CHAPTER 1

General Provisions

**SECTION 29‑1‑10.** Lien on real estate of no force after twenty years; exception for acknowledged debt or payment on account; lien on property interest held by gas or electric utility or electric cooperative.

 No mortgage or deed having the effect of a mortgage or other lien shall constitute a lien upon any real estate after the lapse of twenty years from the date for the maturity of the lien. However, if the holder of the lien shall, at any time during the continuance of the lien, cause to be recorded upon the record of that mortgage or deed having the effect of a mortgage or other lien a note of some payment on account or some written acknowledgment of the debt secured thereby, with the date of the payment or acknowledgment, the mortgage or deed having the effect of a mortgage or other lien shall be, and shall continue to be, a lien for twenty years from the date of the record of that payment on account or acknowledgment. When there is no maturity stated or fixed in the mortgage or the record of the mortgage, then the provisions hereof are applicable from the date of that mortgage and that mortgage shall not constitute a lien after the lapse of twenty years from the date thereof. Notwithstanding the above provisions of this section, any mortgage or other instrument which by its terms creates a lien upon any real property interest held by a gas or electrical utility or electric cooperative shall continue to constitute a lien thereon until satisfied or released of record regardless of whether or not the instrument states a maturity date.

 Any mortgage or other instrument executed or modified of record after the effective date of this paragraph which affects a lien upon any real property interest held by a gas or electrical utility or electric cooperative and is intended to take advantage of the provisions of this section shall state on its face that the lien continues until satisfied or released of record regardless of whether or not the instrument states a maturity date, and shall also state on its face that it is subject to the provisions of this section.

HISTORY: 1962 Code Section 45‑1; 1952 Code Section 45‑1; 1942 Code Section 8864; 1932 Code Section 8864; Civ. C. ‘22 Section 5305; Civ. C. ‘12 Section 3535; Civ. C. ‘02 Section 2449; G. S. 1831; R. S. 1961; 1879 (17) 167; 1898 (22) 748; 1903 (24) 88; 1904 (24) 408; 1924 (33) 990; 1993 Act No. 141, Section 1.

Editor’s Note

1993 Act No. 141, Section 5, effective June 14, 1993, provides as follows:

“SECTION 5. The provisions provided for gas or electrical utilities or electric cooperatives in Sections 29‑1‑10, 29‑3‑50(B), 29‑3‑80, and 29‑3‑90 of this act shall be construed as cumulative authority and shall not be construed to impliedly repeal any existing laws affecting mortgages and liens of gas or electrical utilities or electric cooperatives.”

Library References

Liens 16.

Mortgages 147.

Westlaw Topic Nos. 239, 266.

C.J.S. Mortgages Section 201.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 152, Operation of Law.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:34, Security Instrument.

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1. In general

Applied in Dixion v Roessler (1907) 76 SC 415, 57 SE 203. Lawton v Perry (1893) 40 SC 255, 18 SE 861. Aiken Mortg. & Realty Co. v Altman (1936) 182 SC 300, 189 SE 217.

Cited in De Hihns v Free (1904) 70 SC 344, 49 SE 841. Coleman v Coleman (1906) 74 SC 567, 54 SE 758. Latimer v Trowbridge (1898) 52 SC 193, 29 SE 634.

Stated in First Nat. Bank of Holly Hill v. Hair (S.C. 1942) 200 S.C. 36, 20 S.E.2d 219.

Since the enactment of this section, parties can preserve the mortgage lien only by complying with its terms. McSween v. Windham (S.C. 1916) 104 S.C. 508, 89 S.E. 500.

2. Validity

This section simply changes the rules of evidence. It does not in any wise divest vested rights, and is, therefore, constitutional. Wood v. Milling (S.C. 1890) 32 S.C. 378, 10 S.E. 1081.

3. Determination of lien status at start of action

The status of the lien and the effect of this section are determined at the time of the commencement of a proper action to foreclose the lien or renew its period of activity, and the rule is that the counting of years should stop at the commencement of the action. If this were not the law, lienees would be inclined to curtail their indulgences, and an improper premium would be put upon the efforts of lienors to delay the courts in affording relief. It will not be held that either of these illogical and undesirable ends is within the intendment of this section. Robinson v. Watson (S.C. 1941) 198 S.C. 396, 18 S.E.2d 215.

4. Intent and nature of section

This section [Code 1962 Section 45‑1] is not intended merely as a limitation upon the time in which an action may be brought, nor as a provision for recording merely for the protection of subsequent creditors or purchasers. The lien automatically expires in twenty years, unless kept alive by the indorsement required by this section. [Code 1962 Section 45‑1]. In re Glenn, 1932, 2 F.Supp. 579.

This section [Code 1962 Section 45‑1] creates, upon the lapse of the stated time, a presumption of payment of the liens, and prescribes the form and substance of the evidence necessary to rebut such presumption. Robinson v. Watson (S.C. 1941) 198 S.C. 396, 18 S.E.2d 215. Payment 66(1); Payment 66(5)

This statute is not one of limitation, but rather declares a rule of evidence to rebut a presumption of payment. The right to have one’s controversies determined by the rules of evidence existing at the time the contract is entered into is not a vested right, and therefore may be changed by retroactive legislation without any violation of the Constitution. Boyd v. Boyd (S.C. 1937) 182 S.C. 498, 189 S.E. 794.

5. Application in particular cases

Under this section the period of twenty years commences to run not from the date of the mortgage but from its maturity. Lyles v Lyles (1905) 71 SC 391, 51 SE 113. Stelts v Martin (1911) 90 SC 14, 72 SE 550.

Court of Appeals would decline to affirm’s trial court’s decision granting motion for partial summary judgment that bank, which acquired first tract from mortgagor, filed in mortgagee’s foreclosure action regarding first and second tracts on bank’s additional ground that bank had right to rely on re‑recorded mortgage, which stated that mortgage did not encumber first tract; bank did not raise additional ground in its motion for partial summary judgment, and facts in case were not fully developed. Penza v. Pendleton Station, LLC (S.C.App. 2013) 404 S.C. 198, 743 S.E.2d 850. Mortgages And Deeds Of Trust 2197

Unless a notation of payment for acknowledgment of debt is recorded upon the record of the mortgage at the appropriate office ‑ the office of the register of mesne conveyances or the clerk of the court ‑ it will not preserve the lien beyond the 20‑year period set forth in Section 29‑1‑10. Thus, entries of payments in a mortgagee’s receipt book were incompetent to rebut the statutory presumption of payment of the lien upon a lapse of 20 years from the date of the mortgage. Hart v. Campbell (S.C.App. 1989) 298 S.C. 313, 380 S.E.2d 431.

The holder of a junior mortgage has the right to invoke the benefits of this section, even when the junior mortgage was executed within the twenty‑year period and before the first mortgage had expired, and even where no rights of an innocent third party such as a purchaser for value are involved. The holder of the second mortgage is protected by this section and may plead it as a bar to the lien of the first mortgage which has expired under the terms of this provision. Thomlinson v. Moffett (S.C. 1937) 183 S.C. 181, 190 S.E. 254.

Where a bond and mortgage were executed in 1895, the act of assignee in entering on record of mortgage, in 1915, receipt in 1911 of payment of five dollars did not extend lien of mortgage to twenty years from record under this section, since note must be of payment, and not of ex parte credit which does not affect presumption of payment after twenty years. Merchants’ & Planters’ Nat. Bank of Union v. Hunter (S.C. 1920) 113 S.C. 394, 102 S.E. 720. Limitation Of Actions 159

Under this section, a written acknowledgment, recorded one month and nine days after expiration of the twenty years, does not remove the bar of this section. McSween v. Windham (S.C. 1916) 104 S.C. 508, 89 S.E. 500. Mortgages And Deeds Of Trust 1262

An action commenced Dec. 9, 1905, on a note and mortgage executed January 5, 1886, was held not barred by this section [Code 1962 Section 45‑1]. McSween v. Windham (S.C. 1916) 104 S.C. 508, 89 S.E. 500. Mortgages And Deeds Of Trust 1778

The mere recording in a deed record book of a deed reciting that the grantee is to satisfy a balance of an unstated amount, due to an undesignated person on an unidentified mortgage, is not a compliance with this section. Du Bose v. Kell (S.C. 1911) 90 S.C. 196, 71 S.E. 371, rehearing denied 73 S.E. 184.

When property is conveyed to satisfy a mortgage by husband and wife without a release by the wife after the lapse of more than twenty years from the date of the mortgage, it is presumed paid and is barred by the twenty‑year statute of limitations as prescribed in this section. Gainey v. Anderson (S.C. 1910) 87 S.C. 47, 68 S.E. 888. Limitation Of Actions 19(5)

Under this section the recording of an assignment of a mortgage before the expiration of the twenty years was held to be neither a “note of some payment on account,” nor an “acknowledgment of the debt.” Curtis v. Renneker (S.C. 1891) 34 S.C. 468, 13 S.E. 664.

**SECTION 29‑1‑20.** Right of tenant in common or cotenant to purchase real estate at sale for enforcement of lien.

 A tenant in common or cotenant may purchase real property owned in common at a sale of real property for the enforcement of a lien other than a tax lien, and, unless it be otherwise provided in the judgment or order of sale in the action, the title so acquired by him shall be free and clear of any interests or equities arising from such tenancy in favor of his cotenants or his tenants in common who were properly before the court. In all cases when a tenant in common or cotenant has heretofore purchased real property at a sale of real property for the enforcement of a lien other than a tax lien in an action or proceeding in which all or some of the tenants in common or cotenants were properly before the court, unless it affirmatively appears otherwise in some decree or order duly entered in such action or proceeding, the title of such purchaser is hereby declared to be free of all of the interests and equities of all such tenants in common or cotenants who were properly before the court in such action or proceeding.

HISTORY: 1962 Code Section 45‑2; 1952 Code Section 45‑2; 1942 Code Section 8830‑1; 1934 (38) 1608.

CROSS REFERENCES

Estates and construction of documents creating estates, see Sections 27‑5‑10 et seq.

Library References

Mortgages 362.

Tenancy in Common 19(3), 19(4).

Westlaw Topic Nos. 266, 373.

C.J.S. Mortgages Section 635.

C.J.S. Tenancy in Common Sections 53 to 65, 75.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 34, Judicial Sales.

**SECTION 29‑1‑30.** Wilful sale of property on which lien exists.

 Any person who shall wilfully and knowingly sell and convey any real or personal property on which any lien exists without first giving notice of such lien to the purchaser of such real or personal property shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be imprisoned for a term of not less than ten days nor more than three years and be fined not less than ten dollars nor more than five thousand dollars, either or both in the discretion of the court. But the penalties enumerated in this section shall not apply to public officers in the discharge of their official duties. When the value of such property is less than fifty dollars the offense may be triable in the magistrate’s court and the punishment shall be not more than is permitted by law without presentment or indictment of the grand jury. When the case is within the jurisdiction of the magistrate’s court, the court of general sessions shall have concurrent jurisdiction with the magistrate’s court.

HISTORY: 1962 Code Section 45‑4; 1952 Code Section 45‑4; 1942 Code Section 1276; 1932 Code Section 1276; Cr. C. ‘22 Section 171; Cr. C. ‘12 Section 446; Cr. C. ‘02 Section 336; G. S. 2514; R. S. 276; 1872 (15) 332; 1892 (21) 93; 1893 (21) 411; 1894 (21) 824; 1964 (53) 1719.

Library References

Sales 39.

Vendor and Purchaser 35.

Westlaw Topic Nos. 343, 400.

C.J.S. Sales Sections 50, 52.

C.J.S. Vendor and Purchaser Sections 49, 70.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Peeples v Warren (1898) 51 SC 560, 29 SE 659. State v McCary (1922) 120 SC 361, 113 SE 275. State v Goins (1922) 122 SC 192, 115 SE 232.

Applied in Griffin v. Heinitsh (D.C.S.C. 1970) 309 F.Supp. 1028.

Quoted in McCraney v. Morris (S.C. 1933) 170 S.C. 250, 170 S.E. 276, 95 A.L.R. 622.

Section does not apply to sale not made by owner. For example, a sale of cotton subject to a landlord’s lien by a constable under judicial process, under a crop warrant issued by the landlord, is not such a sale by the owner, who objected thereto, as will subject him to the terms of this section, although he recovered back from the constable and lienor the value of the cotton. State v. Johnson (S.C. 1898) 51 S.C. 268, 28 S.E. 905.

The object of this section is to prevent intentional fraud or deceit in the sale of property by the suppression of facts which it would be important for a purchaser to know before the sale is completed. State v. Johnson (S.C. 1884) 20 S.C. 387.

The lien of a judgment is as much within the meaning of this section as any other lien. State v. Johnson (S.C. 1884) 20 S.C. 387.

This section does not prescribe the degree or kind of notice to be given. State v. Johnson (S.C. 1884) 20 S.C. 387.

**SECTION 29‑1‑40.** Validation of certain mortgages.

 All mortgages given prior to March 9, 1928 by any public utility company, hydroelectric company or manufacturing company to any person whomsoever, covering the whole or any part of its real or personal property, all chattel mortgages executed prior to April 26, 1935 to a production credit association or to the governor of the Farm Credit Administration and all mortgages executed prior to April 4, 1949 by the State Rural Electrification Authority or by a cooperative organized under or subject to the provisions of Electric Cooperative Act and now of record in the office of the clerk of court or register of deeds of any county in this State are hereby validated although the description of the property mortgaged be in whole or in part in printing, mimeographing or any other process of reproduction.

HISTORY: 1962 Code Section 45‑5; 1952 Code Section 45‑5; 1942 Code Section 8713; 1932 Code Section 8713; Civ. C. ‘22 Section 5626; Civ. C. ‘12 Section 4103; Civ. C. ‘02 Section 3002; 1901 (23) 735; 1903 (24) 99; 1928 (35) 1235; 1935 (39) 269; 1949 (46) 157.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

**SECTION 29‑1‑50.** Unlawful use of dual contracts to induce loan commitment on real property.

 It shall be unlawful for any person to knowingly make, issue, deliver or receive dual contracts for the purchase or sale of real property. “Dual contracts”, either written or oral, are two contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price and is used as an inducement for mortgage investors to make a loan commitment on such real property in reliance upon the stated inflated value.

 Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or be imprisoned for not more than six months, or both.

HISTORY: 1962 Code Section 45‑6; 1966 (54) 2284.

Library References

Mortgages 78.

Westlaw Topic No. 266.

C.J.S. Mortgages Section 119.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:41, Miscellaneous.