CHAPTER 9

Indexing and Filing

**SECTION 30‑9‑10.** Indexes to records of registry.

 To the records of the registry, reference shall be had by means of two indexes, both containing the year of registry, names of parties, record and page, the alphabetical arrangement of one being according to the names of the parties who executed the writings and of the other according to the names of the parties to whom they were executed.

HISTORY: 1962 Code Section 60‑151; 1952 Code Section 60‑151; 1942 Code Section 3635; 1932 Code Section 3635; Civ. C. ‘22 Section 2179; Civ. C. ‘12 Section 1355; Civ. C. ‘02 Section 950; G. S. 769; R. S. 820; 1839 (11) 115; 1928 (35) 1185; 1972 (57) 2635.

Library References

Records 8.

Westlaw Topic No. 326.

C.J.S. Records Section 15.

NOTES OF DECISIONS

In general 1

1. In general

A mortgage executed on real estate by the grantors named “Mumford” which was indexed under the subindex “Mul” rather than the subindex “Mum,” was not properly indexed pursuant to Section 30‑9‑10. Liberty Loan Corp. of Darlington, S.C. v. Mumford (S.C.App. 1984) 283 S.C. 134, 322 S.E.2d 17, certiorari granted 284 S.C. 367, 326 S.E.2d 657, certiorari dismissed 287 S.C. 254, 335 S.E.2d 805. Records 8

**SECTION 30‑9‑20.** Separate indexes.

 The clerks and registers of deeds of the several counties shall provide separate indexes for the different sets of records provided for them.

HISTORY: 1962 Code Section 60‑152; 1952 Code Section 60‑152; 1942 Code Section 3635; 1932 Code Section 3635; Civ. C. ‘22 Section 2179; Civ. C. ‘12 Section 1355; Civ. C. ‘02 Section 950; G. S. 769; R. S. 820; 1839 (11) 115; 1928 (35) 1185; 1972 (57) 2635.

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.

Library References

Records 8.

Westlaw Topic No. 326.

C.J.S. Records Section 15.

**SECTION 30‑9‑30.** Filing of written instruments concerning real or personal property; false or fraudulent documents.

 (A) Except as otherwise provided by statute, each clerk of court and register of deeds in this State shall keep a record, in the office in which he files all conveyances, mortgages, judgments, liens, contracts, and papers relating to real and personal property required by statute to be kept by him, by entering in the record the names of the grantor and grantee, mortgagor and mortgagee, obligor and obligee, or other parties to the written instruments, date of filing, and nature of the instrument immediately upon its lodgment for record. The filing is notice to all persons, sufficient to put them upon inquiry of the purport of the filed instrument and the property affected by the instrument. A return address must be provided on each conveyance, mortgage, judgment, lien, contract, or other document submitted for filing with the clerk of court or register of deeds. A document may be refused for filing if it lacks a complete return address.

 (B)(1) If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may refuse to accept the document for filing if he reasonably believes that the document is materially false or fraudulent or is a sham legal process. Within thirty days of a written notice of such refusal, the person presenting the document may commence a suit in a state court of competent jurisdiction requiring the clerk of court or the register of deeds to accept the document for filing.

 (2) If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is materially false or fraudulent, or is a sham legal process, the clerk of court or the register of deeds may remove the document from the public records after giving thirty days’ written notice to the person on whose behalf the document was filed at the return address provided in the document. Within thirty days written notice of the proposed removal, the person providing the notice may commence a suit in a state court of competent jurisdiction preventing the clerk of court or the register of deeds from removing the document.

 (3) If a clerk of court or a register of deeds improperly refuses to accept for filing or recording or improperly removes from the public records a conveyance, mortgage, judgment, lien, contract, or other document pursuant to this section, the clerk of court or register of deeds is not liable for damages, personally or in his official capacity, for the improper refusal or removal.

 (4) For purposes of this subsection:

 (a) “Sham legal process” means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.

 (b) “Lawfully issued” means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.

HISTORY: 1962 Code Section 60‑153; 1952 Code Section 60‑153; 1942 Code Section 8889; 1932 Code Section 8889; Civ. C. ‘22 Section 5320; Civ. C. ‘12 Section 3550; 1911 (27) 152; 1912 (27) 564; 1914 (28) 511; 1916 (29) 781; 1926 (34) 1725; 1972 (57) 2636; 1988 Act No. 494, Section 8(15); 1998 Act No. 385, Section 3; 2005 Act No. 161, Section 18.

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.

Library References

Records 6, 8.

Westlaw Topic No. 326.

C.J.S. Records Sections 9 to 18.

Attorney General’s Opinions

A register of deeds may remove a deed recorded that does not comply with the filing requirements in the law. S.C. Op.Atty.Gen. (September 17, 2015) 2015 WL 5737883.

Registers of Mesne Conveyances and Clerks of Court are not required to accept partial assignments of mortgages for recording; however, because of the absence of express direction from the Legislature on this question, legislative clarification is recommended. 1992 Op. Atty Gen No. 92‑26.

NOTES OF DECISIONS

In general 1

Construction and application 2

1. In general

A landowner had constructive notice, at the time of its land purchase, of a state‑owned pipe which drained water from the highway onto its property and thus its suit for inverse condemnation brought more than 6 years later was barred by the statute of limitations, where a deed in the landowner’s chain of title had been filed in the office of the state Department of Highways and Public Transportation which granted the department a right‑of‑way, and incorporated the department’s construction plans ‑ complete with drainage pipe ‑ by reference. Fuller‑Ahrens Partnership v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1993) 311 S.C. 177, 427 S.E.2d 920, rehearing denied, certiorari denied.

Cited in Witt v. Leysath (S.C. 1931) 160 S.C. 251, 158 S.E. 226.

Application of this section in connection with what are now Sections 30‑7‑10 and 30‑9‑40, see Liddell Co. v. Cork (S.C. 1922) 120 S.C. 481, 113 S.E. 327, 23 A.L.R. 800.

2. Construction and application

Statute authorizing a clerk of court or register of deeds to reject and remove fraudulent documents from the public record did not impliedly give such officials the power to commence litigation to remediate the record; statute was not enacted for the special benefit of the officials, but merely offered guidance as to how they should carry out their job duties, and in fact gave the person presenting a document the power to commence suit to require the clerk of court or register of deeds to accept a document for filing or to prevent him or her from removing a document. Kubic v. MERSCORP Holdings, Inc. (S.C. 2016) 416 S.C. 161, 785 S.E.2d 595, rehearing denied. Records 7; Records 21

Memorandum written by director of court administration to clerks of court, registers of deeds, and masters‑in‑equity recommending that if it was not clear whether a document submitted for recording was fraudulent it should be accepted and then subject to review by the courts did not authorize county administrators and registers of deeds to file lawsuit against Mortgage Electronic Registrations Systems, Inc. (MERS) and others in an attempt to remediate the record; memorandum did not have the force of law, and conflicted with the clear language of statute governing rejection and removal of fraudulent documents from the record, which did not create such a cause of action. Kubic v. MERSCORP Holdings, Inc. (S.C. 2016) 416 S.C. 161, 785 S.E.2d 595, rehearing denied. Records 6

**SECTION 30‑9‑31.** Indexing of deeds where grantor is official acting pursuant to court order and not owner of record.

 When any deed of real property is executed by a master, referee, judge or other official is grantor acting pursuant to a court order, such deed shall be indexed in the grantor index by the clerk of court in the name of the owner of record of the property concerned immediately prior to execution of the deed, as well as in the name of the official who executes such deed as grantor.

HISTORY: 1976 Act No. 451, Section 1.

**SECTION 30‑9‑35.** Filings against present or former government officials or employees; notice of invalid judgment or lien; liability of filing attorney; removal of judgment or lien; remedies for persons injured by wrongful filing.

 (A) A clerk of court or register of deeds may not accept for filing a judgment or other lien against a present or former federal, state, or local official or employee unless the judgment or other lien is issued by a court of competent jurisdiction or appropriate governmental entity, or the judgment or other lien is otherwise authorized by statute.

 (B)(1) If a judgment or other lien is accepted for filing against an individual in contravention of subsection (A), the clerk of court or register of deeds shall accept for filing a notice of invalid judgment or lien. The notice must be signed by the:

 (a) assistant United States attorney or other attorney representing the federal agency of which the individual is an official or employee;

 (b) assistant attorney general or other attorney representing the state agency, board, commission, department, or institution of higher education of which the individual is an employee or official; or

 (c) attorney representing the political subdivision or unit of local government of the State which the official or employee serves if the individual is a local official or employee.

 (2) Within thirty days of filing of a notice of invalid judgment or lien, a copy of the notice of invalid judgment or lien must be mailed by the appropriate attorney to the person shown as the judgment or lien creditor or obligee at the return address provided in the judgment or lien. If no name or return address is provided in the judgment or lien, no notice must be given.

 (3) An attorney who files a notice of invalid judgment or lien pursuant to this subsection is not liable for damages as a result of filing the notice of invalid judgment or lien.

 (4) In addition to the procedure provided in this subsection, the clerk of court or register of deeds may remove a judgment or other lien pursuant to Section 30‑9‑30.

 (C)(1) The filing of a notice of invalid judgment or lien voids the judgment or other lien retroactively to the date it was filed.

 (2) A person who challenges the claim of invalid judgment or lien must commence suit in a state court of competent jurisdiction within thirty days after the date of mailing of the notice of invalid judgment or lien or the filing of the notice is binding and conclusive as to the invalidity of the judgment or other lien.

 (D) A person who is injured by the filing of a judgment or other lien in contravention of subsection (A), has the following civil remedies against the person who filed the judgment or other lien:

 (1) actual damages;

 (2) punitive damages;

 (3) costs; and

 (4) reasonable attorney’s fees.

 (E) For purposes of this section:

 (1) “State or local official or employee” means an appointed or elected official or an employee of a state agency, board, commission, department, in a branch of state government, institution of higher education, other school district, political subdivision, or other unit of government of this State.

 (2) “Federal official or employee” means an employee or official of the United States government or a federal agency as defined for purposes of the Federal Tort Claims Act, 28 U.S.C. Section 2671 (1988).

HISTORY: 1998 Act No. 385, Section 2.

**SECTION 30‑9‑40.** Requirement and effect of indexing of instruments filed for recording.

 The register of deeds or clerk of court in those counties where the office of the register of deeds has been abolished shall immediately upon the filing for record of any deed, mortgage, or other written instrument of the character mentioned in Section 30‑7‑10 or Chapter 9 of Title 36 enter it upon the proper indexes in his office, which constitute an integral, necessary, and inseparable part of the recordation of the deed, mortgage, or other written instrument for any and all purposes whatsoever, and this shall likewise apply to any copy of the indexes made subsequently by the register of deeds or clerk of court, or the deputy of either, or by his authority for the purpose of replacing the original indexes. The entries in the indexes required to be made are notice to all persons sufficient to put them upon inquiry as to the purport and effect of the deed, mortgage, or other written instrument so filed for record, but the recordation of a deed, mortgage, or other written instrument is not notice as to the purport and effect of the deed, mortgage, or other written instrument unless the filing of the instrument for record is entered as required in the indexes.

HISTORY: 1962 Code Section 60‑156; 1952 Code Section 60‑156; 1942 Code Section 8875; 1932 Code Section 8875; Civ. C. ‘22 Section 5312; Civ. C. ‘12 Section 3542; Civ. C. ‘02 Section 2456; G. S. 1776; R. S. 1968; 1879 (16) 92; 1898 (22) 746; 1909 (26) 190; 1914 (28) 482; 1925 (34) 85; 1927 (35) 72; 1934 (38) 1521; 1936 (39) 1387; 1988 Act No. 494, Section 8(16).

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.

Library References

Records 8.

Westlaw Topic No. 326.

C.J.S. Records Section 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 26, Specifics of Recording.

S.C. Jur. Mortgages Section 94, Record Notice.

NOTES OF DECISIONS

In general 1

1. In general

Imperfect indexing of deed does not impair rights of those holding under it. Mitchell v Cleveland (1907) 76 SC 432, 57 SE 33 (superseded by statute as stated in Liberty Loan Corp. v Mumford (App) 283 SC 134, 322 SE2d 17, cert gr 284 SC 367, 326 SE2d 657 and cert dismd 287 SC 254, 335 SE2d 805). Armstrong v Austin (1895) 45 SC 69, 22 SE 763 (superseded by statute as stated in Liberty Loan Corp. v Mumford (App) 283 SC 134, 322 SE2d 17, cert gr 284 SC 367, 326 SE2d 657 and cert dismd 287 SC 254, 335 SE2d 805). Greenwood Loan & Guarantee Ass’n. v Childs (1903) 67 SC 251, 45 SE 167 (superseded by statute as stated in Liberty Loan Corp. v Mumford (App) 283 SC 134, 322 SE2d 17, cert gr 284 SC 367, 326 SE2d 657 and cert dismd 287 SC 254, 335 SE2d 805).

Where two mortgages on same property were recorded on same date and at same time, legal priority would be given to document that was indexed first in the records. BB & T of South Carolina v. Kidwell (S.C.App. 2002) 350 S.C. 382, 565 S.E.2d 316. Mortgages And Deeds Of Trust 1325(2)

The clear construction of Section 30‑9‑40 is that proper indexing supplies inquiry notice of an instrument, while recordation without proper indexing supplies no notice at all. Thomas v. Thomas (S.C.App. 1985) 286 S.C. 294, 333 S.E.2d 76.

A mortgage on real estate executed by grantors named “Mumford” which was indexed under the subindex “Mul” rather than the subindex “Mum” was not properly indexed in accordance with Section 30‑9‑40. Liberty Loan Corp. of Darlington, S.C. v. Mumford (S.C.App. 1984) 283 S.C. 134, 322 S.E.2d 17, certiorari granted 284 S.C. 367, 326 S.E.2d 657, certiorari dismissed 287 S.C. 254, 335 S.E.2d 805. Records 8

It was unnecessary to separately index assignment of mortgage under Section 30‑9‑40 where assignment was essentially part of mortgage. Mills v. Killian (S.C. 1979) 273 S.C. 66, 254 S.E.2d 556.

Cited in Fretwell v. Pearman (S.C. 1926) 134 S.C. 545, 133 S.E. 433.

Presumption that record was in proper county, see Charleston Live Stock Co. v. Collins (S.C. 1908) 79 S.C. 383, 60 S.E. 944.

What is sufficient indexing, see Bryant v. Thigpen (S.C. 1906) 73 S.C. 223, 53 S.E. 368.

**SECTION 30‑9‑50.** Indexing of deeds of certain officers.

 Whenever any clerk of court or register of deeds in counties having such office, tax collector or sheriff shall make any conveyance of, or deed to, real estate, whether pursuant to any order or decree of any court of competent jurisdiction, to a tax sale, to any levy, execution and sale for the satisfaction of a judgment or to any sale pursuant to a partition agreement or ordered by devise or last will, such sale shall be indexed in the office of the clerk of court or register of deeds in the county in which the real estate is situate, not only in the name of the sheriff, clerk of court, register of deeds, or tax collector, making such conveyance, but in the name of the last titleholder. The officer named shall advise the clerk of court or register of deeds of the name of the last title holder and the clerk of court or register of deeds shall index such conveyance in accordance with the provisions hereof.

HISTORY: 1962 Code Section 60‑157; 1952 Code Section 60‑157; 1948 (45) 1971.

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.

CROSS REFERENCES

Recording and indexing of conveyances of real estate sold under execution, see Section 15‑39‑860.

Library References

Records 8.

Westlaw Topic No. 326.

C.J.S. Records Section 15.

Attorney General’s Opinions

When property is under an “unknown” ownership, an entry to this effect in the tax title property description would satisfy the requirements of Sections 30‑9‑50 and 30‑5‑35. 1986 Op. Atty Gen, No. 86‑40, p 125.

**SECTION 30‑9‑70.** Indexing of deeds of certain officers and of passage of title by will or inheritance shall not constitute notice.

 The indexing required by Sections 30‑9‑50 and 30‑9‑60 shall not constitute notice under the statutes of this State relating to the recording of instruments. But nothing herein contained shall impair or affect the notice of the record of the original instruments as otherwise provided by law.

HISTORY: 1962 Code Section 60‑159; 1952 Code Section 60‑159; 1948 (45) 1971.

**SECTION 30‑9‑75.** Second or backup copy of indices maintained by electronic or computer means.

 In all cases where indices affecting real property are required to be maintained in the offices of the clerk of court or register of deeds and where these indices are maintained by electronic or computer means, the clerk of court or register of deeds shall provide at least a second or backup copy of the indices which must be available for use by the public in the event of destruction or unavailability of the electronic indices.

HISTORY: 1990 Act No. 312, Section 1.

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.

Library References

Records 8.

Westlaw Topic No. 326.

C.J.S. Records Section 15.

**SECTION 30‑9‑80.** Fees for indexing or notation.

 For any indexing or notation under Section 30‑9‑50 or 30‑9‑60 the clerk or register shall charge a fee of twenty‑five cents for each paper indexed in the office of the clerk of court or register of deeds and the judge of probate shall charge a fee of twenty‑five cents for each indexing in accordance with the provisions of said sections.

HISTORY: 1962 Code Section 60‑160; 1952 Code Section 60‑160; 1948 (45) 1971.

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.

Library References

Records 8.

Registers of Deeds 3.

Westlaw Topic Nos. 326, 330.

C.J.S. Records Section 15.

C.J.S. Registers of Deeds Sections 16 to 17.