CHAPTER 7

Recordation Essential to Validity

**SECTION 30‑7‑10.** Validity of conveyances, liens, and other transactions as to subsequent purchasers and creditors.

All deeds of conveyance of lands, tenements, or hereditaments, either in fee simple or for life, all deeds of trust or instruments in writing conveying estate, creating a trust in regard to the property, or charging or encumbering it, all mortgages or instruments in writing in the nature of a mortgage of any real property, all marriage settlements, or instruments in the nature of a settlement of a marriage, all leases or contracts in writing made between landlord and tenant for a longer period than twelve months, all statutory liens on buildings and lands for materials or labor furnished on them, all statutory liens on ships and vessels, all certificates of renunciation of dower, all contracts for the purchase and sale of real property, all assignments, satisfactions, releases, and contracts in the nature of subordinations, waivers, and extensions of landlords' liens, laborers' liens, sharecroppers' liens, or other liens on real property created by law or by agreement of the parties and generally all instruments in writing conveying an interest in real estate required by law to be recorded in the office of the register of deeds or clerk of court in those counties where the office of the register of deeds has been abolished or in the office of the Secretary of State delivered or executed after July 31, 1934, except as otherwise provided by statute, are valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors), or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated. In the case of a subsequent purchaser of real estate, or in the case of a subsequent lien creditor on real estate for valuable consideration without notice, the instrument evidencing the subsequent conveyance or subsequent lien must be filed for record in order for its holder to claim under this section as a subsequent creditor or purchaser for value without notice, and the priority is determined by the time of filing for record.

HISTORY: 1962 Code Section 60‑101; 1952 Code Section 60‑101; 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; 1958 (50) 1958; 1960 (51) 1730; 1988 Act No. 494, Section 8(11).

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 30‑7‑20.** Manner and form of recordation of contract affecting recorded lien on real property.

The recordation of any contract in the nature of a subordination, waiver or extension of any lien on real property, created by law or by agreement of the parties, shall be upon the record of the recorded mortgage or other written instrument except that it may be recorded elsewhere, if in the book for the recording of mortgages there should be no place upon the record of the recorded mortgage or other written instrument sufficient for the recordation of such contract in the nature of a subordination, waiver or extension, in which event there shall be entered on the margin of the recorded mortgage or other written instrument in regard to which such contract in the nature of a subordination, waiver or extension has been thus recorded elsewhere an appropriate reference to such recordation, giving the names of the parties thereto and the date and the book and page where such instrument is recorded. But in any county where the records are photographed, or microphotographed, or filmed, and there shall be no place upon the record of the recorded mortgage or other written instrument or upon the margin of the recorded mortgage or other written instrument sufficient for the recordation of such contract in the nature of a subordination, waiver or extension, such documents may be separately recorded as other instruments, and notation of the place of such recordation shall be entered on the index for the mortgage or other written instrument, or in a legible manner in the jacket or other container for such photograph, microphotograph or film. Any contract in the nature of a subordination, waiver or extension of any lien on real property created by law or by agreement of the parties, to be entitled to be recorded as herein provided shall be in writing and witnessed as mortgages of real property are required to be witnessed and not probated when it is upon the original mortgage or other instrument itself, but when it is upon a separate piece then it shall be probated in the same manner as is provided by law for the probating of mortgages of real property.

HISTORY: 1962 Code Section 60‑102; 1952 Code Section 60‑102; 1942 Code Section 8875‑1; 1934 (38) 1518; 1959 (51) 482.

**SECTION 30‑7‑30.** Release or satisfaction of lien affecting title to real estate.

A release or satisfaction of the lien of any mortgage or other written instrument affecting title to real property as security for the payment of money, made or entered into by the original mortgagee, trustee or his legal representative, or any assignee under an assignment recorded as provided in Section 30‑7‑40 shall be good and effectual, both in law and in equity, for the protection of any subsequent purchaser for a valuable consideration of the property affected by such mortgage or other written instrument, or subsequent creditor obtaining a lien upon such property, notwithstanding any assignment or transfer of such mortgage or other written instrument or of the obligation secured thereby, unless such assignment or transfer shall have been recorded as provided in Section 30‑7‑40 or such purchaser or creditor shall have had actual notice thereof before such purchaser or lien creditor acquired any interest in or claim upon the real estate so encumbered.

HISTORY: 1962 Code Section 60‑103; 1952 Code Section 60‑103; 1942 Code Section 8881; 1932 Code Section 8881; 1924 (33) 928; 1926 (34) 982; 1933 (38) 525.

**SECTION 30‑7‑40.** Manner of recordation of assignment or transfer of mortgage.

The recordation of such an assignment or transfer as is mentioned in Section 30‑7‑30 shall, to be effective under such section, be upon the record of the recorded mortgage or other written instrument, except that it may be recorded elsewhere in the record for the recording of mortgages should there be no place upon the record of the recorded mortgage or other written instrument sufficient for the recordation of such assignment, in which event there shall be entered on the margin of the recorded mortgage or other written instrument whose assignment has been thus recorded elsewhere an appropriate reference to such recordation, giving the name of the assignee, the date of the assignment and the record and page where recorded.

HISTORY: 1962 Code Section 60‑104; 1952 Code Section 60‑104; 1942 Code Section 8881; 1932 Code Section 8881; 1924 (33) 928; 1926 (34) 982; 1933 (38) 525; 1972 (57) 2633.

**SECTION 30‑7‑50.** Manner in which assignment shall be executed and probated.

Any assignment to be entitled to be recorded as provided in Section 30‑7‑40 shall be in writing and witnessed as mortgages of real property are required to be witnessed and shall not be probated when it is upon, or attached to, the original mortgage itself, but when it is upon a separate piece not attached to the original mortgage itself then it shall be probated in the same way as is now provided by law for the probating of mortgages of real property. Assignment of mortgage forms shall include the name of the mortgagor and the name and address of the mortgagee and the book, page, and date of recording of the original mortgage, and may include a toll free number for the assignee if such a number is available.

HISTORY: 1962 Code Section 60‑105; 1952 Code Section 60‑105; 1942 Code Section 8881; 1932 Code Section 8881; 1924 (33) 928; 1926 (34) 982; 1933 (38) 525; 1996 Act No. 297, Section 1.

**SECTION 30‑7‑60.** Assignment, satisfaction, or release of lien.

Except as otherwise provided by statute, assignments, satisfactions, releases, and contracts in the nature of subordinations, waivers, and extensions of landlords' liens, laborers' liens, sharecroppers' liens, and other liens on personal property, created by law or by agreement of the parties, contracts in the nature of subordinations, waivers, and extensions of liens on real property, created by law or by agreement of the parties, made or entered into by the original mortgagee, lien creditor, or trustee, or his legal representative or any assignee under an assignment recorded as herein or otherwise provided, are good and effectual, both in law and in equity, for the protection of any subsequent purchaser for a valuable consideration of the property affected by the mortgage or other instrument or lien created by law or any subsequent creditor obtaining a lien upon the property, notwithstanding any other assignment, transfer, satisfaction, release, subordination, waiver, or extension contract of the mortgage or other lien, or the obligation secured thereby, unless the other assignment, satisfaction, release, subordination, waiver, or extension contract of the mortgage or other lien or the obligation secured thereby, has been recorded as herein or otherwise provided or the purchaser or creditor has had actual notice thereof before the purchaser or lien creditor acquired any interest in or lien upon the property so encumbered.

HISTORY: 1962 Code Section 60‑106; 1952 Code Section 60‑106; 1942 Code Section 8875‑1; 1934 (38) 1518; 1988 Act No. 494, Section 8(12).

**SECTION 30‑7‑70.** Recording and indexing of certain liens against personal property.

Except as otherwise provided in Chapter 9, Title 36 or by other applicable provisions of law, liens on personal property required to be recorded in the office of the register of deeds or clerk of court in those counties where there is no office of the register of deeds must be witnessed and probated in the manner required for the execution of deeds and must be recorded and indexed in a book entitled Miscellaneous Liens on Personal Property. A separate index showing the name of the lienor and lienee must be maintained for each separate type of lien recorded in this book. The recording officer is entitled to the same fees as are provided for recording of deeds of equal length.

HISTORY: 1962 Code Section 60‑107; 1952 Code Section 60‑107; 1942 Code Section 8875‑1; 1934 (38) 1518; 1972 (57) 2634; 1988 Act No. 494, Section 8(13).

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 30‑7‑80.** Manner and form of recordation of instruments conveying an interest in or lien on personal property.

Except as otherwise provided by statute, the recordation of the assignments, satisfactions, releases, contracts in the nature of subordinations, waivers, and extensions of chattel mortgages or other instruments conveying an interest in or creating a lien on personal property must be upon the record of the recorded mortgage or other written instrument, except that the instrument may be recorded elsewhere in the book for the recordation of mortgages should there be no place upon the record of the recorded mortgage or other written instrument sufficient for the recordation of the assignment, satisfaction, release, contract in the nature of subordination, waiver, or extension of the lien, in which event there must be entered on the margin of the recorded mortgage or other written instrument whose assignment, satisfaction, release, contract in the nature of subordination, waiver, or extension has been thus recorded elsewhere an appropriate reference to the recordation, giving the names of the parties to the recordation, the date, and the book and page where the instrument is recorded. In any county where the records are photographed, microphotographed, or filmed, and there is no place upon the record of the recorded mortgage or other written instrument, or upon the margin of the recorded mortgage or other written instrument sufficient for the recordation of the assignments, satisfactions, releases, contracts in the nature of subordinations, waivers, and extensions of chattel mortgages or other instruments, the documents may be separately recorded as other instruments, and notation of the place of the recordation must be entered on the index for the mortgage or other written instrument or in a legible manner in the jacket or other container for the photograph, microphotograph, or film. Any assignment, satisfaction, release, contract in the nature of subordination, waiver, or extension of a chattel mortgage or other instrument conveying an interest in or creating a lien on personal property, to be entitled to be recorded as herein provided must be in writing and witnessed, as mortgages of personal property are required to be witnessed and not probated when it is upon the original mortgage or other instrument itself, but when it is upon a separate piece then it must be probated in the same way as is required for the probating of mortgages of personal property.

HISTORY: 1962 Code Section 60‑108; 1952 Code Section 60‑108; 1942 Code Section 8875‑1; 1934 (38) 1518; 1959 (51) 483; 1988 Act No. 494, Section 8(14).

**SECTION 30‑7‑90.** Notice of unrecorded instrument.

No possession of real property described in any instrument of writing required by law to be recorded shall operate as notice of such instrument. Actual notice shall be deemed and held sufficient to supply the place of registration only when such notice is of the instrument itself or of its nature and purport.

HISTORY: 1962 Code Section 60‑109; 1952 Code Section 60‑109; 1942 Code Section 8882; 1932 Code Section 8882; Civ. C. '22 Section 5313; Civ. C. '12 Section 3543; Civ. C. '02 Section 2457; R. S. 1969; 1888 (20) 15.

**SECTION 30‑7‑100.** Assignment of mortgage or note; collateral assignment; obligations involving Farm Credit System institutions.

(A) For purposes of this section:

(1) "Assignment of note" means every document endorsing, assigning, transferring, pledging, or conveying an interest in a note and mortgage securing the note, whether set forth in a separate instrument or contained in a loan agreement, financing agreement, or security agreement or given in conjunction with financing arrangements, involving Farm Credit System institutions.

(2) "Collateral assignment" means any assignment of a note and mortgage made and delivered in connection with any extension of credit involving Farm Credit System institutions, where the assignor retains the right to collect or to apply the note payments after assignment and prior to default.

(3) "Farm Credit System institution" means a Farm Credit Bank, (formerly Federal Land Bank or Federal Intermediate Credit Bank), an Agricultural Credit Bank, an agricultural credit association (ACA), a production credit association (PCA), a federal land bank association (FLBA), or a federal land credit association (FLCA), chartered by the federal Farm Credit Administration pursuant to the Farm Credit Act of 1971, as amended, or an act of the United States Congress, or any successor or assignee of any of the foregoing.

(B) It is not necessary in order to perfect a valid written assignment of a mortgage or other agreement mortgaging real property or an interest in real property, which is pledged as security for an obligation involving Farm Credit System institutions, to record the written assignment in the office of the clerk of court or other recording office in the county in which the real property is located. A transfer of the promissory note or other instrument secured by the mortgage or other security instrument by an assignment of note to such an institution, which assignment of note constitutes an effective transfer or assignment under the laws of this State, constitutes an effective assignment of the mortgage or other security instrument. The assignee of the note is entitled to enforce all obligations contained in the promissory note or other agreement and possesses all of the rights of the assignor in the mortgage or other security instrument given to a Farm Credit System institution, including the right to foreclose the instrument in accordance with law without restriction. The provisions of this section do not preclude the recordation of a written assignment of a mortgage or other security instrument with or without the promissory note or other instrument that it secures.

(C) The execution of a written document containing an assignment of note is valid and enforceable from the time of execution to pass the interest granted, pledged, assigned, or transferred in the note and the mortgage securing the note as against the assignor, and the transfer is perfected from the time of execution against subsequent assignees, lien creditors, and purchasers for valuable consideration from the assignor; provided, however, that service of process on a Farm Credit System institution that is a mortgagee of record in any foreclosure action, or other action affecting title to the underlying real estate collateral, must be deemed sufficient service to any Farm Credit System institution that is assignee of such mortgage and underlying note as provided herein.

(D) Where an assignment of note is a collateral assignment, after a default under the loan agreement, financing agreement, security agreement, or other evidence of indebtedness which the assignment secures, the assignee is thereafter entitled, but not required, to collect and receive any accrued and unpaid or subsequently accruing note payments and to foreclose the mortgage securing the note subject to the assignment without need for the appointment of a receiver, any act to take possession of the note, or any further demand on the assignor or maker of the note. Unless otherwise agreed, after default the assignee is entitled to notify the maker or other obligor to make payment to the assignee and is also entitled to have possession of any payments or proceeds to which the assignee may be entitled.

(E) This section does not exclude other methods of creating, perfecting, collecting, sequestering, or enforcing a security interest in notes and mortgages provided by the laws of this State.

(F) For documents executed on or after the effective date of this section, the provisions of this section providing that the assignment of mortgages need not be recorded must be reflected in the mortgage in bold print.

HISTORY: 1994 Act No. 398, Section 1.