

CHAPTER 1: REAL ESTATE TRANSACTIONS 1

A. Role of a Lawyer.....3

Unauthorized Practice of Law3

State v. Buyers Serv. Co., 292 S.C. 426, 357 S.E.2d 15 (1987) 3

Wachovia Bank, N.A., v. Coffey, No. 4685, slip op., (S.C. Ct. App. May 6, 2010) 10

Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003)..... 14

Doe Law Firm v. Richardson, 371 S.C. 14, 636 S.E.2d 866 (2006) 22

Lawyer Malpractice in Real Estate Matters26

Mali v. Odom, 295 S.C. 78, 367 S.E.2d 166 (Ct. App. 1988)..... 27

Lawyer Ethics in Real Estate Transactions.....31

“Definitely Suspended and Disbarred”50

In re Brown, 361 S.C. 347, 605 S.E.2d 509 (2004) 50

B. Role of the Broker55

Real Estate Agents 55

 I. Types of Agency.....54

 II. Cases.....56

Champion v. Whaley, 280 S.C. 116, 311 S.E.2d 404 (Ct. App. 1984) 56

United Farm Agency v. Malanuk, 284 S.C. 382 S.E.2d 544 (1985)..... 61

Hilton Head Island Realty, Inc. v. Skull Creek Club, 287 S.C. 530, 339 S.E.2d 890 (Ct. App. 1986)..... 64

 Broker Liability..... 70

 I. Nature of Broker's Obligations 70

 II. Broker's Federal Obligations: The Fair Housing Act of 1968..... 72

Table of Contents

Hobson, et al. v. George Humphreys, Inc., et al.,
563 F. Supp. 344 (W.D. Tenn. 1982)..... 75

CHAPTER 2: REAL ESTATE CONTRACTS **87**

A. Risk of Loss89
Good v. Jarrard, 93 S.C. 229, 76 S.E. 699 (1912) 89
Crawford v. Powers, 419 F. Supp. 723 (D.S.C. 1974)..... 102

B. What are the Terms of the Agreement110
A Sample Real Estate Contract..... 110
Maccaro v. Andrick Dev. Corp., 280 S.C. 96, 311 S.E.2d 91
(Ct. App. 1984) 114

C. Termite and Wood Damage Problems118
The Law of Termites in South Carolina..... 121
May v. Hopkinson, 289 S.C. 549, 347 S.E.2d 508
(Ct. App. 1986) 143

D. Statute of Frauds149
Speed v. Speed, 213 S.C. 401, 49 S.E.2d 588 (1948) 155
Benya v. Gamble, 282 S.C. 624, 321 S.E.2d 57
(Ct. App. 1984) 165
Atlantic Wholesale Co. Inc. & Statute of Frauds 169
Bradshaw v. Ewing, 297 S.C. 242, 376 S.E.2d 264 (1989) 171
Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) 174

E. Option Contracts and Issues of Equity178
Faulkner v. Millar, 319 S.C. 216, 460 S.E.2d 378 (1995) 178
Wall v. Huguenin, 305 S.C. 100, 406 S.E.2d 347 (1991) 182
Edens & Avant Invest. Prop. v. Amerada Hess Corp., 318 S.C.
134, 456 S.E.2d 406 (Ct. App. 1995)..... 186

F. Questions of Waiver, Parol Evidence, and Merger188
Edwards v. Rouse, 290 S.C. 449, 351 S.E.2d 174
(Ct. App. 1986) 188

<i>Iseman v. Hobbs</i> , 290 S.C. 482, 351 S.E.2d 351 (Ct. App. 1986)	192
<i>Wilson v. Landstrom</i> , 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984)	194
G. Real Estate Descriptions	201
<i>John Talbot v. The Ex'rs of John C. Mason</i> , 2 McCord 440, 13 S.C.L. 440 (1823)	201
Real Estate Descriptions	Error! Bookmark not defined.
Verifying Property Descriptions in Deeds	205
<i>Knox v. Bogan</i> , 322 S.C. 64, 472 S.E.2d 43 (Ct. App. 1996)	209
H. Marketable Title	215
<i>Sales Int'l Ltd. v. Black River Farms, Inc.</i> , 270 S.C. 391, 242 S.E.2d 432 (1978)	215
The Honorable Julius B. Ness	220
<i>McMaster v. Strickland</i> , 305 S.C. 527, 409 S.E.2d 440 (Ct. App. 1991)	222

CHAPTER 3: BREACH OF THE AGREEMENT 225

<i>Introductory Note</i>	227
A. Seller Remedies for Breach by Buyer	228
<i>Morris Morgan Realty v. Johnson</i> , 288 S.C. 43, 339 S.E.2d 514 (1985)	228
<i>Sheek v. Lee</i> , 289 S.C. 327, 345 S.E.2d 496 (1986)	230
<i>Benya v. Gamble</i> , 282 S.C. 624, 321 S.E.2d 57 (Ct. App. 1984)	232
<i>Bannon v. Knauss</i> , 282 S.C. 589 320 S.E.2d 470 (Ct. App. 1984)	236
Three More Seller vs. Buyer Cases	238
<i>Slack v. James</i> , 364 S.C. 609, 614 S.E.2d 636 (2005)	238
<i>Madren v. Bradford</i> , 378 S.C. 187, 661 S.E.2d 390 (Ct. App. 2008)	240
<i>Brazell v. Windsor</i> , 384 S.C. 512, 682 S.E.2d 824 (2009)	240

Table of Contents

Hamilton v. Harborview Dev. Partners, 293 S.C. 226, 359 S.E.2d 516 (1987) 241

B. Buyer Remedies for Breach by Seller 243

Culler v. Hydrick, 162 S.C. 253, 160 S.E. 731 (1930)..... 243

Goodwin v. Hilton Head Co., 273 S.C. 758, 259 S.E.2d 611 (1979) 248

Specific Performance 250

Amick v. Hagler, 286 S.C. 481, 334 S.E.2d 525 (Ct. App. 1985) 262

Windham v. Honeycutt, 290 S.C. 60, 348 S.E.2d 185 (Ct. App. 1986) 265

C. One more Buyer v. Seller Case 268

Lowcountry Open Land Trust v. Charleston Southern Univ., 656 S.E.2d 775 (S.C. App. 2008)..... 268

CHAPTER 4: THE DEED AND LIABILITIES THAT SURVIVE THE CLOSING 269

A. Necessary Formalities 269

§ 27-7-10. Form of Conveyance of Fee Simple; Witnesses. 269

§ 30-5-30. Prerequisites to Recording..... 270

§ 30-5-35. Derivation Clause and Address of Grantee or Mortgagee on Deeds and Mortgages. 272

Farmer’s Bank & Trust Co. v. Fudge, 113 S.C. 25, 100 S.E. 628 (1919) 273

B. Defective Deeds 279

Harrington v. Blackston, 319 S.C. 1, 459 S.E.2d 309 (Ct. App. 1995) 279

Leasing Enter., Inc., v. Livingston, 294 S.C. 204, 363 S.E.2d 410 (Ct. App. 1987) 286

Reaves v. Stone, 231 S.C. 628, 99 S.E.2d 729 (1957) 291

Foster v. Foster, 384 S.C. 380, 682 S.E.2d 312 (Ct. App. 2009) 296

Table of Contents

<i>Skipper v. Perrone</i> , 382 S.C. 53, 674 S.E.2d 510 (Ct. App. 2009)	299
§ 27-27-10. Recovery for Improvements Made in Good Faith.	305
§ 27-27-20. Determining Value of Improvements.	305
§ 27-27-30. Proceedings Subsequent to Judgment to Recover Value of Improvements.	305
§ 27-27-40. Stay of Judgment in First Action; Special Verdict for Betterments.	305
§ 27-27-50. Judgment Deemed Equivalent to Attachment; Priority of Liens.	305
C. Interpretation of Deeds.	306
<i>Dargan v. Tankersley</i> , 380 S.C. 480, 671 S.E.2d 73 (2008).....	307
D. Implied Warranties in South Carolina	316
<i>Lane v. Trenholm Bldg. Co.</i> , 267 S.C. 497, 229 S.E.2d 728 (1976)	316
<i>Terlinde v. Neely</i> , 275 S.C. 395, 271 S.E.2d 768 (1980).....	320
<i>Kennedy v. Columbia Lumber & Mfg. Co.</i> , 299 S.C. 335, 384 S.E.2d 730 (1989)	323
E. Negligence and Recklessness	331
<i>Kincaid v. Landing Dev. Corp.</i> , 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986)	331
<i>Pruitt v. Maelstrom Properties, Inc.</i> , 288 S.C. 298, 342 S.E.2d 400 (1986)	334
<i>Satcher v. Berry</i> , 299 S.C. 381, 385 S.E.2d 41 (Ct. App. 1989)	336
<i>McLaughlin v. Williams</i> , 379 S.C. 451, 665 S.E.2d 667 (Ct. App. 2008)	339
F. Warranties Found Directly in the Deed	344
<i>Martin v. Floyd</i> , 282 S.C. 47, 317 S.E.2d 133 (Ct. App. 1984)	344
<i>Greer v. McFadden</i> , 295 S.C. 14, 366 S.E.2d 263 (Ct. App. 1988)	347
The Honorable John P. Gardner, Sr.	353

CHAPTER 5: FINANCING THE PURCHASE 355

A. Mortgages: Past and Present357
Green v. Jacobs, 5 S.C. 280 (1874) 357
Sample Savings and Loan Association Mortgage..... 360
Williams v. Lawrence et al., 194 S.C. 1, 8 S.E.2d 838 (1940) 370
Paramount Fund, Inc. v. Cusaac, 282 (S.C. 497, 319 S.E.2d 354
(Ct. App. 1984) 380

B. Less Obvious Types of Mortgages?383

F. *Gregorie & Son v. Hamlin*, 273 S.C. 412, 257 S.E.2d 699
(1979) 383
Further order in *F. Gregorie & Sons v. Hamlin*..... 398
Lewis v. Premium Inv. Corp., 351 S.C. 167, 568 S.E.2d 361
(2002) 412
Perpetual Fed. Sav. & Loan Ass'n v. Willingham, 296 S.C. 24,
370 S.E.2d 286 (Ct. App. 1988)..... 422

CHAPTER 6: PRIORITY PROBLEMS 425

A. Introductory Note427

B. Is the Mortgage Protected under the Recording Statute?430
Liberty Loan Corp. of Darlington, S.C. v. Mumford, 283 S.C
134, 322 S.E.2d 17 (Ct. App. 1984) 430
Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp., 273
S.C 306, 257 S.E.2d 496 (1979) 436
McMillen Feed Mills, Inc. of S.C. v. Mayer, 265 S.C. 500, 220
(S.E.2d 221 (1975) 441
United Carolina Bank v. Caroprop, Ltd., 316 S.C. 1, 446 S.E.2d
415 (1994) 451

CHAPTER 7: THE UNDERLYING OBLIGATIONS 455

A. Introductory Note457

B. Promissory Note458

Fed. Deposit Ins. Corp. v. Kirkland, 272 S.C. 310, 251 S.E.2d 750 (1979) 463

C. The Basic Mortgage467

Mortgage 468

Sec. Fed. Sav. & Loan Assoc. of Aiken v. Coleman, 284 S.C. 394, 325 S.E.2d 546 (1985) 485

D. Release of Mortgagee.....487

§ 29-3-310. Satisfaction shall be Entered upon Full Payment. 487

§ 29-3-320. Liability for Failure to Enter Satisfaction..... 487

CHAPTER 8: TITLE INSURANCE 491

Introduction to Title Insurance..... 493

First Fed. Sav. Bank of Brunswick v. Stewart Title Guar. Co., 451 S.E.2d 916, 317 S.C. 131(Ct. App. 1994) 512

Bennett v. Investors Title Ins. Co., 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006) 522

Black v. Patel, 357 S.C. 466, 594 S.E.2d 162 (2004) 535

CHAPTER 9: FORECLOSURE AND OTHER REMEDIES 541

A. A Primer On Mortgage Foreclosures543

B. Mortgage Foreclosure Check List546

C. A Peek Into Practice: The Pleadings in Foreclosure550

1. Summons..... 550

2. Complaint..... 551

3. Lis Pendens 554

4. Master’s Report and Judgment of Foreclosure and Sale..... 555

5. Transcript of Testimony for Foreclosure Case 561

D. A Look At The Statutory Scheme.....565

§ 29-3-10. Rights and Title of Mortgagor and Mortgagee. 565

Table of Contents

§ 29-3-20. Prior Mortgages may be Redeemed by Second Mortgagees..... 565

§ 29-3-30. Mortgagee may Pay Taxes. 565

§ 29-3-40. Priority of Certain Advancements by Mortgage. 565

§ 29-3-50. Mortgage for Future Advances; Mortgage or Lien on Property held by Gas or Electric Utility or Electric Cooperative. 566

§ 15-65-10. Appointment of Receiver. 567

E. A Look at Some Relevant Cases568

1. Traditional Foreclosure Remedy..... 563

Sellars v. First Colonial Corp., 276 S.C. 548, 280 S.E.2d 805 (1981) 568

Watson v. Fowler et al., 165 S.C. 288, 163 S.E. 640 (1932) 570

Goodwin v. Dawkins, 282 S.C. 40, 317 S.E.2d 449 (1984) 576

S.C. Nat’l Bank v. Cook, 291 S.C. 530, 354 S.E.2d 562 (1987) 579

F. Special Remedy of a Receiver583

Seignious v. Pate et. al., 10 S.E. 880 (1890) 583

Kirvin v. Lawrence, 244 S.C. 572, 137 S.E.2d 764 (1964) 587

The Honorable Claude Ambrose Taylor 593

CHAPTER 10: REDEMPTION OF THE MORTGAGE 595

Allendale Furniture Co. v. Carolina Commercial Bank, 284 S.C. 76, 325 S.E.2d 530 (1985) 597

Cont’l Mtg. Investors v. Quail Run Assocs., 280 S.C. 409, 312 S.E.2d 272 (Ct. App. 1984) 602

Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989) 608

CHAPTER 11: MORE FORECLOSURE, INCLUDING SPECIFIC LEGISLATION ON DEFICIENCY JUDGEMENTS 615

A. The Basic Statutory Scheme617

§ 29-3-660. Deficiency Judgment..... 617

§ 29-3-670. Deficiency shall not be Extinguished on Purchase
by Mortgagee. 617

§ 29-3-680. Application for Order of Appraisal. 617

§ 29-3-690. Time for Filing for Appraisal may be extended only
by Written Consent. 618

§ 29-3-700. Order for Appraisal. 618

§ 29-3-710. Appointment of Appraisers. 618

§ 29-3-720. Appraisal of the Mortgaged Property. 618

§ 29-3-730. Effect of Failure of Appraisers to Agree. 618

§ 29-3-740. Return of Appraisers; Effect of Return on
Deficiency Judgment. 619

§ 29-3-750. Appeal from return of appraisers. 619

§ 29-3-760. Compensation and Costs of Appraisers and Clerk. 619

§ 29-3-770. Application of Appraisal Provisions to Present and
Future Mortgages. 619

B. Selected Cases 620

Perpetual Bldg. & Loan Assoc. v. Braun, 270 S.C. 338, 242
S.E.2d 407 (1978) 620

Bartles v. Livingston, 282 S.C. 448, 319 S.E.2d 707 (Ct. App.
1984) 625

*Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Ret. Group,
Inc.*, 302 S.C. 223, 394 S.E.2d 849 (Ct. App. 1990) 636

CHAPTER 12: TRANSFERS 645

Ga. R.R. Bank & Trust Co. v. Doolittle, 272 S.C. 249, 252
S.E.2d 556 (1979) 647

Zorn v. Railroad Co., 5 S.C. 90 (1873) 650

Cooper v. Tindall, 267 S.C. 196, 226 S.E.2d 888 (1976) 661

CHAPTER 13: QUIET TITLE ACTION 667

A. The Basic Statutory Scheme 669

§ 15-67-10. Persons Who may Bring Action to Determine
Adverse Claim. 669

Table of Contents

§ 15-67-30. Propriety of Service by Publication; Personal Service Out of State shall be Sufficient.	669
§ 15-67-40. Service on Unknown Parties; Notice o Lis Pendens.	669
§ 15-67-50. Appearance of Unknown Parties; Subsequent Defense by Minors.	670
§ 15-67-60. Reference to Master; Determining Claims of Nonresidents or Minors.	670
§ 15-67-70. Effect of Judgment; Persons Bound.	670
§ 15-67-80. Costs.	670
§ 15-67-100. Right to Jury Trial Unchanged.	670
B. The Cases	671
<i>Tolbert v. Greenwood Cotton Mill</i> , 213 S.C. 43, 48 S.E.2d 599 (1948)	671
<i>Ayers v. Ackerman</i> , 324 F. Supp. 814 (D.S.C. 1971)	674
<i>Jones v. Leagan</i> , 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009)	678
<i>Duncan v. Little</i> , 384 S.C. 420, 682 S.E.2d 788 (2009)	689