

1980 WL 120902 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 30, 1980

**Re: Procedure for Recording of Leases of Personal Property**

\*1 The Honorable Donnie S. Tankersley, R.M.C.  
Room 200  
County Court House  
Greenville, South Carolina 29601

Dear Mr. Tankersley:

You have requested the opinion of this office regarding the procedure for recording of lease of personal property. This question is the subject of a recent South Carolina Law Review article, Zion, Mandatory Recording of Personal Property Leases in South Carolina: An Examination of the South Carolina Bailment Statute as Affected by U. C. C. Article Nine, 30 S.C.L. Rev. 557 (1979), and a recent opinion of this office, [1970-71] Op.Atty.Gen. 180, 181, copies of which are enclosed.

Under the terms of U. C. C. Article 9, § 36-9-101, et seq., Code of Laws of South Carolina (1976), the proper procedure for recording personal property leases is the filing of a U. C. C. Financing Statement (§ 36-9-401, Code of Laws of South Carolina (1976)). This section, however, excludes those leases which are not intended as security interests, i.e., the 'true lease'. (For a discussion of the distinction between 'security leases' and true leases see Zion, 567 (enclosed).)

The true lease is governed by the bailment statute (§ 27-23-80, Code of Laws of South Carolina (1976), but this office has opined (see enclosed [1970-71] Op.Atty.Gen. 180) and the federal district court has agreed (In re Bazen, 425 F.Supp. 1184 (1977)) that even true leases may be recorded as U. C. C. financing statements, as if they were chattel mortgages, with a notation in Item 4 of U. C. C. Form 1 that the agreement which the statement covers is a lease.

In the event that a party to a true lease does not wish to assume the rights and obligations of the U. C. C. such as a true lease may be recorded under the bailment statute in the same fashion as a mortgage of real estate, the lessor indexed as Mortgagee and the lessee as Mortgagor.

Sincerely,

Richard B. Kale, Jr.  
Senior Assistant Attorney General

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