

1977 S.C. Op. Atty. Gen. 170 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-221, 1977 WL 24563

Office of the Attorney General

State of South Carolina

Opinion No. 77-221

July 14, 1977

***1 RE: Retention period of chattel mortgages prior to their destruction by the Local Records Section of the Department of Archives and History.**

TO: Julian Mims
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S. C. Department of Archives and History

DISCUSSION:

Pursuant to Sections 30–1–10, *et seq.*, CODE OF LAWS OF SOUTH CAROLINA (1976), the South Carolina Department of Archives and History is in charge of a records management program for, among other things, the disposal of public records. The question has arisen as to what length of time is required before Archives can begin destroying chattel mortgages. The retention period of chattel mortgages varies from county to county in this State. *See*, Sections 15–1765–1766, CODE OF LAWS OF SOUTH CAROLINA (1962). To further complicated matters, when the State adopted the Uniform Commercial Code chattel mortgages were replaced by financing statements. Section 36–9–102; Opinion of the Attorney General 1968 at 110. Archives is desirous of setting a retention period of no longer than ten (10) years for chattel mortgages and six (6) years for financing statements that have not been reviewed, but only after being certain that the instrument is of no further value. In this regard, several questions have arisen.

1. How many times can a financial statement or a chattel mortgage be renewed?

Section 36–9–403(3) sets out the renewal procedure and time period for financial statements.

A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specific in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

As a reading of the section makes clear, as long as one follows the continuation procedure set forth in the Code, there is no limit to the number of times a financial statement may be renewed. However, once the statement has lapsed, Archives may set up any destruction schedule it chooses. Sections 36–9–403(3), 30–1–110.

The chattel mortgage question is more difficult to answer. The basic statute setting forth the renewal period for chattel mortgages is found in Section 60–306, CODE OF LAWS OF SOUTH CAROLINA (1962), which reads:

***2** The effect of the filing for record of any chattel mortgage or instrument in the nature of a chattel mortgage may in all respects, including the preservation of priority of the mortgage over junior encumbrances, be extended for successive additional

periods, each not exceeding three years from the date of the refile, by filing in the proper office a statement signed by the mortgagee or by the holder of the mortgage, and verified by his affidavit, identifying the mortgage and showing that it is in force and the nature and amount of the obligation still secured.

Thus, generally chattel mortgages may be renewed indefinitely for three year periods. There are, however, county by county exceptions to this general statute. See: Sections 15–1765–15–1766 (copies of which are attached hereto). This Office is of the opinion that all of the statutes dealing with renewal of chattel mortgages filed prior to the effective date, January 1, 1968, of the U.C.C. are still in force and that the length of renewal of chattel mortgages varies from county to county. See: Opinion of the Att’y Gen’s Off. at 110 (1968) (a copy of which is enclosed).

First, by the terms of the U.C.C., it did not expressly repeal all existing statutes which were in conflict with it. Secondly, as a basic principle of statutory construction, repeal by implication, which this would be, is not favored. Furthermore, Sections 15–1765–15–1766, CODE OF LAWS OF SOUTH CAROLINA (1962) vary the retention time of chattel mortgages prior to their destruction or storage on a county by county basis. In any county which has a specific statutorily enacted destruction schedule, Archives is bound by the terms of the statute unless and until these local statutes are repealed.

2. Is federal indebtedness as referred to in the Code still in effect and if so, does it have any bearing on the destruction of chattel mortgages or financial statements?

Section 60–307, CODE OF LAWS OF SOUTH CAROLINA (1962) and Section 36–9–403(3), CODE OF LAWS OF SOUTH CAROLINA (1976) speak directly to this issue. Section 60–307 provides:

Nothing contained in §§ 60–305 and 60–306 shall be construed to apply to any mortgage or similar instrument executed by any public service corporation or to any mortgage or similar instrument given to secure any indebtedness to the United States, or any agency or instrumentality thereof, incurred under the Rural Electrification Act of 1936, as amended.

Section 36–9–403(3) provides in pertinent part:

Notwithstanding the provisions of this section, no continuation statement need be filed by the secured party of a rural electric cooperative nor by the secured party of a public utility subject to the jurisdiction of the South Carolina Public Service Commission, and the financing statement filed by such secured party and such rural electric cooperative or such public utility shall not lapse and shall be effective and the security interest shall remain perfected until a termination statement is filed according to the provisions of § 36–9–404 of this chapter.

*3 Both as to chattel mortgages and financial statements, in all cases where federal indebtedness has not been expressly terminated, the indebtedness remains in effect until such time as the indebtedness is terminated without the necessity of renewal. Until such time as the evidence of indebtedness is terminated, Archives may not destroy these records.

3. Can Archives destroy chattel mortgages executed by public utility companies?

Chattel mortgages and financial statements executed by public utility companies, like the rural electric cooperation indebtedness discussed above, does not have to be renewed. See supra, Sections 60–307, 36–9–403(3). Archives may not destroy either a public utility chattel mortgage or financial statement until such time as the instrument has been terminated. Then Archives may set any destruction schedule it chooses.

CONCLUSION:

Archives may not destroy chattel mortgages or financial statements until such time as they either have been terminated or have lapsed. To determine the circumstances under which a financial statement will lapse, follow the statutory procedure set forth

in Section 36-0-403(3), CODE OF LAWS OF SOUTH CAROLINA (1976). The point at which a chattel mortgage lapses can only be determined on a county by county basis because of the variation in renewal periods.

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