

1978 WL 35065 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 28, 1978

***1 RE: [S. C. Code \(1976\) 15-39-880](#)**

W. B. McCaskill
Chief Deputy
County of Charleston
P. O. Box 605
Charleston, S. C. 29402

Dear Deputy McCaskill:

In a recent letter to this Office you questioned whether

When real property of a judgment debtor is sold at an execution sale at the request of a senior judgment creditor, is it necessary for that creditor to join junior or subordinate judgment creditors in order to convey a clear title at the sale, or are junior judgments extinguished by the sale without further action by the execution creditor or the sheriff's office?

[Section 15-39-880 of the 1976 Code](#) of Laws was referenced in relation to your question.

[Section 15-39-880](#) states:

No lien created by operation of law or agreement of the parties whether of record or authorized by law to be entered of record in any office of any clerk of court of register of mesne conveyance in this State or any transcript, extension, renewal or revival thereof shall constitute a lien or attach or reattach as a lien on real property of the lien debtor or real property in which the lien debtor has an interest after a public sale of such real property at any execution or judicial sale in any action or special proceeding to which the lien creditor is duly made a party as provided by law. But this section and [Section 15-39-890](#) shall not be construed to affect any prior mortgage lien not foreclosed in any such action or special proceeding and shall not be construed to require the foreclosure of any such prior mortgage lien. And this section and [Section 15-39-890](#) shall not apply to tax execution sales.

Please be advised that in the case of Matthews v. Nance, 49 S.C. 389, 27 S.E. 407 (1897) the South Carolina Supreme Court held that

the principle of law in this State is too well settled to admit now a question, that where a sale of property is made under an execution, such sale divests the lien of all judgments, whether execution has been issued upon them or not . . . (I)t has been uniformly held in this State, that a sale by the sheriff under a junior judgment divests the lien of the senior judgments and confers a good title on the purchasers.'

Presumably, the sale pursuant to a senior judgment lien would also divest any interest of a junior judgment. Furthermore, the general rule is that ' . . . a purchaser at an execution sale takes the property free of all liens which are subsequent or junior to the lien of the judgment or execution under which the property is sold.' 30 Am.Jur. 2d, Executions, Section 445, p. 703. I do not read [Section 15-39-880](#) as necessarily changing this principle of laws. Therefore, it is the opinion of this Office that it is not necessary for a senior judgment creditor to join junior or subordinate judgment creditors in order for a clear title to be conveyed at an execution sale.

With best wishes, I am
Very truly yours,

Charles H. Richardson
*2 Assistant Attorney General

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