

Real Estate Leasing: South Carolina

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A Q&A guide to commercial real estate leasing law for landlords and tenants in South Carolina. This Q&A addresses state laws and customs that impact commercial leasing, including the execution and enforceability of leases, disclosures, transfer taxes, rents and security deposits, permitted assignments, financings, remedies, and automatic terminations in foreclosure actions. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Leasing: State Q&A Tool).

Execution and Enforceability

1. Describe any formal requirements for the execution of a lease. In particular, specify if:

- Witnesses are required.
- Acknowledgments are necessary.
- Counterpart signatures are enforceable.
- There are any other important requirements in your state.

For information on whether South Carolina has adopted electronic signatures, electronic recording, or remote online notarization (RON), see Question 20.

Witnesses

South Carolina does not require witnesses for the execution of a commercial lease if the lease is not recorded. However, if the parties intend to record a lease or memorandum of lease, the lease must comply with the Uniform Recognition of Acknowledgments Act (URAA). The URAA requires that:

- The signature of each party to the instrument be witnessed by two different individuals.
- Each individual sign the instrument as a witness.

(S.C. Code Ann. §§ 26-3-10 to 26-3-90.)

Acknowledgments

A valid and enforceable commercial lease in South Carolina does not need to be acknowledged if it is not recorded. However, if the parties intend to record a lease or memorandum of lease, the lease must comply with the URAA, and the signatures must be acknowledged. The person taking the acknowledgment is generally a notary or other person authorized under S.C. Code Ann. § 26-3-20.

Counterpart Signatures

Counterpart signatures are enforceable under South Carolina law.

Other Requirements

A lease for a term of more than one year must be in writing to be valid and enforceable (S.C. Code Ann. § 27-35-20).

A lease for a term of less than one year may be created by oral agreement (S.C. Code § 27-35-10).

2. Must a memorandum of lease (or any other instrument) be recorded for a lease to be enforceable against third parties? If so, must an amendment to a recorded memorandum of lease be recorded if there is a further (material or non-material) amendment to the lease?

In South Carolina, a lease for a term of more than one year must be recorded in the county recording office to be enforceable against:

- Subsequent creditors without notice.
- Purchasers for value without notice.
- Third parties (but only from the date it is recorded).

(S.C. Code Ann. § 30-7-10.)

However, if a third party has actual knowledge of the lease or other instruments affecting the title of the property, then the third party is bound by such notice regardless of whether the instrument is recorded (*Frist Presbyterian Church of York v. York Depository*, 27 S.E.2d 573, 576 (S.C.1943)).

If a lease is required to be recorded, then possession of real property described in the lease does not provide notice of the lease to third parties (S.C. Code Ann. § 30-7-90). A lease only gives notice to third parties if either:

- The lease is recorded in the same manner as a deed.
- The third party has actual knowledge of the lease.

In addition, an unrecorded lease for a term of less than one year is enforceable against third parties (*Barksdale v. Hinson*, 46 S.E.2d 170, 172 (S.C. 1948)).

A lease only gives notice to third parties if it is recorded in the same manner as a deed (S.C. Code Ann. § 27-33-30).

Commercial leases are not generally recorded unless the lease involves a ground lease or a mortgage is being granted on the leasehold interest.

South Carolina law also does not address under what circumstances the recorded instrument should be amended. However, the common practice is to amend or restate the recorded instrument when a material change to the primary lease has occurred.

Confirm the necessary recording procedures with a title company or by contacting the applicable recording office directly.

3. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

South Carolina statutory law provides model short form acknowledgment certificates (S.C. Code Ann. § 26-3-70). The examples below are:

- Based on the statutory short forms.
- Sufficient for use assuming the acknowledgment meets all other requirements (S.C. Code Ann. § 26-3-70).

Individual

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF PERSON ACKNOWLEDGED].

(SIGNATURE OF
PERSON TAKING
ACKNOWLEDGMENT)

(TITLE OR RANK)

(SERIAL NUMBER,
IF ANY)

Corporation

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF OFFICER OR AGENT], [TITLE OF OFFICER OR AGENT] of [NAME OF CORPORATION ACKNOWLEDGING], a [STATE OR PLACE OF INCORPORATION] corporation, on behalf of the corporation.

(SIGNATURE OF
PERSON TAKING
ACKNOWLEDGMENT)

(TITLE OR RANK)

(SERIAL NUMBER,
IF ANY)

Limited Liability Company

In South Carolina, there is no separate statutory form for an individual executing a deed on behalf of a limited liability company, but the following is sufficient:

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [SIGNATORY NAME], [SIGNATORY TITLE] of [LLC NAME], a [STATE OR PLACE OF INCORPORATION] limited liability company, on behalf of the limited liability company.

(SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

Limited Partnership

In South Carolina, there is no separate statutory form for an individual executing a deed on behalf of a limited partnership. However, S.C. Code Ann. § 26-3-70(3) provides a form for a partnership.

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ACKNOWLEDGING PARTNER OR AGENT], [PARTNER OR AGENT] on behalf of [PARTNERSHIP NAME], a partnership.

(SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

Trustee

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME], [TITLE OF POSITION].

Disclosures, Certifications, and Implied Uses

4. Are there any statutory or legal disclosures required by the landlord or the tenant either at the beginning or end of the lease term? Are there any compliance certificates the tenant may request from the landlord?

In South Carolina, neither a commercial landlord nor tenant is required to make any statutory disclosures. There are no compliance certificates that a commercial tenant typically requests from a landlord in South Carolina.

5. Is a lease deemed to include an implied warranty of fitness for intended use?

Commercial leases are not deemed to include an implied warranty of fitness for a particular purpose or warranty of habitability in South Carolina (*Allen v. Greenville Hotel Partners, Inc.*, 405 F. Supp. 2d 653, 656 (D.S.C. 2005)).

Term, Renewal, and Early Termination

6. Are there any legal restrictions which:

- Limit the maximum term of a lease (including any renewals)?
- Require the landlord to allow the tenant to renew its lease?
- Allow the tenant to terminate its lease before the express expiration date?

Limit on Maximum Term

South Carolina statutory law does not restrict the maximum term of a commercial lease. However:

- Oral leases cannot exceed a term of one year (S.C. Code Ann. §§ 27-35-10, 27-35-20, and 32-3-10).
- The rule against perpetuities applies to all leases (S.C. Code Ann. §§ 27-6-10 to 27-6-80).

Tenant Renewal

A commercial landlord is not required to allow the tenant to renew or extend its lease on the termination or expiration of the lease term.

Early Termination

In South Carolina, there is no law that allows a commercial tenant to terminate its lease before the expiration date unless expressly provided for by the lease agreement.

7. Is the landlord required to provide the tenant with a notice before the effective date of a renewal when the lease term automatically renews?

In South Carolina, a commercial landlord is not required to notify the tenant before the automatic renewal of any lease term, unless otherwise specified in the lease agreement.

Rents and Security Deposits

8. Are there any legal restrictions on:

- How much rent the landlord may charge?
- Whether certain operating expenses (or other additional rent) may be passed through to the tenant?

Maximum Rent

In South Carolina commercial leases, there are no limitations on the amount of rent a landlord can charge.

Operating Expenses

In South Carolina commercial leases, there are no legal restrictions on the amount of operating

expenses that can be passed through to the tenant.

9. For security deposits:

- Must the landlord maintain security deposits in a separate bank account for each tenant?
- Must a security deposit be in an interest-bearing account?
- Must the landlord pay all interest earned to the tenant or can the landlord retain a percentage of the interest earned as an administrative fee?

Commingling Permitted

South Carolina law does not require a commercial landlord to maintain security deposits in a separate bank account for each tenant.

Interest Bearing Account

A South Carolina commercial landlord is not required to hold security deposits in an interest-bearing account, and landlords in South Carolina generally do not do so.

Administrative Fees

A South Carolina commercial landlord is not required to pay tenants any interest on their security deposits.

For more information about security deposit requirements across jurisdictions, see [Security Deposit Laws \(Commercial Lease\): State Comparison Chart](#) and Quick Compare Chart: Commercial Security Deposit Laws.

Transfer Taxes and Other Taxes

10. Are any state or local transfer taxes triggered when a lease is signed or in the later assignment of a lease? If so, please specify the:

- Rate for the tax and how it is calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

There are no transfer taxes applicable to commercial lease transactions in South Carolina.

Confirm any local transfer tax requirements with a title company or by contacting the applicable taxing authority or recording office.

For more information about transfer taxes across jurisdictions, see [State Transfer Tax Comparison Chart](#) and Quick Compare Chart: State Transfer Taxes.

11. Are state or local transfer taxes triggered when the tenant undergoes a (direct or indirect) transfer of its ownership interests? In particular, please specify the:

- Percentage of ownership interest that triggers the taxes.
- Rates for the taxes and how they are calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

In South Carolina, there are no transfer taxes when a tenant undergoes a transfer of its ownership interests, either directly or indirectly.

Confirm any local transfer tax requirements with a title company or by contacting the applicable taxing authority or recording office.

For more information about transfer taxes across jurisdictions, see [State Transfer Tax Comparison Chart](#) and Quick Compare Chart: State Transfer Taxes.

12. Describe any state or local taxes (rental or other) that the landlord must collect from the tenant.

There are no state required taxes. However, taxes may vary from county to county.

Tax assessment, payment, and collection practices vary by jurisdiction. Consult with local counsel or a title company (or contact the applicable taxing authority directly) to verify these details.

Assignment, Financing, and Transfers

13. Describe any laws allowing the tenant to assign its lease, or sublease its premises, without the landlord's consent. Is a reasonableness standard implied when the lease is silent on whether the landlord's consent to an assignment or sublease may be reasonably or unreasonably withheld?

In South Carolina, a commercial tenant can assign or sublet its interest in a lease without the landlord's consent, unless expressly provided to the contrary in the lease agreement.

The South Carolina Supreme Court has refused to adopt a reasonableness standard if the lease is silent on whether the landlord's consent is needed to assign a lease or sublease. The court declines to read further into a contract and does not have the power to re-write a contract. (*Dobyns v. S.C. Dept. of Parks, Recreation, and Tourism*, 480 S.E.2d 81, 84 (S.C. 1997).)

14. If the lease does not expressly define the term "assignment" and there is no other express restriction in the lease to the contrary can the:

- Tenant's corporate ownership interests be freely transferred without the landlord's consent?
- Tenant freely place a lien on its leasehold interest, or pledge its corporate ownership interests, in connection with a financing without the landlord's consent?

Transfer of Ownership Interests

In a South Carolina commercial lease, absent an express lease provision to the contrary, a tenant's corporate ownership interests may be transferred without the landlord's consent. However, it is common practice to obtain written consent from the landlord for the assignment or lien, which usually provides the landlord with a right to receive notices and cure defaults.

Security Lien or Pledge of Ownership Interests

In a South Carolina commercial lease, absent an express lease provision to the contrary, a tenant may place a lien on its leasehold interest or pledge its ownership interests as collateral for loan financing.

15. When a lease requires a landlord's consent for an assignment and defines the term "assignment" to include a transfer of the tenant's corporate ownership interests, would an indirect transfer of the tenant's interests trigger the landlord's consent requirement?

In South Carolina, whether an indirect transfer of the tenant's ownership interests would trigger the landlord's consent requirement depends on the language of the lease. Generally, the indirect transfer of a tenant's ownership interests would not constitute an assignment of the lease.

16. Is the tenant/assignor deemed released from future liability under the lease when the lease is silent on whether the original tenant will be released in the event of an assignment?

In South Carolina, assigning a lease does not release a tenant from future liability unless there is a provision in the lease stating otherwise.

17. Describe any restrictions on the landlord's ability to transfer the real property subject to the lease. Does this transfer affect the tenant's rights or obligations?

Whether a tenant's rights under a lease in South Carolina survive the transfer of the real property depends on the circumstances of the transfer and the terms of the lease. For example:

- A purchaser takes real property subject to an oral lease that is for a term of one year or less (*Barksdale*, 46 S.E.2d at 172).
- Leases for a term of more than one year affect the rights of subsequent bona fide purchasers without notice only from the time they are recorded in the land records. A purchaser of real estate who did not

have actual notice of a relevant lease agreement takes the property free of the lease if:

- the lease was not recorded, and it was required to be recorded under South Carolina law; and
- the lease term exceeds one year.

(S.C. Code Ann. § 30-7-10.)

- When real property subject to a lease is transferred, the landlord-tenant relationship is automatically created between the purchaser and the tenant as if the purchaser had been the original landlord under the lease (S.C. Code Ann. § 27-35-50).

Remedies

18. If a tenant breaches the lease:

- Are there any implied remedies available to the landlord, such as the acceleration of rent?
- Is there a limitation on the landlord's ability to exercise self-help?
- Is there a common form of an eviction proceeding and, if so, what is the typical length of time for the proceeding?
- Are there specific mechanisms for expedited remedies, such as waiver of jury trial or arbitration?
- Is the landlord required to mitigate its damages without an express obligation to do so?

Implied Remedies

In South Carolina, commercial lease terms generally govern available remedies, and state statute allow for additional remedies not explicitly stated in statute. In practice, commercial landlords rarely exercise remedies that are outside of the available statutory remedies due to potential liability issues.

When a tenant breaches a commercial lease, a landlord can bring actions for:

- Distraint (see Action for Distraint).
- Rent (see Action for Rent).
- Eviction (see Eviction Proceeding).

Action for Distraint

A landlord that successfully sues for distraint is empowered to seize the tenant's personal property located in the leased property to enforce collection of rent due (S.C. Code Ann. §§ 27-39-210 to 27-39-360).

However, certain personal property is exempt from seizure (S.C. Code Ann. § 27-39-230).

To commence a distraint proceeding, the landlord must file an affidavit with the magistrate in the relevant jurisdiction that sets out:

- The amount of rent due.
- A notice directed to the tenant stating the alleged amount of rent due including any costs. Costs include those enumerated in the distress warrant.
- A time and place for a pre-distress hearing, which must be held not earlier than five days after service of the notice.

(S.C. Code Ann. § 27-39-210.)

Action for Rent

When a tenant fails to pay rent, the landlord can sue:

- For all present and future past-due rent and damages through the duration of the lease, less any rent received by the landlord's mitigation of damages.
- After terminating the lease, to recover the unpaid rent through the termination date.
- After the lease expires, for arrearages.

Generally, these actions are considered actions for actual damages due to breach of contract, subject to the landlord's obligation to mitigate its damages (*U.S. Rubber Co. v. White Tire Co.*, 97 S.E.2d 403, 409 (S.C. 1956); Mitigation of Damages).

Self-Help

In South Carolina, commercial landlords are permitted to use self-help remedies (S.C. Code Ann. § 36-2A-501).

Eviction Proceeding

Landlords in South Carolina may recover possession of the premises from a defaulting tenant by filing an ejectment action (S.C. Code Ann. § 27-37-10). Ejectment actions in South Carolina are summary proceedings that may be filed in either the magistrate's court or circuit court.

Once the necessary documents are filed with the court, a sheriff or constable serves notice on the tenant. If the tenant fails to appear and show cause at the hearing, the court issues a warrant of ejectment (S.C. Code Ann. § 27-37-40). If the tenant contests the ejectment, the matter continues as any other civil matter and is typically tried before a judge, unless either party specifically requests a jury trial (S.C. Code Ann. §§ 27-37-60 and 27-37-80).

If the court finds in favor of the landlord:

- It must issue a warrant of ejectment on the tenant within five days following the verdict.
- The tenant may appeal the court's verdict but must post a bond to delay ejectment from the premises.

(S.C. Code Ann. §§ 27-37-100, 27-37-120, and 27-37-130.)

Different local jurisdictions in South Carolina may have different procedures for effecting an eviction. Best practice is to consult the local jurisdiction before initiating eviction proceedings.

Expedited Remedies

In South Carolina, an ejectment action is considered an expedited remedy. In addition, the parties may agree in the lease to waive their rights to a jury trial and consent to arbitration. Any requirement for arbitration must include the notice mandated by statute in underlined capital letters on the first page of the document (S.C. Code Ann. § 15-48-10).

Mitigation of Damages

Generally, the landlord has a duty to mitigate its actual damages by attempting to lease the property (*U.S. Rubber Co. v. White Tire Co.*, 97 S.E.2d 403, 409 (S.C. 1956); *Butler v. Wilson*, 2013 WL 8482371, at *2 (S.C. Ct. App. Feb. 20, 2013)). The landlord's failure to mitigate its damages may result in a court reducing any actual damages award by the amount it determines could have been reasonably recovered from leasing the property (see, for example, *Rapid Indus., Inc. v. Indus. Serv. Works, Inc.*, 2007 WL 8326617, at *1 (S.C. Ct. App. Feb. 15, 2007)).

For more information about mitigation of damages across jurisdictions, see [Commercial Landlord's Duty to Mitigate: State Comparison Chart](#) and Quick Compare Chart: Commercial Landlord's Duty to Mitigate.

Automatic Termination of a Lease in a Foreclosure Action

19. When a landlord's lender forecloses on its lien recorded against the landlord's property, would the lease interest that is subordinated to the lender's lien automatically terminate? If so, how do the parties avoid automatic termination of subordinated lease interests?

In South Carolina, commercial leases entered into after the execution and recording of the landlord's mortgage may be extinguished by a foreclosing mortgagee, but only if the tenant is named and served as a defendant in the mortgage foreclosure action.

The landlord, tenant, and lender can also enter into a subordination, non-disturbance, and attornment agreement where the tenant subordinates its lease to the lender's lien and agrees to perform these obligations for the lender's benefit. In return, the lender agrees to honor the lease and not disturb the tenant's possession so long as the tenant is not in default.

Electronic Signatures, Recording, and Notarization Laws

20. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Despite South Carolina's adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may not be required to accept documents executed or notarized

electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

Electronic Signatures

South Carolina has adopted the UETA (S.C. Code Ann. §§ 26-6-10 to 26-6-210).

Electronic Recording

South Carolina has adopted the URPERA (S.C. Code Ann. §§ 30-6-10 to 30-6-70).

Remote Online Notarization

South Carolina has not adopted RON.

While the South Carolina Electronic Notary Public Act addresses electronic documents and signatures, it does not permit remote notarization. (S.C. Code Ann. §§ 26-2-5 to 26-2-210.) Under that law, the principal must appear in person before the notary at the time of notarization (S.C. Code Ann. § 26-2-50(A)(1)).

For a state-by-state chart covering key provisions of RON laws, emergency orders permitting RON during the COVID-19 pandemic, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#). To view and customize comparison charts on electronic signatures, recording, and notarization laws across states, see Quick Compare Chart, State Laws on Electronic Signatures, Electronic Recording, and Remote Notarization.

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