

Chapter 15

COMMERCIAL CODE

Sections:**27.1510 Validity of mortgage, bill of sale, etc.****27.1510 Validity of mortgage, bill of sale, etc.**

No mortgage, agreement that creates or provides for a security interest, bill of sale, conditional sales contract, deed of trust or conveyance of personal property which is not accompanied by a permanent delivery thereof to the vendee is valid as to persons who do not have actual knowledge thereof unless all of the following conditions are met:

- (1) it is in writing signed by the person to be bound and attested to by at least one witness;
- (2) it is filed with the Territorial Registrar within 10 days after its execution;

(3) it truly states the consideration upon which it was based or the debt or liability which it was intended to secure, and contains a description of the land sold or mortgaged, or the security for the debt or liability that reasonably identifies the security, whether specific or not. The security may be described by its listing, category, type, quantity and/or location and may include property so described which is acquired after execution of the mortgage or agreement creating or providing for the security interest.

History: 1962, PL 7-31; 1968, PL 10-68; amd 2006, PL 29-19.

Case Notes:

Statute which states that no instrument shall be effective to create a security interest unless it contains a description of items to be mortgaged prevents the creation of a "general mortgage" and reinforces the statutory prohibition against mortgages on after-acquired real property and fixtures, as well as security interests in personal property. A.S.C.A. 27.1510(c), 37.1003. *Shantilal Brothers, Ltd. V. KMST Wholesale*, 15 A.S.R.2d 115 (1990).

American Samoa's chattel mortgage statute requires not just that the mortgage contain some language sufficient to put third parties on inquiry, but that it contain a "description" of the "specific" article or articles mortgaged. A.S.C.A. § 27.1510. *Shantilal Brothers, Ltd. V. KMST Wholesale, Inc.*, 16 A.S.R.2d (1990).

Purposes of territorial statute requiring recordation of non-possessory liens are (1) to protect those who might otherwise extend credit to others in the mistaken belief that the borrowers' possessions are likely to be available as security for any unpaid debts; and (2) to foil fraudulent assertions by judgment debtors that property in their possession actually does not belong to them but has been purchased by or hypothecated to friends or relatives. A.S.C.A. § 27.1510. *Development Bank v. Reed*, 5 A.S.R.2d 135 (1987).