

GEORGIA DEPARTMENT OF REVENUE

LOCAL GOVERNMENT SERVICES DIVISION



DEED FUNDAMENTALS, DEED RESEARCH AND SALES VERIFICATION

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For Educational Purposes Only:

The material within is intended to give the course participant a solid understanding of general principles in the subject area. As such, the material may not necessarily reflect the official procedures and policies of the Georgia Department of Revenue or the Department's official interpretation of the laws of the State of Georgia. The application of applicability to specific situations of the theories, techniques, and approaches discussed herein must be determined on a case-by-case basis.

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SECTION 1 13

OVERVIEW OF AD VALOREM TAXATION
THE TAX BILL
APPRAISAL PROCESS
UNIFORM RESIDENTIAL APPRAISAL REPORT
THE MASS APPRAISAL / ASSESSMENT PROCESS

SECTION 2 47

GEORGIA CODE SECTION

- § 44-1-1. "Property" defined
- § 44-1-3. "Personalty" defined; status of certain stocks.
- § 44-1-4. "Estate" defined
- § 44-1-5. "Title" defined
- § 44-1-6. What things considered fixtures; movable machinery as personalty; effect of detachment from realty
- § 44-1-12. What constitutes perfect title?
- § 44-1-15. Removal or destruction of survey monuments prohibited; exceptions; penalties
- § 44-1-16. Failure to disclose in real estate transaction that property was occupied by diseased person or was site of death; failure to disclose information required to be provided or maintained in accordance with Code Section 44-9-44.1
- § 44-1-17. Responsibilities of buyers or grantees and grantors or owners relating to transfers of property within or adjacent to property zoned for agricultural or silvicultural use; notice to prospective purchaser, lessee, or grantee; effect of noncompliance

- § 44-2-1. Where and when deeds recorded; priority as to subsequent deeds taken without notice from same vendor
- § 44-2-2. Duty of clerk to record certain transaction affecting real estate and personal property; priority of recorded instruments; effect of recording on rights between parties to instruments
- § 44-2-3. Voluntary deeds or conveyances of land; effect of recording
- § 44-2-4. Protection of good faith purchases and liens without notice against unrecorded liens or conveyances
- § 44-2-5. Recording execution and deed after sheriff's sale
- § 44-2-6. Recording bond for title, contracts, transfers, and assignments; priority as to subsequent deeds taken without notice from same vendor.
- § 44-2-7. Recording of surrender or satisfaction of bond for title
- § 44-2-8. Recording of options to purchase land and assignments of such options; effect as notice
- § 44-2-9. Recording leases, usufructs, and assignments thereof; effect as notice
- § 44-2-10. Recording deeds and bills of sale to personalty; effect as notice

§ 44-2-11. Recording copy of instrument recorded in other counties in which part of affected land is located in cases where original lost or destroyed

§ 44-2-12. Rerecording lost or destroyed deeds and other instruments; validity

§ 44-2-13. Rerecording instruments upon creation of new County or change in County lines; effect on validity of original record

§ 44-2-14. Requirements for recordation

§ 44-2-15. Officers authorized to attest registrable instruments

§ 44-2-16. Effect of acknowledgment subsequent to execution

§ 44-2-22. Legal effect of good record title for 40 years

§ 44-2-25. Recording techniques; photostatic copies of plats

§ 44-2-30. Filing and recording of notice of settlement

§ 44-5-2. How land in state held

§ 44-5-30. Requisites of deed to lands; inquiry into consideration

§ 44-5-31. Requisites of deed to personalty; necessity for deed

§ 44-5-33. Form of deed

§ 44-5-34. Construction of inconsistent clauses in deed; ascertainment of intention of parties

§ 44-5-36. Purchaser's remedies for loss of land due to title defect

§ 44-5-39. Binding effect of covenants on grantee who accepts deed

§ 44-5-43. Effect of adverse possession on making of deed

§ 44-5-168. Adverse possession of mineral rights under certain conditions; procedure to obtain title

§ 44-6-80. Nature of life estates; estates during widowhood

§ 44-6-81. Length of life estate

§ 44-6-82. How and in what property life estate may be created

§ 44-6-83. Rights and duties of life tenant; forfeiture of interest to remainderman

§ 44-6-86. Rights of lessee upon termination of life estate

§ 44-6-87. Effect of purported sale of estate by life tenant

§ 44-6-88. Demand for bond by purchaser of life estate in personalty; effect of failure to give bond

§ 44-9-6. Loss of easement by abandonment or nonuse

SECTION 3..... 67

REAL PROPERTY AND PERSONAL PROPERTY

REAL ESTATE AND REAL PROPERTY

GEORGIA DEFINITION OF REAL PROPERTY

PERSONAL PROPERTY

GEORGIA DEFINITION OF PERSONAL PROPERTY

IMPROVEMENTS

FIXTURES

TRADE FIXTURES

**TESTS FOR FIXTURE STATUS
FIXTURES AS COLLATERAL**

SECTION 4..... 77

REAL PROPERTY AND OWNERSHIP RIGHTS

FORMS OF OWNERSHIP

ABSOLUTE OWNERSHIP

LIMITED OWNERSHIP

OWNERSHIP ENTITIES

TYPES OF ESTATES DEFINITION OF "ESTATE"

FREEHOLD ESTATES

FEE SIMPLE ESTATE (ABSOLUTE OR DETERMINABLE)

ESTATE ON CONDITION

LIFE ESTATE

CREATION OF FUTURE INTERESTS

ESTATE IN REMAINDER

NON-FREEHOLD ESTATES

ESTATE FOR YEARS

INDIVIDUAL OWNERSHIP

CONCURRENT OWNERSHIP

TENANCY IN COMMON

JOINT TENANCY WITH RIGHT OF SURVIVORSHIP

TENANCY IN PARTNERSHIP

CORPORATION

LIMITED LIABILITY COMPANY (LLC)

SECTION 5..... 95

TRANSFER OF OWNERSHIP RIGHTS AND INTERESTS

TITLE AND EVIDENCE OF GOOD AND MARKETABLE TITLE DEFINITION OF TITLE

WATER RIGHTS

SUBSURFACE AND MINERAL RIGHTS

AIR SPACE RIGHTS

GOOD AND MARKETABLE TITLE

THE TITLE EXAMINATION

THE IMPORTANCE OF TITLE EXAMINATION

TITLE INSURANCE

FUNDAMENTALS OF LAND TITLE

SECOND EXCEPTION TO GENERAL RULE: THE "SHELTER" RULE

WHO IS A BONA FIDE PURCHASER? NOTICE JURISDICTIONS

WHO IS A BONA FIDE PURCHASER? RACE- NOTICE JURISDICTIONS

SOURCES OF NOTICE

FIRST PURCHASER FOR VALUE TO RECORD PREVAILS: RACE JURISDICTIONS

TRANSFER OF FREEHOLD RIGHTS

VOLUNTARY TRANSFER

VOLUNTARY TRANSFER BY DEED

INVOLUNTARY TRANSFERS

DEEDS

DEED PREPARATION

REQUIREMENTS OF A VALID DEED

RECORDATION OF DEEDS

TYPES OF DEEDS

WARRANTY DEED

LIMITED WARRANTY DEED

QUIT CLAIM DEED

BRIEF DESCRIPTIONS OF OTHER FREQUENTLY USED DEEDS

ADMINISTRATOR DEED

ASSENT TO DEVISE

CONDEMNATION OF PROPERTY DEED

CONSERVATION EASEMENT DEED

CONSERVATION COVENANTS

CONTRACT FOR DEED

DEED OF CORRECTION

DEED IN LIEU OF FORECLOSURE

DEED OF TRUST

EASEMENT DEED

EXECUTOR'S DEED

DEED UNDER POWER

GIFT

RIGHT OF WAY

RIGHT OF FIRST REFUSAL

INSTALLMENT DEED

SHORT SALE DEED

TAX SALE DEED

TAX REDEMPTION DEED

TIMBER DEED

WATER RIGHTS DEED

SIGNATURE OF DEED

AFFIDAVITS

SURVEYORS AFFIDAVIT

TITLE AFFIDAVIT

SAME NAME AFFIDAVIT

OTHER RECORDINGS

CERTIFICATE OF CONVERSION

WILLS

TESTATE SUCCESSION

INTESTATE SUCCESSION

TRUSTS

TESTAMENTARY TRUST

INTER VIVOS TRUST

RELATED MATTERS

SIGNATURE OF HUSBAND OR WIFE

SIGNATURE ON BEHALF OF CORPORATION

POWER OF ATTORNEY

INSTRUMENTS RECORDED IN THE CLERK OF COURTS OFFICE

PROPERTY TRANSFER FORMS

RULE 560-11-2-.16 REAL ESTATE TRANSFER TAX FILING DECLARATION FORMS

560-11-10-.09 REAL PROPERTY APPRAISAL. (2)(b)

TAX SALES

YEARS SUPPORT

SECTION 6..... 230

THE SECURITY DEED AND PROMISSORY NOTE

SECURITY DEEDS

ORIGINS OF THE SECURITY DEED

DEFINITION OF A SECURITY DEED

COMMON CLAUSES IN THE SECURITY DEED

SAMPLE SECURITY DEED

THE PROMISSORY NOTE

PROVISIONS OF THE PROMISSORY NOTE

SECTION 7..... 254

DEFAULT AND FORECLOSURE

DEFAULT AND FORECLOSURE DEFINED

FORECLOSURE OPTIONS

GEORGIA FORECLOSURE PROCEEDINGS

SECTION 8..... 262

PUBLIC AND PRIVATE LIMITS AND CONTROLS ON REAL PROPERTY

PUBLIC LIMITS AND CONTROLS ON REAL PROPERTY

INTRODUCTION

THE POLICE POWERS OF THE STATE

THE ZONING ORDINANCE

CHANGES IN ZONING REGULATIONS

SUBDIVISION REGULATIONS

IMPACT FEES

CONSTRUCTION CODE

HOUSING CODE

EMINENT DOMAIN

TAXATION AND ASSESSMENT POWERS

ESCHEAT

FORFEITURE OF LAND FOR CRIME

PRIVATE LIMITS AND CONTROLS ON REAL PROPERTY INTRODUCTION

THE EASEMENT

EXPRESS EASEMENTS

IMPLIED EASEMENT (PRIOR EXISTING USE)

EASEMENT BY NECESSITY

PRESCRIPTIVE EASEMENT

IRREVOCABLE LICENSES OR EASEMENTS BY "ESTOPPEL"

ABANDONMENT

MISUSE

LICENSE

ENCROACHMENT

THE LIEN

RESTRICTIVE COVENANT

HOMEOWNERS' ASSOCIATIONS

***SECTION 9*..... 287**

LAND DESCRIPTION SYSTEMS

LAND DESCRIPTION SYSTEMS

LAND DESCRIPTION TECHNIQUES

PLATTED DESCRIPTION

LAND LOT

RECTANGULAR SURVEY

METES AND BOUNDS SYSTEM

BEARINGS

MEASUREMENT OF ANGLES

DECLINATION

A BRIEF HISTORY OF GEORGIA LAND DISTRICTS AND LAND LOTS

HEADRIGHT SYSTEM

SECTION 10..... 327

DEED VERIFICATION

VERIFICATION OF SALES

QUALIFYING SALES - ARM'S LENGTH TRANSACTION

SALE

DISTRESSED SALES

IAAO STANDARD ON VERIFICATION AND ADJUSTMENT OF SALES EXTRACT 338

SAMPLE DOCUMENTS AND PROCEDURES

SAMPLES OF DOCUMENTS WHICH MAY NEED TO BE PRINTED

SUGGESTED PROPERTY TRANSFER POLICIES

ADDITIONAL SUGGESTIONS/ NOTES:

SAMPLE SALES CODE EXPLANATIONS

SAMPLE DEED INPUT PROCEDURES

TRANSFERRING OWNERSHIP INFORMATION IN WINGAP

ALLOCATING SALES WITH MULTIPLE PARCELS ON ONE DEED

TRANSFERRING OWNERSHIP INFORMATION IN TYLERIASWORLD

SECTION 11..... 408

CALCULATING AREA

AREA FORMULAS

PRACTICAL EXERCISE ON ACREAGE CALCULATION

SECTION 12..... 418

GEORGIA MILITIA DISTRICTS

GMD'S

GEORGIA MILITIA DISTRICTS

CERTIFICATE OF CONVERSION

SECTION 13..... 429

COMMON QUESTIONS ANSWERED

SECTION 14..... **437**

QUICK REFERENCE INFORMATION
SALES RATIO STEPS

GLOSSARY **444**

REFERENCES

NOTES **484**

REFERENCES

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SECTION 1

OVERVIEW OF AD VALOREM TAXATION

The Department of Revenue (DOR) offers classes as guided by state law for County Assessors and appraisers on the administration and appraisal of property for the Ad Valorem Tax process. The DOR also maintain the records of the training offered by the Department as well as continuing education course records submitted to the Department by the student or the student's County of employment which were offered by organizations and professionals with expertise in providing instruction in property tax administration, property taxation, or related matters which have been approved by the (Revenue) Commissioner.

- *Who is an assessor or appraiser?*
- *What do they do?*
- *What role do they play in County Government and Ad Valorem Taxation?*

These are some of the questions this chapter will address.

An **appraiser** is a person which develops an opinion of the market value or other value of a product, most notably real estate. Appraiser qualification requirements undergo continuous review and revision. Appraisers will have to fulfill both education and experience requirements before taking a qualifying appraiser exam. The State of Georgia has four levels of Appraiser designations for mass appraisal. With each level of Appraiser designations, core classes must be completed before one may sit for the levels and the exams have increasing difficulty as you move up through the four levels.

560-11-2-.25 County Appraisal Staff -- Qualifications. Amended.

1) County appraisal staff shall be classified into four classifications: Appraiser I, Appraiser II, Appraiser III, and Appraiser IV, with qualifications as follows:

(a) **Appraiser I** -- Under supervision and direction as an Appraiser trainee, the Appraiser I is expected to learn and do the more routine technical work in the appraisal of real and/or personal property for tax assessment purposes. The Appraiser I must:

1. Be not less than twenty-one (21) years of age;
2. Successfully complete the appraiser examination set for this level by the state Revenue Commissioner;
3. Be in good physical and mental health;
4. Hold a high school diploma or its equivalent;
5. Have the aptitude to learn to perform tasks assigned including reviewing maps, photography, etc., to locate property; visiting the property and gathering all information necessary to determine value; performing basic research on building costs and sales data; computing appraisal values for real and/or personal property.

(b) **Appraiser II** -- Under supervision and direction, the Appraiser II makes appraisals of real and/or personal property of the more common types and assists his superiors in the supervision and direction of Appraiser I personnel. The Appraiser II must:

1. Be not less than twenty-one (21) years of age;
2. Hold a high school diploma or its equivalent;
3. Be in good physical and mental health and have the ability to meet and relate to the general public well;
4. Be able to make field appraisals of the average types of real and/or personal property. In this regard, he must be able to perform research on and inspect the property to gather all information necessary for appraisals such as size, zoning, use, location, quality of construction, depreciation, and market data;
5. Have the ability and aptitude to learn under supervision the appraisal techniques, etc., involved in the appraisal of the more complex types of property.

(c) **Appraiser III** -- The Appraiser III must have the ability to make accurate appraisals of all types and classes of real and/or personal property within his jurisdiction. He must be able to effectively supervise and direct the activities of subordinate personnel. The Appraiser III must:

1. Be not less than twenty-one (21) years of age;
2. Hold a high school diploma or its equivalent;
3. Have the ability to correctly apply the three approaches to valuation in appraising properties within his jurisdiction;
4. Have the ability to organize and direct the activities of subordinate personnel;
5. Have the ability to perform all phases of mass appraisal and revaluation work within his jurisdiction including the ability to develop pricing and valuation schedules for the valuation of all land, improvements, and personal property.

(d) **Appraiser IV** -- The Appraiser IV supervises the work of subordinate appraisers in the appraisal of rural, residential, commercial, and industrial properties for tax assessment purposes. The Appraiser IV must:

1. Have a complete knowledge of mass appraisal techniques;
2. Have the ability to direct all phases of revaluation;
3. Have the ability to organize effectively and direct properly the work activities of his subordinate personnel;
4. Have the ability to plan and conduct necessary training programs for subordinate appraisal personnel;

5. Have the ability to direct office procedures and techniques related to the appraisal-assessment process;
6. Have the ability to effectively deal with the general public and with other governmental agencies;
7. Be not less than twenty-one (21) years of age;
8. Be a graduate of an accredited college or university with at least five (5) years of increasingly responsible experience in the appraisal field. Two (2) years of appraisal experience may be substituted for each year of college required.

All County appraisal staff members must successfully complete an examination approved by the Revenue Commissioner and designed to test the applicant's knowledge of appraisal techniques on all classes and types of property.

“Staff should comprise persons skilled in general administration, supervision, appraisal, mapping, data processing, and clerical functions.”

-IAAO Standard on Mass Appraisal

All County appraisal staff members must successfully complete at least forty (40) hours of approved appraisal courses during each two years of tenure as an appraiser.

AUTHORITY: O.C.G.A. Secs. 48-2-12, 48-5-291.

HISTORY: Original Rule entitled "County Appraisal Staff--Qualifications" was filed on May 25, 1973; effective June 14, 1973. Amended: Filed June 20, 1980; effective July 10, 1980. Amended: F. Jan. 4, 2016; eff. Jan. 24, 2016.

§ 48-5-263. Qualifications and duties of appraisers

(a) Qualifications.

(1) The (Revenue) Commissioner shall establish, and the Department of Administrative Services may review, the qualifications and rate of compensation for each appraiser grade.

(2) Each appraiser shall, before their employment, obtain a satisfactory grade, as determined by the (Revenue) Commissioner, on an examination prepared by the (Revenue) Commissioner and an institution of higher education in this state.

(b) Duties. Each member of the County property appraisal staff shall:

(1) Make appraisals of the fair market value of all taxable property in the

- County other than property returned directly to the (Revenue) Commissioner;
- (2) Maintain all tax records and maps for the County in a current condition. This duty shall include, but not be limited to, the mapping, platting, cataloging, and indexing of all real and personal property in the County;
 - (3) Prepare annual assessments on all taxable property appraised in the County and submit the assessments for approval to the County Board of Tax Assessors;
 - (4) Prepare annual appraisals on all Tax-Exempt property in the County and submit the appraisals to the County Board of Tax Assessors;
 - (5) Prepare and mail assessment notices after the County Board of Tax Assessors has determined the final assessments;
 - (6) Attend hearings of the County Board of Equalization and provide information to the Board regarding the valuation and assessments approved by the County Board of Tax Assessors on those properties concerning which appeals have been made to the County Board of Equalization;
 - (7) Provide information to the Department as needed by the Department and in the form requested by the Department;
 - (8) Attend the standard approved training courses as directed by the (Revenue) Commissioner for all minimum County property appraisal staffs;
 - (9) Compile sales ratio data and furnish the data to the (Revenue) Commissioner as directed by the (Revenue) Commissioner;
 - (10) Comply with the rules and regulations for staff duties established by the (Revenue) Commissioner; and
 - (11) Inspect mobile homes located in the County to determine if the proper decal is attached to and displayed on the mobile home by the owner as provided by law; notify the residents of those mobile homes to which a decal is not attached of the provisions of **Code Sections 48-5-492 and 48-5-493**; and furnish to the Tax Collector or Tax Commissioner a periodic list of those mobile homes to which a decal is not attached.

The **assessor** is a valuator. As such, the assessor shall be required to take approved appraisal courses of instruction covering the basic principles of appraisal and assessing of all classes and types of property including instruction in the fundamentals of Georgia Law covering the appraisal and assessing of property for Ad Valorem Tax purposes as prescribed and designated by the commission pursuant to **Code section 48-5-13**. To ensure the assessment functions are performed in a professional manner by competent assessors, meeting clearly specified professional qualifications, the (Revenue) Commissioner shall develop, approve, and administer courses of instruction designed to qualify applicants or Tax Assessors under this code section and to specify qualification requirements for certification.

The **value** the assessor is trying to achieve is defined by Georgia law as "Fair Market Value". The "**Fair Market Value**" is the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length bona fide sale. Fair market value is the most probable price real estate should bring in an arm's length transaction in which neither party is acting under duress; the property has been on the market a reasonable length of time; the property's assets and defects are known to both parties; and there are no unusual circumstances.

An **arm's length transaction** is a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and willing seller, each acting in his or own self-interest. Every comparable property must have been sold in a transaction where neither buyer or seller is acting under duress (*greater duress than what is felt by the buyer and seller in the average transaction*).

Market demand is a reflection of the number of possible buyers competing for the available products and services.

Sales price is what a property sells for- its transaction price. This price may differ from market value because many factors may prevent a sale from being an arm's length transaction. Asking prices of properties currently listed but not yet sold are generally not considered in fair market value. As a generally accepted appraisal principle the appraiser may also note any previous sales of comparable property within the last three years. Close analysis of prior sales of similar property could indicate general market conditions.

The value of real property is essentially determined by using what is referred to as the *principle of substitution*. The price someone is willing to pay for a property is influenced by the cost of acquiring a substitute or otherwise comparable property.

The amount paid for a good or service is its **cost**. The cost to purchase a parcel of real estate may or may be the same as the price it may command when it is sold to someone else. Cost may or may not be same as the item's estimated value and its subsequent resale price. The cost to the owner of an item includes the labor and materials required to produce it. An extensively remodeled kitchen usually will not contribute its entire cost to the value of a house. A second bathroom, however, may very well increase a houses value by more than its installation cost. The appraiser will estimate the cost to produce features of similar quality, using currently available construction materials and methods.

When a good or service may be used to acquire another good or service, the commodities have what is termed as *value in exchange*. The amount of money required to bring about the

exchange is the price paid for the good or service. Because it reflects conditions in the marketplace, value in exchange is what is described as market value.

THE TAX BILL

Ad Valorem means 'according to value'. So, Ad Valorem Tax will be a tax based on the value of such property.

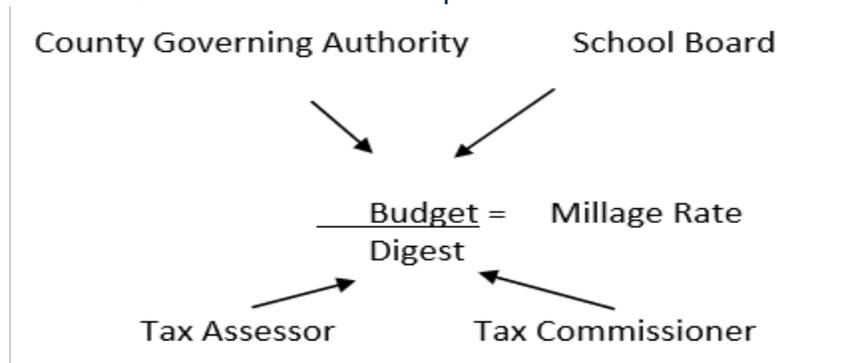
This "value" is only one of the factors which determine the individual tax bill for a taxpayer. Another factor is the millage rate. The millage rate is simply the equal percentage all property owners pay based on the assessed value of their property.

The millage rate is a quotient. It is the budget divided by the net assessment of the property in the County. We shall call this the Tax Digest or simply the Digest.

The format for calculation is:

$$\frac{\text{Budget}}{\text{Digest}} = \text{Millage Rate}$$

Let us look at who is responsible for what.



Now you see the budget or the total amount of money which must be collected from property taxes is determined by the County Governing Authority and the school Board.

******Beginning in tax year 2016 the State of Georgia no longer collects ad valorem tax on real and personal property.***

Appraisal staff, GIS staff, and municipal representatives should work together annually, before the Digest is compiled, to ensure all real and personal property records reflect accurate tax district codes, thereby providing each tax jurisdiction with the best information available for establishing annual millage rates and ensuring error-free billing and tax distribution. The tax burden should be uniformly distributed within the County and between the separate

classifications of property.

APPRAISAL PROCESS

Real Estate Appraisal Terminology by the American Institute of Real Estate Appraisers and The Society of the Real Estate Appraisers, defines an appraisal as:

“An estimate or opinion of value. The act or process of estimating value. The resulting opinion of value derived from the appraisal may be informal, transmitted orally; or it may be formal, presented in written form. Usually, it is a written statement setting forth an opinion of the value of an adequately described property as of a specified date, supported by the presentation and analysis of relevant data.”

At its simplest, an **appraisal** presents the appraisers opinion of a property’s probable monetary value on the open market. To appraise something means to estimate the dollar amount which represents its value.

“Mass Appraising” describes the appraisal of a large number of properties. There are prescribed procedures to be described in this book for arriving at uniform and equitable assessments.

A **market** is simply a forum for buying and selling, bringing together buyer and seller. This appraisal or estimate of value is, in the property tax world, referred to as “Fair Market Value”. Fair Market Value is defined by the **Georgia Code, Annotated § 48-5-2**.

For real estate to have value, the four elements which create value must be present. These elements are *demand, utility, scarcity, and transferability (DUST)*.

The element of **demand** is present when someone desires the property and has the financial ability to purchase it.

Utility means the property may serve a useful purpose.

Scarcity is present when the property is in short supply relative to demand.

Transferability means the title to property may be moved readily from one person or entity to another.

When all four elements of value are present, property has a market value which may be estimated by a trained appraiser.

In addition to estimating the value of property, the assessor and appraiser must constantly seek to maintain equity between properties similarly situated in terms of size, location, desirability, and physical characteristics. The appraiser must conduct a thorough study of the appraised property, its geographical area, historical values, and economic trends. The appraiser must analyze each condition to determine whether it has an effect on value by researching the market. *There may be property differences which may have no effect on the typical buyer's decision to purchase.*

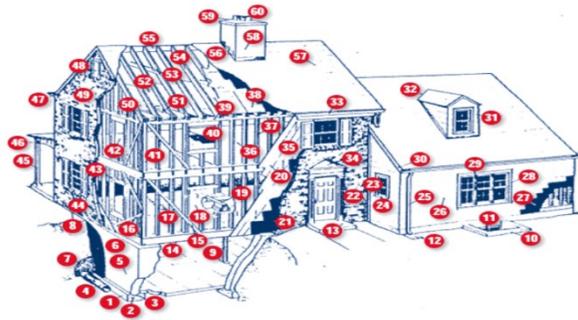
We are dealing with an imperfect market. Every parcel is considered unique and thus not interchangeable with any other parcel. The number of buyers and sellers frequently moves away from a state of equilibrium to create either a sellers' market (*many more buyers than sellers*) or a buyers' market (*many more sellers than buyers*). When an overabundance of buyers confronts a market with relatively few properties for sale, prices tend to rise at sometimes incomprehensible rates.

Real estate values tend to move in cycles, mirroring the economy as a whole. With a high level of employment and regular salary increases, demand for housing and other forms of real estate will increase and prices will follow suit. As more properties become available, yet fewer persons are able to afford them, market value declines. When economic conditions become more favorable, market values are stabilized and, as conditions continue to improve, may begin to rise once again. As a result of all these factors, as well as the fact real estate is immovable, prices may be highly volatile.

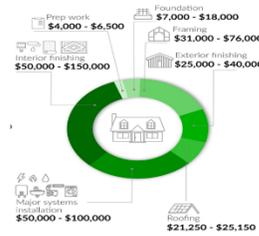
While some property owners could probably make a fairly accurate guess as to the current value of their properties, they would still be unable to identify all or most of the factors which contribute to such value. The knowledge of precisely what those factors are, and how they influence and may be expected to influence property value, is part of what lends credence to the appraiser's opinion of market value.

By gathering, recording, and verifying all the necessary data, then analyzing and interpreting such information, the appraiser may form an opinion of value based on knowledge and understanding of market conditions and not guesswork. This means knowing the construction features which determine quality, show good craftsmanship, and indicate good upkeep or show neglect.

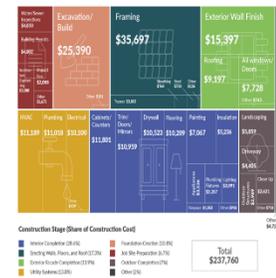
Elements of a House



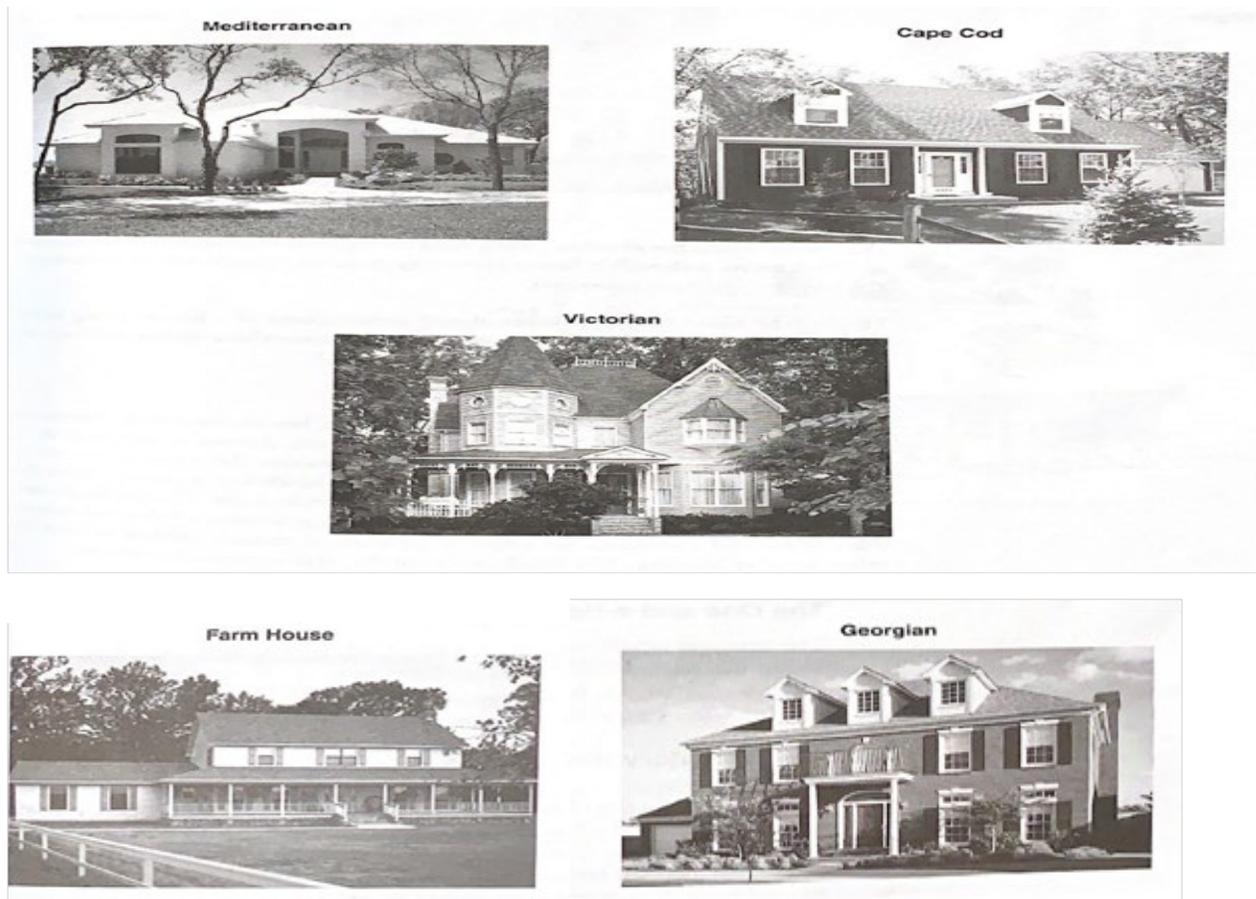
- Residential Improvement Cost Schedules
- Accessory Improvement Cost Schedule
- Commercial/ Industrial Cost Schedules

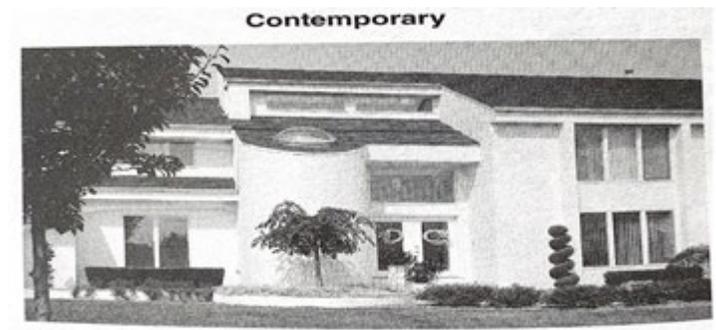


Cost Breakdown of Building a New Home



The Appraiser must also be aware of market conditions—why some properties are more desirable than others. Real estate values rest on what potential buyers think is desirable as well as on what they consider to be attractive. By being aware of current architectural trends and construction standards, the appraiser may gauge a property’s desirability, marketability, and value. Depending on the area, some types of architectural design may be more desirable than others. For instance, in rural areas, the farmhouse style may be desirable than a Mediterranean style.





It is the appraiser's job to build an accurate profile of the neighborhood. The appraiser knows which areas are experiencing declining interest and which neighborhoods are "hot" not based on a hunch, but on solid, quantifiable data.

With a strong economic base, a community becomes more desirable for both businesses and residents, and this desirability is reflected in higher property values. The community's economic base tells an appraiser something about the community's long-term economic viability and, thus, its likely ability to sustain real estate values. *The appraiser should be acutely aware of the effect of value on a depressed real estate market.*

The appraiser's market analysis should be thorough enough to reveal any economic or other factors likely to affect market value. Knowledge of the existence of all these factors, how they are interrelated, and how they impact property values is part of the appraiser's job. In short, the appraiser must be sensitive to all determinants of value to accurately gauge their effect on the neighborhood and property desirability.

Just as with individual properties, a typical neighborhood goes through four distinct periods in its life: growth, equilibrium (*also called stability*), decline, and revitalization (*also called rehabilitation*).

All types of real estate are subject to the effects of competition in some form. The value of a house will be affected by the number of other, similar homes available in the same area. If only a few properties are competing for the attention of a much larger number of buyers those properties will command much higher prices than they would if there were many such properties for sale.

The most important single factor in determining real estate value is location. The one thing the seller of real estate cannot do is change the property's location. What the seller may do is make the property more desirable by analyzing the needs and desires of potential buyers and improving the property with these requirements in mind. By learning as much as possible about the conditions of the area where a property is located, the appraiser may begin

to assimilate the information needed to make an informed judgment, which is one based on the appropriate indicators of market value.

560-11-10-.09(3)(A)

1. **Site analysis.** The appraisal staff shall utilize the trends and factors affecting the value of the subject property, such as its **accessibility and desirability**. The existing zoning, existing use, existing covenants and use restrictions in the deed and in law shall be applied. The other factors the appraiser shall apply include, but are not limited to, environmental, economic, governmental, and social factors. Site-specific information that may be considered includes, but is not limited to, location, frontage, width, depth, shape, size, topography, landscaping, slope, view, drainage, hydrology, off-site improvements, soil condition, soil productivity, zoning, absorption, nuisances, use, covenants, neighborhood, corner influence, proximity to recreational water, and the quality of access.

Site characteristics which have the greatest effect on value include *location, size, view, topography, availability of utilities, and presence of mature trees and other plantings*. A site use may be limited by its size, shape, and topography. *Does this site have sufficient access for development? Are utilities present or available? If they must be brought in, what is the cost involved? Would this site be more promising as part of a larger parcel?*

Land valuation requires market analysis, including sorting sales and market data into comparable groups; determination of appropriate units of comparison; and significant data analysis which must be incorporated into valuation schedules and adjustment factors. The market indicates land values change when properties have different amenities such as road frontage, public utilities, road types and the size of tract.

Location

Location is the key factor in the determination of market value in the County. Depending on market demand and sales prices, locational areas may be established throughout the County.

Size

The size of a parcel plays a major role in determining the per acre price at which a parcel of land will sell. The total price asked for a parcel of land has an indirect correlation with the number of potential buyers in the market. This situation stimulates more price negotiation and longer turnover periods for large tracts. Consequently, the actual cash value per acre decreases as the size of the parcel increases.

Road Frontage

The market tends to recognize parcels containing 10 acres or less as residential homesites. Tracts of this size are more desirable if they have at least 26 - 30% road frontage. Sales of large tracts, which have potential for development tend to reflect the amount of road frontage in relation to total parcel size. Parcels containing more than ten acres are considered to have adequate frontage if 10% of the total acreage is in road frontage. Dividing the number of acres of road frontage by the total acreage, yields the percent of frontage to total acreage. (1 Acre = 208' X 208')

In comparing site data, the appraiser should take care to always use the same units of measurement. Rural property usually is valued in acres; a residential subdivision lot may be valued in square feet or, if large enough, in acres. If lots are all close in size or utility, value may be expressed per lot.

Units of comparison for Land Valuation

Front Foot

Use of the front foot (FF) as a unit of comparison is based upon the premise the frontage significantly contributes to value. A front foot is a strip of land one-foot wide, fronting on a street, railroad siding, or body of water, and continuing to the rear of the parcel. This distance is frequently measured in terms of a standard depth.

Square Foot

The square foot unit of comparison is used for irregularly shaped parcels and where frontage is not a dominant factor in the valuation process. It is used for sites which sell for an average price per square foot of land area. This method may be used to value residential, commercial, and small industrial sites.

Acre

Acres may be calculated by dividing total square footage by 43,560. This unit of comparison is generally used in the valuation of large industrial sites, shopping centers and rural and farm properties. It is possible to breakdown acreage which has frontage on a public thoroughfare. In many circumstances, the front acres are more valuable.

Site or Lot

The site, or lot, unit of comparison is used by an appraiser when the market does not indicate a significant difference in lot value, even when there is a difference in lot size. This method is often used in residential subdivisions such as planned unit developments and may also be

used in valuing sites located in industrial parks.

Units-Buildable

The units-buildable unit of comparison is used by an appraiser for properties which may be developed to a greater degree of density of development. This unit of comparison is used when the market indicates a site is sold on a unit-basis, such as an apartment property where the unit of comparison is selling price per buildable apartment or a parking garage site where the unit of comparison is selling price per parking space. *The units buildable may be either a theoretical or an actual number of units.* The probable number of units to be built may be different from the theoretical number permitted by zoning ordinances.

It is important to note land does not depreciate. The location and amenities of the subject site (except for improvements) are compared with those of similar nearby sites. Adjustments are made for any significant differences, and the adjusted prices of the property most like the subject site are used to form an opinion of the value of the subject site. Land may be depleted of its resources and the value of the land may (and does) go down, but the surface area will remain the same. By extracting all other costs from total property value, the appraiser will arrive at the amount which is attributable solely to land value. This method is primarily useful when there are few sales of such property available for comparison. Because land is not considered a wasting or depreciating asset, its value must be subtracted from the overall property value. Land held as an investment, whether or not improved with structures, may lose value due to market factors, but any *loss cannot be realized until sold.*

An appraisal performed correctly may assure taxpayers the sales price is reasonable in light of prevailing market forces.

The courts throughout the United States have consistently upheld three basic approaches to estimating value. There are variations in terms of application within each of the three approaches but only three. These are as follows:

I.

THE MARKET DATA OR COMPARABLE SALES APPROACH TO VALUE:

The sales comparison approach makes use of data regarding recent sales of comparable properties. These sales are “adjusted” for time, location, and physical characteristics to make them as similar as possible. This approach makes the most direct use of the principle of substitution.

II.

THE COST APPROACH TO VALUE:

The cost approach utilizes indicated construction cost by the current cost of replacing a property less any accrued depreciation from physical deterioration or functional and economic obsolescence. The appraiser will estimate the cost to produce features of a similar quality, using currently available construction materials and methods. The appraiser always begins the cost approach valuation by estimating the construction cost of a new building which is physically or functionally identical to the subject building at current prices. To this depreciated replacement cost is added the value of the land which is estimated through analysis of comparable sales. The formulation, then in order to arrive at a value via the cost approach would be the following:

**Replacement/Reproduction Cost New (-) Accrued Depreciation (+) Land Value
(=) Value (Cost Approach)**

III.

THE INCOME APPROACH TO VALUE:

The income approach utilizes such which may be supported by the net earning power of a property. This is accomplished by capitalization of the net income into a value estimate.

The three approaches to real estate appraisal require different kinds of information. The information available will help determine which appraisal method will be given the most validity in the appraiser's opinion of the market value of the subject property. Certain approaches obviously are more valid and reliable with some kinds of properties than with others. As a rule, the sales comparison approach is the most reliable approach when dealing with unimproved or vacant land. The cost approach is most reliable with non-income producing properties or with special purpose properties. The income capitalization approach is most reliable with income producing properties.

Most appraisals will require the use of more than one approach, especially when land value must be distinguished from building value. This is true when the cost approach is used to estimate building value. There are other instances when land value must be separated from building value, such as with the *Ad Valorem Tax purposes*.

Improvement v. Land Valuation

Land should be appraised separately from the improvements to consider trends and factors affecting each and to arrive at a separate assessment for the Digest. *APM Rule 560-11-10-.09 (3)(A)*.

By extracting all other costs from total property value, the appraiser will arrive at the amount that is attributable solely to land value. This will help prevent overinflating vacant land values.

The value opinions reached by using the different approaches rarely will be the same. Even if the appraiser had all the relevant data and had carried out the steps in the approach without error, each value indication, in almost every case, would be different. Once assured of the validity of the indicated values, the validity of the methods, the strengths and weaknesses of each approach, and the result of each approach are weighed objectively to arrive at the single best and most supportable conclusion of value in terms of the value sought.

MARKET OR DIRECT SALES COMPARISON APPROACH

The most obvious advantage of the sales comparison approach is its simplicity and rationale; by definition, it reflects the actions of market participants. The basic idea behind the market data approach to value is: *“A person will not buy or rent one property for more than it would cost to buy or rent a comparable or similar property with the same utility.”*

The market data or comparable sales approach should be used with any property where a bank of sales of comparable properties exists. When there are sufficient, recent, and reliable market transactions, the sales comparison approach is probably the most logical and objective approach to value. The chief limitation of the sales comparison approach is it depends on having reliable information for its validity.

The defined boundaries of a neighborhood are also important in determining whether other properties may be considered “comparable.” When an area is first developed, property values usually increase until few vacant building sites remain. The last properties to be sold tend to command a higher price than those first sold. As much as possible, “comparable” properties should reflect similar site attributes and a property with an expansive view is best compared to other properties with similar views. If possible, the “comparable” properties should be from the same neighborhood as the subject property. If a property similar to the appraised was sold recently, its sales price should be a good indicator of the price which could be commanded by the current market.

The best an appraiser may do is learn as much as possible about the property being appraised so other recently sold properties may be found. The number of sales needed for an accurate opinion of market value cannot be easily specified, but the fewer the sales, the more carefully they must be investigated.

This process implies *“How much would this comparable property probably sell for in today’s*

market?”

Local market information is utilized in both the cost and income approaches because appraisers are attempting to find value and regardless of the type of property, so they must at some time, or another go to the marketplace for information.

COST APPROACH

The basic premise of the cost approach is under normal market conditions, buyers of real estate typically do not want to pay more for a parcel with an existing structure than they would have to pay to build an identical structure on a vacant parcel. In the same manner, they would not want to pay as much for an older building as they would pay for a brand-new one. Over time, every building will suffer some of the effects of decay and ordinary wear and tear. In addition, an older structure will not be of the current most desirable design or contain the most up to date fixtures. As a result, an older building should not be as expensive as a new building the same size which offers the features which are currently the greatest in demand.

This approach is based on the assumption the replacement cost new normally sets the upper limit of value, particularly when the improvement is new, provided the improvement represents the highest and best use. It is assumed a newly constructed building has advantages over existing buildings. The measure of this deficiency is called depreciation. This loss in value decreases the value of property.

Appraisers use several methods to measure depreciation.

There are three possible causes of depreciation, and these are:

- Physical Deterioration
- Functional Obsolescence
- Economic Obsolescence (External, Locational)

These causes of depreciation may be further defined as follows:

Physical Deterioration may be due to:

- Wear and tear
- Inadequate repair or maintenance

This is usually the most obvious form of depreciation. Some form of physical deterioration begins the moment a building is completed. All structures will suffer some physical defect eventually, whether from elements or from the way in which it was used. Those defects will

have greater effect on improvements which were poorly constructed. *Because of differences in the quality of construction and the degree of maintenance received, similar structures may not depreciate at the same rate.*

Functional Obsolescence may be due to:

- A design deficiency
- Too many or not enough of certain features (i.e., bathrooms, bedrooms, closets, electrical outlets, etc.)

Functional Obsolescence depends on the changing requirements of homebuyers.

Economic Obsolescence occurs due to forces outside the actual structure such as:

- Encroaching commercial properties
- Environmental pollution

The steps used in the cost approach are to add the land value (derived by the market approach) to the depreciated Replacement or Reproduction Cost New (RCN) as follows:

$$\text{RCN} - \text{Accrued Depreciation} + \text{Land Value} = \text{Value (Cost Approach)}$$

To make the most accurate and thorough use of the cost approach, the appraiser must compute applicable depreciation in each category (*physical deterioration, functional obsolescence, and economic obsolescence*), then subtract those figures from the reproduction or replacement cost of the improvements.

Frequently, an opinion of value by the cost approach is needed to establish value for insurance purposes. Insurance claims are based on the reimbursement for loss, as determined by the appraised value; therefore, an insurance appraiser is mainly concerned with replacement cost, which will dictate the amount of reimbursement for loss.

INCOME APPROACH

Although the income capitalization approach has a formidable title, it is based on a relatively simple premise: the value of a property is related to the income it may produce. The more income the property produces, the more the property tends to be worth. The income approach is most applicable to properties, which may produce an income such as apartment buildings, shopping centers and office buildings.

In applying the income approach, the appraiser is concerned with the present worth of the

future benefits of the property. This is generally measured by the net income a fully informed buyer may assume the property will produce during its remaining useful life or forecasted income period. For this reason, the worth of the property to a prospective buyer is based largely on its earning capacity. Any income received must be taken into consideration, because it will be a factor in determining market value.

Many commercial properties are purchased to be leased to other parties. The future net income the property is capable of earning and the eventual return of the investment's capital are the main benefits to the owner.

Rent is the major source of income from most investments in real estate. After comparison with investments of similar types and classes, this net income is capitalized to form an estimate of value. By comparing present and past performances of the subject and similar properties, the appraiser will be able to recognize what the subject property's rent potential is and whether the property is living up to such potential.

The four steps to be followed in assembling and processing income data are:

1. Obtain annual income.
2. Subtract expenses.
3. Estimate the remaining useful economic life of the building to establish the probable duration of its income (establish the depreciation).
4. Select the appropriate capitalization rate and the applicable method and technique for processing the net income.

Principles affecting marketability (*such as supply and demand*) will have greater influence in the sales comparison and cost approaches, while principles affecting productivity will have the greatest influence in the income approach.

FEE APPRAISAL V. MASS APPRAISAL

The term “appraisal process” entails all the procedures, which are followed from the beginning to the end of an appraisal. As time goes on, increasingly more of these appraisal activities have come to rely on computerized research and databases. An example is the utilization of the Computer Assisted Mass Appraisal (CAMA) system, which is useful when thousands of properties are reappraised for tax purposes.

In the Ad Valorem Tax arena, we have two “appraisal processes” we need to be familiar with:

1. The “fee” appraisal process and
2. The “mass” appraisal process.

“Fee” appraising involves appraising an individual property while “mass” appraising relates to the valuation of many, perhaps thousands of properties.

“Mass appraisal, unlike single-property appraisal, requires the development of a valuation model capable of replicating the forces of supply and demand over a large area. Appraisal judgments relate to groups of properties rather than to single properties. The assessor must be able to develop, support, and explain standardized adjustments in a valuation model among use classes, construction types, neighborhoods, and other property groups.”
-IAAO

There are six steps, which may be related to both “fee” appraising and “mass” appraising.

		Fee Appraisal	Mass Appraisal
1	Definition of the Problem	The purpose and function of the appraisal may be for many reasons	It is always an appraisal for ad valorem tax purposes
2	Preliminary Survey & Appraisal Plan	It may be quite extensive as with a narrative appraisal or quite simple as with FHA or VA Form Reports.	It is most often by either local or state law or through established procedures
3	Data Program	Detailed information about general (regional, city, neighborhood, etc.) and specific site data.	Concerned with gathering data to eventually establish land and building schedules
4	Application of the Three Approaches	Use all three on each property, much research with narrative reports	Most often only using one approach with each property, dealing with the mass
5	Correlation/ Reconciliation	This is a very important part of a fee appraisal, where work is checked and reviewed for the final step.	This probably exists only in the initial setting of land and/or building cost schedules
6	The Final Estimate	The point where appraisers decide which approach or combination of approaches they will use to arrive at the final value estimate.	The final "calculated" value or "fair market value" is considered the final value estimate.

Generally, the fee appraisal process will result in the distribution of a uniform residential report, comparing characteristics of recently sold properties to the subject property to indicate a "fee" appraiser opinion of market value. While these reports could be completed for a variety of reasons, the most common is for the issuance for mortgage or refinance loans or home owners insurance policies. Upon close inspection, it is not unusual to discover a disclaimer in such report which provides such report is not to be utilized for "Ad Valorem Tax purposes."

UNIFORM RESIDENTIAL APPRAISAL REPORT

Uniform Residential Appraisal Report				File No. EXAMPLE		
The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.						
Property Address 1234 Example Report Way		City Fakeville	State CA	Zip Code 91234-1234		
Borrower Victor Fake		Owner of Public Record Victor Fake	County Fakeramento			
Legal Description Fakeville Square 16 LOT 84						
Assessor's Parcel # 085-0035-001-0000		Tax Year 2012	R.E. Taxes \$ 1,585			
Neighborhood Name Fakeville Square		Map Reference 239-Z7	Census Tract 109.03			
SUBJECT	Occupant <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant		Special Assessments \$ 0.00	<input type="checkbox"/> PUD HOA \$ 0.00 <input type="checkbox"/> per year <input type="checkbox"/> per month		
	Property Rights Appraised <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Other (describe)					
	Assignment Type <input type="checkbox"/> Purchase Transaction <input checked="" type="checkbox"/> Refinance Transaction <input type="checkbox"/> Other (describe)					
Lender/Client Fake Mortgage Company		Address 1234 Fake Loans Way Suite 101, Fakeville, CA 91234				
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
Report data source(s) used, offering price(s), and date(s). The subject has not been offered in the past 12 months prior to the effective date of this appraisal. Sources include Multiple Listing Services and owner where applicable.						
I <input type="checkbox"/> did <input type="checkbox"/> did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.						
CONTRACT	Contract Price \$		Date of Contract	Is the property seller the owner of public record? <input type="checkbox"/> Yes <input type="checkbox"/> No Data Source(s)		
	Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? <input type="checkbox"/> Yes <input type="checkbox"/> No					
	If Yes, report the total dollar amount and describe the terms to be paid. \$0::					
Note: Race and the racial composition of the neighborhood are not appraisal factors.						
NEIGHBORHOOD	Neighborhood Characteristics		One-Unit Housing Trends		One-Unit Housing	Present Land Use %
	Location <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Values <input checked="" type="checkbox"/> Increasing <input type="checkbox"/> Stable <input type="checkbox"/> Declining	PRICE	AGE	One-Unit	70 %
	Built-Up <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input checked="" type="checkbox"/> Shortage <input type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$1000	(yrs)	2-4 Unit	5 %
	Growth <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time <input checked="" type="checkbox"/> Under 3 mths <input type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	80 Low	19	Multi-Family	10 %
	Neighborhood Boundaries The neighborhood boundaries should be listed here. If they are not correct, the comps might not be correct.		303 High	75	Commercial	10 %
			167 Pred	47	Other/Vacant	5 %
Neighborhood Description See Attached Addendum under "NEIGHBORHOOD DESCRIPTION"						
Market Conditions (including support for the above conclusions) This is where the appraiser should discuss the neighborhood real estate market and at the least support the "One-Unit Housing Trends" listed above (direction of property values, demand/supply and marketing time). Does it seem like the appraiser understands the neighborhood market?						
Dimensions See Attached Plat Map		Area 7203 sf	Shape Mostly Rectangular	View N;Res;Res		
Specific Zoning Classification RD5		Zoning Description 5 dwellings units per gross acre of land				
Zoning Compliance <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal Nonconforming (Grandfathered Use) <input type="checkbox"/> No Zoning <input type="checkbox"/> Illegal (describe)						
Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe.						
SITE	Utilities Public Other (describe)		Public Other (describe)	Off-site Improvements - Type	Public Private	
	Electricity <input checked="" type="checkbox"/> <input type="checkbox"/>	Water <input checked="" type="checkbox"/> <input type="checkbox"/>	Street Asphalt	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	
	Gas <input checked="" type="checkbox"/> <input type="checkbox"/>	Sanitary Sewer <input checked="" type="checkbox"/> <input type="checkbox"/>	Alley None	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	
FEMA Special Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		FEMA Flood Zone X	FEMA Map # 0607720210E	FEMA Map Date 07/06/1998		
Are the utilities and off-site improvements typical for the market area? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe. Flood Information Taken from Tax Records (Realist)						
Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe. There are no apparent easements or encroachments and other apparent adverse conditions noted except for normal utilities. The appraiser did not receive a Title report from the client/lender and is therefore not responsible for information contained within. The deed was not reviewed and apparent conditions were considered and noted where applicable; Properties in the subject's neighborhood are similar in size, topography and utility. No adverse conditions noted.						

	GENERAL DESCRIPTION		FOUNDATION		EXTERIOR DESCRIPTION materials/condition		INTERIOR materials/condition		
	Units	<input checked="" type="checkbox"/> One	<input type="checkbox"/> One with Accessory Unit	<input type="checkbox"/> Concrete Slab	<input checked="" type="checkbox"/> Gravel Space	Foundation Walls	Concrete/Avg	Floors	Carpet/Tile/Avg
#of Stories	1		<input type="checkbox"/> Full Basement	<input type="checkbox"/> Partial Basement	Exterior Walls	Vinyl Siding/Avg	Walls	Sheetrock/Avg	
Type	<input checked="" type="checkbox"/> Det.	<input type="checkbox"/> Att.	<input type="checkbox"/> S-Det/End Unit	Basement Area	0 sq. ft.	Roof Surface	Comp Shingle/Avg	Trim/Finish	Painted Wd/Avg
	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> Proposed	<input type="checkbox"/> Under Const.	Basement Finish	0 %	Gutters & Downspouts	Metal/Avg	Bath Floor	Vinyl/Tile/Avg
Design (Style)	Ranch		<input type="checkbox"/> Outside Entry/Exit	<input type="checkbox"/> Sump Pump	Window Type	Dual Pane/Avg	Bath Wainscot	Fiberglass/Tile/Avg	
Year Built	1973		Evidence of <input type="checkbox"/> Infestation		Storm Sash/Insulated	N/A	Car Storage	<input type="checkbox"/> None	
Effective Age (Yrs)	20		<input type="checkbox"/> Dampness	<input type="checkbox"/> Settlement	Screens	Yes/Avg	<input checked="" type="checkbox"/> Driveway	#of Cars 2	
Attic	<input type="checkbox"/> None		Heating <input checked="" type="checkbox"/> FWA	<input type="checkbox"/> HWBB	<input type="checkbox"/> Radiant	Amenities	<input type="checkbox"/> Woodstove(s) #0	Driveway Surface	Concrete
<input type="checkbox"/> Drop Stair	<input type="checkbox"/> Stairs		<input checked="" type="checkbox"/> Other Central	Fuel Gas	<input type="checkbox"/> Fireplaces) # 0	<input checked="" type="checkbox"/> Fence Perimeter	<input checked="" type="checkbox"/> Garage	#of Cars 2	
<input type="checkbox"/> Floor	<input checked="" type="checkbox"/> Scuttle		Cooling <input checked="" type="checkbox"/> Central Air Conditioning		<input checked="" type="checkbox"/> PatioDeck Patio	<input checked="" type="checkbox"/> Porch Concrete	<input type="checkbox"/> Carport	#of Cars 0	
<input type="checkbox"/> Finished	<input type="checkbox"/> Heated		<input type="checkbox"/> Individual	<input type="checkbox"/> Other	<input type="checkbox"/> Pod None	<input type="checkbox"/> Other None	<input checked="" type="checkbox"/> Att.	<input type="checkbox"/> Det.	<input type="checkbox"/> Built-in
Appliances	<input type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Range/Oven	<input checked="" type="checkbox"/> Dishwasher	<input checked="" type="checkbox"/> Disposal	<input checked="" type="checkbox"/> Microwave	<input type="checkbox"/> Washer/Dryer	<input type="checkbox"/> Other (describe)		
Finished area above grade contains:	6 Rooms		3 Bedrooms		2.0 Bath(s)		1,465 Square Feet of Gross Living Area Above Grade		
Additional features (special energy efficient items, etc.):	Dual Pane Windows, Fireplace, CH&A, Whole House Fan, Ceiling fans throughout.								
IMPROVEMENTS	Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.): C4:No updates in the prior 15 years;This is the section of the appraisal report where the appraiser will explain the condition of the subject property and any upgrades. Did the appraiser adequately describe the house? This is important to ensure the appraiser considers all the upgrades (or lack thereof) in the final value. Also, make sure to look at the bed/bath count and living area. Does it seem accurate?								
	Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe: _____								
	Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe: _____								

Uniform Residential Appraisal Report

File No. EXAMPLE

There are 5 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 130,000 to \$ 215,000					
There are 124 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 85,000 to \$ 232,500					
FEATURE	SUBJECT	COMPARABLE SALE NO. 1	COMPARABLE SALE NO. 2	COMPARABLE SALE NO. 3	
1234 Example Report Way Address Fakeville, CA 91234-1234		1690 Bono Way Fakeville, CA 91234-1234	1761 Edge Court Fakeville, CA 91234-1234	2523 Mullen Drive Fakeville, CA 91234-1234	
Proximity to Subject		0.45 miles SW	0.43 miles SW	0.74 miles SW	
Sale Price	\$	\$ 170,000	\$ 157,500	\$ 179,000	
Sale Price/Gross Liv. Area	\$ 0.00 sq. ft.	\$ 117.24 sq. ft.	\$ 116.15 sq. ft.	\$ 121.44 sq. ft.	
Data Source(s)		RapMLS #12341234;DOM 3	RapMLS #12341234;DOM 4	RapMLS #12341234;DOM 9	
Verification Source(s)		Doc# 130419-1234	Doc# 130227-1234	Doc# 130315-1234	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	ADJUSTMENT	DESCRIPTION	ADJUSTMENT
Sale or Financing Concessions		ArmLth Cash:0		ArmLth Cash:0	
Date of Sale/Time		s04/13;c03/13	+3,500	s02/13;c02/13	+5,000
Location	N;Res;Res	N;Res;Res		N;Res;Res	
Leasehold/Fee Simple	Fee Simple	Fee Simple		Fee Simple	
Site	7203 sf	6480 sf	0	6960 sf	0
View	N;Res;Res	N;Res;Res		N;Res;Res	
Design (Style)	Ranch	Ranch		Ranch	
Quality of Construction	Q4	Q4		Q4	
Actual Age	40	42	0	44	0
Condition	C4	C4		C4	+7,000
Above Grade	Total Bdrms Baths	Total Bdrms Baths		Total Bdrms Baths	
Room Count	6 3 2.0	6 3 2.0		6 3 2.0	
Gross Living Area	40 1,465 sq. ft.	1,450 sq. ft.	0	1,356 sq. ft.	4,500
Basement & F Finished Rooms Below Grade	0sf	0sf		0sf	
Functional Utility	Average	Average		Average	
Heating/Cooling	FWA/CAC	FWA/CAC		FWA/CAC	
Energy Efficient Items	Dual Pane Wnds	Dual Pane Wnds		Dual Pane Wnds	
Garage/Carport	2 Car Garage Att	2 Car Garage Att		2 Car Garage Att	
Porch/Patio/Deck	Porch,Patio	Porch,Patio		Porch,Patio	
Pool	None	None		None	
Net Adjustment (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 3,500	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 16,500	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 2,000	
Adjusted Sale Price of Comparables		Net Adj. 2.1% Gross Adj. 2.1% \$ 173,500	Net Adj. 10.5% Gross Adj. 10.5% \$ 174,000	Net Adj. 1.1% Gross Adj. 1.1% \$ 181,000	

SALES COMPARISON APPROACH

I did did not research the sale or transfer history of the subject property and comparable sales. If not, explain **Do the "comps" above seem reasonable? Or are there better ones that were not used? A good "comp" or comparable sale is one that a buyer would consider as a replacement for the subject property. If the "comp" was still on the market, would a buyer also be interested in that property?**

My research did did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data source(s) Tax Records, Multiple Listing Service

My research did did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data source(s) Tax Records, Multiple Listing Service

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE NO. 1	COMPARABLE SALE NO. 2	COMPARABLE SALE NO. 3
Date of Prior Sale/Transfer	03/25/2011			
Price of Prior Sale/Transfer	146000			
Data Source(s)	County Records	County Records	County Records	County Records
Effective Date of Data Source(s)	05/14/2013	05/14/2013	05/14/2013	05/14/2013

Analysis of prior sale or transfer history of the subject property and comparable sales **The subject property sold as a foreclosure on MLS after 19 days of market exposure at \$146,000. The subject property previously transferred as a foreclosure on 02/02/2011 for \$121,456 (not a public sale on MLS). I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.**

Summary of Sales Comparison Approach: **This is the section where the appraiser explains and supports the adjustments used in the appraisal report. Do the adjustments seem legitimate to you? Do they appear to be indicative of the way buyers behave? Do the adjustments make sense when you compare all the sales used in the appraisal report? Is there anything that should have been adjusted for but was not? The adjustments are supposed to be based on the amount buyers would pay for the difference of the feature (instead of the cost of the feature). As an example, Comp 2 has 109 less square feet of living area than the subject property. When adjusted at \$40 per square foot, the value difference is \$4,500. We all know the cost to actually build 109 additional square feet would be far more than \$4,500, but what this adjustment is saying is that buyers are only willing to pay \$4,500 for the extra space despite the cost of construction. The \$40 looks like it is based on comparison to Comp 1.**

Indicated Value by Sales Comparison Approach \$ 174,000

Indicated Value by: Sales Comparison Approach \$ 174,000 Cost Approach (if developed) \$ 0 Income Approach (if developed) \$ 0

This is the section where the appraiser explains how the final value was reconciled. This section is only three lines, so the text will likely be in an addendum. Does the explanation make sense? In this case, the reader would want to know why the value is at \$174,000 (Comps 1-2) instead of \$181,000 (Comp 3).

This appraisal is made "as is," subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: _____

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 174,000 as of 05/22/2013, which is the date of inspection and the effective date of this appraisal.

THE MASS APPRAISAL / ASSESSMENT PROCESS

Mass appraising, as contrasted with fee or single property appraising, is a much more comprehensive process. In viewing the mass appraisal flow chart, the work of a fee appraiser, who values only a single property, begins, and ends in the ‘data collection and analysis’ and ‘valuation’ portion of this discussion. The assessor, however, must initially identify each and every parcel of land within the County; map and identify property splits or transfers; collect information concerning costs, market sales and rental data; physically measure and value each parcel of property; notify the taxpayers of changes in property values; be prepared to support the value estimates from initial hearings through Boards of Equalization and into the judicial system. Mass appraising is extremely comprehensive. The assessor must value every possible type of property and deal with virtually every type of valuation problem, which might be encountered, in the appraisal of real estate.

Property Identification:

The mass appraisal process begins with the identification of property. The initial step is mapping because properties cannot be properly identified without a mapping system.

Data Collection and Analysis

The next step in the mass appraisal process is data collection and analysis. The appraiser collects selling price information and other data on homes similar to the property being appraised (*called the subject property*) which are located in same or similar neighborhood, and which have sold recently. The appraiser then adjusts the selling price of those properties to account for significant differences between them and the subject property in size, style, quality of construction, and other factors likely to affect the market value of the property being appraised.

As seen in the appraisal flow chart, we have collection and analysis for cost information, comparative market sales information, and for possible rental information.

The data collection concerning ‘costs’ is to assist in the establishment of cost manuals or for the updating of an existing manual. These manuals are ultimately used in estimating the replacement/reproduction cost of the building involved in the appraisal. Cost manuals give building specifications and typical construction costs. They are customized for specific geographic regions and are usually updated quarterly, sometimes even monthly.

This data would also be useful in setting up depreciation schedules. ‘Comparative sales data’ is used in almost every aspect of the mass appraisal process. In the context of

this section, it is used in estimating the value of raw land. Land becomes a site suitable for building when utilities are available. It is also used in estimating the value of the real estate through the use of comparable sales.

Comparative sales data is the basis for the establishment of sales ratios or trends, which we use in Ad Valorem Tax appraisal as a tool (or criterion) for evaluating our appraisal performance. This information is also useful where computerized assessments are being used.

In mass appraisal it is during and within this “collection and analysis” step which the actual land and building schedules are established. It is here such depreciation schedules are established and checked. An example would be to subtract an estimated land price from the sale price of a recently sold property to determine if the remaining value checks with the depreciated cost arrived at with the cost manual.

The Appraisers analysis always takes into account the fact the market demand fluctuates. The most significant investment for most is the purchase of a home. Such a purchase is often well-rewarded at the time of a subsequent sale when the property’s value may have increased substantially over its initial purchase price. Real estate has historically proved to be a generally appreciating asset. As such it is usually bought with the expectation of future higher value. Not every property will increase in value, particularly over the short term, and some may lose value.

Commercial property values may be even more volatile than other forms of real estate. The favorable economic indicators which encourage office and retail development may lead to overbuilt markets and empty buildings. Commercial property is typically leased, and unfavorable economic conditions may quickly lead to vacant store fronts and lowered lease rates.

Valuation

The next step in the appraisal process is to analyze the value indications from the three approaches to arrive at the best and most supportable opinion of value. The third step of the appraisal process is the actual valuation of property. This involves the valuation on an annual basis, of all property throughout the County. The initial step begins with the use of a “field card,” or what is more commonly referred to as a “Property Record Card.” The field appraiser takes the property records card for the property and measures the property, identifies the various property components on the field card, grades the house based on the quality of construction, and places the house measurements in the appropriate space on the card.

The property record card is also used for updating or making additions or deletions to an existing property. There is no need to revisit, re-measure and recheck every property every year. This is generally not very efficient but may at times be feasibly impossible. Schedules should be updated from year to year and properties should be revisited periodically. The Appraisal Procedures Manuals suggests properties be reviewed once every three years, or more frequently depending on market conditions.

Once the property record card has been properly filled out and the improvement properly graded, with emphasis on the quality of construction, the property record card is brought back to the County assessors' office. Here the actual card, cost manual and land schedules are merged into a final value estimate. In many instances, the same individual who measured the house and listed it in the field is not the individual who calculates the value of the property. *This is a perfectly legitimate procedure and, in some cases, the only manner in which "mass appraising" may be accomplished.*

Mass appraisal, by its very nature, dictates some degree of "production- line appraising." The use of uniform schedules and manuals should provide property owners with the uniformity and equality, which are necessary in maintaining an equitable assessment system. The result, therefore, of the "Valuation" portion would be a uniform value estimate, which we in Georgia refer to as "Fair Market Value." This value is the 100% appraisal to which the 40% assessment ratio is applied.

Notification of Assessment

Notification of assessments is the fourth step in the appraisal process. Georgia law requires "annual notice of assessment" regardless of whether there have been any changes in the property value. There are statutes, which dictate the contents of the notice and the time period from which taxpayers may file appeals. Notices to taxpayers generally are sent out between April and first of June, with a statutory deadline of no later than July 1st. These dates may vary if the County has requested extensions of the allowable deadlines.

Appeal Procedures

If the taxpayer receives their notice of change and disagrees with the new valuation, they have 45 days in which to file a written appeal. This appeal should specifically state the reasons why the taxpayer disagrees with the assessors' valuation. While the Department of Revenue does have a uniform promulgated appeal form, PT-311A, there is no requirement this particular form be utilized. Any written objection to an annual

notice of assessment made by the taxpayer or their representative, should be regarded as a valid appeal.

SALES RATIO STUDIES

Fair Market Value has been defined as, “*what the property would bring at cash sale when sold in the manner in which such property is usually sold, between a knowledgeable buyer and a willing seller.*”

Georgia law also states “... *the value of tangible property as referred to in the tax laws of this State shall be forty percent of the fair market value of such property*” (***See Georgia Code § 48-5-7***)

From the above two paragraphs, the fair market value which the law states are the basis for taxation, depends to a great extent on sales. Our property taxation laws refer to what property would bring when sold on the open market. In other words, the law is saying fair market value may be found by studying sales. Of course, every property does not sell every year so there must be other ways to value property. The principal criterion, however, should be rough analysis of sales data.

WHAT IS A RATIO?

When we speak of Sales Assessment Ratios, what do we mean? A ratio, any ratio, is simply one number divided by another. It signifies a relationship between the two numbers.

USING SALES RATIOS TO MEASURE EQUITY

Sales ratios have numerous uses as we have seen earlier. The use of ratios to do more than calculate the "level" of assessment may be greatly beneficial to the mass appraiser. Ratio studies may also be used to measure equity. Measuring equity means the assessor is trying to determine if the valuations are "*fair and equitable*" among and between the property owners and property types within the taxing jurisdiction. In attempting to analyze the total sales within a county for this purpose, the sales should be grouped by location, property type and any other means the appraiser may want to utilize.

The appraisal staff shall conduct sales ratio studies to periodically measure the quality of their appraisals relative to the market. Such studies should be designed to measure whether appraisals meet the overall legal standards provided in *Rule 560-11-2-.56* of the Appraisal Procedures Manual (APM) and provide more precise analysis of the quality of

appraisals within and between market strata used by the appraisal staff to compare properties. When sales ratio studies reveal excessive inequities within a stratum, the appraisal staff should consider reappraising the properties in the stratum. When such studies reveal excessive inequities between strata, and there is acceptable uniformity within the strata, the appraisal staff should consider trending to correct this uniformity problem.

Level of Assessment is measured by the median or aggregate ratio and is used to ensure uniformity between residential, agricultural, commercial, and industrial properties by requiring each to fall within an acceptable range of 36.00 to 44.00 (*10% of state mandated 40% assessment*).

Uniformity within each classification of property is measured by the Coefficient of Dispersion (COD), which sets an upper limit of deviation at no greater than 15% for residential property and no greater than 20% for non-residential property.

Assessment Bias, within each classification, is measured by the Price Related Differential (PRD), which sets a range between .95% to 1.10% to ensure higher- or lower-valued properties are not assessed disproportionately.

Sales ratio reports are one of the most vital tools for an appraiser when performing mass appraisals or updates to values. Most assessors are familiar with the calculation of the sales ratio. These ratios, on an individual basis, provide an indication for specific properties which sold during some given period of time. Viewing a large number of ratios (for instance, all within a County in one year) one may calculate the average or "mean" ratio. This simply tells us what the average ratio was for all sales which occurred. It does not in any way tell us anything about the range (high to low) or how much variation there was within such range. For example, an average ("mean") ratio is calculated to be 36% for a county. On the surface, it would seem the valuations in the county are fairly close to the required 40% level. However, closer examination might reveal the range of ratios was from 5% to 75% and, in actuality, very few individual ratios fell around the 36% mean ratio. In other words, without some indication of the "spread" in the individual ratios, a ratio study is somewhat useless if it is to be used to judge assessment performance. We may use several statistics to describe or measure uniformity and equity in the valuation system.

DOAA RATIO AND ITS SIGNIFICANCE

In the fall of each year, all counties in the state of Georgia receive a sales ratio study from the Department of Audits and Accounts (DOAA). This study provides the public utility equalization

ratio calculation utilized in determining taxes due from the apportioned share of a public utility in each county.

According to **O.C.G.A. § 48-5-274 (e)**, on or before November 15 of each year, the state auditor shall furnish to the State Board of Education the current equalized adjusted property Tax Digest of each County in the state and the current equalized adjusted property Tax Digest for the state as a whole. In any county which has more than one school system, the state auditor shall furnish the State Board of Education a breakdown of the current County equalized adjusted property Tax Digest showing the amount of the Digest applicable to property located within each of the school systems located within the County. At the same time, the state auditor shall furnish the Governing Authority of each county, the Governing Authority of each municipality having an independent school system, the local Board of Education of each school system, the Tax Commissioner or Tax Collector of each County, and the Board of Tax Assessors of each County the current equalized adjusted property Tax Digest of the local school system or systems, as the case may be, and the current equalized adjusted property Tax Digest for the state as a whole.

A County Board of Tax Assessors may alter the equalization ratio determined by the DOAA and later administered through the Revenue Commissioner and State Board of Equalization, guided by **O.C.G.A. § 48-2-18 (c)**. According to statute, after final approval by the State Board of Equalization of the Digest of proposed assessments made by the (Revenue) Commissioner and after any adjustments by the Board as authorized by this Code section are made, the (Revenue) Commissioner shall notify within 30 days each taxpayer, in writing, of the proposed assessment of its property. At the same time, the (Revenue) Commissioner shall notify in writing the Board of Tax Assessors of such county, as outlined in **Code Section 48-5-511**, of the total proposed assessment of the property located within the County of taxpayers who are required to return their property to the (Revenue) Commissioner. **O.C.G.A. § 48-2-18 (d)** provides, within 30 days after receipt of the proposed Digest of assessments, the county Board of Tax Assessors shall make the final assessment of the property in question and provide notice to the taxpayer. Such notice and any appeal therefrom shall be accomplished as is provided by **Code Sections 48-5-306** and **48-5-311**.

The equalization ratio, determined by the DOAA and administered by the DOR is used to assess public utility property at the same level as all other property was determined to be assessed in the County for any given year. When a ratio falls between 38.00 to 42.00, counties receive a proposed public utility sales ratio of 40.00. When a county falls outside of this threshold, the ratio determined by the public utility equalization ratio is recommended. Should a Board of Tax Assessors utilize an alternative ratio other than what was determined by

the DOAA and proposed by the DOR, the public utility company may appeal. The County would be responsible for handling such an appeal and follow **O.C.G.A. § 48-5-311**, in administration of the appeal process.

In **O.C.G.A. § 48-5-7 (a)**, taxing authorities are instructed to assess all tangible property at 40 percent of its fair market value, except as otherwise provided in this Code section. Furthermore, **O.C.G.A. § 48-5-340** awards authority with the purpose and intent of this article to establish a procedure for use by the (Revenue) Commissioner to equalize County property Tax Digests between counties and within counties so as to require County Boards of Tax Assessors to make adjustments in the valuation of property to ensure uniformity and equity. The (Revenue) Commissioner shall continue to examine the Digest and exercise their responsibility to bring about property valuations which are reasonably uniform and equalized throughout the state.

Counties may, without realizing, lose significant revenue when the Board of Tax Assessors fail to maintain an equalized ratio between 38.00 to 42.00. Often, without this realization, revenue, which would have been collected from public utility companies, is now shifted to other taxpayers.

SALES RATIO STEPS

“RAMMACAP”

Ratio – if (Appraised Value, (Appraised value * .40 = Assessment) divided by Sale Price)
***Total Sale prices & Assessment Columns) ***

Array– Array the ratios from lowest to highest.

Mean – (total all ratios and divide by total number of ratios)

Median– Find the middle (median). If (even number of sales, add them, divide by 2)

AADeviation – subtract median from each ratio, ignore the negative sign, total deviations, divide by number of ratios.

COD – AAD divided by Median.

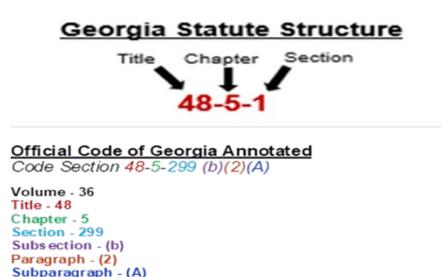
Aggregate – total all assessments divided by total of all sales.

PRD – Mean divided by Aggregate.

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SECTION 2

GEORGIA CODE SECTION



§ 44-1-1. "Property" defined

As used in this title, the term "property" means:

- (1) Realty and personalty which is actually owned;
- (2) The right of ownership of realty or personalty; and
- (3) That which is subject to being owned or enjoyed.

The ordinary person defines property as things, while the attorney typically views property as rights.

§ 44-1-2. "Realty" or "real estate" defined; extent of owner's interest in airspace.

(a) As used in this title, the term "realty" or "real estate" means:

- (1) All lands and the buildings thereon;
- (2) All things permanently attached to land or to the buildings thereon; and
- (3) Any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

(b) The property right of the owner of real estate extends downward indefinitely and upward indefinitely.

This would include minerals below the land, air above the land, and the water located on or running through the land (to some extent).

§ 44-1-3. "Personalty" defined; status of certain stocks.

(a) As used in this title, the term "personalty" or "personal estate" means all property which is movable in nature, has inherent value or is representative of value, and is not otherwise defined as realty.

(b) Stocks representing shares in a corporation which holds lands or a franchise in or over lands are personalty.

(Georgia Constitution reserves right to tax intangible property, as well as repeal).

§ 48-5-42. Exempt Personalty

All personal clothing and effects, household furniture, furnishings, equipment, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial use, shall be exempt from all ad valorem taxation.

§ 44-1-4. "Estate" defined

As used in this title, the term "estate" means the quantity of interest which an owner has in real or personal property. Any estate which can be created in realty may be created in personalty.

§ 44-1-5. "Title" defined

As used in this title in referring to property, the term "title" signifies the means whereby a person's right to property is established. Property rights exist only if and to the extent they are recognized by our legal system. Property rights, in short, are defined by law.

§ 44-1-6. What things considered fixtures; movable machinery as personalty; effect of detachment from realty

(a) Anything which is intended to remain permanently in its place even if it is not actually attached to the land is a fixture which constitutes a part of the realty and passes with it.

(b) Machinery which is not actually attached to the realty but is movable at pleasure is not a part of the realty.

(c) Anything detached from the realty becomes personalty instantly upon being detached.

§ 44-1-12. What constitutes perfect title?

One person may have the right of possession of certain property and another person may have the right to the property itself. A union of those rights constitutes a perfect title. (Financing and Mortgage on the property does not constitute perfect title).

§ 44-1-15. Removal or destruction of survey monuments prohibited; exceptions; penalties

(a) As used in this Code section, the term:

(1) "Geodetic control monuments" means those survey monuments which are established by federal, state, local, and private agencies, the position of which monuments on the earth's surface has been fixed by high-order surveying and computation for use by surveyors and engineers in the extension of geodetic position to property corners, improvements to property, utility systems, streets and highways, and such other objects and things as may be located by surveying. Such monuments may be in the form of metal disks set in concrete, rock, metal, or some other fixed permanent object, the position thereof having been published by the agency which established the monument and made available to the public as well as to land surveyors and engineers for public use.

(2) "Property corner monuments" means those survey monuments which are established to identify property corners, the location and description of which are made a part of any plat or any instrument pertaining to real property filed in the office of the clerk of the superior court of any County of this state. Said survey monuments may be any permanent or semipermanent objects or any live or dead plant material, including, but not limited to, iron or steel pipes, bars, or rods; concrete markers, including highway right of way markers; stone or rock, whether natural or erected; trees, stumps, stakes, and marks, including those marks made on trees, stones, rocks, concrete, or metal; and such other monuments as may be described in said plats and instruments of record.

(b) It shall be unlawful for any person willfully and knowingly to remove, destroy, injure, or displace any geodetic control monument or property corner monument except under the authority of the agency which originally set the monument or, in the case of a property corner monument, under the authority of a registered land surveyor or duly elected or appointed County surveyor having the written permission of all landowners who are parties to said property corner monument. In the case of a geodetic control monument, the record of any authorized change shall be published; and, in the case of a property corner monument, the record of any authorized change shall be filed for record in the office of the clerk of the superior court of the County in which the monument is located.

(c) Any person who violates this Code section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$100.00 nor more than \$500.00 and may also be punished by imprisonment for not less than 30 days nor more than 60 days.

§ 44-1-16. Failure to disclose in real estate transaction that property was occupied by diseased person or was site of death; failure to disclose information required to be provided or maintained in accordance with **Code Section 44-9-44.1**

(a)(1) No cause of action shall arise against an owner of real property, a real estate broker, or any affiliated licensee of the broker for the failure to disclose in any real estate transaction the fact or suspicion that such property:

(A) Is or was occupied by a person who was infected with a virus or any other disease which has been determined by medical evidence as being highly unlikely to be transmitted through the occupancy of a dwelling place presently or previously occupied by such an infected person; or

(B) Was the site of a homicide or other felony or a suicide or a death by accidental or natural causes; provided, however, an owner, real estate broker, or affiliated licensee of the broker shall, except as provided in paragraph (2) of this subsection, answer truthfully to the best of that person's individual knowledge any question concerning the provisions of subparagraph (A) or (B) of this paragraph.

(2) An owner, real estate broker, or affiliated licensee of the broker shall not be required to answer any question if answering such question or providing such information is prohibited by or constitutes a violation of any federal or state law or rule or regulation, expressly including without limitation the federal Fair Housing Act as now or hereafter amended or the state's fair housing law as set forth in **Code Sections 8-3-200** through **8-3-223**.

(b) No cause of action shall arise against an owner of real property, real estate broker, or affiliated licensee of the broker for the failure to disclose in any real estate transaction any information or fact which is provided or maintained or is required to be provided or maintained in accordance with **Code Section 42-9-44.1**. No cause of action shall arise against any real estate broker or affiliated licensee of the broker for revealing information in accordance with this Code section. Violations of this Code section shall not create liability under this Code section against any party absent a finding of fraud on the part of such party.

§ 44-1-17. Responsibilities of buyers or grantees and grantors or owners relating to transfers of property within or adjacent to property zoned for agricultural or silvicultural use; notice to prospective purchaser, lessee, or grantee; effect of noncompliance

(a) Prior to any purchase, lease, or other acquisition of real property or any interest in real property located within any County which has land zoned for agricultural or silvicultural use or identified on an approved County land use plan as agricultural or silvicultural use, it shall be the buyer's or grantee's responsibility to determine whether the subject property is within, partially within, or adjacent to any property zoned or identified on an approved County land use plan as agricultural or silvicultural use. If the grantor, owner, or agent of the owner knows that the property being acquired is within, partially within, or adjacent to any property zoned or identified on an approved County land use plan as agricultural or silvicultural use, the owner or agent for the owner shall deliver to the prospective purchaser, lessee, or grantee a notice which states the following:

"It is the policy of this state and this community to conserve, protect, and encourage the development and improvement of farm and forest land for the production of food, fiber, and other products, and also for its natural and environmental value. This notice is to inform prospective property owners or other persons or entities leasing or acquiring an interest in real property that the property in which they are about to acquire an interest lies within, partially within, or adjacent to an area zoned, used, or identified for farm and forest activities and that farm and forest activities occur in the area. Such farm and forest activities may include intensive operations that cause discomfort and inconveniences that involve, but are not limited to, noises, odors, fumes, dust, smoke, insects, operations of machinery during any 24-hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides. One or more of these inconveniences may occur as the result of farm or forest activities which are in conformance with existing laws and regulations and accepted customs and standards."

(b) Noncompliance with any provision of this Code section shall not affect title to real property nor prevent the recording of any document.

(c) This Code section shall not apply to any transaction involving title passing by foreclosure, deed in lieu of foreclosure, tax deed, deed to secure debt, or from an executor or administrator.

(d) This Code section shall not create a cause of action for damages or equitable relief.

§ 44-2-1. Where and when deeds recorded; priority as to subsequent deeds taken without notice from same vendor

Every deed conveying lands shall be recorded in the office of the clerk of the superior court of the County where the land is located. A deed may be recorded at any time; but a prior unrecorded deed loses its priority over a subsequent recorded deed from the same vendor when the purchaser takes such deed without notice of the existence of the prior deed. (There is no requirement that a deed be recorded).

§ 44-2-2. Duty of clerk to record certain transaction affecting real estate and personal property; priority or recorded instruments; effect of recording on rights between parties to instruments

(a)(1) The clerk of the superior court shall file, index on a computer program designed for such purpose, and permanently record, in the manner provided constructively in **Code Sections 15-6-61** and **15-6-66**, the following instruments conveying, transferring, encumbering, or affecting real estate and personal property:

- (A) Deeds;
- (B) Mortgages;
- (C) Liens of all kinds; and
- (D) Maps or plats relating to real estate in the County.

(2) For the purpose of this subsection, "liens" shall be defined as provided in **Code Sections 15-19-14, 44-14-320, and 44-14-602** and shall include all liens provided by state or federal statute.

(3) When indexing liens, the clerk shall enter the names of debtors in the index in the manner provided for names of grantors conveying real estate in subsection (b) of **Code Section 15-6-66** and the names of creditors or claimants in the manner as provided therein for names of grantees making such conveyances.

(4) When indexing maps or plats relating to real estate in the County, the clerk of superior court shall index the names or titles provided in the caption of the plat.

(b) Deeds, mortgages, and liens of all kinds which are required by law to be recorded in the office of the clerk of the superior court and which are against the interests of third parties who have acquired a transfer or lien binding the same property and who are acting in good faith and without notice shall take effect only from the time they are filed for record in the clerk's office.

(c) Nothing in this Code section shall be construed to affect the validity or force of any deed,

mortgage, judgment, or lien of any kind between the parties thereto.

§ 44-2-3. Voluntary deeds or conveyances of land; effect of recording

Every unrecorded voluntary deed or conveyance of land made by any person shall be void as against subsequent bona fide purchasers for value without notice of such voluntary deed or conveyance; provided, however, that, if the voluntary deed or conveyance is recorded in accordance with **Code Section 44-2-1**, it shall have priority over subsequent deeds or conveyances to the described land.

§ 44-2-4. Protection of good faith purchases and liens without notice against unrecorded liens or conveyances

(a) All innocent persons, firms, or corporations acting in good faith and without actual notice which purchase real or personal property for value or obtain contractual liens on the property from distributees, devisees, legatees, or heirs at law holding or apparently holding real or personal property by will or inheritance from a deceased person shall be protected in the purchase of the property or in acquiring such a lien thereon as against unrecorded liens or conveyances created or executed by the deceased person upon or to the property in like manner and to the same extent as if the property had been purchased or the lien acquired from the deceased person.

(b) All innocent persons, firms, or corporations which purchase real or personal property for value or obtain contractual liens on the property from a surviving joint tenant, or surviving joint tenants, holding or apparently holding real or personal property as a surviving joint tenant, or surviving joint tenants, shall be protected in the purchase of the property or in acquiring such a lien thereon as against unrecorded liens or conveyances created or executed by a deceased joint tenant upon or to the property, and as against other unrecorded instruments resulting in a severance of any joint tenant's interest, in like manner and to the same extent as if the property had been purchased or the lien acquired from the deceased joint tenant and surviving joint tenant, or surviving joint tenants.

§ 44-2-5. Recording execution and deed after sheriff's sale

A purchaser at a sheriff's sale may have the execution under which the property was sold recorded with their deed together with all the entries on the execution.

§ 44-2-6. Recording bond for title, contracts, transfers, and assignments; priority as to subsequent deeds taken without notice from same vendor.

Every bond for title, bond to reconvey realty, contract to sell or convey realty or any interest therein, and any and all transfers or assignments of realty shall be filed and recorded in the

office of the clerk of the superior court of the County where the land referred to in the instrument is located. The filing and recording shall, from the date of filing, be notice of the interest and equity of the holder of the instrument in the property described therein. The filing and recording may be made at any time; but such bond for title, bond to reconvey realty, contract to sell or convey realty or any interest therein, and any transfer or assignment of realty shall lose its priority over deeds, loan deeds, mortgages, bonds for titles, bonds to reconvey realty, contracts to sell or convey realty or any interest therein and any transfer or assignment of realty from the same vendor, obligor, transferor, or assignor which is executed subsequently but filed for record first and is taken without notice of the former instrument

§ 44-2-7. Recording of surrender or satisfaction of bond for title

When any bond for title has been recorded and is subsequently surrendered or satisfied, such surrender or satisfaction may be entered of record by the clerk of the superior court in the same manner that cancellations of mortgages and deeds to secure debts are entered of record.

§ 44-2-8. Recording of options to purchase land and assignments of such options; effect as notice

When executed with the formality prescribed for the execution of deeds to land, options to purchase land or any interest in land and assignments of such options to purchase may be recorded in the County in which the property described in the instrument is located. The record shall, from the date of filing, be notice of the interest and rights of the parties to the option to purchase in and with respect to the property described in the option to purchase and of the interest and rights of any person holding an assignment of the option to purchase.

§ 44-2-9. Recording leases, usufructs, and assignments thereof; effect as notice

When executed with the formality prescribed for the execution of deeds to land, leases, or usufructs of land or of any interest in land and assignments of such leases or usufructs for any purpose, including the purpose of securing debt, may be recorded in the County where the property described in the instrument is located. The record shall, from the date of filing, be notice of the interest of the parties to the lease or usufructs in the property described in the instrument and of the interest of any person holding an assignment of any interest in such lease or usufruct. A usufruct will not transfer any interest in the property to the holder.

§ 44-2-10. Recording deeds and bills of sale to personalty; effect as notice

Absolute deeds and bills of sale to personalty may be recorded in the office of the clerk of the superior court of the County where the maker resides. Such record, being permissive and not compulsory, is not constructive or implied notice to anyone. *This Code section shall not apply to*

transactions covered by Article 9 of Title 11.

§ 44-2-11. Recording copy of instrument recorded in other counties in which part of affected land is located in cases where original lost or destroyed

A copy from the registry of any instrument conveying or affecting land in any County of this state which is recorded in the office of the clerk of the superior court of the County, if duly certified by the clerk, may be filed for record and recorded in the office of the clerk of the superior court of any other County where some of the land conveyed or affected by such instrument is located in the same manner and with the same force and effect for all purposes as if the certified copy were the original instrument, provided an affidavit is attached to the certified copy and recorded with it in which the affiant says that he owns an interest in property affected by the instrument, that the original instrument has been lost or destroyed, and that he truly believes that the original instrument was genuine.

§ 44-2-12. Rerecording lost or destroyed deeds and other instruments; validity

When the record of any deed or other recorded instrument or the certificate of record is lost or destroyed, the clerk of the superior court may rerecord the instrument and the certificate of record. The rerecording shall be as valid as the original recording and shall take effect from the date of the original recording, provided the rerecording is within 12 months after the loss or destruction of the original recording.

§ 44-2-13. Rerecording instruments upon creation of new County or change in County lines; effect on validity of original record

(a) When the creation of a new County or a change in County lines causes land to be included in a different County than that in which it was situated at the time of the recording of a deed, mortgage, or other lien therein, any holder of such a deed, mortgage, or other lien may have such instrument rerecorded in the office of the clerk of the superior court of the County in which the land is newly situated. If the original of such deed, mortgage, or other lien is lost, a certified copy thereof from the record where the same was recorded may in like manner be rerecorded in the County in which the land affected is newly situated. Upon payment of the recording fees, it shall be the duty of the clerk of the superior court of the County where the instrument is rerecorded to cause the deed, mortgage, or other lien to be entered upon the proper records for such papers; and the clerk shall note on the record book the date of the original recording and the book and page or pages upon which the deed or mortgage or other lien was originally recorded.

(b) The rerecording of a deed, mortgage, or other lien pursuant to subsection (a) of this Code section shall not affect the validity of the original record as notice.

§ 44-2-14. Requirements for recordation

(a) Except for documents electronically filed as provided for in Chapter 12 of Title 10, and in other Code sections in this part, before any deed to realty or personalty or any mortgage, bond for title, or other recordable instrument executed in this state may be recorded, it shall be an original instrument and shall be attested or acknowledged as provided by law. However, nothing in this Code section shall dispense with another witness where an additional witness is required. This Code section shall not apply to transactions covered by Article 9 of Title 11.

(b) No affidavit prepared under **Code Section 44-2-20** and no instrument by which the title to real property or any interest therein is conveyed, created, assigned, encumbered, disposed of, or otherwise affected shall be entitled to recordation unless the name and mailing address of the natural person to whom the affidavit or instrument is to be returned is legibly printed, typewritten, or stamped upon such affidavit or instrument at the top of the first page thereof.

(c) If an instrument or affidavit is titled or recorded without compliance with subsection (b) of this Code section, such noncompliance does not alone impair the validity of the filing of recordation or of the constructive notice imparted by filing or recordation.

(d) Subsection (b) of this Code section does not apply to the following:

- (1) An affidavit or instrument executed before July 1, 1994;
- (2) A decree, order, judgment, or writ of any court;
- (3) A will; or
- (4) Any plat.

§ 44-2-15. Officers authorized to attest registrable instruments

Any of the instruments enumerated in **Code Section 44-2-14** may be attested by a judge of a court of record, including a judge of a municipal court, or by a magistrate, a notary public, or a clerk or deputy clerk of a superior court or of a city court created by special Act of the General Assembly. With the exception of notaries public and judges of courts of record, such officers may attest such instruments only in the County in which they respectively hold their offices.

§ 44-2-16. Effect of acknowledgment subsequent to execution

If subsequent to its execution a recordable instrument is acknowledged in the presence of any of the officers referred to in **Code Section 44-2-15**, that fact, certified on the deed by such officer, shall entitle it to be recorded.

§ 44-2-22. Legal effect of good record title for 40 years

A prima-facie case shall be made out in actions respecting title to land upon showing good record title for a period of 40 years, and it shall not be necessary under such circumstances to prove title to the original grant from the state.

§ 44-2-25. Recording techniques; photostatic copies of plats

All decrees, deeds, mortgages, or other instruments affecting the title to land shall be recorded by the clerk of superior court in such a manner so as to provide a permanent record of such instruments. It shall be lawful to make a copy or copies of any plats, blueprints, or other copies of plats that are already of record in the clerk's office. These copies shall serve all purposes and shall be as authentic as the originals.

§ 44-2-30. Filing and recording of notice of settlement

(a) Any party, or his or her legal representative, to a settlement which will convey legal or equitable title to real estate or any interest therein or create any lien thereon by way of a deed to secure debt, mortgage, or other instrument may file an instrument to be designated a "notice of settlement" with the clerk of the superior court of the County in which the real estate is situated. The notice of settlement shall be filed, permanently recorded, and indexed by the clerk of the superior court in the same manner as real estate records of the County. The clerk of the superior court shall transmit such information regarding notices of settlement as required by the Georgia Superior Court Clerks' Cooperative Authority for inclusion in the state-wide uniform automated information system for real and personal property records, as provided for by **Code Sections 15-6-97 and 15-6-98**. The clerk of the superior court shall charge a fee for the filing and recording of the notice of settlement as is required for filing other instruments pertaining to real estate as set forth in division (f)(1)(A)(i) of **Code Section 15-6-77**.

(b) The notice of settlement provided for in subsection (a) of this Code section shall be signed by said party or legal representative and shall set forth the names of the parties to the settlement and a description of the real estate. If the notice is executed by anyone other than an attorney at law of this state, the execution shall be acknowledged or proved in the manner provided by law for the acknowledgment or proof of deeds.

(c) After the filing of a notice of settlement, any person claiming title to, an interest in, or a lien upon the real estate described in the notice through any party in the notice shall be deemed to have acquired said title, interest, or lien with knowledge of the anticipated settlement and shall be subject to the terms, conditions, and provisions of the deed or mortgage between the parties filed within the period provided by subsection (e) of this Code section.

(d) The form of the notice of settlement shall be substantially as follows:

"NOTICE OF REAL ESTATE SETTLEMENT"

This form must be executed by a party or legal representative. If the notice is executed by anyone other than an attorney at law in Georgia, it must be executed and acknowledged or proved in the same manner as a deed.

Name(s) and address(es)

Seller(s)

-and-

Name(s) and address(es)

Notice of Settlement

Buyer(s)

-and-

Name(s) and address(es)

Mortgagee(s)

NOTICE is hereby given of a contract, agreement, and mortgage and commitment between the parties hereto.

The lands to be affected are described as follows:

All that certain tract or parcel of lands and premises situate lying and being in the _____ of _____, County of _____ and State of Georgia, commonly known as _____ and more particularly described as follows:

Tax map reference

County of _____ Block No. _____ Lot No. _____ Block

Prepared by

Name

Address

Telephone Number

(e) The notice of settlement shall be effective for 30 days from the date of filing; provided, however, that the notice of settlement shall be allowed to be renewed by a second filing for one additional 30-day period. Any lien filed during said 30 days shall attach to the premises described in the notice immediately upon the expiration of the 30 days, provided that the

premises have not been conveyed and notwithstanding the filing of a subsequent notice of settlement.

§ 44-5-2. How land in state held

All realty in this state is held under the state as the original owner thereof. It is free from all rent or service and is limited only by the right of eminent domain which remains in the state.

§ 44-5-30. Requisites of deed to lands; inquiry into consideration

Except for documents electronically filed as provided for in Chapter 12 of Title 10 and Part 1 of Article 1 of Chapter 2 of this title, a deed to lands shall be an original document, in writing, signed by the maker, attested by an officer as provided in **Code Section 44-2-15**, and attested by one other witness. It shall be delivered to the purchaser or their representative and be made on a good or valuable consideration. The consideration of a deed may always be inquired into when the principles of justice require it.

§ 44-5-31. Requisites of deed to personalty; necessity for deed

A deed to personalty needs no attesting witness to make it valid; in other respects, the principles applicable to deeds to lands are applicable to deeds to personalty. However, generally a deed is not necessary to convey title to personalty.

§ 44-5-32. Requisites of instruments other than deeds

Every bond for title, bond to reconvey realty, contract to sell or to convey realty or any interest therein and every transfer or assignment of any of such instruments shall, except as between the parties thereto, be executed with the same formality as is required for the execution of deeds conveying realty.

§ 44-5-33. Form of deed

No prescribed form is essential to the validity of a deed to lands or personalty. If the deed is sufficient in itself to make known the transaction between the parties, no want of form will invalidate it.

§ 44-5-34. Construction of inconsistent clauses in deed; ascertainment of intention of parties

If two clauses in a deed are utterly inconsistent, the former shall prevail; but the intention of the parties should, if possible, be ascertained from the whole instrument and carried into effect.

§ 44-5-35. Apportionment of price for deficiency in number of acres; rescission

In a sale of lands, if the purchase is per acre, a deficiency in the number of acres may be apportioned in the price. If the sale is by the tract or the entire body, a deficiency in the quantity sold cannot be apportioned. If the sale is by a quantity of acres with the qualification "more or less" added, any deficiency is not apportionable unless the deficiency is so great as to constitute a willful deception or mistake amounting to fraud. In this event, the purchaser may demand a rescission of the sale or an apportionment of the purchase price.

§ 44-5-36. Purchaser's remedies for loss of land due to title defect

If the purchaser loses part of his land from a defect of title, he may claim according to the relative value of the land so lost either a rescission of the purchase contract or a reduction of the price.

§ 44-5-39. Binding effect of covenants on grantee who accepts deed

When a grantee accepts a deed, he is bound by the covenants contained therein even though the deed has not been signed by him.

§ 44-5-43. Effect of adverse possession on making of deed

A deed to lands which is made while the lands are held adversely to the maker of the deed is not void.

§ 44-5-168. Adverse possession of mineral rights under certain conditions; procedure to obtain title

(a) Whenever mineral rights are conveyed or whenever real property is conveyed in fee simple but the mineral rights to such property are reserved by the grantor, the owner of the real property in fee simple or his heirs or assigns may gain title to such mineral rights by adverse possession if the owner of the mineral rights or his heirs or assigns have neither worked nor attempted to work the mineral rights nor paid any taxes due on them for a period of seven years since the date of the conveyance and for seven years immediately preceding the filing of the petition provided for in subsection (b) of this Code section.

(b) In order to obtain absolute title to mineral rights in the circumstances described in subsection (a) of this Code section:

(1) The owner of the real property in fee simple or his heirs or assigns may file in the superior court for the County where the land is located a petition requesting relief in

the nature of declaratory judgment. The petition:

(A) Shall contain all essential, required paragraphs, including jurisdiction;

(B) Shall contain the name and last known address of the grantor of the property reserving the mineral rights and the names and last known addresses of his heirs or assigns or any other person known by the plaintiff to have an interest in the mineral rights;

(C) Shall show:

(i) That the plaintiff or his predecessors in title were granted and obtained a deed for the property in question;

(ii) That the conveyance reserved mineral rights or that the plaintiff or his predecessors in title conveyed the mineral rights and reserved or retained the fee simple title to the real property; and

(iii) That, for a period of seven years preceding the filing of the petition after the conveyance, the owner of the mineral rights or his heirs or assigns have neither worked nor attempted to work the mineral rights nor paid taxes on them; and

(D) Shall include any and all prayers regarding the land that the plaintiff may desire. Specifically, the petition may pray that the court find that the plaintiff has obtained title to the mineral rights through adverse possession and that the plaintiff be granted title to mineral rights;

(2) Upon a finding in the plaintiff's favor, the court shall issue a judgment and decree declaring that the mineral rights involved have been lost and that the plaintiff has gained absolute title to such mineral rights; and

(3) Service shall be perfected in the same manner as service on defendants in an in rem proceeding, including service by publication.

(c) Nothing in this Code section shall restrict the court from granting further plenary relief, whether legal or equitable; and the failure of the petition in the plaintiff's favor shall not affect the right of the plaintiff to any other relief, legal or equitable, to which he may be entitled.

(d) Any person named in the petition or any person having an interest in the mineral rights shall have the right to intervene in a case brought under this Code section.

(e) In order to maintain the status quo pending the adjudication of the questions or to preserve equitable rights, the court may grant injunctions and other interlocutory extraordinary relief.

(f) Nothing in this Code section shall apply to a lease for a specific number of years nor to an owner of mineral rights who has leased the mineral rights in writing to a licensed mining operator as defined in Part 3 of Article 2 of Chapter 4 of Title 12.

§ 44-6-80. Nature of life estates; estates during widowhood

Estates which may extend during the life of a person, but which must terminate at his death are deemed life estates during their existence. Estates during widowhood are life estates.

§ 44-6-81. Length of life estate

An estate for life may be either for the life of the tenant or for the life of some other person or persons.

§ 44-6-82. How and in what property life estate may be created

(a) An estate for life may be created by deed or will, by express agreement of the parties, or by operation of law.

(b) A life estate cannot be created in property which will be destroyed on being used.

§ 44-6-83. Rights and duties of life tenant; forfeiture of interest to remainderman

The tenant for life shall be entitled to the full use and enjoyment of the property if in such use he exercises the ordinary care of a prudent man for its preservation and protection and commits no acts which would permanently injure the remainder or reversion interest. For the want of such care or the willful commission of such acts, the tenant for life shall forfeit his interest to the remainderman if the remainderman elects to claim immediate possession.

Remainderman is further defined as a person who inherits or is entitled to inherit property upon the termination of the estate of the former owner. Usually this occurs due to the death or termination of the former owner's life estate, but this can also occur due to a specific notation in a trust passing ownership from one person to another.

§ 44-6-86. Rights of lessee upon termination of life estate

If the tenant for life rents the land by the year and the life estate is terminated during the year by his death or otherwise, the lessee, upon complying with his contract with the tenant for life, shall be entitled to the land for the balance of the year.

§ 44-6-87. Effect of purported sale of estate by life tenant

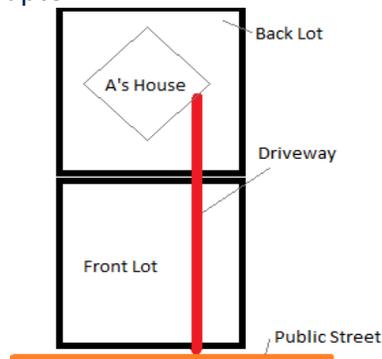
No forfeiture shall result when a tenant for life purports to sell the entire estate in lands. In such a case, the purchaser shall acquire only the interest of the life tenant.

§ 44-6-88. Demand for bond by purchaser of life estate in personalty; effect of failure to give bond

Upon the demand of anyone interested in the remainder or his agent or attorney, which demand shall be accompanied by a statement under oath of his interest, it shall be the duty of the officer making the sale of a life estate in personalty under process of law to require the purchaser to give bond in double the value of the property, with good security, for the delivery of the property to the remainderman. The bond shall be filed in the office of the clerk of the superior court of the County in which the sale is made and shall be subject to an action on the bond by any person who is interested in the remainder. On the failure of the purchaser to give such bond, the property shall be resold at his risk, provided that notice of the demand for such bond was given before he made the purchase.

§ 44-9-1. Methods of acquiring private ways

The right of private way over another's land may arise from an express grant, from prescription by seven years' uninterrupted use through improved lands or by 20 years' use through wild lands, by implication of law when the right is necessary to the enjoyment of lands granted by the same owner, or by compulsory purchase and sale through the superior court in the manner prescribed by Article 3 of this chapter.



§ 44-9-6. Loss of easement by abandonment or nonuse

An easement may be lost by abandonment or forfeited by nonuse if the abandonment or nonuse continues for a term sufficient to raise the presumption of release or abandonment.

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SECTION 3
REAL PROPERTY AND PERSONAL PROPERTY

The purpose of this section is to review some of the laws and regulations concerning real property in Georgia. It is by no means a comprehensive treatise on real estate law, nor is it intended to be a substitute for legal advice. Rather, it offers a concise overview of the various aspects of the nature of ownership of real property in Georgia.

REAL ESTATE AND REAL PROPERTY

Real estate is a valuable commodity, and almost every aspect of its use, sale, and development is regulated by law. Traditionally, appraisers have distinguished between real estate (*the land and buildings*) and real property (*the legal rights of ownership*). The term real estate is difficult to define, and its meaning may be slightly different from state to state or even community to community. Generally, real estate (*or realty*) is a physical commodity consisting of land and its attachments. By comparison, real property is generally defined as real estate and the rights arising from real estate. The rights inherent in the ownership of real estate are what may be bought and sold in a real property transaction. The value of real property depends on the kind of property rights owned.



GEORGIA DEFINITION OF REAL PROPERTY

The State of Georgia defines real property in its compilation of laws (***O.C.G.A. § 44-1-2***) as:

(a)	All lands and the buildings thereon;
(b)	All things permanently attached to the land or to the buildings thereon;
(c)	Any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

LAND

Land is defined as the materials of the earth, whether soil, rock, or other substance, and includes free or unoccupied space for an indefinite distance upwards as well as downwards.

RAW LAND
Land in its natural state, with no man-made improvements such as cleaning, clearing, digging, grading, etc. is known as raw land.

Land includes:

- Trees and bushes
- Grass
- Boulders

REAL ESTATE

Real estate is defined as land plus anything permanently attached to land.

Improvements include:

- Houses / Garages
- Fences

REAL ESTATE = LAND + IMPROVEMENTS



PERSONAL PROPERTY

Comparing and contrasting real property and personal property may seem like an academic exercise, but the distinction is an especially important one. The explanation lies not in the history of property, but in the history of procedure. In early common law a real action, so called because it led to the return of the thing itself, was used when land was wrongfully detained by another; a personal action, which gave only a claim against the wrongdoer, was proper when things other than the land was involved. Thus, the thing took the name of the action, and we have, to this day, real property, and personal property.

The rights of ownership and the methods by which these two categories of property are transferred are quite different. Any items which are considered real property, such as houses, trees, and other landscaping, plumbing fixtures, and permanently installed kitchen appliances (such as a stovetop or dishwasher) will be included in the sale unless otherwise specified in the contract or deed. On the other hand, items of personal property such as potted plants, furniture, and countertop appliances will not be included in the sale unless otherwise specified. If the real estate transaction involves both real and personal property, which is the case in most residential and commercial transactions, then a separate legal document must be used to transfer ownership of the personal property. The bill of sale usually is signed with the same formalities as a deed, witnessed, and notarized, however, a bill of sale is usually not recorded.

GEORGIA DEFINITION OF PERSONAL PROPERTY

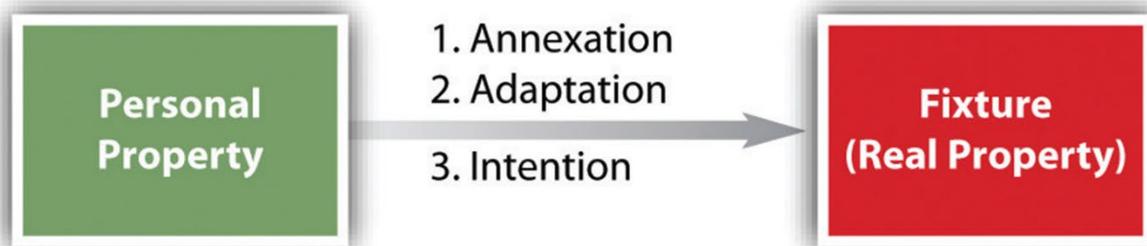
Georgia Law defines **personal property** as, "*all property which is movable in nature, has inherent value or is representative of value, and is not otherwise defined as realty.*" [**O.C.G.A. § 44-1-3(a)**]. For practical purposes, personal property is anything which is movable and is not intended to be affixed to the land permanently. As with real property, title to personal property gives the owner the right to control it, enjoy it, and dispose of it. Unfortunately, the distinction between real and personal property is not always clear. An item of personal property, such as a dishwasher or garbage disposal, instantly becomes part of the real property upon installation. Likewise, real property may become personal property, such as when a tree, which is part of the real property when growing on the land, becomes personal property immediately upon being cut down.

IMPROVEMENTS

Any improvements made to land, or its attachments become part of the real estate. For example, if a homeowner adds a room onto her house, the new room becomes attached to the building and is part of the real estate. She may have started with nails, plywood, wall board, and shingles (which are personal property), but they convert into real property, as an improvement to the land, when they are put together to form the new room.

FIXTURES

Fixtures are a special category of improvements. A fixture is an item of personal property which, by the process of attachment and by intent, has become real property.



This transformation occurs through the same process as the nails and plywood in the example given for improvements. The reason fixtures merit a special category is they do not lose their individual character by attachment to real estate. A brick loses its individual character in a brick wall, but a chandelier attached to a ceiling does not lose its character as a light fixture.

In one case between a landlord and a tenant, the court held a chandelier attached to the ceiling by screws did not lose its character as personal property and was removable by the tenant at the end of the lease. A more recent case also treated a chandelier as personal property but suggested such articles may become real property by agreement of the parties. A furnace begins as personal property, but generally becomes part of the realty when installed. Items such as drapery rods have ambiguous status as real property or personal property, and the law must resort to tests to see which form of property they are. Sometimes local customs will prevail. In some communities it may be customary to treat an oven or refrigerator as personal property which the seller will remove when selling the house. In other communities, these items are real property and customarily are left with the house.

So why is it important to know the distinction between fixtures and personal property? If an item is classified as a fixture, it is part of the real estate, and its contribution to value is included in the value estimate. Items of personal property are usually not included in the appraisal. Because the distinction between fixtures and personal property is not always obvious, appraisers should find out how these items are treated in their areas.

TRADE FIXTURES

A trade fixture is an article of personal property which a tenant has attached to leased premises because it is necessary or convenient to the tenant's trade or business. Examples include everything from display cases and shelving to bar stools and barber chairs. Unless the lease agreement says otherwise, a commercial tenant may remove trade fixtures which they installed in the course of business at the end of the lease term (**O.C.G.A. § 44-7-12**). Landlords and tenants are free to make whatever agreement they desire regarding ownership of trade fixtures. A residential tenant may also remove domestic fixtures installed for convenience. Tenants usually may remove a trade fixture before the end of the lease term if the fixture was installed for purposes of trades, manufacture, or domestic use, and if it may be removed without damages to the premises. However, items which have become so merged with the realty as to suffer a substantial loss of identity cannot be removed by the tenant even if they were intended for the convenience of the tenant and may be removed without serious damage to the realty. Of course, tenants who are allowed to remove a trade fixture must pay for any resulting property damage. If the tenant moves out at the end of the lease and does not take the fixtures, they become part of the realty and the tenant cannot return at a later time and remove them. Neither may the tenant normally remove replacement fixtures which the tenant installed to replace worn out fixtures originally installed by the landlord. If they have made no lease agreement or if the lease is silent on the subject of a particular fixture, state law will determine ownership of the fixture and whether it may be removed by a tenant.

TESTS FOR FIXTURE STATUS

Unfortunately, sales contracts and lease agreements do not always specify which items are to be considered fixtures and which are not. When a dispute about a fixture arises, there are certain tests or criteria courts use to determine the status of the object. None of these tests is conclusive alone, and the courts may apply more than one. Some criteria which the courts may apply are the following:

(a)	EASE OF REMOVAL - An article removable without essential injury to the real estate or to the article itself has more of the characteristics of personal property than real property. In an 1858 case, the Georgia Supreme Court summed up the rule on removal, stating " <i>Wherever the article can be removed without essential injury to the freehold or the article itself, it is a chattel [personal property]; otherwise, it is a fixture.</i> " However, some items may become part of the realty without actual attachment, such as paving stones laid into a driveway or a rail fence with no buried posts.
(b)	LOSS OF IDENTITY - When an article loses its identity as personalty, it is considered to be real estate. Thus, construction materials such as lumber, nails, window locks,

		and bricks are real estate once they have been assembled into a structure. The Georgia Court of Appeals has stated:
		The separate nomenclature "fixtures" would help us to determine between things attached to the realty which do not lose their identity - "fixtures" - and personal property or things incorporated into the realty, such as nails, brick, lumber, door locks and the like, which, when used in the construction of a house, lose their identity as separate things, and their individual existence is so completely merged into the house they are not included in the separate nomenclature of "fixtures."
	(c)	USEFULNESS AND ADAPTABILITY AS REAL ESTATE - The courts give weight to the overall plan and design of real estate and look at ambiguous articles in the context of their usefulness as part of the real estate. Under this test, uninstalled items such as stage props for a theater and switchboards for telephone equipment have been held to be fixtures, and thus part of the real estate.
	(d)	INTENTION OF THE PARTIES - Intent plays a large part in determining fixture status, as it does in other areas of the law. If a buyer and seller agree to treat an item as personal property, the courts will normally honor their intention unless the rights of other parties are involved. Thus, a buyer and seller could agree to treat drapery rods as personal property removable by the seller but could not treat an attached garage as personalty if a lender had a mortgage against the house and the garage.

Identification		IRS Publication 946	
The appraiser <i>shall</i> identify personal property, determine its taxability and classify it for addition to the county tax digest.			
GROUP 1: ECONOMIC LIFE OF 5-7 YEARS	GROUP 2: ECONOMIC LIFE OF 8-12 YEARS	GROUP 3: ECONOMIC LIFE OF 13 YEARS OR MORE	GROUP 4: ECONOMIC LIFE OF 1-4 YEARS ALSO ASSET CLASS 00.12 IRS PUBLICATION 946
<ol style="list-style-type: none"> 1) Copiers, Duplicating Equip., Typewriters 2) Calculators, Adding and Accounting Machines 3) Electronic Instrumentation Mfg. 4) Construction Equipment 5) Timber Cutting Equipment 6) Mfg. of Electronic Components & Products 7) Radio and T.V. Broadcasting Equipment 8) Drilling of Oil and Gas Wells 9) Temporary Sawmills 10) Any Semiconductor Mfg. Equipment 11) Telegraph and Satellite Communications 12) Vending Equipment, Coin Operated 13) Rental Appliances and Televisions 14) Hand Tools 15) Nuclear Fuel Assemblies 16) Fishing Equipment 17) Cattle, Breeding, or Dairy Equipment 	<ol style="list-style-type: none"> 1) Office Furniture, Fixtures and Equipment 2) Agriculture Machinery and Equipment 3) Recreation or Entertainment Services 4) Mining and Quarrying 5) Mfg. of Textile Products 6) Mfg. of Wood Products and Furniture 7) Permanent Sawmills 8) Mfg. of Chemicals and Allied Products 9) Mfg. of finished Plastics Products 10) Mfg. of Leather and Leather Products 11) Mfg. of Electrical and Non-electrical Machinery 12) Mfg. of Athletic, Jewelry and Other Goods 13) Retail Trades Furniture, Fixtures and Equipment 14) Restaurant and Bar Equipment 15) Hotel and Motel Furnishing and Equipment 16) Automobile Repair and Shop Equipment 17) Personal and Professional Services 	<ol style="list-style-type: none"> 1) Petroleum Refining Equipment 2) Grain and Grain Mill Products (Mfg.) 3) Mfg. of Sugar and Sugar Products 4) Mfg. of Vegetable Oils and Products 5) Mfg. of Tobacco and Tobacco Products 6) Mfg. of Pulp and Paper 7) Mfg. of Rubber Products 8) Mfg. of Cement 9) Mfg. of Stone and Clay Products 10) Mfg. of Primary Nonferrous Metals 11) Mfg. of Foundry Products 12) Mfg. of Primary Steel Mill Products 13) Tanks and Storage 14) Billboards/Signs 15) Radio/T.V. Antennas and Towers 16) Cold Storage and Ice Making Equipment 17) Mfg. of Glass Products 	<ol style="list-style-type: none"> 1) Computers - Non Production 2) Peripheral Computer Equipment 3) Jigs, Dies, Molds, Patterns 4) Special Tools and Gauges 5) Returnable Containers 6) Special Transfer and Shipping Devices 7) Pallets 8) Rental Movies 9) Card Readers 10) High Speed Printers 11) Data Entry Devices 12) Teleprinters 13) Plotters 14) Terminals, Tape Drives, Disc Drives 15) Magnetic Tape Feeds 16) Optical Character Readers

FIXTURES AS COLLATERAL

The method for securing a loan with personal property, including fixtures, is provided by Article 9 of the Uniform Commercial Code (*UCC*), a standardized law which has been passed in all states. Under Article 9 of the *UCC*, a loan secured through personal property, is secured by having the debtor sign a security agreement and by filing a *UCC Financing Statement* in the County in which the property is located. In addition, a general filing in the state of the debtor's location will be with the Secretary of State. The Georgia Uniform Commercial Code allows lenders to acquire security interests in personal property. The property must be described with specificity so it may be identified. If a lender finances items of an ambiguous character which will be placed on realty and attached, such as machinery, the borrower and lender may agree such machinery will remain personal property but still be part of the collateral for the loan. In such case, the borrower and the lender would enter into a security agreement (*to cover the personal property*) along with the security deed (*to cover the real property*). The lender is permitted to file a financing statement in the County where the land lies, to put the world on notice of its security interest; much like the deed to secure debt serves as public notice of the lender's mortgage interest in the realty. Upon default by the borrower, the lender may then repossess the personal property in addition to foreclosing the real property. The property must be described with specificity so it may be identified.

UCC FINANCIAL STATEMENT



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)
John Henry Smith c/o 1234 Main Street Anywhere, uSA [00000]

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (1a or 1b) - do not abbreviate or combine names				
1a. ORGANIZATION'S NAME SMITH, JOHN H, ORGANIZATION/TRADE NAME/TRADE MARK - DEBTOR				
OR				
1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS C/O BIRTH ADDRESS		CITY BIRTH TOWN	STATE ST	POSTAL CODE 11111
				COUNTRY USA
1d. TAX ID # - SSN OR EIN leave blank	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION ENS LEGIS/TRUST	1f. JURISDICTION OF ORGANIZATION Private	1g. ORGANIZATIONAL ID #, if any (birth cert # goes here)
				<input type="checkbox"/> NONE
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (2a or 2b) - do not abbreviate or combine names				
2a. ORGANIZATION'S NAME SMITH, SALLY M, ORGANIZATION/TRADE NAME/TRADE MARK - DEBTOR				
OR				
2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS C/O 4321 CENTER STREET		CITY BIRTH TOWN	STATE ST	POSTAL CODE 11111
				COUNTRY USA
2d. TAX ID # - SSN OR EIN leave blank	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION ENS LEGIS/trust	2f. JURISDICTION OF ORGANIZATION Private	2g. ORGANIZATIONAL ID #, if any (birth cert # goes here)
				<input type="checkbox"/> NONE
3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only <u>one</u> secured party name (3a or 3b)				
3a. ORGANIZATION'S NAME				
OR				
3b. INDIVIDUAL'S LAST NAME Smith	FIRST NAME John	MIDDLE NAME Henry	SUFFIX	
3c. MAILING ADDRESS c/o Current Street		CITY Resident address	STATE state	POSTAL CODE [99999]
				COUNTRY uSA

4. This FINANCING STATEMENT covers the following collateral:

This is Actual and Constructive Notice that all of Debtor's interest now owned or hereafter acquired is hereby accepted as collateral for securing contractual obligation in favor of the Secured Party as detailed in a true, correct, complete, notarized Security Agreement. Affidavit of Obligation file stamp # _____, at the county recorders office on (date of filing) consummated on (Date of the Affidavit of Obligation between debtor and creditor)

NOTICE: In accordance with USC - Property - This is the entry of the Debtor in the Commercial Registry as a transmitting utility and the following property is hereby registered in the same as public notice of a commercial transaction: Certificate of Birth documents # _____; Employer Identification #(SS# w/one dash I.E. 12-3456789); All property is accepted for value and is exempt from Levy. Adjustment of this filing is from Public Policy HJR-192, Public Law 73-10 and UCC 10-104. All proceeds, products, accounts, fixtures and the orders therefrom are released to the Debtor.

SMITH JOHN H, ORGANIZATION/TRADE NAME/TRADE MARK/ TRUST - DEBTOR
SMITH, SALLY M, ORGANIZATION/TRADE NAME/TRADE MARK / TRUST- DEBTOR

5. ALTERNATIVE DESIGNATION (if applicable)	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOBR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. THIS FINANCING STATEMENT IS TO BE FILED (or recorded) in the REAL ESTATE RECORDS - Attach Affidavit	7. CHECK IF REQUEST SEARCH REPORT (S) OR DESIGN (X) (ADDITIONAL FEE)		All Debtors	Debtor 1	Debtor 2	
8. OPTIONAL FILER REFERENCE DATA						

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

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SECTION 4

REAL PROPERTY AND OWNERSHIP RIGHTS

Law is the foundation of property rights in the United States. Property rights exist only if and to the extent they are recognized by the legal system. If you purchased this book, you might reasonably believe you own “the book.” But a law professor would explain technically you own legally enforceable rights concerning such particular book. For example, the law will protect your right to prevent others from reading this particular copy of the book. Property rights, in short, are defined by law, not public expectations. As the Supreme Court explains, “*generally speaking, state law defines property interests.*” *

* (*Stop the Beach Renourishment, Inc. v. Florida Dept. Env'tl. Protection*, 130 S. Ct. 2592, 2597 (2010))¹

The law of real property is generally governed by state law, and it is the law of the state in which the property is located which controls. State law is generally divided into two classifications: statutes and judicial decisions. Statutes are laws passed by the state’s elected legislature. The statutes are usually codified into a code. Decisions rendered by a state court such as a court of appeals or supreme court are published and bound together in the form of a reporter for each state. Reporters are generally found in the same law libraries as statutes.

The chief legal rights accorded an ownership of real property are possession, use, and power of disposition. An owner of real property has the right to possess the property and the term “possession” refers to control over the land. *Possession is an occupation of the land evidenced by visible acts such as an enclosure, cultivation, the construction of improvements, and the occupancy of existing improvements.*

Although the rights of ownership are referred to as the “bundle of rights,” all the rights are not always owned by the same person or transferred together. Ownership interests in real estate are called estates in land.



“Bundle of Rights”

FORMS OF OWNERSHIP

Traditional English common law generally recognized the right of an owner to use his land in any way he wished, as long as the use was (a) not a nuisance and (b) no other person held an interest in the land. Today, however, virtually all land in the United States is subject to statutes, ordinances, and other laws which substantially restrict its use.

ABSOLUTE OWNERSHIP

Absolute freedom to use land has never existed, and the modern owner is faced with a number of limitations on the use of the land arising from public demands of health, safety, and public welfare as well as the rights of neighbors to the safety and enjoyment of their property.

Absolute ownership of real property is ownership or title unqualified by any restrictions other than those imposed by government entities. Absolute ownership includes the rights:

(a)	to sell;
(b)	to lease;
(c)	to devise by will;
(d)	to mortgage;
(e)	to encumber;
(f)	to build and destroy within the bounds of the law; and
(g)	to dedicate or give away.

THE FEE SIMPLE BUNDLE OF RIGHTS



Real estate ownership is, in actuality, the ownership of rights to land. The largest bundle available for private ownership is called "fee simple."

LIMITED OWNERSHIP

Absolute ownership of realty in Georgia may be limited in a variety of ways. Restrictions may be voluntary or involuntary and public or private. They include:

(a)	property (ad valorem) taxes;
(b)	liens;
(c)	restrictions on use, such as zoning laws;
(d)	governmental ability to take property (eminent domain); and
(e)	rights held by others, such as easements, riparian (water) rights, covenants, and rights of tenants or lessees.

OWNERSHIP ENTITIES

Any person, natural or artificial (such as a corporation or limited partnership) may own land in the State of Georgia, subject to limits imposed by the U.S. Constitution, the Georgia Constitution, or legislative acts. The following is a partial list of entities which may hold title to real property in Georgia:

(a)	the United States;
(b)	the State of Georgia;
(c)	political subdivisions of the State of Georgia (cities, counties, and agencies such as the Georgia Ports Authority);
(d)	individuals, both citizens of Georgia and citizens of other states;
(e)	aliens whose governments are at peace with the United States;
(f)	corporations, including Georgia corporations, corporations of other states, and corporations of foreign countries;
(g)	trusts, limited partnerships, and limited liability companies (LLCs);
(h)	unincorporated religious societies and other associations; and
(i)	infants and mental incompetents (although their ownership must be through guardianships and judicial wardships).

TYPES OF ESTATES

DEFINITION OF "ESTATE"

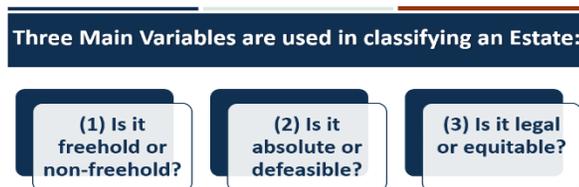
The term "estate" refers to the ownership interest one has in land. An estate is an interest which is possessory or may become possessory. Interests in land such as mortgage liens and easements are not possessory and, therefore, not estates. Moreover, ownership interests are measured by duration. Estates are either freehold (*for an uncertain length of time*) such as a fee simple or life estate, or less than freehold (*for a certain or definable length of time*) such as an estate for years or "leasehold estate." Today, we view freehold estates as a form of "owning" land, while non-freehold estates are merely seen as forms of "leasing" lands.

FREEHOLD ESTATES

Freehold Estates are estates of ownership. The person who owns a freehold estate may transfer the right of possession to someone else, as in a lease of the property, but the underlying right of ownership remains with the holder of the freehold estate.

Three main variables are used in classifying an estate:

- (1) Is it freehold or non-freehold?
- (2) Is it absolute or defeasible?
- (3) Is it legal or equitable?

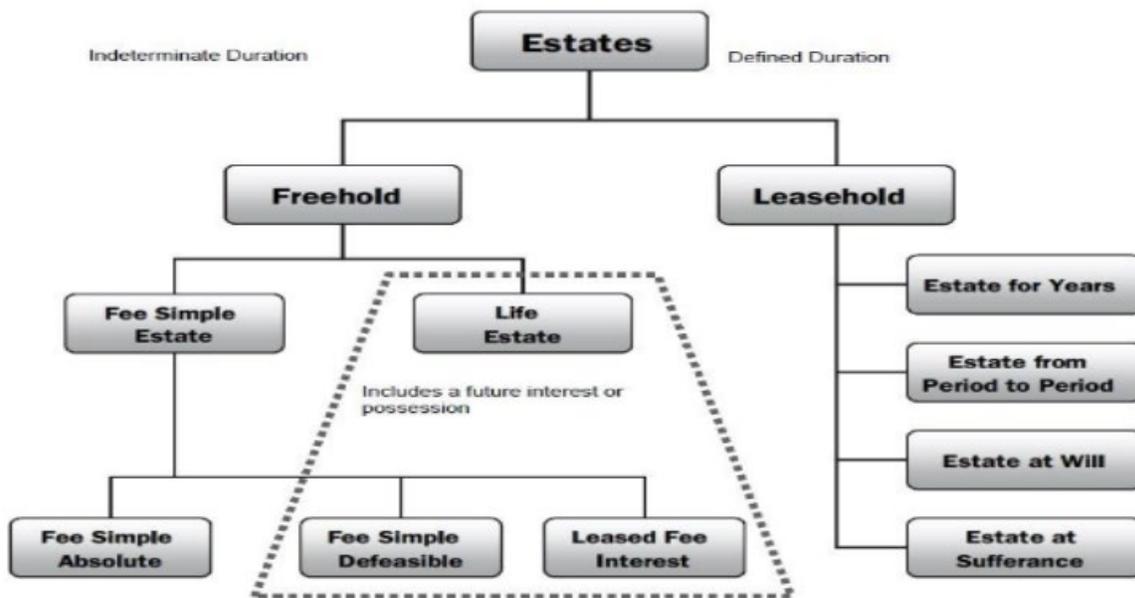


Defeasible means the conveyance of property has conditions attached to it.
This transfer of ownership is dependent on the occurrence or nonoccurrence of a particular event.

It is important in each transaction the estate owned be sufficient to satisfy all the parties' expectations to the transaction.

There are six types of modern-day estates in real property:

- (1) Fee Simple or Fee Simple Absolute,
- (2) Fee Simple Determinable,
- (3) Fee Simple on Condition Subsequent,
- (4) Life Estate,
- (5) Estate For Years, and
- (6) Estate At Will



FEE SIMPLE ESTATE (ABSOLUTE OR DETERMINABLE)

An absolute or “fee simple” estate entitles the owner to the entire property with unconditional power of disposition (**O.C.G.A. § 44-6-20**). Fee simple is defined in property ownership as the complete interest in a property, subject only to governmental powers such as eminent domain. Fee simple absolute is the highest and best kind of estate an owner may have. Fee simple absolute is the maximum legal ownership of property for a potential infinite duration and as unrestricted inheritability. If the owner of a fee simple estate dies without a will, the property will pass to the owner's heirs or legal representatives. Freedom to dispose of the land in any way during the life of the owner and to decide who will inherit the land on the owner's death are the primary characteristics of an estate held in fee simple. Most property transfers involve the transfer of a fee simple estate. Today, virtually all land in the United States (over 99%) is held in fee simple absolute, standing alone as the largest “bundle” of permissible property rights, unencumbered by any future interests. *Making fee simple absolute the largest aggregation of property rights recognized under American law.*

A fee simple determinable is an ownership in real property limited to expire automatically on the happening or nonhappening of an event which is stated in the deed of conveyance or the will creating the estate. For example, you may have a conveyance which says, “ownership to have and to hold so long as the land is used for residential purposes.” This language in a deed or will creates a fee simple determinable. The estate granted is a fee, and like the fee simple absolute, it may be inherited and may last forever so long as the condition is not broken. Yet it

is a determinable fee because there is a condition. With a fee simple determinable the grantor of the deed retains a future interest in the property call a possibility or right of reverter. The possibility of a reverter may be passed on to heirs and may also be transferred to a third party at the time of conveyance.

The presumption is a fee simple estate is created at every conveyance unless a lesser estate is mentioned and limited in the conveyance. This generally is what we mean when we refer to property ownership.

ESTATE ON CONDITION

An estate on condition is an estate limited by some condition requiring performance before ownership of an estate will "vest" (*bequeath*) an individual with the absolute right of ownership in the property. A special limitation is a limitation on the use of the property, written as such if the stated condition is broken, title to the property automatically returns to the former owner without the need for legal action. Often a property owner is willing to transfer valuable land to a charity provided it is used for a specific charitable purpose. On the happening of the stated event, the granted estate will continue in existence until the original grantor of the estate exercises the option to terminate by making entry or bringing an action to recover the property. The right to re-enter may be transferred to a third party in the same manner as the possibility of reverter in a fee simple determinable. A breach of the condition does not cause an automatic termination of the estate on condition subsequent estate.

Conditions may be either precedent or subsequent. Conditions precedent require performance before the estate will vest, and conditions subsequent may cause the forfeiture of a vested estate.

For example, Mr. Adair grants Miss Brown an estate in the family farm conditioned upon her finishing college. The estate is subject to a condition precedent and will not vest until Miss Brown finishes college. If Miss Brown completes college, the family farm is hers. However, if Mr. Adair grants an estate in the family farm to Miss Brown, conditioned upon her finishing college within a reasonable time, the estate vests subject to a condition subsequent. If Miss Brown does not finish college, she loses the family farm.

If there is any question whether the condition established is subsequent or precedent, *Georgia courts will favor the finding of a condition subsequent*. Furthermore, if the grantee fails to meet the terms of the condition subsequent, the Georgia courts will seek to cure the situation through the payment of monetary damages by the grantee to the estate or other heirs (**O.C.G.A. § 44-6-41**). The judicial preference for the theory of favoring conditions subsequent has evolved in Georgia because courts favor the establishment of ownership of land and are reluctant to disrupt such ownership when remedies other than the loss of such land are available.

The basic difference of a fee simple determinable or an estate on condition subsequent is the former automatically expires on violation of the specified condition contained in the instrument creating the estate, whereas the latter continues until it is terminated by the exercise of the grantor's power to terminate. Creation of a fee simple determinable or an estate on condition gives a property owner the means of controlling the use of the property after the transfer or after the property owner's death. Owing to the threat such ownership will terminate in the event the condition is breached makes this form of ownership difficult to sell. In addition, most lending institutions who lend money on the security of real property will not make a loan or receive conditional fee title as a security for a loan. These reasons have made fee simple determinable and estate on condition subsequent somewhat uncommon forms of ownership.

LIFE ESTATE

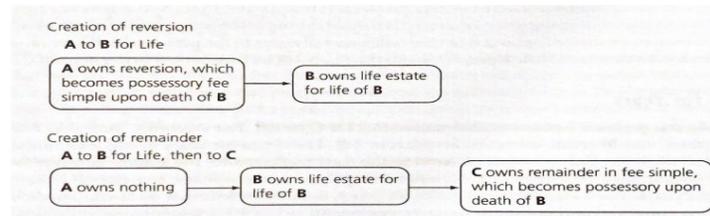
The term "life estate" refers to an estate which may extend during the life of a person, but which must terminate upon his or her death (**O.C.G.A. § 44-6-80**). The duration of a life estate may be either for the life of the owner or for the life of some other person or persons (**O.C.G.A. § 44-6-82**). When the measuring life is anyone other than the holder of the estate, it is termed a life estate *pur autre vie* (*for another's life*). On the death of the person against whose life the term of possession is measured, the land becomes the property of the person named at the time the life estate was created. Alternatively, at the time of creation of the life estate, the land could be designated to return to the person who originally gave or transferred the life estate, in which case the original owner's interest during the term of the life estate is called a reversion or remainder interest.

The holder of a life estate has the full use and enjoyment of the property if the holder exercises the ordinary care of a prudent person for its preservation and does nothing which would permanently injure the remainder interest (**O.C.G.A. § 44-6-83**). If the life estate owner of the real property does not take care of the property, the owner will be deemed to commit waste and the life estate will terminate, even though the measuring life is still alive. Toward this end, the holder of a life estate must make necessary repairs to preserve the property and pay taxes on the property. A life estate may be transferred by gift, sale, or lease, but its value will depend on the risk associated with its probable termination date. Because death terminates the life estate and death is so uncertain an event, a life estate ownership is difficult to sell or pledge as security for a loan.

CREATION OF FUTURE INTERESTS

The fee simple determinable, estate on condition subsequent and life estate all have the effect of creating different ownerships in the same property. This division of the property into different ownerships is known as the "*creation of future interests*." There is no certainty an individual will ever own the property in the future since there is no certainty the condition will be broken. Future interests are present ownership interests in the property, but the right to

possession and use of the property is deferred until some future event, such as the death of the life owner or the breach of condition. Future interests are generally referred to as “reverters,” “reversions,” or “remainders.” The term “revert” describes the coming back of the land when one owner dies, or a condition is breached. As the word “revert” is used to describe the coming back of land, the word “remain” is used to express the fact of land staying away from the grantor and “remaining” to some other person.



ESTATE IN REMAINDER

The word "remainder" describes the form of estate granted to or owned by someone else. It indicates the owner of the remainder interest in the property will enjoy the ownership only after another estate ends or at some time specified in the future. The owner of an estate in remainder has all the rights and benefits of an owner of a fee estate except those rights and benefits will not become the remainderman's to use and enjoy until some future time. For example, Mr. Adams wills the land which he owns to Mrs. Adams for her lifetime and specifies after Mrs. Adams dies, the land will pass to their children. Upon the death of Mr. Adams, Mrs. Adams receives a life estate, and the children receive an estate in remainder (**O.C.G.A. § 44-6-60**).

A remainder interest is either vested or contingent. If it is vested, the rights of ownership become the remainderman's subject only to the termination of the other estate. A remainder interest is contingent if it is granted either to an uncertain person or if the vesting of the estate depends upon the happening of an uncertain event. For example, Mrs. Green leaves her property to Mr. Green for life with a remainder to all her children surviving at the time of Mr. Green's death. Mrs. Green's children have a contingent remainder, for they must outlive Mr. Green to receive a share of the property. However, if Mrs. Green leaves her property to Mr. Green for life with a remainder to her children, then the remainder vests in the children. It is not contingent upon their ability to survive Mr. Green.

An individual who owns an estate in remainder may sell or assign the estate just as the holder of a fee simple or life estate may sell or assign such interest. The buyer of an estate in remainder receives the same interest held by the seller and must wait until the other estate ends before enjoying the property.

NON-FREEHOLD ESTATES

Non freehold estates are those which convey only a right of use and not the underlying fee simple rights of ownership. A leasehold estate is the interest of the lessee (*tenant*), who acquires a right to use property, by an agreement, called a lease, with the fee simple owner, who is then called the lessor (*landlord*). The leasehold is an estate of tenancy. A tenant has no underlying fee interest, but the tenant's leasehold estate may have value, such as when the rent paid by the tenant is less than the property's market rent- what it would command if available on the market today.

The leased fee estate is the interest retained by the landlord who conveys a leasehold estate to a tenant.

ESTATE FOR YEARS

Next to the fee simple estate, the estate for years is the next most common form of ownership. When an owner conveys land to another person for a fixed or determinate period of time, the interest conveyed is an estate for years, also known as a leasehold estate. An estate for years may be a lease, but not all leases are estates for years. An estate for years may be for any number of years, but *a lease of less than five years will not be considered an interest in land*, unless the document which creates it provides otherwise. For a lease to be an estate for years, it must be clear such ownership to the real property is conveyed and not mere rights to possession. In a true estate for years, the owner conveys all rights of possession and has no obligation to repair the property. Thus, an estate for years differs from a rental contract such as a standard apartment lease. In an apartment lease, the landlord contractually gives the right of possession to another without conveying an interest in land. In this type of lease, the interest conveyed is a "usufruct." By contrast, when an owner conveys an estate for years, the owner retains only a reversionary interest, which is, the expectation of becoming the full owner again when the estate for years expires.

There are some important consequences to the distinction between an estate for years and a usufruct. One of these distinctions is property taxation. *An estate for years is taxable, and a usufruct is not.* For example, the City of Atlanta leased property at Hartsfield Airport to Eastern Airlines on a 30-year lease. When the city and County attempted to tax the airline, Eastern Airlines contested the taxation. Eastern Airlines won the case, since the lease, although long enough to qualify as an estate for years, stated no estate passed. The lease had other features similar to a short-term usufruct, and so the court held Eastern Airlines owed no property taxes on the lease.

INDIVIDUAL OWNERSHIP

Ownership by only person is called separate ownership or ownership in severalty. The individual owner has full control over disposition of the property and is the sole recipient of any benefits which flow from it, such as rents. On the other hand, the owner in severalty also has the sole liability for any debts or other obligations associated with the property, such as taxes and assessments. Separate ownership frequently is used when a business is operated as a sole proprietorship. Sole proprietors conduct business in their name or under a trade name, report business income on their own individual tax return, and are solely liable for debts of the business.

CONCURRENT OWNERSHIP

Ownership of real property by more than one person provokes some interesting questions. Can one owner sell their interest without the consent of the others? Will the debts of one owner attach the real property as a whole, thereby affecting the interests of the other owners? How are the expenses and income of the real property divided among the owners? What happens if an owner does not pay their share of the expenses? Can the owners terminate the group ownership and divide the real property among themselves? Each common owner, whether it be a tenancy in common or a joint tenancy with right of survivorship, has a right to enter on the common real property and take possession of the whole property, subject only to the equal rights of the other common owners to do the same thing.

TENANCY IN COMMON

A tenancy in common exists when two or more people own the right to the simultaneous possession of a property under certain conditions (**O.C.G.A. § 44-6-120**). Here, the term "tenancy" refers to an ownership interest and not a landlord/tenant relationship. This is the simplest and most common form of concurrent ownership.

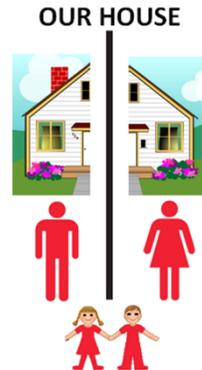
RIGHTS OF TENANTS IN COMMON

- (a) Tenants in common may own equal or unequal shares in the property, but all tenants have equal rights to the possession and enjoyment of the whole property. Subject to the rights of the other common owners, a common owner of real property may use and enjoy the property as though he were the sole owner. A common owner may occupy and utilize every portion of the real property at all times and in all circumstances. The right to use and possess, however, is not exclusive, and each of the common owners has the same right.

Tenants in Common:

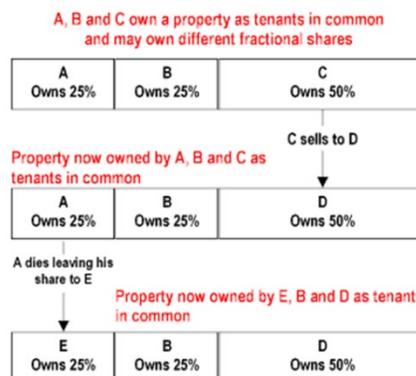
Each of the owner has a share (e.g. 50% each).

If one of the owners dies, his/her share of the property will pass on to who ever he/she specifies in a Will.



For example, one tenant in common may own an undivided 40 percent interest and the other tenant in common may own an undivided 60 percent interest. Neither one may exclude the other from possession of the property. Some tenants in common may agree on a separate time period during which each will have full use of the property.

- (b) As long as a tenant does not infringe upon the co-tenants' share of the property and does not do anything to diminish the essential value of the property as a whole, the tenant is not liable for rent to the co-tenants.
- (c) Each co-tenant is free to transfer his or her share by deed, encumber his or her interest with a security deed, and will his or her interest in the property to whomever they please, without the consent of other common owner's; and such a transfer does not end the tenancy in common. The person to whom the property is transferred receives the same fractional interest and right of possession. However, tenants in common may voluntarily restrict their rights of transfer and possession by entering into an agreement. A common situation would be where two investors own property as tenants in common, but each wants the right to purchase the other's interest in case the other wants to sell.



Any deed executed by a common owner will be treated as conveying only their undivided interest in the real property, even though the deed may, on its face,

purport to convey the entire real property. A single owner does not have the power to rent the common property, grant an easement across the property, sell the property, or mortgage the property without the consent of the other common owners. Common owners usually are not considered agents for one another, and one common owner cannot bind the other common owners to any agreement regarding the common property.

LIABILITIES OF TENANTS IN COMMON

- (a) A tenant in common is liable to the co-tenants if they receive more than their share of any rent or profit from the joint property. Any common owner who has received money from a third party for the use of the common real property is a trustee of the amount collected for purposes of distribution to the other common owners for all sums over and above the common owner's share. This right to reimbursement is known as the right of contribution. A common owner may enforce their right of contribution against other common owners by way of a lien on the other common owner's interests in the real property. This lien, if not voluntarily paid, may be enforced by a sale of the real property.
- (b) A tenant in common may not waste or destroy the joint property.
- (c) A tenant in common may not deprive other co-tenants of the use of their proportion of the joint property.
- (d) A co-tenant may not appropriate the joint property to their exclusive use or use the property in a way which would necessarily exclude other co-tenants.
- (e) A tenancy in common is subject to partition. Partition is a court action to divide property held in common or force a sale to dissolve the tenancy. The parties may voluntarily agree to a partition by executing an agreement allocating separate tracts to each other or by exchanging deeds executed by all the common owners. Any division by agreement or deed should be accompanied by a survey or plat showing the new agreed-on boundaries. Superior Courts have jurisdiction to decide upon a division of the property into separate estates among the co-tenants if the co-tenants cannot agree among themselves.

There are two basic types of partition: partition in kind and partition by sale. The court usually divides the real property into parcels with a market value equivalent to each owner's undivided interest in the real property. The court usually has the authority to hire surveyors to describe the parcels and appraisers to establish values of each parcel. Partition by kind- the preferred technique- is a physical division of the property into separate parcels. If physical division of the land is impossible, impractical, or inequitable, a court may order partition by sale. Under this technique, the property is sold, and the sales proceeds are divided among the

cotenants according to their respective shares. Partition is both a right and a liability. It is a right if an owner seeks the division of the property. It is a liability to an owner who does not want the property divided or sold.

Additionally, *Tenants in Common do not have a right of survivorship*. Each common owner's interest in the real property will pass by will or by inheritance on the common owner's death.

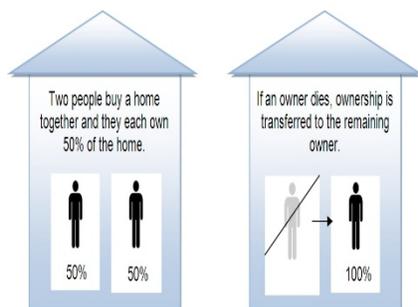
JOINT TENANCY WITH RIGHT OF SURVIVORSHIP

Joint tenancy in Georgia is another form of co-ownership of property. A joint tenancy is a form of co-ownership which must meet certain legal requirements to be effective. Common law requirements for joint tenancy are interest, title, time, and possession. Each owner's interest must constitute an identical interest (*e.g., fee simple or life estate*), must accrue by the same conveyance (*deed or will*) must commence at the same time, and must be held in the same undivided possession. If any of these four items or "unities" is lacking in a conveyance, the estate is not a joint tenancy with right of survivorship.

Each owner's interest must:

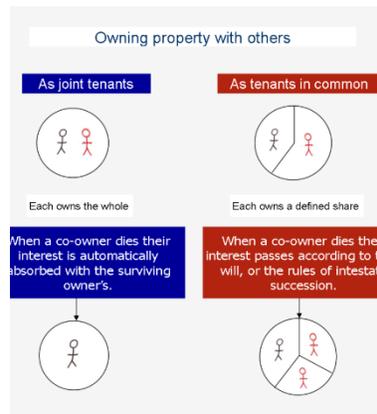
- Constitute an **identical interest** (*e.g., fee simple or life estate*)
- Accrue by the **same conveyance** (*deed or will*)
- Commence at the **same time**
- Be held in the **same undivided possession**

The rights and privileges of a joint tenant are essentially the same as those of a tenant in common, except the interest of a joint tenant is subject to a "right of survivorship." Upon the death of a joint tenant, the deceased tenant's interest automatically passes to the other joint tenant(s).



Even if the interest is specified in a will to go to someone else, the attempted transfer will be ineffectual because the right of the surviving joint tenants is paramount. Since joint tenants own undivided interests in the whole property rather than divisible shares as with tenants in

common, it is impossible for a joint tenant to sell or assign an undivided interest to another without at least partially terminating the joint tenancy. A joint tenant may transfer the interest in the joint tenancy while alive, but not without terminating the joint tenancy with the respect to such interest. The sale of a joint tenant's interest in the real property will create a severance of the joint tenancy. A severance of the joint tenancy means the survivorship feature no longer takes effect. For example, if a joint tenancy consists of only two joint tenants Able and Baker, and Baker sells her interest in the joint tenancy to Carr, such sale will completely end the joint tenancy, and the two owners then would be tenants in common. On the other hand, if a joint tenancy consists of joint tenants Able, Baker, and Carr, and Able sells his interest in the joint tenancy to Dixon, then Baker and Carr remain joint tenants with Dixon as a tenant in common. If there were more than two joint tenants originally, the joint tenancy would remain in effect only for the joint tenants whose interests were not terminated. The remaining joint tenants would have a co-tenancy with the new owner. The last survivor takes title in severalty and has all the rights of individual ownership.



Most states prefer a tenancy in common over a joint tenancy with right of survivorship. Traditionally, Georgia laws have not favored joint tenancies. Prior to 1977, there was a statute which attempted to abolish joint tenancies. Even now, the Georgia statute requires the words "joint tenants" when creating a joint tenancy. If these words are not used, the arrangement is a tenancy in common. Each joint tenant must take title at the same time, and each joint tenant must have an equal interest in the property. All joint tenants must be natural persons, not artificial persons such as corporations or limited liability companies.

Form of Co Ownership	Joint Tenancy with Right of Survivorship	Tenancy in common
Creation	By conveyance *Deed or Will	By conveyance *Deed, Will, Inheritance
Identity of owner	Two or more persons identified in conveyance	Two or more persons identified in conveyance
Quantity of interest in property	Equal Shares	Shares as set forth in conveyance; may not be equal
Nature of interest	Undivided	Undivided
Responsibility for expenses of ownership (taxes, mortgages, and insurance)	Equal responsibility	Responsibility according to percentage of ownership
Right of Survivorship	Yes	No
Right of Partition	Yes	Yes
Right to sell co-owners interest in common property	Yes	Yes
Debts of individual co-owner attach to co-owners interest in property	Yes	Yes
Debts of individual co-owner attach to common property as a whole	No	No

TENANCY IN PARTNERSHIP

Two or more persons who carry on a business for profit as partners may own property for partnership purposes in a tenancy in partnership. All partners have the right to use the property for partnership purposes. The property may be transferred by the partnership only if the rights of all partners are transferred. General partnerships and limited partnerships also create specialized authorization problems. A general partnership has the power to enter into contracts for the sale and purchase of real property. Unless the partnership agreement designates a managing partner, all partners must consent to any contracts entered into by the partnership. Limited partnerships authorize the general partners to act on behalf of the partnership and to buy and sell partnership property. The consent or agreement of the limited partners is not required. When a partner dies, such partner's interest in partnership property goes to the surviving partners, although the heirs of the deceased are entitled to the deceased share of business profits.

CORPORATION

A corporation must follow the laws of the state in which it is incorporated. Although owned by shareholders, the corporation is recognized as a separate legal entity. As such, it may own, lease, and convey real estate. Deeds from corporations should have proper corporate authority from the Board of Directors.

A nonprofit corporation also may own, lease, and convey real estate, but the corporation is owned by members rather than shareholders.

For corporations, the correct name is obtained from the corporate records division of the secretary of state's office in the state of incorporation.

LIMITED LIABILITY COMPANY (LLC)

A limited liability company is now recognized by most states. The exact structure and requirements of the LLC vary from state to state, but the LLC generally offers its members the control and income distribution benefits of the general partnership coupled with the reduced liability of the corporation. The limited liability company has the taxation features of a partnership, and thus is not a separate taxable entity. A limited liability also contains the limitation of liability features of a corporation, and thus the LLC members are not personally responsible for the debts of the company or for any contracts entered into.

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SECTION 5

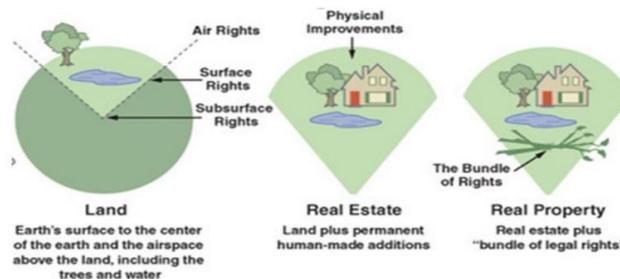
TRANSFER OF OWNERSHIP RIGHTS AND INTERESTS

TITLE AND EVIDENCE OF GOOD AND MARKETABLE TITLE

DEFINITION OF TITLE

In Georgia, the title to real property is the means or the evidence by which an owner establishes rights in land. The possession of legal title to land is entitlement to rights of ownership of such land, the minerals below the land, the air space above the land, and to some extent, the waters contained on or flowing through the land. In reality, you are purchasing title to the land, not the land itself. Title is a set of intangible legally enforceable rights relating to a specific parcel of land.

Most residential appraisals are of property held in fee simple ownership; which is all the rights of ownership are held by the current property owner. Sometimes, however, the different rights of ownership are separated and held by more than one person.



Historically, surface, subsurface, and air space rights tended to favor "natural" uses of the land, and typically vested absolute rights in the surface owner, regardless of the interests to others. Over the last few centuries, these doctrines have been reoriented toward encouraging land development.

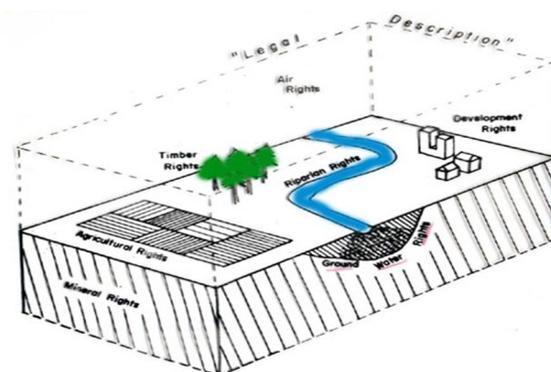


Figure 1. The Geography of Legal Rights in Land: Elements of Property Ownership

WATER RIGHTS

Water is one of Earth's most precious commodities. Without water, no life would exist.

The categories of water sources are:

- (a) groundwater, such as an underground stream or spring;
- (b) surface water, which accumulates on the surface of the land from rain; and
- (c) water which accumulates in a river, stream, or natural lake.



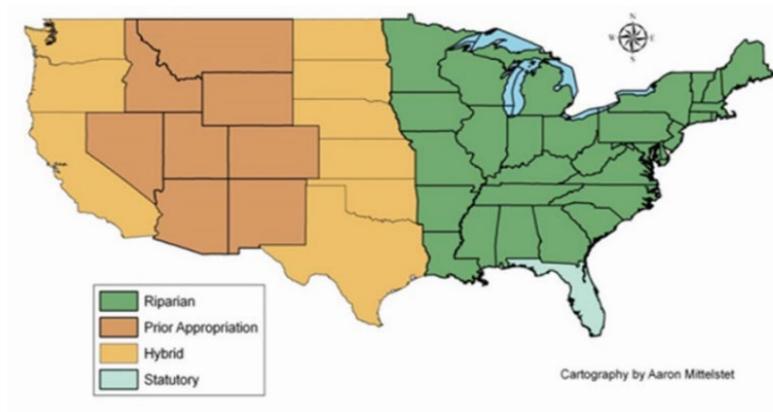
Groundwater is water beneath the surface of the land. It is created by underground streams or by rain which soaks through the soil. A landowner's right to use an underground stream is governed by the same rules which govern rivers and streams on the surface of the land.

A landowner may use surface water in any way they choose as long as the use does not harm an adjoining property owner. A property owner does not have the right to alter the natural flow of surface water.

Water located within a river, stream, or natural lake is owned by the state or federal government and not by the individual property owners whose properties adjoin the river, stream, or natural lake. Although an adjoining property owner to a river, stream, or natural lake does not have ownership rights of the water, in most states, the owner has a right to the beneficial use of the water.

Water pollution and changes in weather patterns are responsible for below- average rainfall have combined to drastically reduce the amount of usable water available. Many states, in an effort to resolve this conflict, have enacted laws regulating the transfer, ownership, and use of water rights.

Water rights are allocated through two basic systems. The riparian system dominates in eastern states, where water is usually abundant. The prior appropriation system prevails in western states, where water is typically scarce. The difference between the two is fundamental: The riparian system is based on the location of the land while the prior appropriation system is based on first use of the water. A riparian system allocates water rights to the owner whose land adjoins a river, stream, lake, or other watercourse.

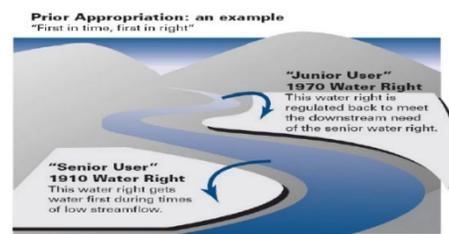


Today virtually all riparian jurisdictions follow the “reasonable use doctrine.” A riparian owner may take water for all reasonable uses which do not unreasonably interfere with the uses of other riparian owners. A few riparian jurisdictions still adhere to the historic natural flow rule. Under this view, the riparian owner may:

- (1) Take an unlimited amount of water for “natural” uses and
- (2) Take water for “artificial” uses, so long as the natural flow of the watercourse is not substantially diminished in either quantity or quality.



Under a prior appropriation system, water is allocated to the first person to take water from a watercourse for a beneficial use. This doctrine was developed in the nineteenth century to regulate the conflicts of water usage between settlers of the western states, predominantly miners, farmers, and ranchers. Beneficial Use has two parts: purpose and quantity. Water may be taken only for a use which has a beneficial purpose. In most states, only the quantity of water necessary for the beneficial use may be diverted.



An example of prior appropriation at work. Prior appropriation ensures the first water user to obtain water rights has first access to water in times of shortage. If a “downstream” landowner has the earlier priority date (they initiated their water right in 1910) the “upstream” landowner may have to let the water pass unused to meet the needs of the senior, downstream water right holder.

All states which follow the appropriation theory of water rights usage have established administrative agencies to issue water permits in connection with water usage. The chief purpose of the administrative procedures is to provide an orderly method for appropriating water and regulating established water rights. Water rights under the appropriation theory are transferable from one property owner to another. It is possible to transfer water rights without a transfer of land and to transfer land without a transfer of water rights. Each state has its own regulatory system and requirements for the transfer of water rights.

SUBSURFACE AND MINERAL RIGHTS

How far down does ownership go? Ownership of land has both horizontal and vertical dimensions.

- (1)The land surface
- (2)The air space above the surface
- (3)Everything underneath such land surface down to the center of the earth.

Today courts increasingly recognize this approach as poetic hyperbole, not binding law.

While contemporary courts do protect the surface owners right to absolute possession, there are situations which may affect the shallow subsurface:

- Mining,
- Installing pipeline,
- Allowing tree roots to grow

A frequent example of separation of rights of ownership with respect to residential property involves mineral rights. The substances under the Earth’s surface may be more valuable than the surface itself. A transfer of title to real estate frequently withholds mineral rights, title to which is retained by the transferor (the person making the transfer). Mineral rights to solid substances (such as coal and iron ore), as well as those which must be removed from beneath the surface to be reduced to possession (such as oil and gas), may be transferred independently of the rest of the land. Ownership of gold, coal, and other “hard” minerals is governed by the general common law rule: whoever owns the land surface also owns the minerals in place under the surface. Of course, it is possible – and quite common- to split off mineral rights from surface ownership. The owner may sell the minerals separate from the surface or lease them to

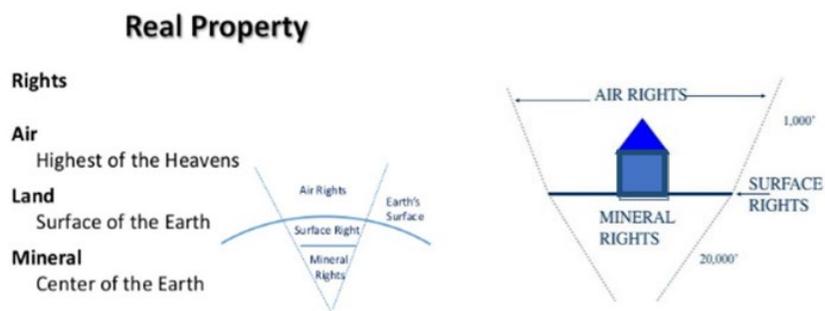
a company with the technology to extract the minerals, retaining a royalty or percentage of the profits from the minerals. If all properties in the area carry a similar reservation of mineral or other rights, there is likely to be little to no effect on market value.

AIR SPACE RIGHTS

Air, like water, goes with the land but is not confined to it, and the landowner has a transient right to use the air as it flows over their boundaries. A landowner has a right to receive air in a reasonably clean and pure state from their neighbors and must let it pass over their property without adding pollution or debris.

A transfer of only a partial interest in commercial property is the transfer of developmental air rights. Common law courts confidently proclaimed each landowner owned “to the heavens.” Thus, in theory at least, each landowner held title to a column of air space which extended upward from the land surface for an infinite distance. Any intrusion which interfered with the owner’s exclusive possession of this airspace was deemed a trespass. However, modern courts uniformly agree an airplane overflight with “navigable airspace” as defined by federal regulations, is not a trespass. More broadly, it is increasingly accepted a landowner owns only the air space which is reasonably necessary for the use or enjoyment of the property.

Air space also may be valuable in less populous areas to preserve a scenic view of a mountain or shoreline. The advent of solar energy has also increased the value of air space, and most states provide for solar easements which create the right to purchase adjoining air space to permit the sun to shine on solar heating and cooling units of a building. The property from which the developmental rights have been transferred will have its value reduced accordingly.



GOOD AND MARKETABLE TITLE

A good and marketable title is one which is legally sufficient and free from reasonable doubt of defects. It is a title in which a prudent buyer would accept and pay fair market value for. A good and marketable title is one proven to be free of legal defects by all the means available to prove the quality of the title. Ideally, a person who owns real property wants the use of the property to be unrestricted and the title to debt free. In real life it is unusual for real property, especially urban real property, to be free of restrictions or debts. A property might be burdened with liens, easements, or other encumbrances which affect the value or desirability of the land. Although, some encumbrances, such as zoning restrictions or easements, may have a positive effect on the ownership of the property, an encumbrance is usually viewed as an unwanted item.

Contrary to popular belief, there is no written instrument which evidences a seller's good and marketable title. Prior to court systems and document recordings, ownership of land was obtained by the homestead act of 1862.

This gave citizens or future citizens up to 160 acres of land, provided they live on it, improve it, and pay a small registration fee for a period of 5 consecutive years. However, with no official recording system in place, land was frequently in dispute and chain of title was not easily discernable. Even today, there is no requirement a deed be recorded. So, finding title to be free from all legal defects and doubt is virtually impossible. Usually, a seller will convey the title to the land by a warranty deed. This deed contains a warranty under which the seller guarantees good title. However, the warranty does not necessarily mean the title is good and marketable. It only means the seller will be liable if the title is not good.

The law provides a "default standard"; an implied covenant in which the seller must deliver marketable title. The seller's obligation to provide marketable title is viewed as both an implied condition and an implied covenant. Consider a warranty on a product, such as a blender which a consumer purchases from a department store. The warranty does not mean the blender is in good working condition. It means if the blender is not in good working condition, the company will repair or replace it. Thus, if the seller cannot deliver such title, the condition fails (excusing the buyer from all duties under the contract) and the covenant is breached (allowing the buyer to sue the seller for breach).

However, the doctrine of marketable title concerns only the quality of the seller's title to land, not the physical condition or value of the land. *"One can hold perfect title to land that valueless; one can have marketable title to land while the land itself is unmarketable."* (Hocking v. Title Ins. & Trust Co., 234 P.2d 625, 629 (Cal. 1951)).

To make certain the client has good title to property. This title assurance comes about using three safeguards: (1) the warranty deed of conveyance to the property, (2) title examination before conveyance, and (3) title insurance.

THE TITLE EXAMINATION

The primary purpose of a title examination is to ensure a seller has the ability to convey good title to the purchaser at the time of sale, or a borrower has good title to the property being pledged as security for a loan.

The title examiner begins by compiling a history of the ownership of the property. The period covered by the search is set by the standards of the title insurance company insuring the transaction. (The normal search period is 50 years, as recommended by Section 2.1 of the State Bar of Georgia Title Standards.) Most potential defects in title, both recorded and unrecorded, will have no effect on the current ownership of the property after fifty years.

A title examination searches the owners "chain of title" by starting at the present time and working backward to some predetermined point. The examination establishes a source of title for each owner in the chain.



The title examiner conducts this portion of the examination on the grantee (or reverse) index of the Superior Court deed records in the County where the land lies. If the property is located in more than one County, it may be necessary to conduct the examination in each County to have a full title examination.

Once the examiner has compiled a history of the title for the normal search period (a "back chain of title"), they examine the records of the grantor (or direct) index for conveyances made by the owners. Here the examiner may find easements, deeds to secure debt, mechanics' and materialmen's liens, affidavits, and other title documents. When the grantor search is complete, the examiner makes a search of other County records for divorces, lawsuits, judgments, federal tax liens, past due ad valorem taxes, notices of pending suits (lis pendens), and probate proceedings for any wills or estate administration. The closing attorney or title insurance company then decides if the title is satisfactory, and closing may proceed. If the title is not satisfactory, title clearance work may be necessary.

Local governments are embracing the new computer technology in designing deed or title records. Title registry offices located throughout the country have now automated all or a large portion of their title record systems. Although many recognize using the new technology to preserve land records should be embraced, they also believe paper records should be

maintained. Several states have now passed laws requiring County governments, in which have committed to the use of electronic land title databases, to also maintain a paper archive.

THE IMPORTANCE OF TITLE EXAMINATION

A prudent buyer would never buy real estate without receiving some assurance the title to the real estate is satisfactory. Similarly, a prudent lender would never give a loan using real estate as the collateral without obtaining some guarantees of good title. The evidence of good title of ownership is provided by the title examination of the public real property records and the issuance of title insurance. This guarantee of good title is necessary even if the buyer obtains a general warranty deed because the quality of the warranty is only as good as the solvency of the seller. If the seller moves out of state or becomes bankrupt, any warranties of title become worthless, or at least expensive and uncertain of enforcement.

Information on most of the matters affecting title to real property resides in the County courthouse of the County in which the property is located. Some examples of matters which could affect the title to a parcel of real property include:

(a)	security deeds and mortgages;
(b)	restrictive covenants;
(c)	condominium declarations and agreements;
(d)	easements;
(e)	liens for unpaid federal taxes;
(f)	liens for unpaid county and municipal property taxes;
(g)	estates of decedents who died owning the property in prior years;
(h)	mechanics' and materialmen's liens for unpaid labor and material used to improve the property; and
(i)	notices of pending litigation affecting the property, including divorces in which a spouse seeks to get title from the other in the divorce action.

RE: 5167 Tilly Mill Road, Atlanta, Georgia

A search of the above referenced property as of April 20, 20__ at 5:00 P.M., reveals title to be vested in Markam Industries, Inc., subject to the following objections:

1. Easement between Sam Turner and Georgia Power Company dated August 6, 1959 recorded at Deed Book 2898, page 25, Fulton County Records.
2. Easement between Markam Industries, Inc. and Georgia Power Company dated February 11, 1998 and recorded in Deed Book 5106, page 810 aforesaid records.
3. Deed to Secure Debt from Markam Industries, Inc. to The Southern National Bank dated March 3, 2001 recorded in Deed Book 5508, page 83, aforesaid recording securing the original principal amount of \$85,000.00.
4. County taxes have been paid through 20__, but are unpaid for 20__, in the amount of \$1,850.00—due on October 1, 20__.
5. City of Atlanta taxes paid through 20__; 20__ due in the amount of \$1,560.00 and due on October 1, 20__.

The above list is merely a representative sample. There are many other matters which may affect the quality of the potential buyers or lender's title. An examination of title protects buyers and lenders in arms' length transactions conveying real property. However, bear in mind there are some matters, such as zoning restrictions and environmental hazards, in which a standard title examination would not disclose.

TITLE INSURANCE

Title insurance is a policy which protects the holder from loss sustained by defects in the title. Title insurance is a contract to indemnify the insured against loss caused by defects in title to the property. The main economic justifications of title insurance are to cover the remote risks of title examinations and to add financial substance to the title examination and to the deed warranties. The main role for title insurance is risk elimination. A title insurance company will not issue a policy of title insurance unless it has performed an extensive title search and believes there are no problems to the title. After an insurance policy is effective, the company will settle any title defects or pay in the form of reimbursement to the insured sums of money lost as a result of the title defect up to the amount of the total insurance provided under the policy. A title company also has the obligation to defend, at its own expense, any title defects which are insured against. Title insurance also ensures the proposed mortgage or deed of trust creates a valid first lien on the title to the real property security.

There are two types of title insurance: owner's title insurance and lender's (mortgagee's) title insurance. At most closings involving residential loans, the only policy the lender requires to be issued by the title insurance company is the lender's policy. It is necessary for the buyer to purchase an owner's policy to get protection for their ownership equity since the lender's policy only protects the lender. For instance, an owner's policy insures against loss incurred by the insured by the lack of access to and from the insured property. This coverage protects against any loss resulting from the insured's lack of legal and enforceable right to get to and from the insured property. An owner's title insurance policy also insures marketability of the title to the insured property. A marketable title is title free from doubt, enabling the owner to hold the land in peace, free from the hazards of litigation or adverse claims. This insurance provides protection against the inability to market the title- a legal concept- but does not protect against the inability to sell the property.

An insurance company issues its policy based upon only a review of the public records.

There are four basic insuring provisions against loss and damage incurred as a result of the risks which the policy insures. They are:

- (1) insurance title to the estate or interest is vested in the insured;
- (2) insurance against any defect, lien, or encumbrance on such title;
- (3) insurance the property has access to a public road; and
- (4) insurance the title is marketable.

The vesting of title provision ensures the insured owns the real property described in the policy. The insurance of the insured's ownership of the described real property is the most important coverage of the owner's title insurance policy.

It should be noted, by definition, the insured extends not only to the named insured, but also to those who succeed to the interest of the insured by operation of law. Additionally, insurance

coverage will not be lost if an insured transfers the property to a trust in which the insured is the beneficiary of the trust for estate planning purposes, or if the insured transfers the property to a special purpose entity, such as a limited liability company, for the purposes of securing a loan. Transfers to a trust for estate planning purposes or to a special purpose entity for the purposes of obtaining a loan are quite common transactions in today's marketplace.

The title insurance policy contains a description of the property, the terms of the policy, and a list of matters (called "exceptions") not covered by the policy. Usually, the matters not covered by the policy are those matters in which there are technical limitations on fee simple title, such as subdivision restrictive covenants and power company easements, which are acceptable limitations to the owner and lender.

Usually, these exclusions are non-negotiable. Exclusions generally include:

- (1) zoning and other governmental police power rights;
- (2) rights of eminent domain;
- (3) matters created, suffered, assumed, or agreed to by the insured;
- (4) title defects not known to the insurance company and not shown by public records but known to the insured and not disclosed in writing to the insurance company prior to issuance of policy. These are referred to as "secret defect";
- (5) matters resulting in no loss or damage to the insured;
- (6) title defects which are first attached or created after the effective date of the policy;
- (7) matters resulting in a loss or damage which would not have been sustained if the insured had paid value for the estate or interest insured; and
- (8) environmental matters

The exclusion of zoning and other governmental regulations will not be covered in title insurance policy. This exclusion reflects the fact in which all ownership of property is ultimately subject to control and regulation by the government. A title insurance company will not insure against future changes of government regulations.

The exclusion of eminent domain and police power recognizes the ownership for private property is subject not only to government control, but also to a government taking of the property by eminent domain or other regulation under police power.

<i>Owner's title insurance policy insures:</i>	<i>Exclusions from coverage:</i>	<i>Exceptions to coverage:</i>
<ul style="list-style-type: none">• Title to the property is vested in the insured• The property is free of defects, liens, encumbrances, except for the exceptions on Schedule B• The property has access to a public road• Title to the property is marketable	<ul style="list-style-type: none">• Zoning and other government regulations• Eminent domain and police power• Matters created, suffered, assumed, or agreed to by the insured• Unrecorded title defects not known to the title insurance company• Matters resulting in no loss to the insured• Title defects that are first created after the effective date of the policy• Title matters that would not have resulted in loss if insured had been bona fide purchaser for value	<ul style="list-style-type: none">• Rights of parties in possession• Matters of survey• Unrecorded easements• Mechanics' liens• Taxes and special assessments• Any matters revealed by the title examination that appear on Schedule B to the policy

FUNDAMENTALS OF LAND TITLE

How does the law resolve conflicting Title claims? The system consists of one general rule and two exceptions to the rule.

The traditional common law rule is the person whose interest is first delivered prevails over anyone who acquires an interest later. All states have since modified this general rule through legislation known as recording acts. Recording statutes

- (a) give the community notice of the changes in ownership of the property,
- (b) protect subsequent purchasers and encumbrancers of property from the same common grantor by giving them notice of information contained in the recorded documents, and
- (c) determine priority among conflicting claims to real property.

The recording acts in most all states create a major exception to the general rule: in a title dispute between a first-in-time claimant and a later bona fide purchaser for value, the bona fide purchaser prevails. The general rule is also subject to a second, minor exception called the shelter rule: one who acquires an interest from a bona fide purchaser also prevails over a first-in-time claimant.

SECOND EXCEPTION TO GENERAL RULE: THE “SHELTER” RULE

Under the shelter rule, a grantee from a bona fide purchaser is protected as a bona fide purchaser, even though the grantee would otherwise not qualify for this status. The shelter rule is necessary to make bona fide purchaser protection meaningful. Without it, a bona fide purchaser might well be unable to sell the property. The rationale for the extended protection is to permit the bona fide purchaser to sell the property for full value.

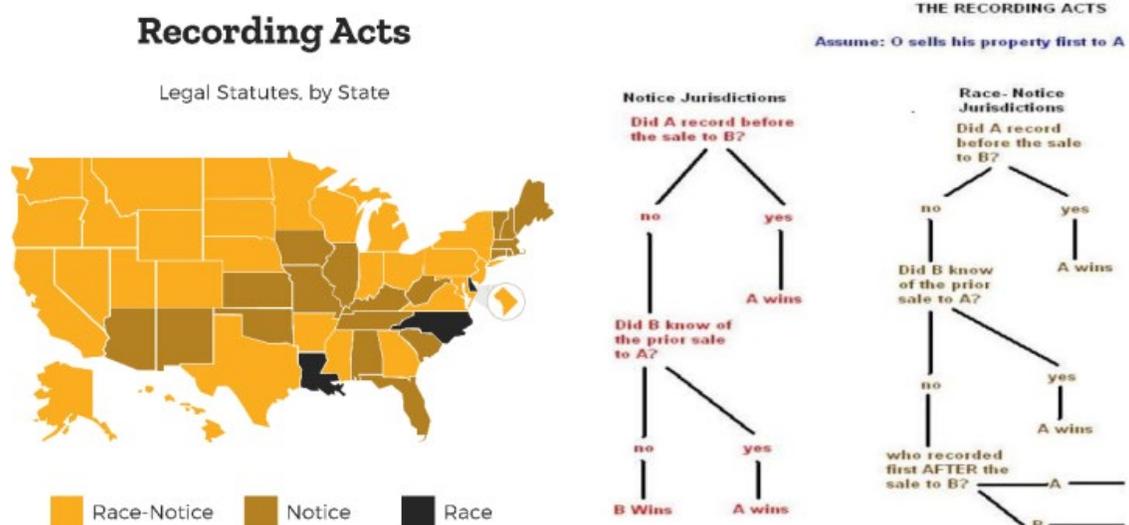
The law is seeking a compromise between two goals. On the one hand, it seeks to provide security and stability by respecting the property rights of current owners; the general first-in-time rule reflects this goal. On the other hand, the law also seeks to facilitate the transfer of property rights to new owners. Accordingly, virtually all states protect the later buyer who innocently paid value without any notice of prior claims. Absent this special protection, the purchase of interests in land would be extraordinarily risky, and buyers would be less willing to buy.

The recording act in each state defines the precise requirements for bona fide purchaser status. Although the statutory language varies widely from state to state, there are three basic types of recording acts:

- (1) Notice Jurisdictions
- (2) Race-notice jurisdictions
- (3) Race jurisdictions

WHO IS A BONA FIDE PURCHASER? NOTICE JURISDICTIONS

A bona fide purchaser is a subsequent purchaser who pays valuable consideration for an interest in real property, without any prior notice of an interest a third party already holds the land. The bona fide purchaser rule provides they have the right to take the property free and clear of any claims to or interests in the property by other parties. A bona fide purchaser must pay something of value for the property, although the consideration paid need not be equal to the market value of the property. The person taking title to property by inheritance or as a recipient of a gift has not been given valuable consideration, and therefore is not protected as a bona fide purchaser.



WHO IS A BONA FIDE PURCHASER? RACE- NOTICE JURISDICTIONS

The first three elements are the same ones required in notice jurisdictions, merely adding on a fourth requirement; the subsequent purchaser must be the first one to record. The race-notice recording statute is the most common type.

Roughly half of the states are notice jurisdictions, which use the general bona fide purchaser definition. About half of the states are race-notice jurisdictions, which add the requirement the bona fide purchaser must also be the first to record. Finally, three states are race jurisdictions, which do not recognize the bona fide purchaser exception at all.

When considering the three types of recording acts, it is crucial to remember, property rights are defined by law, not by the intentions of private parties. Property rights exist only to the extent they are recognized by our legal system. The law may choose to recognize different

persons as the “owner” of the same property, depending on the circumstances. A basic precept of American property law is title is relative, not absolute.

SOURCES OF NOTICE

- (1) Actual notice,
- (2) Record notice,
- (3) Inquiry notice,
- (4) Imputed notice

Actual Notice	Knowledge of prior interest by any method of written, oral, or nonverbal communication (e.g., deed, letter, newspaper, phone call, radio broadcast, email, personal conversation, sign language) or by personal observation. Actual notice includes any facts that the purchaser can see with their own eyes, any facts that the purchaser learns about the property, or any information the circumstances of which should put the purchaser on duty to conduct an investigation that would lead to the finding of certain facts in regard to the property.
Record Notice	Notice of any prior interest that would be revealed by an appropriate search of the public records affecting land title (sometimes referred to as <i>constructive notice</i>). Record notice is a presumption of law that charges a purchaser with the responsibility of learning about all title matters that would result from an inspection of the property or an examination of the public real property records. Recording an instrument is essential to impart record notice. The act of recording the instrument in its proper place will place future purchasers on record notice.
Inquiry Notice	Based on a purchaser’s duty to investigate suspicious circumstances. Inquiry notices arise most commonly in two situations: (1) notice from possession of land (possession of land is notice to the world of the possessor’s right therein) and (2) notice from a reference in a recorded document. In most states, a reference in a recorded document to an unrelated document is sufficient to give inquiry notice.
Imputed Notice	Arises from a special relationship between two or more persons; if one has actual knowledge of a fact, the others are also deemed to know the fact.

FIRST PURCHASER FOR VALUE TO RECORD PREVAILS: RACE JURISDICTIONS

Under a race recording statute, the first purchaser for value to record prevails and has priority of title. Priority is determined simply by which purchaser wins the “race” to the recorder’s office. Under the race statute, priority between successive grantees of the same land from a

common grantor is determined by who wins the race to the recorder's office. Race jurisdictions afford no special protection to the done or other interest holder who fails to pay a value. Notice is irrelevant in a race jurisdiction. For example, Alice Owner conveys her home to Paul Purchaser by deed dated March 1. Paul Purchaser does not record the deed until March 4. Alice Owner on March 2 conveys the same home to Doris Purchaser. Doris receives the deed to the home on March 2 with full knowledge a deed has been given by Alice Owners on the previous day to Paul Purchaser. Doris Purchaser records the deed to the home on March 3. Under a race recording statute, Doris Purchaser would be the owner of the property since Doris Purchaser recorded the deed to the property before the recording of Paul Purchaser.

In summary, if a person obtains an interest in the property by way of being a purchaser, a lender of a security deed or mortgage, the holder of an easement, or so on, the only way this property interest may be protected against subsequent purchasers is to record the deed, easement, mortgage, or instrument in the property records.

TRANSFER OF FREEHOLD RIGHTS

Estates and their accompanying future interests originate in three main sources: deeds, trusts, and wills.

VOLUNTARY TRANSFER

Anyone who holds title to real property may transfer all or part of such title to another. Transfer may take place through gift, sale, or will. In a voluntary transfer, the owner may set the terms of the disposition within the bounds of the law. Ownership to real property may also be obtained by a gift. Typically, once an individual deeds the property, the gift is irrevocable, however the promise to make a gift, is usually revocable. The power of disposition may also take place at the owner's death by inheritance or will.

VOLUNTARY TRANSFER BY DEED

The most common method of transfer of title is by deed. In Georgia, a deed must be in writing, signed by the maker of the deed, and to be eligible for recordation, witnessed by at least two witnesses, one of whom must be a notary public. The seller (grantor) must deliver the deed to the buyer (grantee). The transaction must include a valuable consideration, with one exception: a deed of gift does not require a valuable consideration. The intent to make a gift exempts the transaction from the normal requirement of consideration.

INVOLUNTARY TRANSFERS

Transfer of ownership may also occur against the will of the owner. For example, an involuntary transfer occurs when the state takes a parcel of land to satisfy a tax lien. The government also

has the right to take property for public use, as when the government obtains an easement for purposes of public transportation, or a utility easement as referenced below.

STATE OF _____, _____ COUNTY.

In consideration of the sum of _____, (\$ _____) Dollars in hand paid by The American Power Company, hereinafter called the Company, the receipt and sufficiency whereof is hereby acknowledged, the undersigned, _____, whose Post Office Address is _____, does hereby grant and convey to said Company, its successors and assigns, the right, privilege and easement to go in, upon and along the tract of land owned by the undersigned to Land Lot _____, of the _____ District of _____ County, known as No. _____ in or near the City or Town of _____, together with the right to construct, operate and maintain upon said land its lines for transmitting electric current, erected on one line of poles, with wire and other necessary apparatus, fixtures and appliances; with the right to permit the attachment of the wires and appliances of any other company, or person, to said poles; together with the right at all times to enter upon said premises for the purpose of inspecting the lines, making repairs, removals, alterations and extensions thereon, thereto or therefrom; also the right to cut away or trim and keep clear of said lines all trees, limbs of trees and other obstructions that may interfere or be likely to interfere with the proper operation of said lines; also the right of ingress and egress over said lines to and from said lines.

The undersigned does not convey any land, but merely grants the hereinabove described rights, privileges and easements.

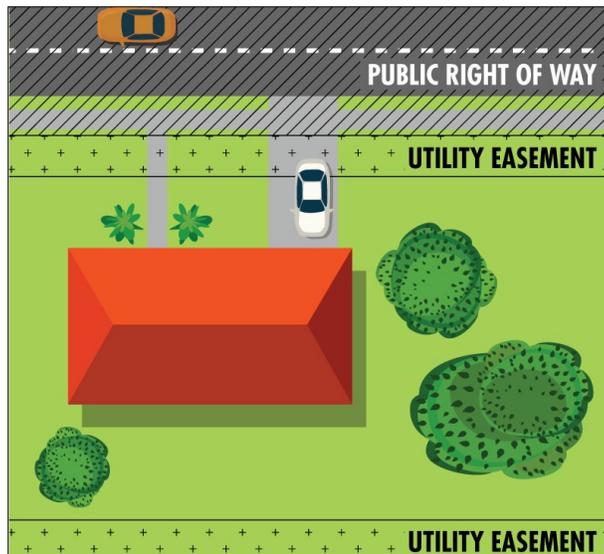
Said Company shall not be liable for, or bound by, any statement or agreement or understanding not herein expressed.

IN WITNESS WHEREOF, the said _____, has hereinto set _____ hand _____ and seal _____, this _____ day of _____, 20____.

By: _____ (SEAL)
Title: _____ (SEAL)

Grantors
Signed, sealed and delivered in the presence of:
Witness
Notary Public
My Commission Expires:

This document to be signed in the presence of two (2) witnesses, one of whom should be a Notary Public.



In cases of this type of involuntary transfer, the government pays compensation to the owner. The following discussion outlines several methods of involuntary transfer of ownership which occur in Georgia.

(a) **PRESCRIPTIVE TITLE** - Often in the State of Georgia, it is impossible to trace the ownership of the land to the original state grant. The reasons for this difficulty range from negligent record keeping procedures to the burning of courthouse records. Therefore, ways of establishing title have evolved to cover the situations when the owner cannot prove ownership during a particular period. As mentioned above, for purposes of obtaining title insurance in Georgia, it is usually sufficient to go back only fifty years in a chain of ownership to prove title.

There are also two recognized ways of establishing ownership when the owner may not have valid written proof of title. The first is "prescription" and the other (discussed below) is "adverse possession." Prescription establishes title under a claim not supported by valid written evidence of title. It requires possession of the property which did not originate fraudulently. Possession must be public, continuous, exclusive, uninterrupted, peaceable, and not merely permissive. Prescriptive title confers ownership in seven years when the claimant possesses flawed written evidence of title or evidence which is invalid for some reason. The phrase "color of title" describes this type of evidence. Generally, "color of title" derives from a deed which is for some reason is void and therefore did not legally transfer the title to the grantee. For example, Mrs. Arnold conveyed property to Mr. Brooks by warranty deed. However, because Mrs. Arnold held imperfect title to the property herself, the transaction was flawed; and Mr. Brooks does not hold perfect title to the land. Although the deed is flawed, it is considered "color of title." Therefore, Mr. Brooks may perfect his title after seven years through prescription (**O.C.G.A. § 44-5-164**). Another example of imperfect title may be demonstrated if a person received title from an individual which did not have the authority of conveyance. If a person acquires property from a partnership by a deed signed by a partner who did not have the authority to sell property, the partners lack of authority would cause the deed not to transfer title. If the grantee of the deed is unaware of the partner's lack of authority and enters into possession under the deed, the possession would be adverse to the partnership, but could evolve into ownership after seven years. States permit the "color of title" to be unrecorded but do require it contain a sufficient description of the property to identify the property being possessed. Even though ownership to real property may be obtained throughout adverse possession, except for adverse possession under color of title there is no written documentation or proof of this ownership.

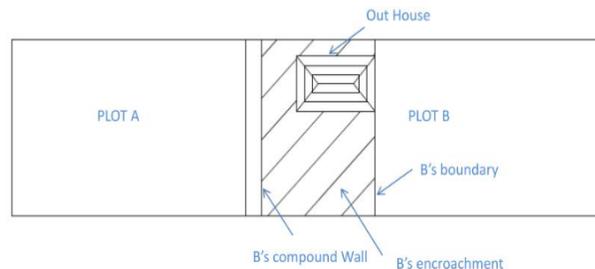
(b) **ADVERSE POSSESSION** - Adverse possession is the acquisition of prescriptive title when the claimant does not have "color of title." The requirements for establishing title by adverse possession are the same as those for title by prescription, except the period required to establish title is twenty years (**O.C.G.A. § 44-5-163**). The possession also must

be adverse, which means without the consent or permission of the true owner. Possession, in a strict sense, means occupancy and use of the property. Even a party in unlawful possession of the real property has the right to exclude anyone else from possession except for the true owner. At common law, land owned by a government entity was immune from adverse possession. Courts traditionally explain government lands are held in trust for all citizens. Thus, the goal adverse possession seeks to serve- the overall welfare of society- is be protected by retaining public ownership, not by transferring title to a private owner.

Adverse possession:

When A occupies B's land or a portion of it and creates some kind of visible sign of physical occupation in the form of a compound wall or a permanent or semi-permanent structure, for a period of 12 years, he can claim ownership of such land by law. This means that A has become owner of B's land by adverse possession.

There is an essential difference between adverse possession and easement. In case of easement the ownership of land continues to remain with the servient owner. The property merely becomes an encumbered property owing to easement



If the adverse possessor attempts to sell the real property, chances are they will have a difficult time establishing title. One means of establishing ownership through adverse possession is by bringing what is known as a “quiet title” action. In a quiet title action, the adverse possessor sues the entire world and challenges anyone to step forward and object to the adverse possessor’s claim of ownership. In the suit the adverse possessor would then bring proof through affidavits or witnesses as to the adverse possessor’s necessary period of possession and the nature of such possession. If the court finds the adverse possessor is now the owner, it will issue a judgement adjudicating the adverse possessor’s ownership. The judgement could then be used to establish ownership for purposes of future sales.

- (c) **EMINENT DOMAIN** - Eminent domain refers to the power of the state to reassert its ownership over the land, permanently or temporarily, for public use. There must be due notice and a hearing on the matter following the equal protection and due process clauses of the Federal and State Constitutions, and the government must pay adequate and just compensation to the owner of land. “Condemnation” is the name for the act of taking the property. In condemnation proceedings under the government’s right of eminent domain, courts will frequently require separate site and building valuations as part of the determination of the property’s fair market value.

(d) **FORFEITURE FOR CRIME** - Normally, both state and federal laws prohibit the forfeiture of real property as a criminal penalty. However, both state and federal RICO (Racketeer Influenced and Corrupt Organizations) Acts allow the seizure of property used in or acquired as a consequence of racketeer influenced activities. The Georgia RICO statute allows the seizure of real property **O.C.G.A. § 16-14-7**.

DEEDS

INTRODUCTION

A deed is a written agreement, in proper legal form, which conveys title to, or an interest in, realty and when properly signed and delivered gives evidence of the location, title, or transfer of an interest in realty. The purpose of a deed is to describe by words the exact location, geometric shape and size of the land intended to be conveyed, and to identify the land for title purposes as a protection to the grantee. A deed is simply a written instrument which transfers the title to real property from one party to another. The owners of the real estate are called grantors, and the person who acquires title is called the grantee.

A deed:

(a)	transfers ownership of the property,
(b)	may or may not include guarantees on the quality of ownership,
(c)	may include limitations on ownership,
(d)	may create rights against adjoining property owners, and
(e)	may create obligations to adjoining property owners.

DEED PREPARATION

The law of the state in which the land to be conveyed by the deed is located controls the form as well as the formal requirements for a deed. Most deed forms have the following formal parts: caption, premises, or preamble, granting clause, description, habendum, warranty clause, and testimonium.

(1) **Caption:** The caption or heading of a deed is designed to show the place of execution of a deed. The caption indicates the County and state in which the deed was signed by the grantor. The caption does not refer to the County and state in which the land is located.

(2) **Premises or Preamble:** The premises or preamble to a deed is the section which sets forth the parties to the deed and the date of the deed. A grantor should be identified exactly the way the grantor holds title to the real property. Grantees should be identified the way in which they desire to take the title. The date should be the date of execution by the grantor.

(3) **Granting Clause:** The granting clause contains the language indicating the instrument is a deed and the land is being granted or conveyed. The granting clause in many deeds also contains a recital of consideration.

(4) **Description:** The main portion of any deed is the description of the land being conveyed.

(5) **Habendum Clause:** The habendum clause indicates what estate is being transferred, such as a life estate or fee simple.

(6) **Warranty Clause:** The warranty clause usually contains words of warranty or, in the case of quitclaim deeds, a lack thereof warranty words.

(7) **Testimonium:** The testimonium is the execution portion of the deed. Most deeds are signed under hand and seal and are witnessed. A recital of the action is found in the testimonium.

WARRANTY DEED

1

STATE OF _____ COUNTY OF _____

THIS INDENTURE, Made the _____ day of _____, in the year two thousand _____, between _____, 2

of the County of _____, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and _____

as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of _____) DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee. 3

4

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE. 5

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever. 6

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written. 7

Signed, sealed and delivered in presence of: _____ (Seal)
_____ (Seal)
_____ (Seal)

Formal Parts of a Deed

- (1) caption,
- (2) premises or preamble,
- (3) granting clause,
- (4) description,
- (5) habendum,
- (6) warranty clause, and
- (7) testimonium.

REQUIREMENTS OF A VALID DEED

A valid deed includes all the following elements:

(a)	the deed must be in writing, purporting to convey title to land;
(b)	the grantor (the person transferring the title) must be a person or legal entity having contractual powers (competent, if an individual, and properly created, if a legal entity such as a corporation);
(c)	the grantee (the person receiving the title) must be a properly created legal entity, or if a person, does not have to be competent (for example, a minor or insane person could be a valid grantee, but not a valid grantor);
(d)	the deed must include words of conveyance such as "grant, bargain, transfer, give, sell, alien, and convey"; <i>(this "conveyance" provides the property is sold subject to specific restrictions such as: easements, rights-of-ways, covenants, mineral reservations etc.)</i> <i>This includes constructive notice:</i> <i>Constructive notice is the legal fiction that signifies that a person or entity should have known, as a reasonable person would have, of a legal action taken or to be taken, even if they have no actual knowledge of it.</i>
(e)	the deed must include a valid legal description of the land;
(f)	the deed must contain the signature of the grantor;
(g)	the deed must be delivered by the grantor to the grantee or someone acting on the grantee's behalf;
(h)	the deed must be given in exchange for good and valuable consideration (except that a deed of gift may be valid without consideration). Consideration is defined as something of value given for the deed. A recital of consideration is sufficient. A typical recital of consideration is "for ten dollars and other good and valuable consideration."

When conveying an estate using phrases such as "to A and his heirs," the words "to A" are termed words of purchase; they identify the person who now owns the estate. The words "and his heirs" are called words of limitation. They serve only to signal the type of estate.

A deed is not effective until it is "delivered." Once a deed is validly delivered, title vests in the grantee. Delivery will be presumed if:

- (1) The deed is recorded, or
- (2) The grantee has physical possession of the deed.

A deed is of no effect if it is not delivered; which is, its delivery cannot be conditional.

Legal Requirements of a Valid Deed

1. Capacity of the Grantor
2. Identify the Grantee
3. Form of Ownership
4. Granting Clause
5. Consideration
6. Legal Description
7. Signatures
8. Delivery & Acceptance



GEORGIA STATUTORY REQUIREMENT

The **premise clause** is legally required.

Traditionally

“This indenture dated as of _____ between Seller, Grantor and Buyer, Grantee.”

THIS INDENTURE Made the ____ day of _____ Between _____ and _____ Husband and Wife, of _____ [insert address] hereinafter referred to as the "Grantors") and _____ and _____ Husband and Wife, of _____ and _____ [insert address] hereinafter referred to as the "Grantees";

“The words Grantor and Grantee whenever used shall include all individuals, corporations and any other persons or entities, and all the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under either of them, and the pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto. If more than one party shall execute this deed each Grantor shall always be jointly and severally liable for the performance of every promise and agreement made herein.”

Sometimes the author will include a **definitional clause**, but this is not required.

WITNESSETH, that the Grantors, for and in consideration of the sum of \$10.00, in hand paid by the Grantees, the receipt whereof is hereby acknowledged, have granted, bargained, and sold to the Grantees, as joint tenants with rights of survivorship, the following lands and property, together with all improvements located on the property, situate in the County of _____, State of _____

THE GRANTING CLAUSE

GEORGIA STATUTORY REQUIREMENT

IMPORTANT LANGUAGE

The granting clause is required with **A RECITAL OF CONSIDERATION** except in the case of gifts.

Georgia courts continuously hold the recital of consideration, “\$10”, nominal consideration is adequate consideration.

No requirement, this “\$10” get paid.

Could put actual sale price of property.

GEORGIA STATUTORY REQUIREMENT

The granting clause must also contain **language of conveyance**

have granted, bargained, and sold

GEORGIA STATUTORY REQUIREMENT

Deed must include a legal description

Typically, a metes and bounds description

Must be sufficient in order to allow Sheriff of the county to find property.

Legal Description:

Physical Address:

Property Appraiser’s Parcel I.D. No.:

All that tract or parcel of land, with all buildings, structures, improvements and appurtenances, situate in Lowndes County, Georgia, described as follows:
 BEGIN at a part of Land Lots 152 and 171 in the 1st Land District of Lowndes County, Georgia, as shown on survey dated March 15, 1901, made by William S. Beach, Jr., being more particularly described as follows:
 BEGINNING at a concrete monument at the southerly intersection of Interstate Highway 75 and Lake Park-Belleville, Florida Road, and going being 50 feet from the centerline of Lake Park-Belleville, Florida Road, crossing thence north 44 degrees 29 minutes east 227.7 feet along the southerly right of way of Lake Park-Belleville, Florida Road to a point; thence north 47 degrees 34 minutes east 188.8 feet along said right of way to a concrete monument; thence north 42 degrees 23 minutes west 35 feet along said right of way line to an iron pin; thence north 46 degrees 28 minutes east 100 feet along said right of way to an iron pin; thence north 43 degrees 17 minutes east 100 feet along said right of way to an iron pin; thence north 39 degrees 17 minutes east 100 feet along said right of way to an iron pin; thence north 33 degrees 42 minutes east 100 feet along said right of way to a concrete monument; thence north 42 degrees 54 minutes east 49.31 feet to a concrete monument; thence north 49 degrees 57 minutes west 1050 feet to a concrete monument located in the southerly right of way line of Interstate Highway 75; thence north 29 degrees 19 minutes west 218.83 feet along the southerly right of way line of Interstate Highway 75 to a concrete monument; thence north 7 degrees 51 minute east 238.55 feet along the southerly right of way line of Interstate Highway 75 to a concrete monument and the point of beginning.

“**This conveyance**” provides the property is sold subject to specific restrictions such as:

SUBJECT to all easements, rights-of-way, protective covenants and mineral reservations of record, if any.

NOT REQUIRED

NOT REQUIRED

The **habendum clause** is not required because of the granting clause but is a clarifying clause – in most all warranty deeds.

This indicates the type of estate conveyed.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining forever. And said party of the first part, _____ and assigns does hereby covenant, promise and agree to and with said party of the second part, at the delivery of these presents that _____ is/are lawfully seized in _____ own right of an absolute and indefeasible estate of inheritance in fee simple, of and in, all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, and discharged of and from all former grants, charges, judgments, taxes, assessments, mortgages and other liens and encumbrances of whatsoever nature, EXCEPT, taxes and assessments not yet due, restrictions, covenants and easements of record, and that party of the first part _____

The three most used deeds in the United States are the general warranty deed, the limited warranty deed, and the quitclaim deed. The main difference among them is the extent to which the grantor warrants the quality of the title.

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TYPES OF DEEDS

WARRANTY DEED

A warranty deed (sometimes called a "general warranty deed") is a deed containing promises relating to the title, usually a general warranty. That is, an assurance by the grantor the grantee shall enjoy clear title to the property described in the deed with no further claims being made by the grantor on the basis of their previous title.

A warranty deed fully warrants good clear title to the property. A warranty deed warrants the title, not the quality of the construction of the property. A warranty deed is used in most real estate transfers.

The warranty deed in general use in the State of Georgia contains the following clause:

	<i>And the said Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.</i>	
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

A general warranty deed provides the most title protection. This language of general warranty means the seller (Grantor) makes the following guarantees to the buyer (Grantee):

	(a)	a covenant of title, meaning the seller guarantees that legal title is vested in the seller and that the seller has the right to sell the property and transfer the title;
	(b)	a covenant of quiet enjoyment, meaning the seller guarantees that the buyer's title will be free from adverse claims; and
	(c)	a covenant against encumbrances, meaning the seller guarantees that the title is free and clear from liens and encumbrances such as easements, deeds to secure debt, and tax liens.
	(d)	a covenant of further assurance is a promise by a grantor that in the future, the grantor will make any conveyance necessary to vest in the grantee of the deed the title intended to be conveyed.

Recording requested by: _____ Space above reserved for use by Recorder's Office
When recorded, mail to: _____ Document prepared by:
Name: _____ Name _____
Address: _____ Address _____
City/State/Zip: _____ City/State/Zip _____
Property Tax Parcel/Account Number: _____

Warranty Deed

This Warranty Deed is made on _____, between _____,
Grantor, of _____, City of
_____, State of _____, and
_____, Grantee, of _____
_____, City of _____, State of _____.

For valuable consideration, the Grantor hereby sells, grants, and conveys the following described real estate, in fee simple, to the Grantee to have and hold forever, along with all easements, rights, and buildings belonging to the described property, located at _____
_____, City of _____, State of _____:

The Grantor warrants that it is lawful owner and has full right to convey the property, and that the property is free from all claims, liabilities, or indebtedness, and that the Grantor and its successors will warrant and defend title to the Grantee against the lawful claims of all persons. Taxes for the tax year of _____ shall be prorated between the Grantor and Grantee as of the date of recording of this deed.

LF602 Warranty Deed Pg.1 (12-12)

The covenants of right to convey and against encumbrances are called present covenants because if they are breached, it is at the time the deed is delivered. The immediate grantee (original purchaser or recipient of the land) is the only person who may sue for a breach of a present covenant. The covenants of further assurance and quiet enjoyment is called future covenants because they may be breached at some time in the future. Future covenants are transferable and run with the land. A claim under a future covenant may be asserted by any owner of the land against any person who has given a general warrant deed in the claim of title.

<i>Present Covenants</i>	<i>Future Covenants</i>
Can only be enforced by the immediate grantee of a deed	Can be enforced by any owner of the property against the grantor of the deed
<ul style="list-style-type: none">• Covenant of Seisin• Covenant of Right to Convey• Covenants against Encumbrances	<ul style="list-style-type: none">• Covenant of Further Assurance• Covenant of Quiet Enjoyment• Covenant of Warranty

LIMITED WARRANTY DEED

A limited warranty deed (known in some other states as a special warranty deed) is one which limits the scope of the warranty by certain provisions in the deed. Theoretically, a limited warranty deed could contain any language limiting the promises of warranty offered by the grantor. Such a deed is usually identified by the language "by, though, or under the grantor, but not otherwise." A special warranty deed is often used when a fiduciary such as an executor or trustee conveys the property of their principal, because the fiduciary usually has no authority to warrant against acts of their predecessors in title.

The form in common use in Georgia has a limited warranty similar to the following:

<p><i>And the said Grantor will warrant and forever defend the right and title to the above described property against the claims of all persons owning, holding, or claiming by, through and under the said Grantor.</i></p>

This language has the effect of saying "I warrant the title against actions I may have taken, but I do not warrant the title against any claims which arose before my ownership." The limited warranty deed will only cover defects of title caused by the acts or omissions of the grantor. This language is a major limitation on the grantor's liability. A seller who wishes to assume as little liability as possible and often provides for a limited warranty deed as the deed of conveyance in the sales contract. The buyer may cover the lowered liability of the seller by obtaining title insurance. Limited warranty deeds are frequently used in commercial transactions and occasionally in certain residential transactions.

Return to: _____

LIMITED WARRANTY DEED

STATE OF GEORGIA

COUNTY OF _____

THIS INDENTURE, Made the ____ day of _____, 20__ between _____ of the County of _____, and the State of _____, as party or parties of the first part, hereinafter called Grantor, and _____ of the County of _____, and the State of _____, as party or parties of the second part, hereinafter called Grantee.

WITNESSETH

Grantor, for and in consideration of _____ dollars (\$_____) received at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does hereby grant, bargain, sell and convey unto the Grantee the following described property:

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the Grantee, heirs and assigns, forever, in FEE SIMPLE.

AND THE SAID Grantor, heirs, executors and administrators, will warrant and forever defend the right and title to the above described property, unto the Grantee, heirs and assigns, against all claims of all persons owning, holding and claiming by through or under the Grantor.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

By: _____

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

(Notary Seal)

My commission expires: _____

QUIT CLAIM DEED

A quit claim deed conveys to the grantee whatever interest the grantor has in the property, without any warranties of title. A deed of conveyance which relinquishes, concedes, or gives up a title, interest, or claim made by the person in whom these exist or to whom they accrue, to the person against whom such title, interest, or claim might have been demanded or enforced. A quit-claim deed passes any title, interest or claim which the grantor might have in the premises, but it does not contain any warranty or covenants for title.

If the grantor has fee simple title, the grantee will receive fee simple title. If the grantor has nothing, the grantee will receive nothing. The quit claim deed has many uses in instances where the grantor does not wish to warrant the title. For example, grantors often use quit claim deeds when they are not certain of the quality of the title. This situation could occur in clearing up the estate of a deceased person or in settling a boundary dispute when the property line is not clear. In addition, lenders often use quit claim deeds to satisfy deeds to secure debt when the debt is paid, particularly if the original security deed is lost and thus cannot be cancelled and re-recorded. The quit claim deed is also used to transfer title following an involuntary sale of property (e.g., a foreclosure sale on a judgment or tax lien).

For example, say if the grantor of the quit claim deed were married to the owner of the property, signing, and recording a quit claim deed in favor of the spouse would transfer any interest the grantor may have had in the property to the spouse.

Prepared by:

State of Georgia

County of _____

Quit Claim Deed

This indenture is made this ___ day of _____, 20__.

by and between _____ (hereinafter "Grantor")

and _____ (hereinafter "Grantee")

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby remise, convey and quitclaim unto the said Grantee forever all the right, title, interest, claim and demand which the said Grantor has in and to the following described lot, piece or parcel of land, situate, lying and being in Cobb County, Georgia, to-wit: IN WITNESS WHEREOF, Grantor has hereunto set a hand and seal the day and year first written above. (Property Description below or attached)

Grantor

Print Name

Signed, sealed and delivered in our presence:

Witnesses:

Grantor

Print Name

Notary Public (SEAL)

BRIEF DESCRIPTIONS OF OTHER FREQUENTLY USED DEEDS.

Special purpose deeds are frequently used in connection with court proceedings and instances where the deed is from a person acting in some type of official capacity.

Most special purpose deeds offer little to no protection to the grantee and are essentially quitclaim deeds.

Types of special purpose deeds include but are not limited to:

- Administrator's Deed**
- Agreement Deed**
- Assent to Devise**
- Condemnation of Property Deed**
- Conservation Easement Deed**
- Contract for Deed**
- Deed in Lieu of Foreclosure**
- Deed of Assent**
- Deed of Correction**
- Deed of Trust (Mortgage)**
- Deed Under Power**
- Easement Deed**
- Executors Deed**
- Gift**
- Installment Deed**
- Right of First Refusal**
- Right of Way**
- Short Sale Deed**
- Tax Sale Deed**
- Timber Deed**
- Water Rights**

Page left blank intentionally

ADMINISTRATOR DEED

The administrator of an estate is a person appointed by the Probate Court to dispose of the property of a Georgia decedent who did not leave a valid will. If the will fails to nominate an executor (or if decedent died intestate), the probate court will appoint an administrator to administer the estate. Usually, the law imposes more formalities on an administrator than on an executor. The Administrator is tasked with the responsibility of disposing of the estate in a manner which they feel the decedent would have if they would have considered the matter. A valid will may relieve most of the legal formalities. The additional formalities required of an administrator may include getting court approval to sell the decedent's real property. In many states, an administrator cannot enter into a contract to sell estate property without a court order or without consent from all the heirs who would be entitled to inherit the property. The formalities may make the procedure of buying from an administrator exceptionally long and frustrating. An administrator's deed does not contain any promises of warranty.

ADMINISTRATOR'S DEED
Mail Tax Statement To: (Name & Address) _____ _____

Name of Grantor(s):

As Administrator of the Estate of _____, deceased, under and by authority of an Order of the Circuit Court of _____ County, Illinois, entered on the _____ day of _____, 20____, in a proceeding wherein said Administrator petitioned said court for leave to sell the real estate or interest therein which is hereinafter described, and wherein said Court approved said Administrator's Report of Sale to:

Grantee, whose address is _____ does for and in consideration of the sum of _____ Dollars, in hand paid, hereby grant and convey to said Grantee _____ heirs and assigns, forever the interest of said deceased in the following described Real Estate in the County of _____ and State of Illinois
 To-wit:

IN WITNESS WHEREOF, said Administrator of the Estate of said Deceased has hereto set _____ hand and seal, on this _____ day of _____, 20____.

Documentary Stamp Exempt under provisions of Paragraph _____, Section 31-45, Property Tax Code (35 ILCS 200/31-45) _____ Date Buyer, Seller, or Representative

STATE OF ILLINOIS)
 COUNTY OF MACON) ss

 Administrator (SEAL)

MARY A. EATON
 Recorder

(Seal)

The foregoing instrument was acknowledged before me this _____ day of _____ 20____ by _____

_____ for the purposes therein set forth.

 Notary Public

This instrument was prepared by _____ (Name) _____ (Address)

AGREEMENT DEED

An agreement deed is an agreement between owners to resolve a disputed boundary line.



DEED OF AGREEMENT

This Deed of Agreement is made aton the ----- day of -----, 20----- (-----
-----) of the Christian era;

BETWEEN

..... a company incorporated under the Companies Act, 1994,
having its business office at
represented by its Chairman / Managing Director / Director, Mr/Mr.
..... hereinafter called the **DEVELOPER/FIRST
PARTY** (which expression where the context so admits will include its successor in office,
administration, legal representatives and assigns) is the First Party of the **FIRST PART**.

AND

....., son/wife of, of present address at
..... Dhaka and permanent address at
..... Bangladesh, by profession
respectively, by religion Islam, by nationality Bangladeshi (by birth), hereinafter referred to as
the Purchaser/Purchasers (which expression, unless repugnant to the subject or context, shall
include their successors, executors, administrators, legal representatives and assigns) is/are the
Purchaser(s)/Second Party/Parties of the **SECOND PART**.

WHEREAS the First Party is engaged in Real-Estate and Construction business and has
proposed the Landowner(s) for construction of a...storied building on the schedule land of
him/her/them.

AND WHEREAS subsequently the Landowner(s), i.e. entered into an
Agreement with on for the construction of a
..... storied Apartment building Project, on the Schedule Land, consisting of
..... Apartments from to Floors and required Car-parking on the
Floor together with common facilities of gate way, electricity, water, sewerage, path way, lift
service, boundary wall, sanitation, roof-access, fire-protection, walk-up-stairs and security
services, for every Apartment owner of the Project as per Standard Specifications.

AND WHEREAS the Landowner executed a registered Irrevocable General Power of
Attorney in favour of the Developer bearing No. dated registered with the
Sub-Registrar Office, empowering Developer/First Party for the
construction of a ...storied building on the Schedule land including powers to sell or otherwise
dispose of the specified Apartments to different Purchasers and receiving all payments from
such Purchasers.

AND WHEREAS Developer undertook the construction of the said Apartment Building
Project including the Car-ports and common facilities as per Design Plan duly approved by the
Rajdhani Unnayan Katripakkha (RAJUK) / Chittagong Development Authority (CDA) /
Khulna Development Authority (KDA) / Rajshahi Development Authority (RDA), City
Corporation, Pourashava, Cantonment Board.

ASSENT TO DEVISE

Doc ID: 001943540002 Type: ESTD
Recorded: 10/26/2018 at 11:51:00 AM
Fee Amt: \$12.00 Page 1 of 2
Transfer Tax: \$0.00
Fannin Co. Clerk of Superior Court
DANA CHASTAIN Clerk of Courts
BK 1145 PG 291-292

RECORDING TIME, BOOK & PAGE

Deed Preparation Only

Assent of Executor to Devise

STATE OF GEORGIA,
COUNTY OF FANNIN

WHEREAS, BOBBY WAYNE MCCLURE, A/K/A BOBBIE WAYNE MCCLURE, a
resident of Fannin County, Georgia, departed this life on the 22nd day of October, 2014, leaving a
will which has been probated in solemn form in said County of the Court of Probate thereof; and

WHEREAS, under the terms of said will the following described property was devised to
MARIE MCCLURE, for and during her lifetime (Life Estate), and the remainder interest unto
RACHEL BOBBIE MCCLURE (Remainderman):

All that tract or parcel of land lying and being in the 8th District and 2nd Section of Fannin County,
Georgia, being part of Lot of Land No. 5, and being located within the limits of the City of
McCaysville, Georgia, and being more particularly described as follows:

BEGINNING at the Northwest corner of the property conveyed at the point where the property
conveyed and the property of Doc and Helen Wagner corners on Toccoa Street; thence East along
and with the Toccoa Street for a distance of 100 feet to an iron stake; thence due North to the L&N
Railroad; thence West along and with the L&N Railroad and parallel with the same to the point
where the property conveyed and the property of Doc and Helen Wagner corner on the said L&N
Railroad; thence South along and with the line of Doc and Helen Wagner to the point of Beginning.

This is the same property which was conveyed by J.N. Wilson, Florida Wilson, and Josie Wilson to
W.H. Chancey, Sr., on May 13, 1947, which said deed is recorded in Deed Book 20, Page 146 of the
Fannin County Records.

WHEREAS, the undersigned is duly qualified as the Executor of the estate of the said Bobby
Wayne McClure, a/k/a Bobbie Wayne McClure, and is now administering the estate under the terms
of said Will; and it has been determined that all debts and claims against the estate have been fully
paid.

Recording Information

Return To:
Clark & Clark
Attorneys at Law, P.C.
84 River Street
Ellijay, GA 30540


Doc ID: 001420240001 Type: ESTD
Recorded: 09/24/2012 at 02:00:00 PM
Fee Amt: \$50.00 Page 1 of 1
Transfer Tax: \$0.00
Fannin Co. Clerk of Superior Court
DANA CHASTAIN Clerk of Courts
BK 1023 PG 270

Assent of Executor to Devise

State of Georgia
County of Gilmer

Whereas, **Billy Pittman** died a resident of Fannin County, Georgia, on the 25th day of September, 2010, leaving a will which has been probated in solemn form in said County at the Regular Term of the Court of Probate thereof; and

Whereas, under the terms of said will the following described property was devised to **Terence D. Pittman**; to wit:

All that tract or parcel of land lying and being in Land Lots 51 and 52 of the 8th District, 2nd Section of Fannin County, Georgia and consisting of 67.52 acres, more or less, as shown on a plat of survey for Terence D. Pittman, prepared by Charles C. Franklin, Georgia Registered Land Surveyor No. 2143, dated August 11, 2012 and recorded in Plat Hanger E 319, pages 6-7 in the office of the Clerk of Superior Court of Fannin County, Georgia to which reference is hereby made for the purpose of incorporating the same as a part herein.

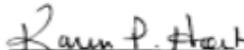
Together with a permanent and perpetual non-exclusive 40' right of way easement for ingress and egress off of Laurel Springs Road, as shown on the aforementioned plat.

Whereas, the undersigned duly qualified as Executor of the estate of the said **Billy Pittman** and is now administering the estate under the terms of said will; and it has been determined that all debts and claims against the estate have been fully paid.

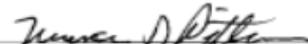
Now, Therefore, the undersigned, as Executor of the will of the said **Billy Pittman** hereby assents to the devise of said property under the terms of said will, so that full fee simple title thereto is vested in the said **Terence D. Pittman** as provided in said will.

Witness my hand and seal, this 21st day of August, 2012.

Signed, Sealed and Delivered in the presence of:



Unofficial Witness

 (Seal)
Terence D. Pittman
as Executor of the will of
Billy Pittman



Notary Public



This instrument prepared by
Clark & Clark
Attorneys at Law, P.C.
84 River Street

CONDEMNATION OF PROPERTY DEED

A condemnation of property is the instrument by which the property of a private owner is taken for public use, or more rarely, in satisfaction of a private claim, without the owner's consent but upon award and payment of compensation. While the act of condemnation is through court decree and action, the actual conveyance occurs when the deed issued by the court is properly recorded.

Approved. SCAO STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	DEPARTMENT OF NATURAL RESOURCES ORDER Condemnation and Confiscation	Original - Department of Natural Resources 1st copy - Court 2nd copy - Defendant CASE NO.
Court address _____	Court telephone no. _____	

In the matter of _____
 STATE OF MICHIGAN, COUNTY OF _____

1. A conservation officer of the State of Michigan filed a complaint with this court, and stated that the following described property was seized by the officer on _____ at _____ .
Date Time

Description of property

2. The court heard the matter, determined that notice was given according to law, and also determined that the described property was used possessed shipped in violation of the laws of this state.

3. **IT IS ORDERED** that the property described above be confiscated and forfeited to the State of Michigan, and that it be turned over to the director of the Department of Natural Resources, to be sold or otherwise disposed of, and that the proceeds from any sale be paid into the state treasury and credited to the Game and Fish Protection Fund.

Date _____
Judge _____
Bar no.

CONSERVATION EASEMENT DEED

A conservation easement is a voluntary legal agreement between a landowner and an easement holder which allows the landowner to impose permanent restrictions on the way the property is used. Conservation values are protected by extinguishing some property rights, such as mining and subdivision, while reinforcing rights such as passive recreation, agriculture, silviculture, and some limited construction.

THIS IS A NON-CONTRACTUAL
CONVEYANCE PURSUANT TO NEW
HAMPSHIRE RSA 78-B:2 AND IS
EXEMPT FROM THE NEW HAMPSHIRE
REAL ESTATE TRANSFER TAX.

CONSERVATION EASEMENT DEED

We, Richard W. Daniels and Julianne P. Daniels, husband and wife, of Route 113A (a.k.a. The Chase Road), Town of Sandwich, County of Carroll, State of New Hampshire, (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors, and assigns),

for consideration paid, with WARRANTY covenants, grant in perpetuity to

the Society for the Protection of New Hampshire Forests, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 54 Portsmouth Street, City of Concord, County of Merrimack, State of New Hampshire, 03301-5486, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon situated on Route 113A in the Town of Sandwich, County of Carroll, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purpose:

The preservation of open spaces, particularly the 148.76 acres of productive forest land of which the land area subject to the Easement granted hereby consists for the scenic enjoyment of the general public. This purpose is consistent with New Hampshire RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open spaces in the state by providing a healthful and attractive outdoor

CONSERVATION COVENANTS

Conservation covenants are similar to conservation easements, but distinct, mechanisms for conserving property. Covenants may be created through the Conservation Use Valuation Assessment (CUVA) programs operated by County Tax Assessors' offices. Covenants remain in place for 10 years and allow the landowner to claim a lower property tax burden during the covenant period in exchange for using the property for prescribed purposes.

PT283A Rev. 3/15

APPLICATION AND QUESTIONNAIRE FOR CURRENT USE ASSESSMENT OF BONA FIDE AGRICULTURAL PROPERTY

To the Board of Tax Assessors of _____: In accordance with the provisions of O.C.G.A. § 48-5-7.4, I submit this application and the completed questionnaire on the back of this application for consideration of current use assessment on the property described herein. Along with this application, I am submitting the fee of the Clerk of Superior Court for recording such application if approved.

Name of owner (individual(s), family owned farm entity, trust, estate, non-profit conservation organization or club) – The name of each individual and the percentage interest of each must be listed on the back of this application. For special rules concerning Family Farm Entities and the maximum amount of property that may be entered into a covenant, please consult the County Board of Tax Assessors

Owner's mailing address		City, State, Zip	Number of acres included in this application.	
Property location (Street, Route, Hwy, etc.)		City, State, Zip of Property:	Agricultural Land: _____	Timber Land: _____
			Covenant Acres _____	Total Acres _____
District	Land Lot	Sublot & Block	Recorded Deed Book/Page	List types of storage and processing buildings:

AUTHORIZED SIGNATURE

I, the undersigned, do hereby solemnly swear, covenant and agree that all the information contained above, as well as the information provided on the questionnaire, is true and correct to the best of my knowledge and that the above described property qualifies under the ownership and land use provisions of O.C.G.A. § 48-5-7.4. I further swear that I am authorized to sign this application on behalf of the owner(s) making application and that I have shown the percentage interest for each of the individuals having an ownership right to this property on the back of this application form. I am also aware that certain penalty provisions are applicable if this covenant is breached.

Signature of Taxpayer or Taxpayer's Authorized Representative _____ Date Application Filed _____

Sworn to and subscribed before me this _____ day of _____

Signature of Taxpayer or Taxpayer's Authorized Representative _____ Notary Public _____
(Please have additional taxpayers sign on reverse side of application)

If denied, Georgia law O.C.G.A. § 48-5-7.4 provides that the applicant may appeal in the same manner as other property appeals are made pursuant to O.C.G.A. § 48-5-311.

FOR TAX ASSESSORS USE ONLY

MAP & PARCEL NUMBER	TAX DISTRICT	TAXPAYER ACCOUNT NUMBER	YEAR COVENANT: Begin: Jan 1, _____ Ends: Dec 31, _____
If transferred from Preferential Agricultural Assessment, provide date of transfer: _____	If applicable, covenant is a renewal for tax year: Begin: Jan 1, _____ Ends: Dec 31, _____		If applicable, covenant is a continuation for tax year: Begin: Jan 1, _____ Ends: Dec 31, _____
	Pursuant to O.C.G.A. § 48-5-7.4(d) a taxpayer may enter into a renewal contract in the 9th year of a covenant period so that the contract is continued without a lapse for an additional 10 years.		If continuing a covenant where part of the property has been transferred, list Original Covenant Map and Parcel Number: _____

Approved _____ Date: _____
Board of Tax Assessors _____ Date _____

Denied: _____ Date: _____ If denied, the County Board of Tax Assessors shall issue a notice to the taxpayer in the same manner as all other notices are issued pursuant to O.C.G.A. Section 48-5-306.

CONTRACT FOR DEED

A Contract for Deed is a conditional deed in which the deed is not delivered to the grantee until a specified amount of the purchase price has been paid. (Bond for Title, Sales Contract) Can qualify purchaser for Homestead. A.K.A. Land contracts. Executory contracts for the purchase of real property under the terms of which legal title to the property is retained by the seller until such time all the conditions stated in the contract have been fulfilled. These contracts are commonly used for the installment purchase of real property and are often referred to as a contract for deed. The actual deed is not recorded until the title passes to the buyer upon fulfillment of the contract.

CONTRACT FOR DEED

State of Texas
County of Bastrop

THIS AGREEMENT is made on _____, between, Woodrun Ltd., a limited partnership organized under the laws of the State of Texas, with offices at 7901 East Ben White Blvd, Austin, Travis County, Texas ("Seller"), and _____ of _____ County, Texas ("Purchaser").

Purchase and Sale

1. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following described real property ("the Property"), together with all improvements on the Property, situated in Bastrop County, Texas:

Lot ____, Wood Run Subdivision, a Subdivision located in Bastrop County, Texas of record in Vol. ____, Page _____ of the Plat Records of Bastrop County, Texas.

Purchase Price

2. Purchaser promises to pay to Seller or to Seller's order the purchase price of _____ for the Property, payable as follows:

\$ _____ on execution of this Agreement, receipt of which is acknowledged, and the balance in installments of \$ _____ or more per month payable to Seller at Woodrun Development Co. LTD, 7901 E. Ben White Blvd, Austin, TX 78741, or such other place or places as Seller may from time to time designate by notice in writing, on or before the first (1st) day of every month commencing _____ 20____ and continuing until the full amount of the purchase price together with interest from the date of this Agreement on the remaining unpaid principal balance of the purchase price at the rate of _____ (____) percent per annum has been paid, not exceeding _____ (____) years. Each installment, when received by Seller, shall be credited first to the payment of the interest on the then-remaining unpaid principal balance of the purchase price due to the date of receipt of the

DEED OF CORRECTION

A deed of correction is used whenever an error is made in any deed or in the recording thereof. Although every attempt should be made to avoid mistakes, mistakes do happen, and many times deeds must be corrected. The customary method of correcting an error in a deed is for the grantor to execute and deliver to the grantee a corrective deed. The person liable to injury by such error may petition the circuit court. The court will examine the petitioner's testimony and whenever it shows there was a mistake made in the drawing of the deed of conveyance, the court will order the recorder to record the conveyance according to the correction. A corrective deed is valid without any additional consideration. Acceptance by the grantee is admission of the error found in the original deed.

CORRECTIVE QUIT CLAIM DEED

THIS INDENTURE, made this ___ day of September, 2010, between SCHOOL BOARD OF WAKULLA COUNTY, FLORIDA, a public body corporate under the laws of the State of Florida and legal successor in interest to the Board of Public Instruction of Wakulla County, Florida, whose mailing address is Post Office Box 100, Crawfordville, Florida 32326, Grantor, and WAKULLA COUNTY, FLORIDA, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1263, Crawfordville, Florida 32326, Grantee;

(Wherever the context hereof so requires or admits, the terms "Grantors" and "Grantee") shall include singular and plural, and use of any gender shall be applicable to all genders, and this instrument shall be binding upon all parties hereto and their legal representatives, successors, and assigns.)

WITNESSETH, that the Grantor, for and in consideration of the sum of One Dollar (\$1.00), in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the Grantee all the right, title, interest, claim and demand which the said Grantor has in and to the following described parcel of land, situate, lying and being in the County of Wakulla, State of Florida, to wit:

Commencing at ford of Mile Branch, running along the public road South 100 yards, thence west 50 yards, thence North 100 yards to said Mile Branch, thence East to place of beginning; containing one acre more or less; Said lands being in the Southwest quarter of Section 29, Township 3, South Range 4 West.

This Quit Claim Deed corrects the intent of that certain Indenture as recorded in Page 192 of Deed Record No. 32 of the Public Records of Wakulla County, Florida dated March 6, 1947 from the Board of Public Instruction of Wakulla County to Smith Creek Community, a non-existent entity. The Grantor is the successor in interest to the original Grantor. This instrument is intended to satisfy the intent of the original deed to convey the aforementioned parcel for use by the public.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the said Grantee.

DEED IN LIEU OF FORECLOSURE

A deed in lieu of foreclosure is a deed arrangement instrument in which a mortgagor (i.e., the defaulting borrower) conveys all interest in a real property to the mortgagee (i.e., the lender) to satisfy a loan which is in default and avoid foreclosure proceedings.

DEED IN LIEU OF FORECLOSURE

This Deed in Lieu of Foreclosure (the "Agreement") is made and effective [DATE].

BETWEEN: [YOUR COMPANY NAME] (the "Grantor"), a corporation organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

AND: [GRANTEE NAME] (the "Grantee"), an individual with his main address located at OR a corporation organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

RECITALS

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee the following described real property in the State of [STATE/PROVINCE].

[DESCRIPTION OF PROPERTY]

This deed is an absolute conveyance, the Grantor having sold the above-described real property to the Grantee for a fair and adequate consideration, such consideration being full satisfaction of all obligations secured by the deed of trust heretofore executed by Grantor. Grantor declares that this conveyance is freely and fairly made and that there are no agreements, oral or written, other than this deed between Grantor and Grantee with respect to the above-described real property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

GRANTOR

GRANTEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

EASEMENT DEED

An easement deed provides for the right of the owner of one parcel of land to use the land of another for a special purpose.

*This Deed is Exempt from Taxation under Virginia
Code §§58.1-811(A)(3) and 58.1-811(C)(4)
[no retention of dwelling unit rights]*

PIN _____

DEED OF EASEMENT

THIS DEED OF EASEMENT made this _____ day of _____, 2007, by and between _____ and _____, husband and wife, Grantors (hereinafter "Grantor"); and the **COUNTY OF FAUQUIER**, a political subdivision of the Commonwealth of Virginia (hereinafter the "County" and sometimes "Grantee"), whose address is 10 Hotel Street, Warrenton, Virginia 20186.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of the property located in Fauquier County, Virginia, consisting of _____ acres more accurately described in "**Exhibit A**" attached hereto and hereinafter referred to as the "Property"; and

WHEREAS, under the County's Purchase of Development Rights ("PDR") Program, the County is authorized to acquire conservation easements over qualifying properties in order to accomplish the purposes of the PDR Program and the Open-Space Land Act (Virginia Code §10.1-1700 *et seq.*); and

WHEREAS, the purpose of the Fauquier County Purchase of Development Rights Program is to protect the critical mass of farmland which is necessary for the continued vitality of production agriculture by acquiring conservation easements for the purpose of conserving lands for farming and to provide open space that ameliorates the impact of development in the County as stated in the February 19, 2002 Resolution of the Board of Supervisors and the April 19, 2004 Ordinance amending Chapter 8 of the Code of Fauquier County; and

WHEREAS, the Grantor has voluntarily agreed to convey this easement and have the Property subject to the terms contained herein; and

Return to: County Attorney's Office

EXECUTOR'S DEED

An executor's deed is a deed from the executor of a deceased person's estate. An executor is the person appointed to settle the estate of a person who dies with a valid will. The executor is sworn in by the Probate Court of the County where the decedent died (if the decedent was a resident of Georgia). A Georgia executor typically has court authority to dispose of the decedent's property according to the will. An executor cannot act in violation of the will without a court order. An executor's deed does not contain any promises of warranty.

After Recording Return to:

)
)
)
)
)
)
)
)

-----Above This Line Reserved For Official Use Only-----

STATE OF GEORGIA
COUNTY OF _____

EXECUTOR'S DEED (Under Power)

THIS INDENTURE, made this the ____ day of _____, 20____
_____, between _____,
individually and as Executor of the last will and testament of _____, late
of the State of Georgia, and County of _____, deceased, of the First Part, (hereinafter
called "Grantor") and _____ of the State of Georgia, County of _____,
of the Second Part, (hereinafter called "Grantee"): the words "Grantor" and
"Grantee" to include their respective heirs, successors and assigns where the context requires or permits.

WITNESSETH: That the said Grantor (acting under and by virtue of the power and authority
contained in the said will, the same having been duly probated and recorded in the Superior Court of
_____ County, Georgia, Estate No. _____), for and in consideration of the sum
of **TEN AND 00/100'S (\$10.00) Dollars** and other valuable considerations in hand paid at and before
the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted,
bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said
Grantee,

[describe property or attach as exhibit]

DEED UNDER POWER

DEED UNDER POWER

THIS INDENTURE, made this 6th day of March, 2012, by JOHN E. FOSTER, acting through his duly appointed agent and attorney in fact, UNITED COMMUNITY BANK, as party of the first part, and UNITED COMMUNITY BANK with a mailing address of P. O. Box 398, Blairsville, GA 30514, as party of the second part:

WITNESSETH:

WHEREAS, on March 7, 2011, JOHN E. FOSTER executed and delivered to UNITED COMMUNITY BANK a certain Security Deed dated March 7, 2011, and recorded March 21, 2011, in Deed Book 961, Page 620, Fannin County, Georgia records, as last modified by Modification of Security Deed dated September 14, 2011, recorded in Deed Book 981, Page 330 Fannin County, Georgia records, conveying the after-described property, to secure the payment of a Promissory Note from JOHN E. FOSTER, dated September 14, 2011, in the original principal amount of One Hundred Forty One Thousand Six Hundred Seventy Seven and 30/100 (\$141,677.30)DOLLARS; and

WHEREAS, default in the payment of the monthly installments under said Promissory Note occurred, and whereas by reason of said default, UNITED COMMUNITY BANK elected, pursuant to the terms of said Security Deed and Promissory Note, and declared the entire principal and interest immediately due and payable; and

WHEREAS, the entire indebtedness still being in default, the said UNITED COMMUNITY BANK, in behalf of the said JOHN E. FOSTER, and according to the terms of said Security Deed, did advertise said property for sale once a week for four consecutive weeks in a newspaper in Fannin County, Georgia, wherein the Sheriff carries his advertisements, namely The News Observer; and

WHEREAS, the said UNITED COMMUNITY BANK, did expose said land for sale to the highest bidder for cash on the first Tuesday in March, 2012, within the legal hours of sale at the usual place for conducting Sheriff's sales in **Fannin** County before the Courthouse door at **Blue Ridge**, Georgia, in said county, and offered said property for sale at public outcry to the highest bidder for cash when and where UNITED COMMUNITY BANK bid One Hundred Forty Six Thousand Seven Hundred Thirty Five and 35/100 (\$146,735.35) DOLLARS; and

WHEREAS, the said land was knocked off to UNITED COMMUNITY BANK for the sum of One Hundred Forty Six Thousand Seven Hundred Thirty Five and 35/100 (\$146,735.35) Dollars.

TO HAVE AND TO HOLD the said premises and every part thereof unto UNITED COMMUNITY BANK, its successors and assigns, to its own proper use, benefit and behoof in FEE SIMPLE, in as full and ample a manner as the said JOHN E. FOSTER or his heirs, successors or assigns, did hold and enjoy the same.

Although the notice requirement of O.C.G.A. § 44-14-162.2 is not applicable because none of the property was to be used as a dwelling place by the debtor at the time the Deed to Secure Debt was entered into, a notice of the foreclosure sale was provided to Grantor in the form of a copy of the Notice of Sale submitted to the publisher.

IN WITNESS WHEREOF, UNITED COMMUNITY BANK, as Agent and Attorney in Fact for JOHN E. FOSTER, has set its hand and affixed its seal, the day and year first above written.

JOHN E. FOSTER acting through his duly appointed attorney-in-fact, UNITED COMMUNITY BANK

Signed, sealed and delivered
in the presence of:

Charlotte Childs
Unofficial witness

By: Terrie Sparks (SEAL)
Name: Terrie Sparks
Title: Vice President

Jonathan Love
Notary Public

By: Vicki Owenby (SEAL)
Name: Vicki Owenby
Title: Assistant Vice President

My Commission expires: April 1, 2013
[NOTARY PUBLIC SEAL]

[BANK SEAL]



GIFT

GIFT DEED

THIS DEED, made this 13th day of August, in the year 2021, by the grantor,
 Perry Neal Hester, a married man
 215 Woodland Brook Drive
 Canton, GA 30115

to the grantee,
 Amanda Lee Barnes, a married woman, as her sole and separate property.
 109 Tower Road
 Cumming, GA 30040

WITNESSETH, that for no consideration and as a gift only, the grantor does hereby grant, convey,
 and confirm unto the grantee the following real property located in the County of
 Fannin, State of Georgia, legally described as follows:
 See Exhibit A

And commonly known as: 15941 Morganton Hwy McCaysville, GA 30555
 Parcel ID: 0015 C 00301
 Source of title:
 Being the same plat found in Book 1264, page 727 - 729 in the records of the Fannin County
 Clerk of Superior Court, Georgia.

PT-61 (Rev. 2/18) To be filed in **FANNIN COUNTY** PT-61 055-2021-002679

SECTION A - SELLER'S INFORMATION (Do not use agent's information)				SECTION C - TAX COMPUTATION	
SELLER'S LAST NAME Burger	FIRST NAME Michael	MIDDLE	Exempt Code If no exempt code enter NONE	Deed of Gift	
MAILING ADDRESS (STREET & NUMBER) 737 Bullen Gap Road			1. Actual Value of consideration received by seller Complete Line 1A if actual value unknown	\$0.00	
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY Blue Ridge, GA 30513 USA		DATE OF SALE 8/9/2021	1A. Estimated fair market value of Real and Personal property	\$0.00	
SECTION B - BUYER'S INFORMATION (Do not use agent's information)			2. Fair market value of Personal Property only	\$0.00	
BUYER'S LAST NAME Burger	FIRST NAME Michael	MIDDLE	3. Amount of liens and encumbrances not removed by transfer	\$0.00	
MAILING ADDRESS (Must use buyer's address for tax billing & notice purposes) 737 Bullen Gap Road			4. Net Taxable Value (Line 1 or 1A less Lines 2 and 3)	\$0.00	
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY Blue Ridge, GA 30513 USA		Check Buyers Intended Use () Residential () Commercial () Agricultural () Industrial	5. TAX DUE at .10 per \$100 or fraction thereof (Minimum \$1.00)	\$0.00	
SECTION D - PROPERTY INFORMATION (Location of Property (Street, Route, Hwy, etc))					
HOUSE NUMBER & EXTENSION (ex 265A)	PRE-DIRECTION, STREET NAME AND TYPE, POST DIRECTION			SUITE NUMBER	
COUNTY FANNIN	CITY (IF APPLICABLE)		MAP & PARCEL NUMBER 0053 033	ACCOUNT NUMBER	
TAX DISTRICT	GMD	LAND DISTRICT	ACRES	LAND LOT	SUB LOT & BLOCK
SECTION E - RECORDING INFORMATION (Official Use Only)					
DATE	DEED BOOK 1447	DEED PAGE 252	PLAT BOOK	PLAT PAGE	

ADDITIONAL BUYERS
 Burger, Glenda

RIGHT OF WAY

**GEORGIA DEPARTMENT OF TRANSPORTATION
QUITCLAIM DEED**

STATE OF GEORGIA
COUNTY OF FULTON

PROJECT: APD-056-2(7)
FANNIN COUNTY
PARCEL 298
PM # 1533

THIS INDENTURE, made this 7th day of November, 2014, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of Georgia (herein called "Grantor") and BRANCH BANKING AND TRUST COMPANY, successor by merger to The Home Bank (herein called "Grantee").

WITNESSETH: that the Grantor for and in consideration of the sum of ONE DOLLAR (\$1.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, cash in hand paid, the receipt of which is hereby acknowledged, has bargained, sold, and does by these presents bargain, sell, remise, release, and forever QuitClaim to Grantee all the right, title, interest, claim or demand which Grantor has or may have had in and to the access rights that may have been acquired or may be construed to have been acquired on the above referenced project and parcel as described further in Exhibit "A" attached hereto and shown colored red on Exhibits "B-1" and "B-2" attached hereto. This deed is not intended to and does not transfer any rights other than the access rights in the property acquired in said Right of Way deed.

TO HAVE AND TO HOLD the said described premises, together with all and singular the rights, privileges and appurtenances thereto, or in anywise appertaining, to the only proper use, benefit and behoof of the Grantee, his heirs and assigns, forever.

IN WITNESS WHEREOF, the Grantor, acting by and through the Commissioner of the Department of Transportation, has hereunto caused the hand and seal of the Department of Transportation to be set to these presents the day and year first above written.

STATE OF GEORGIA
COUNTY OF FULTON

PROJECT: APD-056-2(7)
FANNIN COUNTY
PARCEL 298
PM # 1533

DEPARTMENT OF TRANSPORTATION
An agency of the State of Georgia

Signed, Sealed, and Delivered this the 7th day of November, 2014 in the Presence of

BY: [Signature] (Seal)
Keith Golden, P.E.
Commissioner

Chavis B. Madani
Witness

Sheila C. Smith
Notary Public

ATTEST:
Angela Whitworth (Seal)
Angela O. Whitworth
Treasurer



RIGHT OF FIRST REFUSAL

RIGHT OF FIRST REFUSAL TO PURCHASE AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, by and between _____ and wife, _____, Parties of the First Part, hereinafter referred to as "First Party"; and _____ and wife, _____, Parties of the Second Part, hereinafter referred to as "Second Party".

WITNESSETH

IN CONSIDERATION of the sum of _____ DOLLARS AND ____/____ CENTS, (\$ _____) paid by Second Party to First Party, receipt of which is hereby acknowledged, the First Party hereby gives and grants to the Second Party the irrevocable exclusive right to purchase all the First Party's right in and to the following described property:

SITUATED in District Number One (1) of _____ County, Tennessee, without the corporate limits of any municipality, and being known and designated as a _____ acre tract, by _____."Survey for _____ & _____", as the same appears of record in _____, Register's Office for _____ County, Tennessee, to which plat specific reference is hereby made for a more particular description thereof.

BEING part of the same property conveyed to _____ and wife, _____, by Quit Claim Deed dated _____, from _____, recorded in Book _____, page _____, Register's Office for _____ County, Tennessee.

WHEREAS, the First Party shall notify the Second Party, in writing, when the said Property is listed for sale, Such Notice shall be in writing, and receipt shall be acknowledged by the Second Party, in writing. The said Property shall be open for negotiation and for purchase by the Second Party for a period of _____ days from the date the Notice was received and acknowledged in writing by the Second Party. If the First Party, its heirs, successors, and/or assigns, does not list the said Property but receives a bona fide written offer ("Offer") from any other person, firm or corporation dealing at arm's length with the First Party to purchase the above-described Property or a portion thereof, the First Party shall, by notice ("Notice") in writing, offer (the "Second Offer") to sell the said Property or a portion thereof to the Second Party at the same price and upon the same terms and conditions as contained in the Offer. Such Notice shall be in writing, and receipt shall be acknowledged by the Second Party. The Second Offer shall not be revocable except with the consent of the Second Party and shall be open for acceptance by the Second Party for a period of _____ days from the date the Notice was received and acknowledged in writing by the Second Party.

WHEREAS if the Second Offer is accepted by the Second Party, then the First Party shall sell and the Second Party shall purchase the said Property or a portion thereof upon the terms

and conditions contained in the Second Offer. The closing of the transaction to purchase shall take place within _____ days after the date on which the Second Offer is accepted by the First Party.

WHEREAS if the Second Party does not accept the Second Offer or an agreement is not reached to purchase the said Property, within the time limits specified herein, then the First Party shall be entitled to sell the Property or a portion thereof in accordance with the terms of the original Offer or in any other manner.

In case of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable court costs and attorneys fees.

This Agreement is binding on all heirs, successors and assigns of the First Party and the Second Party.

No prior agreements or representations or modifications or changes in this Agreement shall be valid or binding upon the parties hereto unless in writing, executed by both parties.

This Agreement shall be deemed a contract made under the laws of the State of Tennessee, and shall be construed in accordance with the laws of said state.

The headings herein are for convenience only and shall not affect the construction hereof.

The invalidity of any part of this Agreement shall not impair or effect in any manner the validity, enforceability or effect of the balance of this Agreement.

IN WITNESS WHEREOF, the parties have properly executed this Agreement the date and year as written above.

First Party

First Party

Second Party

INSTALLMENT DEED

An installment deed is an instrument for the purchase of real estate which provides for payment of the purchase price to be made in installments, and for the conveyance of title to be made upon completion of the payments.

INSTALLMENT CONTRACT FOR DEED

THIS CONTRACT, made and entered into this day of , 2002, by and between

Seller Name(s), a single or married person, (hereinafter called "SELLER") and Buyer Name(s), husband & wife if applicable, as joint tenants with the right of survivorship, and not as tenants in common, (hereinafter called "PURCHASERS").

WITNESSETH:

1. SELLER hereby agrees to sell and convey to PURCHASERS, and PURCHASERS hereby agree to buy and to pay for on the terms and conditions hereinafter set forth, the following described real estate located in Name of County, State, to-wit:

Type the full legal description here

Subject to easements, restrictions, and reservations of record together with the appurtenances thereto belonging, for the total sum of Type Out Dollar Amount (\$00000.00), to be paid by PURCHASERS AS FOLLOWS:

- a. The sum of \$earnest money, upon the execution of this Contract, which sum shall be paid and delivered to Name of Escrow Agent, the receipt of which is hereby acknowledged, as part of the consideration of the sale.
- b. The Sum of \$down payment at the time of closing as a part of the consideration of the sale;
- c. The remaining sum of \$carryback, with interest at the rate of ##% per annum, to be paid in number of payments (###) equally amortized monthly installments of \$###.## each, with the first said installment being due and payable Month day, 2002, and a similar payment due on the ##th day of each month thereafter, until interest and principal are paid in full. All payments shall be applied first to interest and the balance to principal. Interest shall commence to accrue as of the date of closing and transfer of possession of the subject real estate which shall be on or before Month #3, YEAR. On Balloon Date (or pay out date), all remaining principal and accrued interest shall be due and payable in full.

SHORT SALE DEED

A short sale deed is recorded when a sale of real estate in which the proceeds from selling the property will fall short of the balance of debts secured by liens against the property and the property owner cannot afford to repay the liens' full amounts, whereby the lien holders agree to release their lien on the real estate and accept less than the amount owed on the debt. Any unpaid balance owed to the creditors is known as a deficiency. Short sale agreements do not necessarily release borrowers from their obligations to repay any deficiencies of the loans, unless specifically agreed to between the parties.

GEORGIA SHORT SALE ADDENDUM

I. The Parties. This Short Sale Addendum ("Addendum") is to be made part of the Purchase Agreement dated _____, 20____ ("Agreement") made between _____ ("Seller") and _____ ("Buyer") for the property located at _____, City of _____, State of Georgia ("Property"). In addition to the terms and conditions of the Agreement, Buyer and Seller shall be subject to the following:

II. Short Sale Consent. Seller represents to the Buyer that the Purchase Price as stated in the Agreement is less than the total amount owed by the Seller to their creditor(s). Therefore, this Agreement shall be subject to the creditor(s) written consent. Seller shall have ____ days from the Effective Date of the Agreement to obtain such written consent from the creditor(s). If the creditor(s) provides written consent approving the Agreement, Buyer shall be notified within twenty-four (24) hours.

III. Termination of Agreement. Buyer shall have the right to terminate this Agreement under any of the following:

- a.) Seller is not able to obtain written consent from the creditor(s) within the specified time-frame; or
- b.) At any time prior to the Seller providing written consent from the creditor(s) approving the Agreement.

During such termination, the Buyer shall be entitled to their Earnest Money to be returned in-full by the Seller, Seller's Agent or any other third (3rd) party holding the escrowed funds.

IV. Terms of Agreement. Notwithstanding anything to the contrary in the Agreement, except for those set forth in this Addendum, all time periods and deadlines for performance set forth in the Agreement, including the obligation to deliver the earnest money, shall run from the date Buyer receives a copy of the creditor(s) written consent.

V. Marketing the Property. Unless otherwise stated in the Agreement, Seller shall have the right to continue marketing the Property for sale as well as negotiate and accept other offers and submit those acceptable by the Seller to creditor(s). Buyer shall be notified of the existence of such other offers, however, details of such offers shall remain confidential.

VI. Closing Date. The Closing Date shall be the date as mentioned in the Agreement or ____ days from the Seller notifying the Buyer of the creditor(s) written consent to approving the Agreement, whichever is later.

Buyer's Signature _____ Date _____
Print Name _____

Buyer's Signature _____ Date _____
Print Name _____

Seller's Signature _____ Date _____
Print Name _____

Seller's Signature _____ Date _____
Print Name _____

TAX SALE DEED

A tax deed sale or sheriff's deed sale is the forced sale, conducted by a governmental agency, for nonpayment of taxes. Deed which gives ownership rights in the property bought at a sheriff's sale. A sheriff's sale is a sale conducted by a sheriff or other authorized officer of the court, acting under an order of the court, after the legal owner of such property fails to pay a judgment.

Ex: Mortgage foreclosure action or mechanics lien when there has been a failure to pay for the labor and materials which improve the property.

STATE OF GEORGIA,
FANNIN COUNTY

TAX SALE DEED

THIS INDENTURE, Made this *6th day of August, 2019* between

Shirley Sosebee, Ex-Officio Sheriff of Fannin County

Party or parties of the first part, hereinafter referred to as "Grantor", and

**Maryellen R Van Tassell & Lewis G Van Tassell
2620 Damascus Road, Blue Ridge, Georgia 30513-3131**

Party or parties of the second part hereinafter referred to as "Grantee". The words "Grantor and Grantee", to include the masculine and feminine gender, the singular and the plural, and the respective heirs, legal representatives, successors and assigns of the parties were where the content requires or permits;

WHEREAS, Shirley Sosebee, Ex-Officio Sheriff of Fannin County, Georgia, did levy a writ of fieri facias issued by Shirley Sosebee, Tax Commissioner of Fannin County, Georgia against ***Baker Helen M*** and Map & Parcel ***0058A050A1***,

WHEREAS said levy was made for the purpose of collecting delinquent state and county ad valorem property taxes for the year *2018, 2017, 2016, 2015*; and,

WHEREAS said levy was made on *June 20, 2019* on the following described tract of land, to wit:

All that tract or parcel of land lying and being in Land Lot 148 of the 8th District and 2nd Section of Fannin County, Georgia and being more particularly described as that tract containing 0.13 acres, more or less, of land as shown on a plat of survey dated September 11, 2001 and revised September 20, 2004, prepared by Shelly J. Bishop, GRLS No. 2536, and being recorded in Plat Hanger D-150, Page 1, Fannin County, Georgia Records. Reference is hereby made to said recorded plat of survey for the purpose of incorporating the same herein and for a more complete metes and bounds description of the property herein conveyed.

SUBJECT TO all existing easements, restrictions, reservations and rights of way of record.

As described in Deed Book 820, Page 368. Further described as Map & Parcel 0058A050A1.

WHEREAS said property was levied upon, followed by advertisement by due and legal publication as required by law being made in *The News Observer*, a newspaper published in Fannin County, Georgia in which Sheriff's sales are published; and,

WHEREAS said Ex-Officio Sheriff did proceed to expose for sale the above described tract during the legal hours of sale in accordance with law, before the courthouse doors of Fannin County Courthouse the same being the 6th day of August, 2019, the same being the date advertised for sale; and,

WITNESSETH:

For and in consideration of the above payment, in hand paid, the receipt which of is hereby acknowledged, the undersigned Ex-Officio Sheriff does hereby bargain, grant and convey, and sell unto grantees herein, in accordance with his or her lawful authority granted by the laws of the State of Georgia to conduct sheriff's sales, the above described tract or parcel of land together with improvements thereon. To have and to hold the above granted premises unto the grantees herein in as full and ample a manner as the same was held by *Heirs Known & Unknown of Baker Helen M Deceased* when the said property was levied on and sold.

This conveyance is made without warranty of title and is further made subject to the rights of redemption in accordance with O.C.G.A. sec. 48-4-40 et. Seq.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, Sealed and Delivered in the presence of

Bebbie Cornelius
Unofficial Witness
Kelly M. Hughes
Notary Public, State of Georgia
KELLY M. HUGHES
NOTARY PUBLIC
STATE OF GEORGIA
UNION COUNTY
MY COMMISSION EXPIRES JUNE 3, 2022

Shirley Sosebee seal
Shirley Sosebee, Ex-Officio Sheriff
Fannin County, Georgia

TAX REDEMPTION DEED

Type: QCD
 Kind: QUIT CLAIM DEED
 Recorded: 11/27/2018 12:02:00 PM
 Fee Amt: \$14.00 Page 1 of 2
 Transfer Tax: \$0.00
 Fannin Co. Clerk of Superior Court
 DANA CHASTAIN Clerk of Courts

Participant ID: 7178086017
BK 1276 PG 429 - 430

Address: After recording, please return to:
 DOSS & ASSOCIATES
 ATTORNEYS AT LAW
 P.O. BOX 1277
 BLUE RIDGE, GA 30513

Document Service

RE: Deed Book 1259, Pages 670-671

QUIT-CLAIM DEED
(TAX REDEMPTION)

STATE OF GEORGIA,
 COUNTY OF GILMER

THIS INDENTURE, made this the 15th day of November, 2018 between Fendley Investments, LLC of Gilmer County, of the State of Georgia, of the first part, and Doralese Tipton of the State of Georgia, of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten and No/100 DOLLARS, in hand paid, the receipt whereof is acknowledged, has bargained, sold, and by these presents does remise, convey and forever QUIT-CLAIM to the said party of the second part, their heirs and assigns any and all interest:

All that tract or parcel of land lying and being in the 8th District and 2nd Section of Fannin County Georgia and being a part of Land Lot Number 298 and being in the City of Blue Ridge, city lot No. 5 and part of city lot No. 4 of Block No. 25 of the Green Addition of the City as shown by plat recorded in the Clerk's Office Fannin County Superior Court in Plat Book "K" at page 298; being the same property deeded to L.B. Nunnally, Sr. from Dr. L. C. K, Jr. on September 25, 1954, by deed recorded in Deed Book 23, page 473, said records, said property being more specifically described as follows: Beginning at a point on the east side of West Second Street, said point of beginning being the Northwest corner of this property and is South 65° 50' West a distance of 1,333.8 feet from the Northeast corner of Land Lot No. 98; thence with the East side of West Second Street South 36° 51' West a distance up 80.0 feet; thence South 53° 41' East a distance of 126.0 feet; thence North 36° 51' East a distance of 80 feet; thence North 53° 41' West, a distance of 175.0 feet to the point of beginning; bounded on the West by West Second Street; on the South by property now or formally owned by James Anderson; on the east by property now or formally owned by Larmer and on the north by property now or formally owned by James B. Span; containing a 0.23 acre more or less, as surveyed by J. Lamar Sisson civil engineer on January 30, 1961 and is shown and describe a plat of the property recorded in office [of the Clerk] Plat book 2, page 224.

Pursuant to O.C.G.A. § 48-4-40, Doralese Tipton [or the Estate of said individual] the previous owner of said parcel has the absolute legal right to reacquire the property within a year of the tax sale. The within redemption has occurred within the statutory time period.

Pursuant to O.C.G.A. § 48-4-42, Doralese Tipton [the Estate of] the previous owner of said parcel has tendered to the Grantor the sum paid by the Grantor to the Office of the Tax Commissioner of Fannin County on June 5, 2018, together with the sum paid by the Grantor for the 2017 ad valorem taxes that were due on said parcel of land for the tax year 2017, plus the 20% profit on the Grantor's investment guaranteed.

Pursuant to O.C.G.A. § 48-4-44, the Grantor is obligated to re-convy the property to Doralese Tipton [The Estate of said individual] the previous owner of said parcel.

This quitclaim deed is made for the purpose of re-conveying and quitclaiming the interest of the Grantor in the above described property, the statutory requirements for redemption having been met.

TO HAVE AND TO HOLD the said described premises to the said party of the second part, so that neither the said party of the first part nor its administrators or assigns, nor any other person or persons claiming under him or her shall at any time, by any means or ways, have, claim or demand any right or title to the aforesaid described premises or appurtenances, or any rights thereof.

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and seal, the day and year first above written.

Fendley Investments, LLC of Gilmer County

John Williams (SEAL)
 By: John Williams
 (Printed name)
 Its Managing Member

Signed, sealed and delivered
 in the presence of:

Anna M. Wheeler
 Witness

M. H. Hester
 Notary Public
 My commission expires:

MURRAY B. HESTER
 NOTARY PUBLIC
 Gilmer County
 State of Georgia
 My Comm. Expires November 28, 2021

TIMBER DEED

A timber deed is a conveyance of forest land or the trees growing thereon. Where the timber deed conveys the land, it operates like a warranty deed and is recorded and indexed in the same manner and is subject to the state transfer tax. When the timber deed is restricted to the growing trees, authorizing the grantee to cut and remove them within a specified time, it conveys an interest in the land and therefore may be recorded.

TIMBER DEED

STATE OF ALABAMA*

COUNTY OF GREENE*

This contract made and entered into this the _____ day of _____, 20____, by and between _____ (hereinafter, called whether one or more the "Seller") and **TUSKALOOSA FORESTRY SERVICES, INC.** (hereinafter called the "Buyer").

WITNESSETH:

1. The Seller does hereby grant, bargain, sell and convey to the Buyer, and the Buyer does hereby purchase from the Seller, the following timber and/or trees described below:

ALL MERCHANTABLE TIMBER

2. The above described timber and/or trees conveyed is located on the following described real estate in Greene County, Alabama, to-wit:

The West Half of the Southwest Quarter (W ½ SW ¼) of Section 18, Township 20 North, Range 1 East;

The Northeast Quarter (NE ¼), 10 acres off the South end of the Southwest Quarter of the Northwest Quarter (SW ¼ NW ¼), the Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼), the South Half of the Southwest Quarter (S ½ SW ¼), the Southeast Quarter (SE ¼), Section 13, Township 20 North, Range 1 West;

All of the West Half lying North of Tombigbee River, Section 24, Township 20 North, Range 1 West;

All situated in Greene County, Alabama, containing 687 acres more or less.

3. The Buyer agrees to pay to the Seller for the timber and/or trees hereby conveyed as follows:

\$1,000,000.00 lump sum.

“SAMPLE” TIMBER SALE CONTRACT

THE PARTIES OF THIS CONTRACT ARE _____ AND

(Name and address of Purchaser) HEREINAFTER CALLED **PURCHASER**.

GENERAL TERMS

1. For, and in consideration of, the promises and agreements hereinafter contained, _____ agrees to sell, and **Purchaser** agrees to purchase, harvest, and remove the timber included in this contract subject to the provisions hereof.
2. It is hereby understood and agreed that, except as otherwise provided herein:
 - a. All right, title, and interest in or to any timber included in this contract shall remain with _____ until paid for in full. Any timber remaining in the sale area, whether cut or uncut, beyond the contract period shall be considered abandoned by the **Purchaser**, and all right, title, and interest thereto shall vest to _____ or his heirs.
 - b. In the event any timber included in this contract is destroyed or damaged by fire, wind, flood, insects, diseases, or similar cause, to the extent it is unmerchantable, the party holding title to the destroyed or damaged timber shall bear the loss in stumpage and required deposits resulting from such destruction or damage. There shall be no obligation on the part of _____ to supply, or on the **Purchaser** to accept and pay for, other timber in lieu of that destroyed or damaged: Provided, that damage to or loss of timber removed from the sale area shall be borne by the **Purchaser**, and: Provided further, that this paragraph shall not be construed to relieve either party of liability for negligence.
 - c. Except as otherwise specifically provided, it is the intent of this contract that the **Purchaser** and _____ shall mutually agree upon the interpretation and performance of this contract; provided that within the limitations of law, upon failure to reach an agreement, the decision of _____ as the agency charged with the administration and protection of this property shall prevail.
 - d. Modifications of the terms of this contract, re-determination of rates provided for herein, and termination shall be in writing, and may be made on behalf of _____ only by the appointed _____ representative.
 - e. The appointed _____ representative will make for, and accept on behalf of, the _____ all notices, requests or other action where formal written notice is required herein, or is appropriate.
 - f. The appointed _____ representative, will exercise the rights and duties of the _____ to enforce the provisions of this contract.
 - g. This contract is not transferable in whole or in part. Subcontracting all or parts of the operation is permissible. The _____ will not consider a transfer of the contract.

WATER RIGHTS DEED

WATER RIGHTS QUITCLAIM DEED

TO ALL CONCERNED, and more specifically to the County of _____

FOR THE CONSIDERATION OF TEN DOLLARS (\$10.00) and other good and valuable consideration, cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, _____, of _____ [insert address], (hereinafter referred to as the "Grantor") does hereby grant, convey and quit claim to _____, of _____ [insert address], (hereinafter referred to as the "Grantee"), all of the rights of the Grantor to divert the water appurtenant to land situate in the County of _____, State of Nevada, bearing _____ Irrigation District Serial Number _____, Assessor's Parcel Number _____, consisting of _____ acres of water rights on the following parcel:

[Give legal description of property]

Note: Description as it appears in Document No. _____, Official Records _____ County, State of Nevada

Said water and water rights being conveyed hereunder total an amount not to exceed _____ acre feet per irrigation season, based upon the decreased duty of 3.5/4.5 acre feet per acre pursuant to The United States of America v. Alpine Land & Reservoir Company, United States District Court for the State of Nevada.

SIGNATURE OF DEED

The sale and transfer of real property requires the use of a number of legal documents. The type of real property being transferred often dictates what documents are required. You may also be able to determine the type of deed based on its grantor signature. Below are some examples you may see.

If the grantor is an individual, the deed may be prepared for signature as follows:

_____(Seal)
Christina L. Owens

Deeds executed by partnerships are executed by all the partners.

C & C Services, a
Georgia General Partnership
By: _____(Seal)
Christina L. Owens
General Partner

By: _____(Seal)
Christina A. Kincaid
General Partner

A deed executed by a limited partnership is signed by all the general partners.

C & C Services LTD, a Georgia limited
Partnership by all the general partners
By: _____(Seal)
Christina L. Owens
General Partner

By: _____(Seal)
Christina A. Kincaid
General Partner

Corporate deeds are executed by duly authorized officers on behalf of the corporation.

C & C Services, a Georgia
Corporation

By: _____ (Seal)

Christina L. Owens
President

By: _____ (Seal)

Christina A. Kincaid
Secretary

[Corporate Seal]

It is a good idea with corporate deeds to identify the names and titles of the officers who are signing the deeds and to affix the corporate seal to the deed.

A deed executed by a limited liability company is signed by the authorized members of the limited liability company.

C & C Services, a
Georgia Limited Liability Company

By: _____ (Seal)

Christina L. Owens, authorized member

By: _____ (Seal)

Christina A. Kincaid, authorized member

A deed from a trust is executed by the trustee. The execution usually identifies the trustee and the trust instrument under which the trustee operations.

By: _____ (Seal)

Christina L. Owens, Trustee under agreement with
Christina A. Kincaid dated January 1, 2021, for the
Benefit of JJ Burk

Deeds executed by estates are done by the executor in the case of a testate estate and by the administrator in the case of an intestate estate. Again, the execution usually identifies the estate under which the deed is being signed.

(Testate Estate)

By: _____(Seal)
Christina L. Owens, Executor under the will of
Christina A. Kincaid, Deceased, duly probated and
Recorded

(Intestate Estate)

By: _____(Seal)
Christina L. Owens, Administrator of the estate of
Christina A. Kincaid, who died intestate under letters of
Administration issued January 1, 2021

AFFIDAVITS

SURVEYORS AFFIDAVIT

IN RE: PROPERTY OF R. KEITH BROOME

Note to Clerk: PLEASE CROSS-REFERENCE THIS AFFIDAVIT WITH THAT CERTAIN WARRANTY DEED RECORDED IN DEED BOOK 924, PAGE 810, FANNIN COUNTY, GEORGIA RECORDS.

**STATE OF GEORGIA
COUNTY OF FANNIN**

Personally appeared before the undersigned officer authorized by law to administer oaths in said State and County, comes the undersigned, who states on oath as follows:

1.

I, J. Byron Wyndham, Attorney, am an attorney licensed to practice law in the State of Georgia, State Bar number 779425, and was so on March 31, 2010.

2.

After careful review of the Warranty Deed for the property known as a 40.0 acre tract, more or less, at Plat Hanger E-71, page 2, Fannin County County, Georgia, observed that the name of the Grantee was incorrect.

3.

The correct name of the Grantee should be R. KEITH BROOME. All other references in the legal are correct. This Affidavit is executed to correct the name of the Grantee and is hereby substituted for and does hereby replace the name of the Grantee in Warranty Deed recorded at Deed Book 924, page 810, Fannin County records.

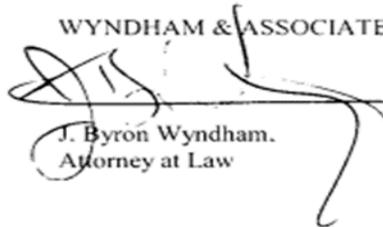
4.

The purpose of this affidavit is to correct the name of the Grantee, any other reference being in error and not in accordance of the chain of title. This affidavit may be relied upon by purchasers, sellers, lenders, attorneys and title insurance companies for the truth of the matter herein.

5.

This affidavit is given in accordance with the provisions of O.C. G. A. 44-2-10.

WYNDHAM & ASSOCIATES



J. Byron Wyndham,
Attorney at Law

Sworn to and subscribed before me,
this 18th day of July, 2012.



Notary Public



SURVEYOR'S AFFIDAVIT

Before me, the undersigned attesting authority duly authorized to administer oaths, came **JOEL JORDAN**, who being duly sworn deposes and says that this affidavit relates to the property designated in the caption hereof and does state under oath as follows:

1.

I am **JOEL JORDAN**, Georgia Registered Land Surveyor No. 2430, of Cherry Log Survey Co., P. O. Box 755, Ellijay, Georgia 30540.

2.

On December 22, 1999, I surveyed the above captioned property and prepared a plat of said survey for "Thomas L. McClure". Said plat is recorded as Exhibit "D" to the above referenced Quitclaim Deed recorded in Deed Book 1107, page 384, in the office of the Clerk of Superior Court of Fannin County, Georgia, and it indicates the total area as being 13.72 acres.

3.

Prior deeds in the chain of title to said property indicate the property is comprised of three tracts in Land Lot No. 240 of the 8th District and 2nd Section of Fannin County, Georgia, consisting of three and one-

half acres, more or less, one acre, more or less, and two and one-half acres, more or less, and described in Exhibits "A", "B", and "C" to the above referenced Quitclaim Deed, and it is my opinion that the property surveyed is the same as that shown in said Exhibits "A", "B", and "C" and consists of a total of 13.72 acres.

4.

This affidavit is made with the understanding that it will be relied upon by prospective purchasers, lenders and title insurance companies dealing with the owner of said property and his successors in title.

Sworn to and subscribed
before me this 1st day
of May, 2015.

Affiant:

Sherry H. Curtis
Witness

Joel Jordan (Seal)
G.R.L.S. No. 2430

Ginger L. Walker
Notary Public
My Commission Expires:



TITLE AFFIDAVIT

AFFIDAVIT AS TO MATTERS OF TITLE

STATE OF GEORGIA

In Re: Warranty Deeds as recorded in Deed Books 505, pages 440-441 and 438, pages 823-24, Fannin County, Georgia land records.

Now comes, the undersigned Deponent, Virginia F. Jestice, who after being duly sworn, deposes and says on oath that the following statements are true and correct to the best of her knowledge and belief:

1. That the Deponent is personally familiar with the facts and matters as set forth in this Affidavit as to Matters of Title.

VF 2. That James E. Jestice, Jr. was the husband of the Deponent and did depart from this life on 7.21.2009, a true and correct copy of the original Death Certificate is attached hereto as Exhibit "A" and made a part hereof by this reference hereto.

3. That the Warranty Deeds dated March 21st 2002 and May 14th 2003 as recorded in Deed Books 505, pages 440-441 and Deed Book 438, pages 823-24, as set out herein above transferred the title of the property described in Exhibit "B" to James E. Jestice, Jr. and Virginia F. Jestice, as joint tenants with the rights of survivorship. Upon the death of James E. Jestice, Jr., Virginia F. Jestice became the sole owner of the real property as described in hereinbelow:

See Exhibit "B" attached hereto and made a part hereof by this reference hereto.

This affidavit is given with the knowledge that it will be relied upon by prospective purchasers of the above referenced real property.

Sworn to and subscribed before me the undersigned Notary.



Virginia F. Jestice (i.s.)
Virginia F. Jestice, Deponent

SAME NAME AFFIDAVIT

14-525

Same Name Affidavit

Re- 136 Mount Pleasant Road Mineral Bluff, GA 30559

STATE OF GEORGIA
COUNTY OF FANNIN

Personally appeared before me, the undersigned Deponent who, being duly sworn, deposes and says on oath that:

1. This Affidavit relates to the following described property at 136 Mount Pleasant Road, Mineral Bluff, GA 30559 (the "Property"):

All that tract or parcel of land lying and being in the 8th District, 1st Section, Land Lot 4, Fannin County, Georgia, containing 1.00 acres, more or less, as shown on a plat of survey by Lane S. Bishop, GRLS No. 1575 & Shelly J. Bishop, GRLS No. 2536, dated March 22, 1995 and recorded in Plat Book 29, Page 173. Fannin County Records, to which reference is hereby made for a more complete and accurate legal description.

Map Parcel No. 0027 032 4A

2. Deponent's name is Sandra S. Scott;

3. And I do hereby swear that I, Sandra S. Scott am the same person as Sandra A. Scott, Grantee in the following deed:

A) Special Warranty Deed from Consumer Solutions REO, LLC to James D. Scott and Sandra A. Scott, dated September 20, 2012, filed October 5, 2012 and recorded in Deed Book 1025, Page 26-31, Fannin County, Georgia Records.


Sandra S. Scott, Deponent

Sworn to and subscribed before me
this 17 day of December, 2014.


Unofficial Witness Connie McChamma


Notary Public
My Commission Expires: 1-31-2017



MARTHA R. WADDAIL
Notary Public, State of Florida
My Comm. Expires Jan. 31, 2017
Commission No. EE 852335

SAME NAME AFFIDAVIT

STATE OF _____
COUNTY OF _____

Before me came in person William Clyde Smith who, being duly sworn, on oath says:
Deponent states that William Clyde Smith (s)he is one and the same person as W. C. Smith and is the same person as named in Warranty Deed dated November 14, 1998 and recorded at Deed Book 156, page 242, _____ County State of _____ .

William Clyde Smith

Sworn to and subscribed before me this
_____ day of _____, 20 ____ .

Notary Public

STATE OF _____
COUNTY OF _____

SIMILAR NAME AFFIDAVIT

Before me, the undersigned attesting officer, came in person _____, who, after having been first duly sworn, deposes and on oath says that deponent is not the _____ referred to in the following:

That there are no judgments or executions of any kind or nature outstanding against deponent;
and
That this affidavit is made for the purpose of inducing _____ to make a loan secured by a loan deed on or to purchase property known as:

Sworn to and subscribed before me this
_____ day of _____, 20 ____ .

Notary Public

OTHER RECORDINGS

CERTIFICATE OF CONVERSION

Control No. 11022776

STATE OF GEORGIA

Secretary of State
Corporations Division
315 West Tower
#2 Martin Luther King, Jr. Dr.
Atlanta, Georgia 30334-1530

CERTIFICATE
OF
CONVERSION

I, **Brian P. Kemp**, the Secretary of State and the Corporations Commissioner of the State of Georgia, do hereby certify under the seal of my office that a certificate of conversion has been filed on **03/16/2011** converting

HEROES MUSIC FESTIVAL INC
a **Domestic Profit Corporation**

to

HEROES MUSIC FESTIVAL, LLC
a **Domestic Limited Liability Company**

The required fees as provided by Title 14 of the Official Code of Georgia Annotated have been paid. Conversion of the above-named entity is effective upon issuance of this certificate.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on March 16, 2011



Brian P. Kemp
Secretary of State

Control No: 11022776
Date Filed: 03/16/2011 12:47 PM

WILLS

TESTATE SUCCESSION

A will is a written document by which the testator, or the maker of the will, provides for the disposition of both real and personal property. A will provides a clear evidentiary record of the testator's intent, thus avoiding potential fraud. A will takes legal effect only at the date of death. A will may only transfer property which is still owned by the decedent at the time of death.

When a property owners death occurs, their death will either be testate- died with a valid will in place, or intestate- died without a valid will. If they died testate, their property will ultimately be transferred according to the provisions of the will. The recipients will receive legal interests in the property or- if the will creates a testamentary trust- will receive equitable interests. If died intestate, his property either:

- (1) Will be distributed to family members designated by the state laws governing intestate succession or
- (2) Will escheat to the state if no such family members exist.

WHEN THERE'S A WILL

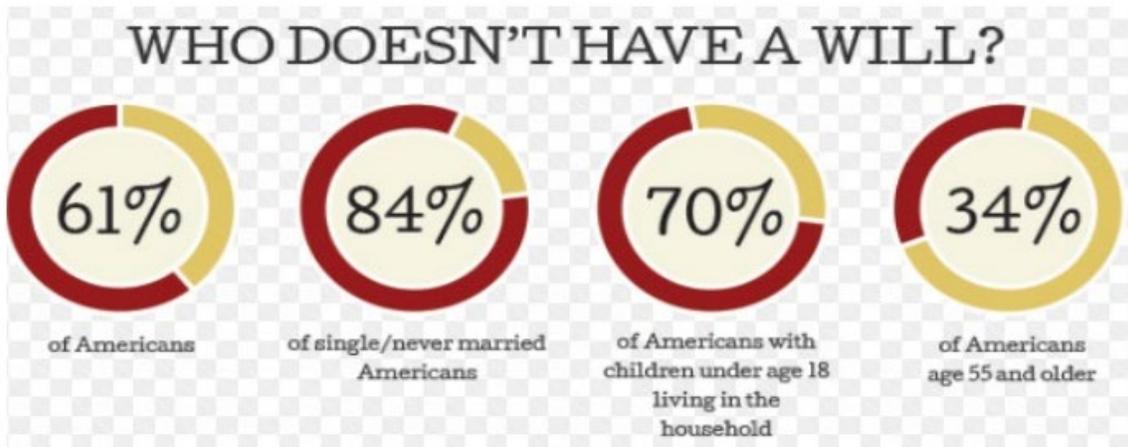
- ▶ Executors are required to administer the property as per the Will
- ▶ But legal heirs can challenge the Will if property is not self-acquired by the deceased and was inherited by her
- ▶ **Documents you need:** Property papers, Will, death certificate

WHEN THERE'S NO WILL

- ▶ In the absence of a Will, appropriate succession laws come into effect
- ▶ **Documents you need:** Property papers, succession and death certificates, affidavit, no-objection certificate from other legal heirs

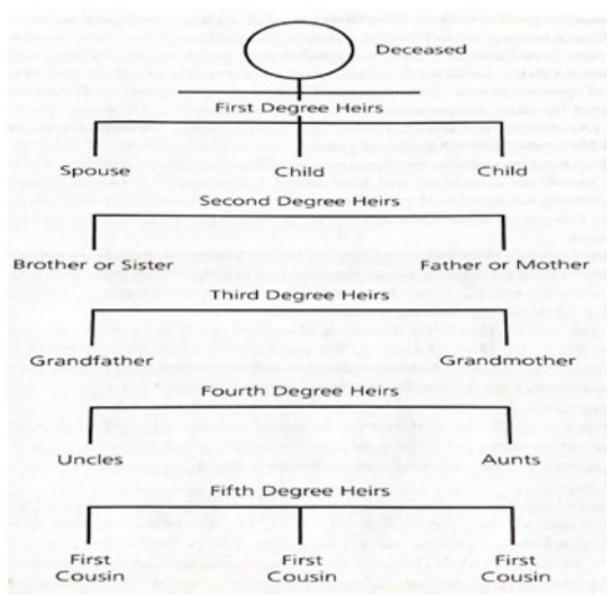
INTESTATE SUCCESSION

The problem with intestate succession is more than half of all Americans die intestate without a valid will to control the disposition of their property. Others die partially intestate, meaning the will does not cover all their property.



Modern Laws governing intestate succession transfer the decedents property to the closest living relatives or heirs. It seeks to do what the decedent would have done if they had considered the matter. Modern rules seek a more uniform system. Therefore, there is broad agreement the decedents property should be distributed among members of the family, with a universal preference for close relatives (surviving spouse and children) over more distant relatives (grandparents or cousins).

**Illegitimate children are now accorded the same treatment as legitimate children, and there is a clear trend toward equal treatment for adopted children as well.*



In most jurisdictions, the rights of the surviving spouse turn on whether the decedent left issue. Issue, in this context, means literal descendants of the decedent (children, grandchildren, great grandchildren, etc.). Most commonly if there is no issue, the surviving spouse will take the entire estate. If the decedent leaves both a spouse and issue, the spouse typically receives one half or one third of the estate, and the remaining share is divided among the issue.

Some states take a different approach. Studies demonstrate the average testator usually leaves all the property to the surviving spouse, even if there is living issue, probably because they believe the spouse will use these assets to support the issue. Where the decedent leaves issue, but no surviving spouse, the issue takes the entire estate. If the decedent leaves no surviving spouse or issue, the estate goes to the surviving parents. The decedents brothers and sisters receive no share of the estate at this time, presumably because they may inherit it upon the parent's death.

Where no spouse, issue, or parents survive, the decedents estate passes to collaterals. Collaterals are all blood relatives of the decedent other than issue and ancestors (brothers, sisters, cousins, nieces, nephews). The estate goes first to the decedents living siblings and the issue of deceased siblings. If there are no such living siblings, the estate will be divided among the issue of the decedents deceased siblings (nieces or nephews). Finally, if no such takers exist, the estate goes to more distant collaterals.

When someone dies intestate without any heirs, the property will escheat to the state in which it is situated. This process derives from the feudal incident of escheat, by which land reverted to the overlord if the tenant died without heirs. Modern law provides the estate of an intestate decedent who has no heirs' escheats to the state. The doctrine of escheat is purely utilitarian,

reflecting the laws historic concern for ensuring the productive use of land. Escheat effectively returns “unowned” property to economic use, thus benefiting society as a whole.

A transfer of real property by will is known as a devise; the same term is also used as the verb to describe the transfer. The recipient of a devise is a devisee.

A transfer of personal property by will is known as a legacy, and the recipient of the legacy, is termed a legatee. The verb used to describe the process is bequeath.

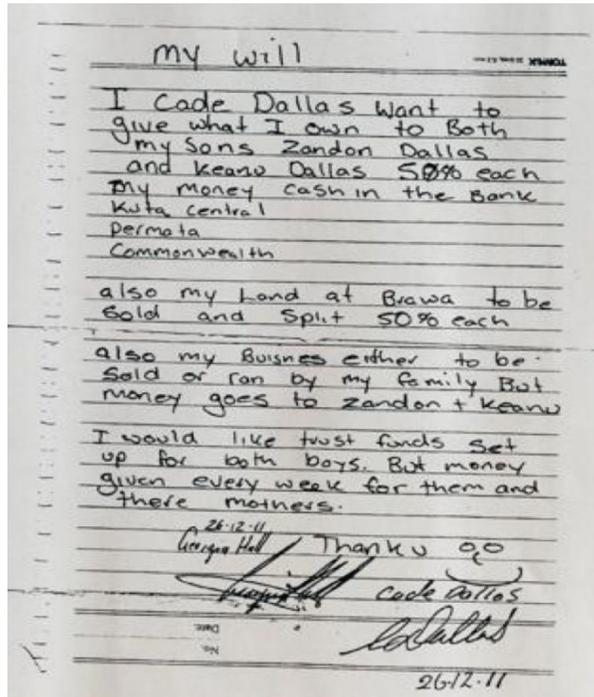
The following are types of wills:

1. **Holographic** -- a will which is written entirely in the handwriting of the Testator.
2. **Nuncupative** -- an oral will (Not Valid in Georgia)
3. **Mutual/reciprocal** -- a simple will in which two people have the exact same will leaving all their property and assets to the other person. These wills are typically used by spouses.
4. **Conditional** -- a written document which becomes a valid will in the event of a certain occurrence.
5. **Inheritance without a will** -- a person who dies without a valid will is said to have died intestate.

Requirements for a will:

- Must be 14 years of age
- Must have capacity – sound mind
- Understand the meaning of the document
- Must be in writing
- Must be signed
- Two witnesses must sign will
- Witnesses must not receive benefit from the will
- Must be consistent with state law

One exception to these requirements is the holographic will. A will which is entirely in the handwriting of the testator and signed by him is valid, even though it is not witnessed. Courts reason the holographic will serves evidentiary record due to the fact the will is written, and the act of physically writing out testamentary wishes adequately assures the testator appreciates the importance of his actions, thereby avoiding fraud.



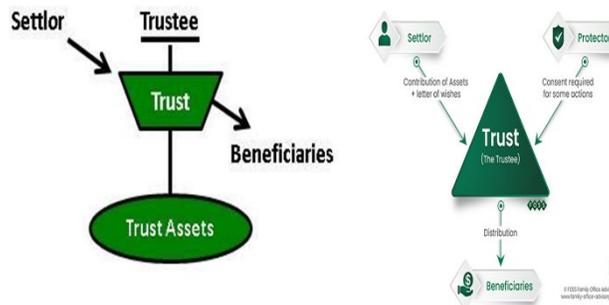
The judicial process for determining the validity of a will and administering the decedent's estate is known as probate. Typically, the decedent nominates an executor in the will, and the named executor files a petition to establish the will's validity. After appropriate notice to all potentially interested parties, the court conducts a brief hearing, receives evidence, and affirms the will. After affirmation, the executor is charged with collecting, managing, and distributing the decedent's assets.

TRUSTS

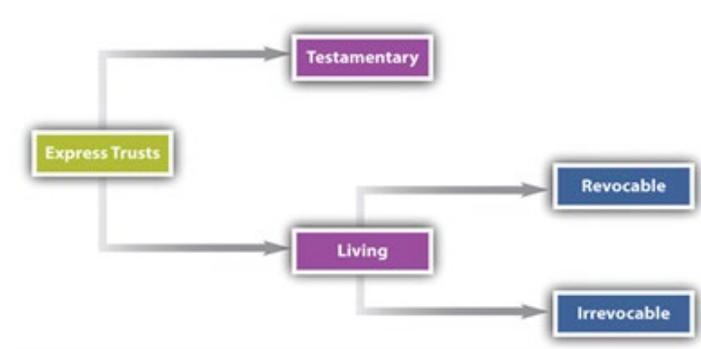
A trust permits title to real estate to be held by a trustee for the benefit of the beneficiary. The trust involves a special fiduciary relationship in which one or more persons (the trustees) manage property on behalf of others (the beneficiaries). The property owner is the trustor, who establishes the trust and conveys title to the trustee, whose powers are defined in the trust document. The hallmark of the trust is title to the trust property is divided, with the trustee and beneficiaries holding different interests. The trustee holds legal title to the trust property, while the beneficiaries hold beneficial or equitable title.

The trustee is obligated to manage the trust property in the best interests of the beneficiaries. The trustee has the power to sell, lease, mortgage, and otherwise administer the property in order to maximize income to the trust. At the same time, the trustee is under a duty to protect and preserve the trust property against loss or damage.

The beneficiaries are entirely passive. They have no right to manage or control the trust property, and merely receive income or principal payments from the trustee. A trust is often used as a way to convey title on behalf of minor children in the event of a parent's death.



The two most common types of trusts are the testamentary trust and the inter vivos (or living) trust.



TESTAMENTARY TRUST

The testamentary trust is created as part of a will and takes effect only at the death of the person creating the trust (Settlor or Trustor). In order to create this trust, the settlor must execute a writing which:

- (1) Expresses the intention to form a trust and identifies the trust property, beneficiaries, and purpose; and
- (2) Complies with all the formalities required for a valid will.

This trust is most commonly used as an estate-planning tool to provide support for the settlor's family.

INTER VIVOS TRUST

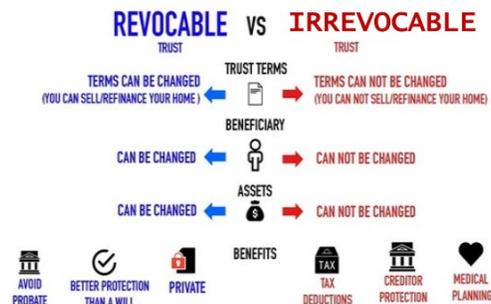
The living trust is gaining popularity as a way to hold title and avoid probate. The trustor places title to both real and personal property in the name of the trustee, but the trustor is also the beneficiary, who has the right to use the property. The inter vivos trust takes effect during the life of the settlor. In order to create an inter vivos trust, the settlor must either:

- (1) Declare himself to be the trustee of property for a particular beneficiary, or
- (2) Transfer property in trust to a third person as trustee for the beneficiary.

The inter vivos trust may be either revocable or irrevocable. The irrevocable inter vivos trust serves much the same function as the testamentary trust; it is a permanent disposition of the settlor's property. The revocable inter vivos trust, as the name suggests, may be revoked by the settlor at any time before death. The revocable inter vivos trust has been popularized over the will in recent decades due to the fact it allows the settlor to:

- (1) Exercise control over assets during their lifetime, and
- (2) Avoids the delay and cost of probate.

Another benefit of the inter vivos trust is privacy. Probate proceedings are open to the public, and the decedents will become a public record.



RELATED MATTERS

SIGNATURE OF HUSBAND OR WIFE

When the title to real property is vested exclusively in one spouse, the other spouse need not sign any deeds or conveyances. However, where one spouse acquired title from the other, closing attorneys may require both spouses to sign the deed, to clear up any problems of title being vested in one spouse and possession in the other. Of course, if both spouses hold title, whether as tenants in common or joint tenants, both must sign deeds and conveyances.

SIGNATURE ON BEHALF OF CORPORATION

A deed from a corporation must be signed in the name of the corporation by its duly authorized officers. The deed must also bear the seal of the corporation in some circumstances, depending on which officer(s) have executed the deed. The formalities of corporate authority are complex, and a careful closing attorney may require more than the minimum legal requirements.

POWER OF ATTORNEY

The law allows the execution of deeds and other contracts by power of attorney, by which a legally competent person delegates authority to another person to act on their behalf. The parties to a sale contract occasionally use this process for signing deeds and other closing documents. An owner who cannot attend a closing executes a power of attorney to another person to sign closing documents. For signing deeds, the power of attorney must be in writing and be executed with the same formality required for a deed, as is, under seal and signed before two witnesses, one unofficial and one official. The power of attorney must also contain a sufficient legal description of the land involved in the transaction. Despite the legality, some lenders will not accept deeds or loan documents signed at closing with a power of attorney but will insist upon these instruments being signed by the actual party or parties involved.

INSTRUMENTS RECORDED IN THE CLERK OF COURTS OFFICE

**Instruments Which Normally
Convey Ownership**

1. Deed of Assent
2. Warranty Deed
3. Quit-Claim (Individual)
4. Executor's Deed
5. Deed of Gift
6. Right-of-Way Deeds
7. Foreclosure Deed
8. Guardian Deed
9. Deed of Correction
10. Deed Under Power of Sale
11. Deed of Remainder Interest
12. Deed of Division
13. Trust Deed
14. Administrator's Deed
15. Judgement on Declaration
Taking
16. Commissioner's Deed
17. V. A. Form
18. Deed in Lieu of Foreclosure
19. Receiver's Deed

**Instruments Which Do Not
Convey Ownership**

1. Security Deed
2. Assignment
3. Satisfaction
4. Assignment of Mortgage
5. Sales Contract
6. Transfers
7. Lease Agreements
8. Protective Covenants
9. Affidavit Service
10. Deeds of Subdivision
Streets
11. Cancellation
12. Mortgage
13. Lien of Materialman
14. Deed of Secure Debt
15. Bond for Title
16. Agreement
17. Cemetery Lots
18. Subordination Agreement
19. Easements
20. Contract for Deed
21. Mineral Rights
22. Power of Attorney
23. Waiver of Borrowers

PROPERTY TRANSFER FORMS

To be filed in **LAURENS COUNTY** **PT-61 087-2015-002069**

SECTION A – SELLER'S INFORMATION (Do not use agent's information)				SECTION C – TAX COMPUTATION	
SELLER'S BUSINESS / ORGANIZATION / OTHER NAME JAMEHECH, INC.				Exempt Code If no exempt code enter NONE	NONE
MAILING ADDRESS (STREET & NUMBER) P. O. BOX 806				1. Actual Value of consideration received by seller Complete Line 1A if actual value unknown	\$239,900.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY DUBLIN, GA 31040 USA		DATE OF SALE 12/30/2015		1A. Estimated fair market value of Real and Personal property	\$0.00
SECTION B – BUYER'S INFORMATION (Do not use agent's information)				2. Fair market value of Personal Property only	\$0.00
BUYER'S LAST NAME STANLEY	FIRST NAME RICKY	MIDDLE B.	3. Amount of liens and encumbrances not removed by transfer		
MAILING ADDRESS (Must use buyer's address for tax billing & notice purposes) 212 WEXFORD COURT				4. Net Taxable Value (Line 1 or 1A less Lines 2 and 3)	\$239,900.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY DUBLIN, GA 31021 USA		Check Buyers Intended Use () Residential () Commercial () Agricultural () Industrial		5. TAX DUE at .10 per \$100 or fraction thereof (Minimum \$1.00)	\$239.90
SECTION D – PROPERTY INFORMATION (Location of Property (Street, Route, Hwy, etc))					
HOUSE NUMBER & EXTENSION (ex 265A)		PRE-DIRECTION, STREET NAME AND TYPE, POST DIRECTION			SUITE NUMBER
COUNTY LAURENS		CITY (IF APPLICABLE)		MAP & PARCEL NUMBER 071 099H	ACCOUNT NUMBER
TAX DISTRICT	GMD	LAND DISTRICT	ACRES	LAND LOT	SUB LOT & BLOCK
SECTION E – RECORDING INFORMATION (Official Use Only)					
DATE	DEED BOOK 2665	DEED PAGE 143	PLAT BOOK	PLAT PAGE	

ADDITIONAL BUYERS
STANLEY, BELINDA B.

To be filed in **LAURENS COUNTY** **PT-61 087-2015-000128**

SECTION A – SELLER'S INFORMATION (Do not use agent's information)				SECTION C – TAX COMPUTATION	
SELLER'S BUSINESS / ORGANIZATION / OTHER NAME Wells Fargo Bank, NA				Exempt Code If no exempt code enter NONE	Govt/NonProfit Public Corp
MAILING ADDRESS (STREET & NUMBER) 3476 Stateview Boulevard				1. Actual Value of consideration received by seller Complete Line 1A if actual value unknown	\$81,120.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY Fort Mill, SC 29715 USA		DATE OF SALE 8/6/2013		1A. Estimated fair market value of Real and Personal property	\$0.00
SECTION B – BUYER'S INFORMATION (Do not use agent's information)				2. Fair market value of Personal Property only	\$0.00
BUYER'S BUSINESS / ORGANIZATION / OTHER NAME Secretary of Housing and Urban Developments, his successo ...*				3. Amount of liens and encumbrances not removed by transfer	\$0.00
MAILING ADDRESS (Must use buyer's address for tax billing & notice purposes) 40 Marietta Plaza Five Points Plaza				4. Net Taxable Value (Line 1 or 1A less Lines 2 and 3)	\$0.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY Atlanta, GA 30303 USA		Check Buyers Intended Use (X) Residential () Commercial () Agricultural () Industrial		5. TAX DUE at .10 per \$100 or fraction thereof (Minimum \$1.00)	\$0.00
SECTION D – PROPERTY INFORMATION (Location of Property (Street, Route, Hwy, etc))					
HOUSE NUMBER & EXTENSION (ex 265A) 403		PRE-DIRECTION, STREET NAME AND TYPE, POST DIRECTION Oasis Drive			SUITE NUMBER
COUNTY LAURENS		CITY (IF APPLICABLE)		MAP & PARCEL NUMBER D03B-055	ACCOUNT NUMBER
TAX DISTRICT	GMD	LAND DISTRICT	ACRES	LAND LOT	SUB LOT & BLOCK
SECTION E – RECORDING INFORMATION (Official Use Only)					
DATE	DEED BOOK 2589	DEED PAGE 99	PLAT BOOK	PLAT PAGE	

ADDITIONAL BUYERS
None

To be filed in **PICKENS COUNTY** PT-61 112-2009-001470

SECTION A – SELLER'S INFORMATION (Do not use agent's information)				SECTION C – TAX COMPUTATION	
SELLER'S BUSINESS / ORGANIZATION / OTHER NAME <u>Big Canoe Company, LLC</u>				Exempt Code If no exempt code enter NONE	Deed of Gift
MAILING ADDRESS (STREET & NUMBER) 10591 Big Canoe				1. Actual Value of consideration received by seller Complete Line 1A if actual value unknown	\$0.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY Jasper, GA 30143 USA			DATE OF SALE 9/15/2009	1A. Estimated fair market value of Real and Personal property	\$0.00
SECTION B – BUYER'S INFORMATION (Do not use agent's information)				2. Fair market value of Personal Property only	\$0.00
BUYER'S BUSINESS / ORGANIZATION / OTHER NAME <u>Big Canoe Property Owners Association, Inc.</u>				3. Amount of liens and encumbrances not removed by transfer	\$0.00
MAILING ADDRESS (Must use buyer's address for tax billing & notice purposes) 10586 Big Canoe				4. Net Taxable Value (Line 1 or 1A less Lines 2 and 3)	\$0.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY Jasper, GA 30143 USA			Check Buyers Intended Use <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Agricultural <input type="checkbox"/> Industrial	5. TAX DUE at .10 per \$100 or fraction thereof (Minimum \$1.00)	\$0.00
SECTION D – PROPERTY INFORMATION (Location of Property (Street, Route, Hwy, etc))					
HOUSE NUMBER & EXTENSION (ex 265A)		PRE-DIRECTION, STREET NAME AND TYPE, POST DIRECTION			SUITE NUMBER
COUNTY PICKENS		CITY (IF APPLICABLE)		MAP & PARCEL NUMBER 045/103	ACCOUNT NUMBER
TAX DISTRICT	GMD	LAND DISTRICT 4	ACRES	LAND LOT 27	SUB LOT & BLOCK The Bluffs at ...*
SECTION E – RECORDING INFORMATION (Official Use Only)					
DATE	DEED BOOK 874	DEED PAGE 36	PLAT BOOK	PLAT PAGE	

ADDITIONAL BUYERS
None

...* This symbols signifies that the data was to big for the field. The original values are shown below.
SUB LOT & BLOCK: The Bluffs at Ridgeview Neighborhood Roads

RULE 560-11-2-.16 REAL ESTATE TRANSFER TAX FILING DECLARATION FORMS

(1) Except as provided for in paragraph (2) of this rule, any deed, instrument, or other writing which conveys any lands, tenements, or other realty must be accompanied by Form PT-61 (1 original and 3 copies). Said form shall be properly completed and signed by the seller or his authorized agent and by the buyer or his authorized agent, prior to such instrument being presented to the Clerk of Superior Court for recording. As used herein, "properly completed" shall be deemed to include the following TYPED or LEGIBLY PRINTED information:

(a) **Seller's Information** - The form shall contain the complete name, street mailing address, city, state and zip code of the seller and the month, day, and year the sale occurred.

(b) **Buyer's Information** - The form shall contain complete name, street mailing address, city, state zip code of the buyer for the purpose of receiving tax notices and billings. The intended use of the property by the buyer at the time of the transfer shall be listed and designated as being residential (R), agricultural (A), commercial (C), or industrial (I).

(c) **Value and Tax Information** - The actual value of the consideration received by the seller for the real and personal property conveyed to the buyer shall be shown separately on the form (PT61) prescribed in subsection (c) of **code section 48-6-4**. This consideration total should reflect all cash, other property or goods, and the assumption of mortgages or other obligations. If the actual value of the consideration is not known, the estimated fair market value of real and personal property conveyed should be shown, separately, along with an estimate of the value of the personal property conveyed. The amount of any lien or encumbrance prior to the transfer and not removed thereby shall be shown.

1. The actual consideration or the fair market value, if the actual consideration is not readily determinable, of the real property conveyed less any liens or encumbrances existing prior to the sale and not removed by the sale shall be the basis upon which the tax is computed. The phrase "ten dollars and other valuable consideration" or other similar phrases are not proper disclosures of consideration. This basis shall be shown along with the tax due.

2. The actual consideration of personal property conveyed shall be shown separately on the form and may be deducted from the basis upon which the tax is computed if the estimate of personal property is accompanied by appropriate evidence of its accuracy.

(d) **Property Information** - The complete description of the property being conveyed, the County name where the property is located shall be listed and the city name (if the property lies within the limits of a city). The number of acres of property, map and parcel number, district, land lot and subplot and block shall be shown.

(e) **Recording Information** - Any other information requested on the most current version of form PT-61 shall be listed.

(f) **Certification** - The seller or seller's authorized agent shall certify all the items of information entered on the transfer form PT-61 are true and correct (to the best of his knowledge and belief and he is aware the making of any willful false statement of material facts will subject him to the provision of the penal law relative to the making and filing of false instruments.

1. The buyer or buyer's authorized agent shall acknowledge that, by law, he is required to file a timely property tax return on all improved and unimproved real property subject to tax on January 1. The buyer or buyer's authorized agent further acknowledges the property described on form PT-61 has not been subdivided or improved during the year of the transfer and if no tax return is filed,

he will be deemed to have returned it at the same valuation as was finally determined for the year in which the transfer took place.

2. By filing the form PT-61, the buyer is not relieved from the responsibility of filing a new timely return where the property transferred has been split from an existing property or where there have been substantial changes or new improvements to the property, nor would the filing of the form PT-61 relieve the buyer from filing an application for homestead or other exemptions to which he may be entitled.

(2) The properly completed form PT-61 shall accompany all deeds, instruments, or other writings when these writings are presented to the Clerk for recording with the exception of the following types of instruments:

(a) Security deed instruments;

(b) Instruments releasing an interest in real estate covered by an existing security deed; provided the body of the release instrument identifies the security deed and it specifically states the purpose of the instrument is to release the security interest represented by the identified security deed;

(c) Deeds of correction; provided the body of the corrective deed identifies the existing instrument it is correcting and specifically states the purpose of the corrections being made to the identified instrument.

560-11-10-.09 REAL PROPERTY APPRAISAL. (2)(b)

3. Real estate transfer declaration forms. The Department of Revenue has established Form PT-61 for owners to declare the real estate transfer tax due when property is transferred from one owner to another. The appraisal staff shall review all PT-61 forms filed with the clerk of superior court to discover new owners of property and to ascertain if their property has been returned for taxation. When a property owner acquires real property by transfer in the preceding tax year and does not file a return on such property for the current tax year, the appraisal staff shall follow the procedures of this subparagraph to determine if the newly acquired property has been properly returned for taxation.

(i) **When real estate transfer tax declaration form properly completed.** For the purposes of subparagraph (2)(b)(3) of this Rule, the PT-61 form shall be deemed properly completed when all applicable information required by the instructions on the form has been entered on the form, it has been signed by the new owner and filed in quadruplicate with the clerk of superior court. A PT-61 form shall not be deemed

properly completed when the appraisal staff determines any of the required information on the form is omitted, false, or misleading.

(ii) **When transferred property deemed returned.** When a property owner acquires by transfer real property which has not been subdivided from the preceding tax year, and such owner properly completes a real estate transfer tax PT-61 form and pays any real estate transfer tax which may be due as provided in Article 1 of Chapter 6 of Title 48 of the Code, the appraisal staff shall deem the owner as having returned the property acquired by transfer at the same value finally determined to be applicable to such property for the preceding year.

(iii) **When transferred property deemed unreturned.** The appraisal staff shall not deem as returned any property:

- (I) That is an improvement made since January 1 of the preceding tax year to property that has been transferred;
- (II) That has been transferred and for which the real estate transfer tax PT-61 form has not been properly completed;
- (III) That has been transferred and for which the real estate transfer tax PT-61 form has not been filed with the clerk of superior court on or before the deadline for returning property in the year following the year the property is transferred; and
- (IV) That has been transferred and for which the real estate transfer tax has not been paid.

TAX SALES

Sale of property executed by Tax Commissioner for delinquent taxes. Non-Arm's length transaction, since title does not transfer for 1 year as defined by **48-5-2 .1.**

§ 48-4-40. Persons entitled to redeem land sold under tax execution; payment; time

Whenever any real property is sold under or by virtue of an execution issued for the collection of state, County, municipal, or school taxes or for special assessments, the defendant in fi. fa. or any person having any right, title, or interest in or lien upon such property may redeem the property from the sale by the payment of the amount required for redemption, as fixed and provided in **Code Section 48-4-42:**

(1) At any time within 12 months from the date of the sale; and

(2) At any time after the sale until the right to redeem is foreclosed by the giving of the notice provided for in Code Section **48-4-45.**

§ 48-4-41. Redemption by creditor without lien

If the property is redeemed by a creditor of the defendant in fi. fa. who has no lien, the creditor shall have a claim against the property for the amount advanced by him in order to redeem the property if:

(1) There is any sale of the property after the redemption under a judgment in favor of the creditor; and

(2) The quitclaim deed is recorded as required by law.

§ 48-4-42. Amount payable for redemption; additional costs

(a) The amount required to be paid for redemption of property from any sale for taxes as provided in this chapter shall with respect to any sale made after July 1, 2002, be the amount paid for the property at the tax sale, as shown by the recitals in the tax deed, plus:

(1) Any taxes paid on the property by the purchaser after the sale for taxes;

(2) Any special assessments on the property; and

(3) A premium of 20 percent of the amount for the first year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter.

(b) If redemption is not made until more than 30 days after the notice provided for in **Code Section 48-4-45** has been given, there shall be added to the sums set forth in subsection (a) of this Code section the sheriff's cost in connection with serving the notice and the cost of publication of the

notice, if any.

(c) With respect to any sale made after July 1, 2016, there shall be added to the sums set forth in subsections (a) and (b) of this Code section any sums:

(1) Paid from the date of the tax sale to the date of redemption to a property owners' association, as defined in **Code Section 44-3-221**, in accordance with Code Section 44-3-232;

(2) Paid to a condominium association, that is an association, as defined in **Code Section 44-3-71**, in accordance with **Code Section 44-3-109**; or

(3) Paid to a homeowners' association established by covenants restricting land to certain uses related to planned residential subdivisions.

(d) All of the amounts required to be paid by this Code section shall be paid in lawful money of the United States to the purchaser at the tax sale or to the purchaser's successors.

§ 48-4-43. Effect of redemption

When property has been redeemed, the effect of the redemption shall be to put the title conveyed by the tax sale back into the defendant in fi. fa., subject to all liens existing at the time of the tax sale. If the redemption has been made by any creditor of the defendant or by any person having any interest in the property, the amount expended by the creditor or person interested shall constitute a first lien on the property and, if the quitclaim deed provided for in **Code Section 48-4-44** is recorded as required by law, shall be repaid prior to any other claims upon the property.

§ 48-4-44. Quitclaim deed by purchaser

(a) In all cases where property is redeemed, the purchaser at the tax sale shall make a quitclaim deed to the defendant in fi. fa., which deed shall recite:

(1) The name of the person who has paid the redemption money; and

(2) The capacity in which or the claim of right or interest pursuant to which the redemption money was paid.

(b) The recitals required by subsection (a) of this Code section shall be prima-facie evidence of the facts stated.

(c) If the quitclaim deed provided for in subsection (a) of this Code section is presented to the purchaser at the time such person accepts the amount payable for the redemption in the form of

cash or a certified check, the purchaser shall, at that time, sign the quitclaim deed if a notary public and an unofficial witness are present to witness such signature.

(d) If no quitclaim deed is presented at the time of the redemption or if sufficient witnesses are not present, it shall be the responsibility of the purchaser to prepare and properly execute such quitclaim deed as is required by law within seven days from the date of the redemption.

(e) It shall be the responsibility of the purchaser once the quitclaim deed is properly executed as required in subsection (d) of this Code section to present such deed for recordation to the clerk of the court within ten days of the redemption. The quitclaim deed shall be presented for recordation in the County where the tax sale originally occurred. The purchaser shall pay all recording costs and return the recorded quitclaim deed to the redeemer.

§ 48-4-45. Notice of foreclosure of right to redeem; time; persons entitled to notice

(a) After 12 months from the date of a tax sale, the purchaser at the sale or his heirs, successors, or assigns may terminate, foreclose, divest, and forever bar the right to redeem the property from the sale by causing a notice or notices of the foreclosure, as provided for in this article:

(1) To be served upon all of the following persons who reside in the County in which the property is located:

(A) The defendant in the execution under or by virtue of which the sale was held;

(B) The occupant, if any, of the property; and

(C) All persons having of record in the County in which the land is located any right, title, or interest in, or lien upon the property;

(2) To be sent by registered or certified mail or statutory overnight delivery to each of the persons specified in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection who resides outside the County in which the property is located, if the address of that person is reasonably ascertainable; and

(3) To be published, if that tax sale occurs on or after July 1, 1989, in the newspaper in which the sheriff's advertisements for the County are published in each County in which that property is located, which publication shall occur once a week for four consecutive weeks in the six-month period immediately prior to the week of the redemption deadline date specified in the notice.

(b) Nothing contained in this Code section shall be construed to require that any notice be sent to or served upon any person whose right, title, interest in, or lien upon the property does not

appear of record in the County in which the land is located.

(c) The heirs of any deceased owner of any land entitled to notice pursuant to this Code section shall be served by the sheriff or notified as provided in this article.

§ 48-4-46. Form of notice of foreclosure of right to redeem; service; time; return and record; waiver

(a) The notice provided for in Code Section 48-4-45 shall be written or printed, or written in part and printed in part, and shall be in substantially the following form:

Take notice that:

The right to redeem the following described property, to wit:

will expire and be forever foreclosed and barred on and after the
day of _____, _____.

The tax deed to which this notice relates is dated the _____ day of _____,
_____, and is recorded in the office of the Clerk of the Superior Court of
_____ County, Georgia, in Deed Book _____ at page _____.

The property may be redeemed at any time before the _____ day of _____,
_____, by payment of the redemption price as fixed and provided by law to
the undersigned at the following address: _____.

Please be governed accordingly.

(b) The purchaser at the tax sale or his heirs, successors, or assigns, as the case may be, shall make out an original notice in substantially the form prescribed in subsection (a) of this Code section and one copy of the notice for each person to be served with the notice. The purchaser shall deliver the notice and the copies together with a list of the persons to be served to the sheriff of the County in which the land is located not less than 45 days before the date set in each notice for the expiration of the right to redeem. Within 15 days after delivery to him, the sheriff shall serve a copy of the notice personally or by deputy upon each of the persons included on the list furnished him who reside in the County. The sheriff shall make an entry of the service on the original copy of the notice. Leaving a copy of the notice at the residence of any person required to be served with the notice shall be a sufficient service of the notice.

(c) If the sheriff personally or by deputy makes an entry that he is unable for any reason to effect service upon any person required to be served, the person who requested that the service be made shall forthwith cause a copy of the notice to be published once a week for two consecutive weeks in the newspaper in which the sheriff's advertisements for the County are published, unless that notice is being published as provided in paragraph (3) of subsection (a) of Code Section 48-4-45. Either publication shall operate as and for all purposes shall be treated as service upon all

persons as to whom the sheriff has made an entry that he has been unable to effect service.

(d) Each original notice together with the entry of the sheriff on the notice shall be returned to the person by whom the service was requested upon the payment of the sheriff's costs as provided by law. Any original notice together with the entries on the notice may be filed and recorded on the deed records in the office of the clerk of the superior court of the County in which the land is located.

(e) Service of notices as provided in this Code section may be waived in writing by any person required or entitled to be served with the notice.

§ 48-4-47. Tender of redemption price before action to cancel tax deed

(a) After notice to foreclose the right of redemption as provided for in this article has been given, no action shall be filed, allowed, sanctioned, or maintained for the purpose of setting aside, canceling, or in any way invalidating the tax deed referred to in the notice or the title conveyed by the tax deed unless and until the plaintiff in the action pays or legally tenders to the grantee in the deed or to his successors the full amount of the redemption price for the property, as provided for in this article.

(b) Subsection (a) of this Code section shall apply unless it clearly appears that:

(1) The tax or special assessment for the collection of which the execution under or by virtue of which the sale was held was not due at the time of the sale; or

(2) Service or notice was not given as required in this article.

§ 48-4-48. Ripening of tax deed title by prescription

(a) A title under a tax deed properly executed at a valid and legal sale prior to July 1, 1989, shall ripen by prescription after a period of seven years from the date of execution of that deed.

(b) A title under a tax deed executed on or after July 1, 1989, but before July 1, 1996, shall ripen by prescription after a period of four years from the execution of that deed. A title under a tax deed properly executed on or after July 1, 1996, at a valid and legal sale shall ripen by prescription after a period of four years from the recordation of that deed in the land records in the County in which said land is located.

(c) A tax deed which has ripened by prescription pursuant to any provision of this Code section shall convey, when the defendant in fi. fa. is not laboring under any legal disability, a fee simple title to the property described in that deed, and that title shall vest absolutely in the grantee in the

deed or in the grantee's heirs or assigns. In the event the defendant in fi. fa. is laboring under any legal disability, the prescriptive term specified in this Code section shall begin from the time the disabilities are removed or abated.

(d) Notice of foreclosure of the right to redeem property sold at a tax sale shall not be required to have been provided in order for the title to such property to have ripened under subsection (a) or (b) of this Code section.

§ 48-4-75. Legislative findings

The General Assembly finds that the nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of such taxes, that the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization, that significant tax delinquency creates barriers to marketability of the property, and that nonjudicial tax foreclosure procedures are inefficient, lengthy, and commonly result in title to real property which is neither marketable nor insurable. In addition, the General Assembly finds that tax delinquency in many instances results in properties which present health and safety hazards to the public. Consequently, the General Assembly further finds that the alternative to nonjudicial tax foreclosure procedures authorized by this article is an effective means of eliminating health and safety hazards by putting certain tax delinquent properties back on the tax rolls and into productive use.

§ 48-4-76. Judicial in rem tax foreclosures

(a) In addition to any other rights and remedies provided under state law for the enforcement of tax liens by the State of Georgia and its counties and municipalities, such governmental entities may proceed with judicial in rem tax foreclosures for delinquent taxes in accordance with the provisions of this article by enactment of an ordinance or resolution of the governing authority of the County in which the property is located which ordinance or resolution shall be sufficient authority for use of the provisions of this article by such County and all municipalities within such County as to their respective taxes. In the event that the governing authority of a County does not so act, a municipality located in such County may, by enactment of its own ordinance or resolution, authorize the use of judicial in rem tax foreclosures for delinquent municipal taxes in accordance with the provision of this article. Any such ordinance or resolution may set forth criteria for selection of properties to be subject to the provisions of this article.

(b) Proceedings in accordance with this article are designed solely to enforce the lien for ad valorem taxes against the property subject to such taxation and shall not constitute an action for personal liability for such taxes of the owner or owners of such property.

(c) The rights and remedies set forth in this article are available solely to the governmental entities authorized by law to collect ad valorem taxes and shall not extend to any transferee of tax executions or tax liens.

(d) The enforcement proceedings authorized by this article may be initiated by a County, by a municipality, by one acting on behalf of the other pursuant to contract, or by joint action in a single proceeding.

§ 48-4-77. Definitions

As used in this article, the term:

(1) "Interested party" means:

(A) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;

(B) Those parties having filed a notice in accordance with Code Section 48-3-9; and

(C) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the County courthouse or by the clerk of the court. "Interested party" shall not include the holder of the benefit or burden of any easement or right of way whose interest is properly recorded which interest shall remain unaffected.

(2) "Redemption amount" means the full amount of the delinquent ad valorem taxes, accrued interest at the rate specified in Code Section 48-2-40, penalties determined in accordance with Code Section 48-2-44, and costs incurred by the governmental entity in collecting such taxes including without limitation the cost of title examination and publication of notices.

§ 48-4-78. Identification of properties on which ad valorem taxes are delinquent; petition for tax foreclosure; contents of petition; notice

(a) After an ad valorem tax lien, based upon a Digest approved in accordance with the law, has become payable and is past due and thereby delinquent, a tax Commissioner or other tax collector, as appropriate, may identify those properties on which to commence a tax foreclosure in accordance with this article. The tax Commissioner or other tax collector, as appropriate, shall not commence tax foreclosure in accordance with this article for a period of 12 months following the date upon which the taxes initially became delinquent. Once enforcement proceedings have commenced in accordance with the provisions of this article, the enforcement proceedings may be amended to include any and all ad valorem taxes which become delinquent subsequent to the date of the initial ad valorem tax lien that was the original basis for the enforcement proceedings.

(b) The tax Commissioner or other tax collector, as appropriate, shall file a petition with the superior court of the County in which the property is located, which petition shall have form and content substantially identical to that form as provided in subsection (g) of this Code section. When the subject property is located in more than one taxing jurisdiction, the entity filing the petition shall identify in the petition only those portions of such property lying within the jurisdiction of the taxing authority of the petitioner.

(c) The petition shall be filed against the property for which taxes are delinquent and shall provide:

(1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;

(2) The property address;

(3) A description of the property;

(4) The tax identification number of the property;

(5) The calendar year or years for which the taxes are delinquent;

(6) The principal amount of the delinquent taxes together with interest and penalties;
and

(7) The names and addresses of parties to whom copies of the petition are to be sent in accordance with subsection (d) of this Code section.

(d) The petitioner shall mail copies of the petition by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identity and address are reasonably

ascertainable. Copies of the petition shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property.

(e) Simultaneous with the filing of the petition, the petitioner shall cause notice of the petition to be filed in the appropriate lis pendens docket in the County in which the property is located.

(f) Within 30 days of the filing of the petition, the petitioner shall cause a notice of the filing of the petition to be published on two separate dates in the official organ of the County in which the property is located. Such notice shall specify:

- (1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;
- (2) The property address;
- (3) A description of the property;
- (4) The tax identification number of the property;
- (5) The applicable period of tax delinquency;
- (6) The principal amount of the delinquent taxes together with interest and penalties; and
- (7) The date and place of the filing of the petition.

(g) The petition for ad valorem tax foreclosure shall be written or printed, or written in part and printed in part, and shall be in substantially the following form:

SUPERIOR COURT OF COUNTY
STATE OF GEORGIA

Petitioner:)

TAX COMMISSIONER/TAX COLLECTOR)
(Name, Address,)
Telephone Number))
v.)

Respondents:) Case No.:

ACRES OF LAND LYING)
AND BEING IN LAND LOT)
, DISTRICT ,)
COUNTY, GEORGIA;)
AND)

(Insert name and mailing address of
owner of property.)

PETITION FOR AD VALOREM TAX FORECLOSURE

COMES NOW (Petitioner) and petitions this Court for an in-rem tax
foreclosure by showing this Court as follows:

1.

is the owner of certain real property located at _____
(the "Property") having a tax identification number of _____. (A
legal description of the Property is attached hereto as Exhibit "A" and by this reference incorpora
ted herein).

2.

The ad valorem taxes assessed against the Property by City/County of
for the year(s) _____ in the amount of \$ _____ (amount includes principal
amount of taxes owed and any accrued interest and penalties as of this
date) have not been paid.

3.

Attached hereto as Exhibit "B" is a list of the names and addresses of Interested Parties also receiving a copy of this Petition by certified mail or statutory overnight delivery, return receipt requested.

4.

and _____ as occupants of the respondent Property shall be served by mailing the petition by first-class mail to the attention of the occupants at the above-listed Property address.

5.

The Petition has also been posted on the Property in accordance with Code Section 48-4-78 of the Official Code of Georgia Annotated.

6.

Simultaneously with the filing of this Petition, Petitioner has filed a lis pendens.

WHEREFORE, Petitioner demands (1) a hearing in the Superior Court of _____ County (the "Court") and (2) a judgment by the Court stating that (a) the taxes for the Property are delinquent and (b) that Notice has been given to all Interested Parties, and ordering that the Property may be sold at public outcry pursuant to Code Section of the Official Code of Georgia Annotated.

TAX COMMISSIONER/TAX COLLECTOR
City/County of _____

By:

Its:

NOTICE TO RESPONDENTS AND ALL INTERESTED PARTIES

This Petition serves as notice to the Respondents and all Interested Parties that (1) each party is presumed to own or have a legal interest in the Property, (2) that foreclosure proceedings have been commenced because of the failure to pay the real property taxes cited above, and (3) foreclosure will

result in the loss of ownership of the Property and all rights or interests of all Interested Parties.

To avoid loss of ownership or any interest in the Property, payment of the full amount of taxes, penalties, interest, and costs must be paid to the office located at _____ by _____ date. Respondents and all Interested Parties are also reminded that each of you may wish to contact an attorney to protect your rights.

A Hearing on the above matter shall take place in the Superior Court of _____ County no earlier than 30 days after the filing of this Petition. To determine the exact time and date of such hearing, please call Clerk of Superior Court of _____ County.

This _____ day of _____, _____.

Deputy Clerk
Superior Court of _____ County

EXHIBIT A
Description of the Property

Together with all rights, title, and interest running with the above-described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.

EXHIBIT B
Names and Addresses of Interested Parties

§ 48-4-79. Judicial hearing on petition; orders; priority of claims; death of interested party

(a) The petitioner shall request that a judicial hearing on the petition occur not earlier than 30 days following the filing of the petition. At such hearing, any interested party shall have the right to be heard and to contest the delinquency of the taxes or the adequacy of the proceedings. If the superior court determines that the information set forth in the petition is accurate, the court shall render its judgment and order that:

- (1) The taxes are delinquent;
- (2) Proper notice has been given to all interested parties;

(3) The property as described in the petition be sold in accordance with the provisions of this article; and

(4) The sale shall become final and binding 60 days after the date of the sale in accordance with Code Section 48-4-81.

(b) The order of the superior court shall provide that the property be sold free and clear of all liens, claims, and encumbrances other than:

(1) Rights of redemption provided under federal law;

(2) Tax liens held by Georgia governmental entities other than the petitioner which are superior to the taxes identified in the petition by virtue of the provisions of subsection (b) of Code Section 48-2-56;

(3) Easements and rights of way of holders who are not interested parties under subparagraph (C) of paragraph (1) of Code Section 48-4-77; and

(4) Benefits or burdens of any real covenants filed of record as of the date of filing of the petition.

(c) If, upon production of evidence to the court by any party, it is determined by the court that any interested party died within the six-month period of time immediately preceding the filing of the petition, the court may postpone the hearing, for a period of up to six months, to allow the administrator or executor of the estate adequate time to close the estate.

§ 48-4-80. Redemption by owner or other interested party

(a) At any point prior to the moment of the sale, any interested party may redeem the property from the sale by payment of the redemption amount. Payment shall be made to the petitioner. Following receipt of such payment, the petitioner shall file for dismissal of the proceedings.

(b) In the event of such payment by the owner of the subject property, the proceedings shall be dismissed and the rights and interests of all interested parties shall remain unaffected.

(c) In the event of such payment by any interested party other than the owner, the party accomplishing such payment shall possess a lien on the property for the full amount of such payment, which lien shall have the same priority as the lien for the delinquent taxes. Such lienholder shall have the right to enforce such lien as permitted to the holder of any lien under existing law. Such lienholder shall not otherwise succeed to the rights of the petitioner as described in this article.

§ 48-4-81. Sale procedures; time; minimum bid; finality; right of redemption by owner; execution of tax deed; report of sale

(a) Following the hearing and order of the superior court in accordance with Code Section 48-4-79, a sale of the property shall be advertised and conducted on the date, time, place, and manner which are required by law of sheriffs' sales. Such sale shall not occur earlier than 45 days following the date of issuance of such order of the superior court.

(b) Except as otherwise authorized by law, the minimum bid price for the sale of the property shall be the redemption amount. In the absence of any higher bid, the petitioner may, but shall not be obligated to, tender its own bid in an amount equal to the minimum bid price and thereby become the purchaser at the sale.

(c) From and after the moment of the sale, the sale shall be final and binding, subject only to the right of the owner of the property to redeem the property from the sale upon payment into the superior court of the full amount of the minimum bid price of the sale. Such right of redemption of the owner shall exist for a period of 60 days from and after the date of the sale and shall be in accordance with the following provisions:

(1) Redemption by an owner in accordance with this subsection shall result in a dismissal of the proceedings. Immediately following such redemption by an owner, if the property was sold to a third party at the sale, the petitioner shall refund to such purchaser the full amount paid by such purchaser at the sale;

(2) For purposes of redemption under this subsection, "owner" shall mean the owner of record of fee simple interest in the property as of the date of filing of the petition, together with such owner's successors-in-interest by death or operation of law. This right of redemption shall not otherwise be transferable; and

(3) This right of redemption shall automatically terminate and expire upon failure to redeem in accordance with the provisions of this subsection within the 60-day period following the date of the sale.

(d) If the property is not redeemed by the owner in accordance with subsection (c) of this Code section, then within 90 days following the date of the sale, the petitioner shall cause to be executed on behalf of the petitioner and delivered to the foreclosure sale purchaser a deed for the property in substantially the form set forth in subsection (g) of this Code section, together with such real estate transfer tax declaration forms as may be required by law.

(e) Within 90 days following the date of the sale, the petitioner shall file a report of the sale with the superior court, which report shall identify whether a sale took place, the foreclosure sale price, and the identity of the purchaser.

(f) In the event that the foreclosure sale price exceeds the minimum bid amount at the foreclosure sale, the petitioner shall deposit into the registry of the superior court the amount of such surplus. Such surplus shall be distributed by the superior court to the interested parties, including the owner, as their interests appear and in the order of priority in which their interests exist.

(g) The form of the deed provided for in subsection (d) of this Code section shall be substantially as follows:

When recorded, please CROSS-REFERENCE: _____
return to: Deed Book , page ,
County, Georgia Records

STATE OF GEORGIA
COUNTY OF

TAX DEED

This indenture (the "Deed") made this _____ day of _____,
, by and between _____, a _____ ("Grantor") and
, a _____ ("Grantee").

WITNESSETH

WHEREAS, on the _____ day of _____, _____, during the legal hours of sale, Grantor did expose for sale at public outcry to the highest bidder for cash before the courthouse door in _____ County, Georgia, the Property (as hereinafter defined) at which sale Grantee was the highest and best bidder for the sum of \$ _____ and the Property was then and there knocked off to Grantee for said sum. The sale was made by Grantor pursuant to and by virtue of the power and authority granted to it in that certain Order granted _____, _____, Case No. _____, Superior Court of _____ County, Georgia (the "Order"). Said sale was made after advertising the time, place, and terms thereof in the _____, _____, published in _____, Georgia, in the aforesaid County, and being the publication in which Sheriff's advertisements for said County are now published, once a week for four consecutive weeks prior to said sale on the _____, _____, _____, and _____ of _____, _____, and said advertisement in all respects complied with the requirements of Code Section of the Official Code of Georgia Annotated. Notice of the time, place, and terms of the sale of the Property was given pursuant to Code Section of the Official Code of Georgia Annotated. Said sale was made for the purpose of paying the ad valorem taxes owed to _____, the interest and penalties on said indebtedness, the expenses of the sale including attorneys' fees, all of which were mature and payable because of failure of the owner to pay the ad valorem taxes owed.

NOW, THEREFORE, Grantor, acting under and by virtue of the Order and pursuant to Code Section of the Official Code of Georgia Annotated, for and in consideration of the facts hereinbefore recited, has bargained, sold, and conveyed and does hereby bargain, sell, and convey unto Grantee, its successors and assigns, the following described property (herein referred to as the "Property"); to wit:

All that tract or parcel of land lying and being in Land Lot of the District, County, Georgia, and being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

This Deed is given subject to all restrictions and easements, if any, to which the Deed is junior and inferior in terms of priority, and any and all tax liens which pursuant to subsection (b) of Code Section 48-2-56 of the Official Code of Georgia Annotated are superior to the rights conveyed herein relating to the Property.

TO HAVE AND TO HOLD, the Property unto Grantee, its successors and assigns in fee simple.

IN WITNESS WHEREOF, Grantor, has caused its duly authorized officer to sign and seal this Deed as of the day and year first above written.

Signed, sealed, and delivered in th presence of:

Unofficial Witness

By: (SEAL)

Its:

Notary Public

Commission Data:

(NOTARIAL SEAL)

Take notice that:

The right to redeem the following described property, to wit:

will expire and be forever foreclosed and barred on and after the
day of _____,

The tax deed to which this notice relates is dated the _____ day of _____,
_____, and is recorded in the office of the Clerk of the Superior Court of
_____ County, Georgia, in Deed Book ____ at page _____.

The property may be redeemed at any time before the _____ day of _____,
_____, by payment of the redemption price as fixed and provided by law to
the undersigned at the following address: _____.

Please be governed accordingly.

(b) The purchaser at the tax sale or his heirs, successors, or assigns, as the case may be, shall make out an original notice in substantially the form prescribed in subsection (a) of this Code section and one copy of the notice for each person to be served with the notice. The purchaser shall deliver the notice and the copies together with a list of the persons to be served to the sheriff of the county in which the land is located not less than 45 days before the date set in each notice for the expiration of the right to redeem. Within 15 days after delivery to him, the sheriff shall serve a copy of the notice personally or by deputy upon each of the persons included on the list furnished him who reside in the county. The sheriff shall make an entry of the service on the original copy of the notice. Leaving a copy of the notice at the residence of any person required to be served with the notice shall be a sufficient service of the notice.

(c) If the sheriff personally or by deputy makes an entry that he is unable for any reason to effect service upon any person required to be served, the person who requested that the service be made shall forthwith cause a copy of the notice to be published once a week for two consecutive weeks in the newspaper in which the sheriff's advertisements for the county are published, unless that notice is being published as provided in paragraph (3) of subsection (a) of **Code Section 48-4-45**. Either publication shall operate as and for all purposes shall be treated as service upon all persons as to whom the sheriff has made an entry that he has been unable to effect service.

d) Each original notice together with the entry of the sheriff on the notice shall be returned to the person by whom the service was requested upon the payment of the sheriff's costs as provided by law. Any original notice together with the entries on the notice may be filed and recorded on the deed records in the office of the clerk of the superior court of the county in which the land is located.

(e) Service of notices as provided in this Code section may be waived in writing by any person required or entitled to be served with the notice.

§ 48-4-47. Tender of redemption price before action to cancel tax deed.

(a) After notice to foreclose the right of redemption as provided for in this article has been given,

no action shall be filed, allowed, sanctioned, or maintained for the purpose of setting aside, canceling, or in any way invalidating the tax deed referred to in the notice or the title conveyed by the tax deed unless and until the plaintiff in the action pays or legally tenders to the grantee in the deed or to his successors the full amount of the redemption price for the property, as provided for in this article.

(b) Subsection (a) of this Code section shall apply unless it clearly appears that:

(1) The tax or special assessment for the collection of which the execution under or by virtue of which the sale was held was not due at the time of the sale; or

(2) Service or notice was not given as required in this article.

§ 48-4-48. Ripening of tax deed title by prescription

(a) A title under a tax deed properly executed at a valid and legal sale prior to July 1, 1989, shall ripen by prescription after a period of seven years from the date of execution of that deed.

(b) A title under a tax deed executed on or after July 1, 1989, but before July 1, 1996, shall ripen by prescription after a period of four years from the execution of that deed. A title under a tax deed properly executed on or after July 1, 1996, at a valid and legal sale shall ripen by prescription after a period of four years from the recordation of that deed in the land records in the county in which said land is located.

(c) A tax deed which has ripened by prescription pursuant to any provision of this Code section shall convey when the defendant in fi. fa. is not laboring under any legal disability, a fee simple title to the property described in that deed, and that title shall vest absolutely in the grantee in the deed or in the grantee's heirs or assigns. In the event the defendant in fi. fa. is laboring under any legal disability, the prescriptive term specified in this Code section shall begin from the time the disabilities are removed or abated.

(d) Notice of foreclosure of the right to redeem property sold at a tax sale shall not be required to have been provided in order for the title to such property to have ripened under subsection (a) or (b) of this Code section.

§ 48-4-75. Legislative findings

The General Assembly finds that the nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of such taxes, that the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization, that significant tax delinquency creates barriers to marketability of the property, and that nonjudicial tax foreclosure procedures are inefficient, lengthy, and commonly result in title to real property which is neither marketable nor insurable. In addition, the General

Assembly finds that tax delinquency in many instances results in properties which present health and safety hazards to the public. Consequently, the General Assembly further finds that the alternative to nonjudicial tax foreclosure procedures authorized by this article is an effective means of eliminating health and safety hazards by putting certain tax delinquent properties back on the tax rolls and into productive use.

§ 48-4-76. Judicial in rem tax foreclosures

(a) In addition to any other rights and remedies provided under state law for the enforcement of tax liens by the State of Georgia and its counties and municipalities, such governmental entities may proceed with judicial in rem tax foreclosures for delinquent taxes in accordance with the provisions of this article by enactment of an ordinance or resolution of the governing authority of the county in which the property is located which ordinance or resolution shall be sufficient authority for use of the provisions of this article by such county and all municipalities within such county as to their respective taxes. In the event that the governing authority of a county does not so act, a municipality located in such county may, by enactment of its own ordinance or resolution, authorize the use of judicial in rem tax foreclosures for delinquent municipal taxes in accordance with the provision of this article. Any such ordinance or resolution may set forth criteria for selection of properties to be subject to the provisions of this article.

(b) Proceedings in accordance with this article are designed solely to enforce the lien for ad valorem taxes against the property subject to such taxation and shall not constitute an action for personal liability for such taxes of the owner or owners of such property.

(c) The rights and remedies set forth in this article are available solely to the governmental entities authorized by law to collect ad valorem taxes and shall not extend to any transferee of tax executions or tax liens.

(d) The enforcement proceedings authorized by this article may be initiated by a county, by a municipality, by one acting on behalf of the other pursuant to contract, or by joint action in a single proceeding.

§ 48-4-77. Definitions

As used in this article, the term:

(1) "Interested party" means:

(A) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;

(B) Those parties having filed a notice in accordance with *Code Section*

48-3-9; and

(C) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the county courthouse or by the clerk of the court.

"Interested party" shall not include the holder of the benefit or burden of any easement or right of way whose interest is properly recorded which interest shall remain unaffected.

(2) "Redemption amount" means the full amount of the delinquent ad valorem taxes, accrued interest at the rate specified in **Code Section 48-2-40**, penalties determined in accordance with **Code Section 48-2-44**, and costs incurred by the governmental entity in collecting such taxes including without limitation the cost of title examination and publication of notices.

§ 48-4-78. Identification of properties on which ad valorem taxes are delinquent; petition for tax foreclosure; contents of petition; notice.

(a) After an ad valorem tax lien, based upon a digest approved in accordance with the law, has become payable and is past due and thereby delinquent, a tax commissioner or other tax collector, as appropriate, may identify those properties on which to commence a tax foreclosure in accordance with this article. The tax commissioner or other tax collector, as appropriate, shall not commence tax foreclosure in accordance with this article for a period of 12 months following the date upon which the taxes initially became delinquent. Once enforcement proceedings have commenced in accordance with the provisions of this article, the enforcement proceedings may be amended to include any and all ad valorem taxes which become delinquent subsequent to the date of the initial ad valorem tax lien that was the original basis for the enforcement proceedings.

(b) The tax commissioner or other tax collector, as appropriate, shall file a petition with the superior court of the county in which the property is located, which petition shall have form and content substantially identical to that form as provided in subsection (g) of this Code section. When the subject property is located in more than one taxing jurisdiction, the entity filing the petition shall identify in the petition only those portions of such property lying within the jurisdiction of the taxing authority of the petitioner.

(c) The petition shall be filed against the property for which taxes are delinquent and shall provide:

(1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;

(2) The property address;

(3) A description of the property;

(4) The tax identification number of the property;

- (5) The calendar year or years for which the taxes are delinquent;
- (6) The principal amount of the delinquent taxes together with interest and penalties;
- (7) The names and addresses of parties to whom copies of the petition are to be sent in accordance with subsection (d) of this Code section.

(d) The petitioner shall mail copies of the petition by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the petition shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property.

(e) Simultaneous with the filing of the petition, the petitioner shall cause notice of the petition to be filed in the appropriate lis pendens docket in the county in which the property is located.

(f) Within 30 days of the filing of the petition, the petitioner shall cause a notice of the filing of the petition to be published on two separate dates in the official organ of the county in which the property is located. Such notice shall specify:

- (1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;
- (2) The property address;
- (3) A description of the property;
- (4) The tax identification number of the property;
- (5) The applicable period of tax delinquency;
- (6) The principal amount of the delinquent taxes together with interest and penalties; and
- (7) The date and place of the filing of the petition.

(g) The petition for ad valorem tax foreclosure shall be written or printed, or written in part and printed in part, and shall be in substantially the following form:

SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA

Petitioner: _____)

TAX COMMISSIONER/TAX COLLECTOR)

(Name, Address,)

Telephone Number))

v.)

Respondents: _____) Case No.: _____

_____ ACRES OF LAND LYING)

AND BEING IN LAND LOT _____)

_____, DISTRICT _____,)

_____ COUNTY, GEORGIA;)

AND _____)

(Insert name and mailing address of
owner of property.)

PETITION FOR AD VALOREM TAX FORECLOSURE

COMES NOW (Petitioner) and petitions this Court for an in-rem tax
foreclosure by showing this Court as follows:

1.

is the owner of certain real property located at _____
(the "Property") having a tax identification number of _____. (A
legal description of the Property is attached hereto as Exhibit "A" and by this reference incorpora
ted herein).

2.

The ad valorem taxes assessed against the Property by City/County of
for the year(s) _____ in the amount of \$ ___ (amount includes principal

amount of taxes owed and any accrued interest and penalties as of this date) have not been paid.

3.

Attached hereto as Exhibit "B" is a list of the names and addresses of Interested Parties also receiving a copy of this Petition by certified mail or statutory overnight delivery, return receipt requested.

4.

and _____ as occupants of the respondent Property shall be served by mailing the petition by first-class mail to the attention of the occupants at the above-listed Property address.

5.

The Petition has also been posted on the Property in accordance with **Code Section 48-4-78 of** the Official Code of Georgia Annotated.

6.

Simultaneously with the filing of this Petition, Petitioner has filed a lis pendens.

WHEREFORE, Petitioner demands (1) a hearing in the Superior Court of _____ County (the "Court") and (2) a judgment by the Court stating that (a) the taxes for the Property are delinquent and (b) that Notice has been given to all Interested Parties, and ordering that the Property may be sold at public outcry pursuant to Code Section of the Official Code of Georgia Annotated.

TAX COMMISSIONER/TAX COLLECTOR
City/County of

By:

Its:

NOTICE TO RESPONDENTS AND ALL INTERESTED PARTIES

This Petition serves as notice to the Respondents and all Interested Parties that (1) each party is presumed to own or have a legal interest in the

Property, (2) that foreclosure proceedings have been commenced because of the failure to pay the real property taxes cited above, and (3) foreclosure will result in the loss of ownership of the Property and all rights or interests of all Interested Parties.

To avoid loss of ownership or any interest in the Property, payment of the full amount of taxes, penalties, interest, and costs must be paid to the ___ office located at _____ by ___ date. Respondents and all Interested Parties are also reminded that each of you may wish to contact an attorney to protect your rights.

A Hearing on the above matter shall take place in the Superior Court of ___ County no earlier than 30 days after the filing of this Petition. To determine the exact time and date of such hearing, please call Clerk of Superior Court of ___ County.

This ___ day of _____,
Deputy Clerk
Court of ___ County

Superior C

EXHIBIT A
Description of the Property

Together with all rights, title, and interest running with the above-described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.

EXHIBIT B
Names and Addresses of Interested Parties

§ 48-4-79. Judicial hearing on petition; orders; priority of claims; death of interested party

(a) The petitioner shall request that a judicial hearing on the petition occur not earlier than 30 days following the filing of the petition. At such hearing, any interested party shall have the right to be heard and to contest the delinquency of the taxes or the adequacy of the proceedings. If the superior court determines that the information set forth in the petition is accurate, the court shall render its judgment and order that:

(1) The taxes are delinquent;

(2) Proper notice has been given to all interested parties;

(3) The property as described in the petition be sold in accordance with the provisions of this article; and

(4) The sale shall become final and binding 60 days after the date of the sale in accordance with **Code Section 48-4-81**.

(b) The order of the superior court shall provide that the property be sold free and clear of all liens, claims, and encumbrances other than:

(1) Rights of redemption provided under federal law;

(2) Tax liens held by Georgia governmental entities other than the petitioner which are superior to the taxes identified in the petition by virtue of the provisions of subsection (b) of **Code Section 48-2-56**;

(3) Easements and rights of way of holders who are not interested parties under subparagraph (C) of paragraph (1) of **Code Section 48-4-77**; and

(4) Benefits or burdens of any real covenants filed of record as of the date of filing of the petition.

(c) If, upon production of evidence to the court by any party, it is determined by the court that any interested party died within the six-month period of time immediately preceding the filing of the petition, the court may postpone the hearing, for a period of up to six months, to allow the administrator or executor of the estate adequate time to close the estate.

§ 48-4-80. Redemption by owner or other interested party

(a) At any point prior to the moment of the sale, any interested party may redeem the property from the sale by payment of the redemption amount. Payment shall be made to the petitioner. Following receipt of such payment, the petitioner shall file for dismissal of the proceedings.

(b) In the event of such payment by the owner of the subject property, the proceedings shall be dismissed, and the rights and interests of all interested parties shall remain unaffected.

(c) In the event of such payment by any interested party other than the owner, the party accomplishing such payment shall possess a lien on the property for the full amount of such payment, which lien shall have the same priority as the lien for the delinquent taxes. Such lienholder shall have the right to enforce such lien as permitted to the holder of any lien under existing law. Such lienholder shall not otherwise succeed to the rights of the petitioner as described in this article.

§ 48-4-81. Sale procedures; time; minimum bid; finality; right of redemption by owner; execution of tax deed; report of sale

(a) Following the hearing and order of the superior court in accordance with **Code Section 48-4-79**, a sale of the property shall be advertised and conducted on the date, time, place, and manner which are required by law of sheriffs' sales. Such sale shall not occur earlier than 45 days following the date of issuance of such order of the superior court.

(b) Except as otherwise authorized by law, the minimum bid price for the sale of the property shall be the redemption amount. In the absence of any higher bid, the petitioner may, but shall not be obligated to, tender its own bid in an amount equal to the minimum bid price and thereby become the purchaser at the sale.

(c) From and after the moment of the sale, the sale shall be final and binding, subject only to the right of the owner of the property to redeem the property from the sale upon payment into the superior court of the full amount of the minimum bid price of the sale. Such right of redemption of the owner shall exist for a period of 60 days from and after the date of the sale and shall be in accordance with the following provisions:

(1) Redemption by an owner in accordance with this subsection shall result in a dismissal of the proceedings. Immediately following such redemption by an owner, if the property was sold to a third party at the sale, the petitioner shall refund to such purchaser the full amount paid by such purchaser at the sale;

(2) For purposes of redemption under this subsection, "owner" shall mean the owner of record of fee simple interest in the property as of the date of filing of the petition, together with such owner's successors-in-interest by death or operation of law. This right of redemption shall not otherwise be transferable; and

(3) This right of redemption shall automatically terminate and expire upon failure to redeem in accordance with the provisions of this subsection within the 60-day period following the date of the sale.

(d) If the property is not redeemed by the owner in accordance with subsection (c) of this Code section, then within 90 days following the date of the sale, the petitioner shall cause to be executed on behalf of the petitioner and delivered to the foreclosure sale purchaser a deed for the property in substantially the form set forth in subsection (g) of this Code section, together with such real estate transfer tax declaration forms as may be required by law.

(e) Within 90 days following the date of the sale, the petitioner shall file a report of the sale with

the superior court, which report shall identify whether a sale took place, the foreclosure sale price, and the identity of the purchaser.

(f) In the event that the foreclosure sale price exceeds the minimum bid amount at the foreclosure sale, the petitioner shall deposit into the registry of the superior court the amount of such surplus. Such surplus shall be distributed by the superior court to the interested parties, including the owner, as their interests appear and in the order of priority in which their interests exist.

(g) The form of the deed provided for in subsection (d) of this Code section shall be substantially as follows:

When recorded, please CROSS-REFERENCE: _____
return to: Deed Book _____, page _____ ,
_____ County, Georgia Records

STATE OF GEORGIA
COUNTY OF _____

TAX DEED

This indenture (the "Deed") made this _____ day of _____ ,
_____, by and between _____, a _____ ("Grantor") and
_____, a _____ ("Grantee").

WITNESSETH

WHEREAS, on the _____ day of _____, _____, during the legal hours
of sale, Grantor did expose for sale at public outcry to the highest bidder
for cash before the courthouse door in _____ County, Georgia, the Property
(as hereinafter defined) at which sale Grantee was the highest and best
bidder for the sum of \$_____ and the Property was then and there knocked
off to Grantee for said sum. The sale was made by Grantor pursuant to and
by virtue of the power and authority granted to it in that certain Order
granted _____, _____, Case No. _____, Superior Court of _____
County, Georgia (the "Order"). Said sale was made after advertising the
time, place, and terms thereof in the _____,
published in _____, Georgia, in the aforesaid county, and being
the publication in which Sheriff's advertisements for said county are now
published, once a week for four consecutive weeks prior to said sale on the
_____, _____, and _____ of _____, and said advertisement in
all respects complied with the requirements of Code Section of the
Official Code of Georgia Annotated. Notice of the time, place, and terms of
the sale of the Property was given pursuant to Code Section of the
Official Code of Georgia Annotated. Said sale was made for the purpose of
paying the ad valorem taxes owed to _____, the interest and
penalties on said indebtedness, the expenses of the sale including
attorneys' fees, all of which were mature and payable because of failure of
the owner to pay the ad valorem taxes owed.

NOW, THEREFORE, Grantor, acting under and by virtue of the Order and pursuant to Code Section of the Official Code of Georgia Annotated, for and in consideration of the facts hereinbefore recited, has bargained, sold, and conveyed and does hereby bargain, sell, and convey unto Grantee, its successors and assigns, the following described property (herein referred to as the "Property"), to wit:

All that tract or parcel of land lying and being in Land Lot ___ of the ___ District, ___ County, Georgia, and being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

This deed is given subject to all restrictions and easements, if any, to which the Deed is junior and inferior- in terms of priority, and any and all tax liens which pursuant to subsection (b) of **Code Section 48-2-56** of the

Official Code of Georgia Annotated are superior to the rights conveyed herein relating to the Property.

TO HAVE AND TO HOLD, the Property unto Grantee, its successors and assigns in fee simple.

IN WITNESS WHEREOF, Grantor, has caused its duly authorized officer to sign and seal this Deed as of the day and year first above written.

Signed, sealed, and delivered in the

presence of

By: (SEAL)

Its:

Notary Public
Commission Data:
(NOTARIAL SEAL)

EXHIBIT A
Description of the Property

Together with all right, title, and interest running with the above-described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.

YEARS SUPPORT

§ 53-3-1. Preference before other debts; entitlement of surviving spouse and minor children

(a) As used in this chapter, the terms “child” or “children” mean any minor child who would be entitled to inherit if the child's parent died intestate.

(b) Among the necessary expenses of administration and to be preferred before all other debts, except as specifically provided otherwise in this chapter, is the provision of year's support for the family.

(c) The surviving spouse and minor children of a testate or intestate decedent are entitled to year's support in the form of property for their support and maintenance for the period of 12 months from the date of the decedent's death.

§ 53-3-2. When year's support barred

(a) A surviving spouse's right to year's support shall be barred by the marriage or death of the spouse prior to the filing of the petition for year's support.

(b) A minor child's right to year's support shall be barred by the marriage or death of the minor or by the minor's attaining the age of 18 years prior to the filing of the petition for year's support.

§ 53-3-3. Provision in will in lieu of year's support; election

A testator by will, may make provision for the spouse in lieu of year's support, in which case the surviving spouse must make an election.

§ 53-3-4. "Homestead" defined; taxes and tax liens

(a) As used in this Code section, the term "homestead" shall have the same meaning as set forth in **Code Section 48-5-40**.

(b) (1) In solvent and insolvent estates, all taxes and liens for taxes accrued for years prior to the year of the decedent's death against the homestead set apart and against any equity of redemption applicable to the homestead set apart shall be divested as if the entire title were included in the year's support. Additionally, as elected in the petition, property taxes accrued in the year of the decedent's death or in the year in which the petition for year's support is filed or, if the petition is filed in the year of the decedent's death, in the year following the filing of the petition shall be divested if the homestead is set apart for year's support.

(2) In solvent and insolvent estates, if the homestead is not claimed, all taxes and liens for taxes accrued for years prior to the year of the decedent's death against the real property set apart and against any equity of redemption applicable to the real

property set apart shall be divested as if the entire title were included in the year's support. Additionally, as elected in the petition, property taxes accrued in the year of the decedent's death or in the year in which the petition for year's support is filed or, if the petition is filed in the year of the decedent's death, in the year following the filing of the petition shall be divested if the real property is set apart for year's support.

§ 53-3-5. Filing of petition

(a) Upon the death of any individual leaving an estate solvent or insolvent, the surviving spouse or a guardian or other person acting in behalf of the surviving spouse or in behalf of a minor child may file a petition for year's support in the probate court having jurisdiction over the decedent's estate. If the petition is brought by a guardian acting on behalf of a minor child, no additional guardian ad litem shall be appointed for such minor child unless ordered by the court.

(b) The petition shall set forth, as applicable, the full name of the surviving spouse, the full name and birthdate of each surviving minor child and a schedule of the property, including household furniture, which the petitioner proposes to have set aside. The petition shall fully and accurately describe any real property the petitioner proposes to have set aside with a legal description sufficient under the laws of this state to pass title to the real property.

(c) A petition for year's support shall be filed within 24 months of the date of death of the decedent.

§ 53-3-6. Issuance of citation and publication of notice; mailing of petition to Tax Commissioner

(a) As used in this Code section, the term "interested person" means the decedent's children, spouse, other heirs, beneficiaries, creditors, and any others having a property right in or claim against the estate of the decedent which may be affected by the year's support proceedings.

(b) Upon the filing of the petition, the probate court shall issue a citation and publish a notice once a week for four weeks, citing all persons concerned to show cause by a day certain why the petition for year's support should not be granted.

(c)(1) If there is a personal representative of the decedent's estate, then, in addition to the citation and notice required by subsection (b) of this Code section, the probate court shall cause a copy of the citation to be sent by mail to the personal representative of the decedent's estate. The copy of the citation shall be mailed not less than 21 days prior to the date and time shown in the citation.

(2) If there is no personal representative of the decedent's estate, then, in addition to the citation and notice required by subsection (b) of this Code section, the petitioner or the attorney for the petitioner shall file with the probate court an affidavit, upon oath, showing the name, last known address, and age if less than age 18 of each interested person and stating that the petitioner or the attorney for the petitioner has listed all known interested persons and has made reasonable

inquiry to ascertain the names, last known addresses, and ages of all interested persons. The probate court shall mail a copy of the citation to each interested person shown on the affidavit not less than 21 days prior to the date and time shown in the citation.

(3) If the sole personal representative of the decedent's estate and the petitioner or the guardian of the petitioner are the same person, then paragraph (2) of this subsection shall govern as if the decedent's estate had no personal representative.

(d) The probate court shall mail a copy of the petition within five days of its filing to the tax Commissioner or tax collector of any County in this state in which real property proposed to be set apart is located.

§ 53-3-7. Hearing and determination

(a) If no objection is made after the publication of the notice, or, if made, is disallowed or withdrawn, the probate court shall entertain order setting aside as year's support the property applied for in the petition.

(b) If objection is made, the probate court shall hear the petition and, upon the evidence submitted, shall determine the property to be set aside according to the standards set out in subsection.

(c) of this Code section. If an appeal is taken, pending the appeal the petitioners shall be furnished with necessaries by the personal representative of the estate, as allowed by the probate court. (c) If objection is made to the amount or nature of the property proposed to be set aside as year's support, the court shall set apart an amount sufficient to maintain the standard of living that the surviving spouse and each minor child had prior to the death of the decedent, taking into consideration the following:

(1) The support available to the individual for whom the property is to be set apart from sources other than year's support, including but not limited to the principal of any separate estate and the income and earning capacity of that individual;

(2) The solvency of the estate; and

(3) Such other relevant criteria as the court deems equitable and proper. The petitioner for year's support shall have the burden of proof in showing the amount necessary for year's support.

§ 53-3-8. Separate awards of year's support for minor children and surviving spouse in certain circumstances

(a) If the decedent leaves minor children by different spouses, the probate court shall specify the portion going to the children of the former spouse or spouses, which portion shall vest in those

children.

(b) If the decedent leaves minor children and the surviving spouse is the parent of the minor children, the probate court may in its discretion specify separate portions for the minor children and the surviving spouse if the court deems the award of separate portions to be in the best interests of the parties, and the portions shall vest separately in the surviving spouse and the children.

§ 53-3-9. Vesting of title to property set apart

(a) Except as otherwise provided in **Code Section 53-3-8**, title to the property set apart shall vest in the surviving spouse and child or children or, if there is no surviving spouse, in the children, share and share alike; and the property shall not be administered as the estate of the deceased spouse or parent.

(b) When property is set apart as a year's support for the benefit of the surviving spouse alone, the spouse shall thereafter own the same in fee, without restriction as to use, encumbrance, or disposition.

§ 53-3-10. Property inside or outside County

The probate court may award year's support as to property located inside or outside the County where the decedent was domiciled at the time of death; and title to property both inside and outside the County where the decedent was domiciled at the time of death shall vest in the surviving spouse, spouse and children, or children only, as applicable.

§ 53-3-11. Awarding interest in real property

(a) When the probate court grants an order for year's support which awards an interest in real property located in this state, within 30 days after granting the order the court shall cause a certificate for the order to be filed with the clerk of the superior court in the County of this state where the real property or any part of the real property is located. The certificate shall:

(1) Identify in the manner provided in **Code Section 53-3-5** those individuals receiving the interest;

(2) Identify the interest received;

(3) Contain a legal description sufficient under the laws of this state to pass title to the real property in which the interest was received, provided that the words "Also lands in _____ County(ies)," which accurately identifies other counties within which the real property is located, shall be sufficient to describe real property located outside the

County to which the order or a copy of the order was sent; and

(4) Contain a certification by the probate court that the information in the certificate is correct.

(b) The certificate to be filed under subsection (a) of this Code section shall be accompanied by the same fee required for the filing of deeds with the clerk of the superior court. The filing fee and any fee for the certificate shall be taxed as costs to the estate.

(c) The clerk of any superior court receiving the certificate provided in subsection (a) of this Code section shall file and record the certificate upon the deed records of that County. The certificate shall be indexed according to the names appearing on the certificate as follows:

(1) The grantor is the name of decedent; and

(2) The grantee is the name of the individual or individuals to whom the award was made.

(d) Upon the filing and recording as provided in subsection (c) of this Code section, the certificate shall be returned to the probate court from whom it was received, for inclusion in the probate court's permanent file. The probate court shall not be required to enter a certificate on the minutes of the court after the return of a certificate recorded under subsection (c) of this Code section.

§ 53-3-12. Fees

(a) The fees of the probate court shall be paid by the petitioner for year's support out of the fund set apart.

(b) The probate court may issue a writ of fieri facias against the personal representative of the estate for the amount awarded as provided in subsection (a) of this Code section.

§ 53-3-13. Sale or conveyance of property by personal representative prior to award

The right of a surviving spouse or minor child to year's support from the estate of a decedent shall be barred by a sale or conveyance made prior to the award of year's support by the personal representative of the estate under authority of a court of competent jurisdiction or under power in a will; provided, however, that the sale or conveyance shall bar year's support and rights to year's support only as to the property sold or conveyed.

§ 53-3-14. Real property subject to option to purchase or contract to sell

If year's support is set apart for the benefit of any individual in or with respect to real property on

which there is a recorded option to purchase or contract to sell outstanding at the time the same is so set apart, the individual and any purchasers or lessees of the real property, after the same has been so set apart, shall take the real property or any interest therein subject to all of the rights and privileges of the grantee of the option or contract and of any assignees of the option or contract if the assignment or assignments are also recorded.

§ 53-3-15. Conveyance, contract, or lien made by surviving spouse or guardian

A conveyance, contract, or lien made or created by the surviving spouse or by the guardian of the minor child or children shall be superior to the title and interest of the surviving spouse or minor child or children under year's support subsequently applied for and set apart.

§ 53-3-16. Real property subject to purchase money mortgage

Whenever the vendor of real property makes a deed to such real property and takes a mortgage to secure the purchase money for such real property, neither the surviving spouse nor the children of the vendee shall be entitled to year's support in the real property as against the vendor or the vendor's heirs or assigns until the purchase money is fully paid.

§ 53-3-17. Personal property subject to mortgage or other security interest

Whenever the vendor of personal property, at the time of selling and delivering such personal property, takes a mortgage or other security interest to secure the payment of the purchase money for such personal property, neither the surviving spouse nor the minor child or children of the vendee shall be entitled to year's support in the personal property as against the vendor or the vendor's heirs, personal representatives, or assigns until the purchase money of the personal property is fully paid; provided, however, that the mortgage or other security interest shall expressly state that the same is executed and delivered for the purpose of securing the debt for the purchase.

§ 53-3-18. Landlord's lien on crops

Whenever a tenant dies owing a landlord for rent or for supplies for which the landlord has a special lien on the crops made on the lands rented from the landlord in the year the rent accrued or supplies were furnished, neither the surviving spouse nor spouse and minor children nor minor child or children only of the tenant shall be entitled to year's support out of the crops so planted or grown in that year as against the landlord until the accounts for the rent and supplies are fully paid, provided that the surviving spouse shall be entitled to year's support in such part of the crop as may remain after the landlord's lien for rent and supplies shall have been discharged.

§ 53-3-19. Conveyance or encumbrance by surviving spouse of property set aside; effect

(a) When property is set apart as year's support for the joint benefit of the surviving spouse and the minor child or children, a conveyance or encumbrance of the same or any or all parts of such

property by the surviving spouse shall convey or encumber the title and interest of the spouse and shall be binding and conclusive upon the spouse.

(b) The conveyance or encumbrance of any or all the property set apart as year's support for the joint benefit of the surviving spouse and the minor child or children shall convey or encumber and be binding and conclusive upon the child or children and person claiming through or under them only when approved by the probate court of the County in which the year's support award was made. No such approval shall be necessary to bind a child who is sui juris and who joins with the surviving spouse in making the conveyance or encumbrance.

(c) The purchaser or lender shall not be responsible for the proper use or application of the proceeds derived from a sale or encumbrance contemplated under this Code section.

§ 53-3-20. Conveyance or encumbrance by surviving spouse of property set aside; approval of probate court

(a) The approval of the probate court required by subsection (b) of **Code Section 53-3-19** shall be obtained in the following manner: The surviving spouse shall petition the probate court, stating the purposes of the proposed conveyance or encumbrance and describing the property the spouse desires to convey or encumber, the nature of the proposed conveyance or encumbrance, and the names, last known addresses, and ages of the children for whose benefit the year's support was set apart. If the surviving spouse has died, the petition may be made by the guardian for any one or more of the children for whose benefit the year's support was set apart. The probate court shall set a date for hearing on the petition and shall appoint guardian ad litem who shall accept the appointment in writing to represent the minor children. Not less than ten days prior to the date set for the hearing, personal service shall be made on each child for whose benefit the year's support was set apart who has attained the age of 18 at the time the petition is filed. If the surviving spouse does not know and cannot easily ascertain the addresses of any of the children, service shall be made by publishing notice of the date and purpose of the hearing one time and by posting a copy of the notice at the courthouse not less than ten days prior to the date set for the hearing. In addition to publication, the probate court shall mail a copy of the notice to the last known address of each child whose current address is unknown, not less than ten days prior to the date set for such hearing. Objections, if any, shall be made in writing.

(b) At the hearing, the probate court shall determine that service has been made as required by this Code section and that the purpose or purposes of the proposed conveyance or encumbrance are proper and shall pass an order reciting due compliance with this Code section and approval of the proposed conveyance or encumbrance, which order shall be final and conclusive.

(c) The proceedings shall be indexed and recorded in books to be kept for that purpose by the probate court in each County in which any of the property is located.

(d) An appeal shall lie in the manner, under the restrictions, and with the effect provided for appeals from the probate court in other cases.

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SECTION 6

THE SECURITY DEED AND PROMISSORY NOTE

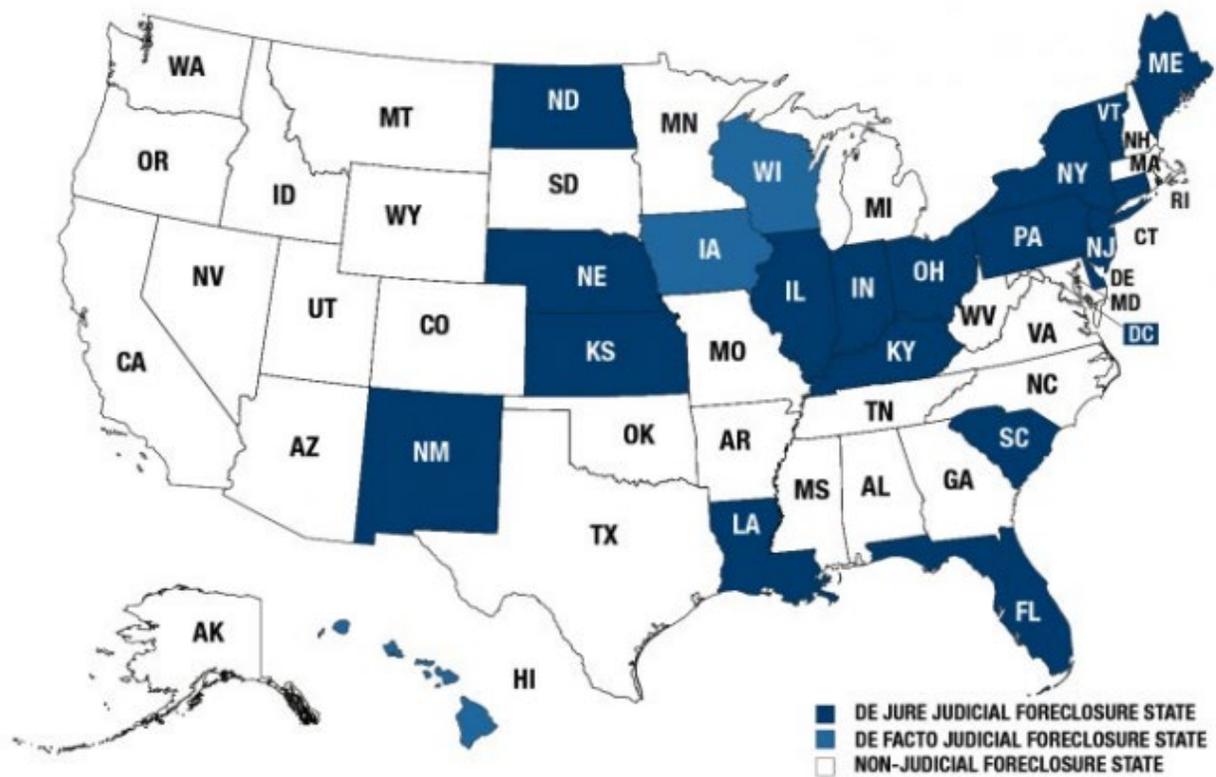
SECURITY DEEDS

A security deed (also known as a deed to secure debt, loan deed, or warranty deed to secure debt) is the most common form of securing a financing instrument for real estate loans in Georgia. Lenders prefer security deeds over mortgages in Georgia because a mortgage creates only a lien on the property, whereas the security deed is an outright transfer of title to the property to the lender to secure the debt. The conveyance by the borrower splits the title to the property into two components: the legal title held by the lender to secure payment of the debt, and the equitable title held by the owner. The owner also retains a right of redemption; which is, the right to pay off the debt and reacquire the legal title. The owner/borrower retains the right of possession of the property and all rights of ownership except those which interfere with the lender's legal title and any rights given up in the security deed. This concept is called hypothecation: the owner/borrower hypothecates, seeming to "own" the property, but limited by the lender's rights. This serves as the lender's assurance the debt incurred will be repaid. If the debt is not paid, the lender has the power to sell the title to the real property and use the proceeds from the sale to pay the debt owed. When real estate is used as security, the debtor usually retains possession.

ORIGINS OF THE SECURITY DEED

Since a mortgage creates only a lien on the property, the property remains subject to future judgment liens and other legal claims. Therefore, in the 1800's lenders adopted the practice of getting an absolute conveyance from the borrower in the form of a warranty deed and giving back to the borrower a "bond for title" agreeing to reconvey the property to the borrower when they pay off the debt. Later, the warranty deed and bond for title became one instrument. Georgia lenders favor the Security Deed, as it minimizes their risks in the event of non-performance by the Borrower, allows for non-judicial foreclosure, and speeds up recovery of the real estate collateral for their loans. The current Georgia **Code section (O.C.G.A. § 44-14-60)** provides the security deed is an absolute conveyance of title, but the borrower has the right to have the property reconveyed upon repayment of the debt. The current act does not require a reconveyance. When the debt is satisfied, the lender marks the original security deed as paid and the borrower may have the security deed marked satisfied on the public records. If the original security deed is lost, the lender reconveys the property to the borrower by quitclaim deed.

FIGURE 1 MANDATORY JUDICIAL FORECLOSURE PROCEDURES, BY STATE



DEFINITION OF A SECURITY DEED

A security deed is an absolute conveyance of title to land from borrower to lender which includes the following provisions:

(a)	a statement that the deed secures an indebtedness;
(b)	a power of attorney from the borrower to the lender authorizing the lender to foreclose the property upon the borrower's default;
(c)	a statement that when the debt is paid, the lender will cancel the security deed or otherwise reconvey the property to the borrower; and
(d)	other provisions defining the rights and obligations of the parties such as a provision that the borrower must maintain casualty insurance in favor of the lender.

PARTIES TO THE SECURITY DEED

The borrower(s) and the lender(s) are the two parties to the security deed. The borrower is the grantor of the security deed, since the borrower is the one conveying the property to secure the debt. The lender is the grantee since the lender receives the absolute conveyance of the title to secure the debt. The grantor (borrower) retains the equitable title to the property and has the right of possession until default as well as the right of redemption once they repay the debt. The grantor remains liable for property taxes, lawsuits for personal injuries (such as an injury to a third party while such person is on the property), and all the other usual obligations of ownership. The grantee (lender) has the legal title, which means ownership without the right of possession, or the obligations of ownership retained by the grantor (such as payment of taxes and liability for personal injuries). Although technically incorrect terms as applied to Security Deeds, since many people are used to mortgage instruments, they may have used in other states, mortgagor refers to the borrower and mortgagee to the lender.

FORMAL REQUIREMENTS OF A SECURITY DEED

A valid and recordable security deed contains the following provisions:

	(a)	an identification of the grantor and the grantee;
	(b)	sufficient language conveying the property from the grantor to the grantee;
	(c)	a valid legal description of the property;
	(d)	proper execution (signed by the owner of the property or another person under a valid power of attorney);
	(e)	proper attestation (witnessing by an unofficial witness and an official witness such as a notary public) which allows the deed to be recorded, although lack of proper attestation will not affect the validity of the deed between the grantor and grantee); and
	(f)	an effective delivery: which is, the grantor (borrower) must put the deed into the possession of the grantee or the grantee's agent with the intention it shall pass title to the grantee. This requirement is usually fulfilled at closing when the attorney for the lender takes possession of the deed.

COMMON CLAUSES IN THE SECURITY DEED

There is no such thing as a "standard" security deed in Georgia, although the FHA, VA and FNMA/FHLMC have their own standardized versions. Security deeds for commercial properties are often custom drafted and may run fifty pages or more. Some simple security deeds in use in rural communities are only one page. Nevertheless, while there is no one standard form, the following clauses appear in most security deeds:

(a)	<p>ESCROW FOR TAXES AND INSURANCE - The normal rule for priority of liens is such the first creditor to file without knowledge of prior liens has priority. Thus, if a lender filed a security deed in the proper county courthouse without knowing of any other liens on the property (including recorded liens, which the lender could have discovered), then the lender's security deed has priority. If, a year after recording the security deed a creditor obtains a judgment against the borrower and records it, the security deed still has priority as a charge against the property because it was recorded first. This normal rule does not apply to property taxes. Thus, if a lender files a security deed in 2011 and the borrower does not pay her 2012 county property taxes, the property taxes have priority over the security deed. For this reason, many lenders require borrowers to maintain escrow accounts. In addition to the principal and interest payment, the borrower pays one-twelfth of the property taxes every month to the lender. When the property taxes are due, the lender pays them. This process helps insure the lender against priority liens for property taxes. The lender may also require the borrower to pay one-twelfth of the annual hazard insurance premium. Most of the value of improved property is the building and improvements; and if the building is destroyed and uninsured, the lender will be able to foreclose on the land only which will not satisfy the debt on foreclosure. Therefore, the lender will require the debtor maintain insurance against hazards and the hazard policy proceeds be payable to the lender, so the lender has security for payment of the debt in case of casualty. When the borrower has a high equity in the property, the lender may not require an escrow account. If the borrower makes at least a twenty percent down-payment, the lender is often confident the borrower's investment in the property is sufficient incentive to the payment of the taxes and insurance without an escrow account.</p>
(b)	<p>DUE-ON-SALE CLAUSE - Often lenders will restrict the right of the borrower to sell or transfer an interest in the property without obtaining the lender's permission. This clause protects the lender if interest rates go up. Since most borrowers have a right to prepay, when rates go down, borrowers will often refinance the property and prepay the loan. The lender does not have a similar option to force borrowers to prepay if rates go up. The due-on-sale clause prevents the borrower from selling the property after rates have gone up and passing on the low interest rate loan to a purchaser, who assumes the loan.</p>
(c)	<p>WAIVER OF HOMESTEAD - The borrower waives the right to claim the benefit of any homestead laws which would affect the rights of the lender to collect the debt.</p>

	<p>(d) NONRECOURSE PROVISIONS - This clause does not typically appear in most security deeds and must be negotiated between lender and borrower. Under this clause, the lender agrees if the borrower defaults on the loan, the lender's remedies are limited to foreclosing on the property. The lender cannot sue the borrower on the promissory note to collect a deficiency judgment if the property does sell at foreclosure sale for the amount of the debt.</p>
	<p>(e) RELEASE PROVISIONS - If the security deed secures unimproved acreage, the borrower and lender may negotiate for the lender to release certain tracts of acreage as the loan is paid down. This situation occurs frequently where a developer grants a security deed to a lender (or owner) financing the purchase of raw land. As the developer subdivides and develops tracts for homes, stores, warehouses, or other uses, buyers purchase the smaller acreage tracts; and the developer uses the cash from the sales to pay down the loan and get those tracts released from the blanket security deed.</p>
	<p>(f) DEFAULT - The law has no precise definition of a <i>default</i> in real estate loan instruments. The borrower and lender are free to negotiate what acts will constitute a default. Residential real estate loan instruments for VA, FHA and FNMA/FHLMC loans are standard, and the borrower cannot negotiate the provisions. The failure of the borrower to do anything which they promised to do in the real estate loan instruments will be a default. Thus, a default may include the failure make payments on time, the failure to pay property taxes and insurance premiums when due, or failure to keep the property in good repair.</p>

SAMPLE SECURITY DEED

After Recording Return To:

[Space Above This Line for Recording Data]

SECURITY DEED

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated , , together with all Riders to this document.
- (B) "Borrower" is . Borrower is the grantor under this Security Instrument.
- (C) "Lender" is . Lender is an organized and existing under the laws of . Lender's address is . Lender is the grantee under this Security Instrument.
- (D) "Note" means the promissory note signed by Borrower and dated , . The Note states that Borrower owes Lender Dollars (U.S. \$) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than .
- (E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges, and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
- (G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|-----------------------------------------------------------|--------------------------------------------------------------------|---------------------------------------------|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input checked="" type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input checked="" type="checkbox"/> Balloon Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input checked="" type="checkbox"/> 1-4 Family Rider | <input checked="" type="checkbox"/> Biweekly Payment Rider | |

- (H) "Applicable Law" means all controlling applicable federal, state, and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
- (I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments, and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
- (J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions, and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the
[Type of Recording Jurisdiction]

of: [Name of Recording Jurisdiction]

which currently has the address of
[Street]

_____, Georgia ("Property Address"): [City] [Zip Code]

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for

encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS

Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent

payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment may be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when, and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, which are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and

applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments, or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination,

certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remapping or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an

agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate, and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage, or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in

bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or
(c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property (as set forth below). Lender's actions can include but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, making repairs, replacing doors and windows, draining water from pipes, and eliminating building or other code violations or dangerous conditions. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage

Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use, and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance

with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time and may enter into agreements with other parties that share or modify their risk or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released, Forbearance by Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including,

without limitation, Lender's acceptance of payments from third persons, entities, or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then

Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" give sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing

this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check, or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of

the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law

and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property.

Borrower shall not do, nor allow anyone else to do, anything affecting the Property

(a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other

remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS.

Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale granted by Borrower and any other remedies permitted by Applicable Law. Borrower appoints Lender the agent and attorney-in-fact for Borrower to exercise the power of sale. Lender shall be entitled to collect all

expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give a copy of a notice of sale by public advertisement for the time and in the manner prescribed by Applicable Law. Lender, without further demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Lender determines. Lender or its designee may purchase the Property at any sale. Lender shall convey to the purchaser indefeasible title to the Property, and Borrower hereby appoints Lender Borrower's agent and attorney-in-fact to make such conveyance. The recitals in the Lender's deed shall be prima facie evidence of the truth of the statements made therein. Borrower covenants and agrees that Lender shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The power and agency granted are coupled with an interest, are irrevocable by death or otherwise and are cumulative to the remedies for collection of debt as provided by Applicable Law.

If the Property is sold pursuant to this Section 22, Borrower, or any person holding possession of the Property through Borrower, shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Borrower or such person shall be a tenant holding over and may be dispossessed in accordance with Applicable Law.

GEORGIA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3011 1/0

THE PROMISSORY NOTE

A security deed requires an underlying debt for the deed to be valid. Usually, the debt takes the form of money advanced by the lender to the borrower, although no money changes hands in a purchase money security deed in which the seller finances all or part of the purchase price of the property and simply defers the collection of the purchase price in return for payments of principal and interest. The evidence of a debt is usually a promissory note, a written instrument in which a borrower promises to pay a lender a sum of money under certain terms and conditions. The promissory note is signed by the maker (the party promising to pay), but the signature does not need to be witnessed or notarized. Both the security deed and the promissory note are forms of contracts.

PROVISIONS OF THE PROMISSORY NOTE

The promissory note contains provisions which spell out the promise, the amount of the debt, the identity of the parties, the costs to the borrower, the terms of repayment, and the penalties for failure to fulfill those payment terms.

(a)	PROMISE TO PAY - The note includes a promise by the borrower to repay the debt to the lender.
(b)	AMOUNT - The lender must give some consideration to the borrower. Usually, such consideration is the principal amount of the loan. The promissory note must state this amount in US dollars or legal tender.
(c)	PAYEE - The note designates the person or entity who will be receiving the payments. The original designated payee in the note may assign the right to collect the debt to a different party. It is this characteristic which makes the note a negotiable instrument.
(d)	PAYOR - The note also designates the person(s) or entity liable for the repayment of the debt.
(e)	INTEREST AND PAYMENT - The note spells out the annual rate of interest, the date when interest begins to accrue, and the amount and due dates of payments.
(f)	DEFAULT, LATE FEES, AND ACCELERATION - The common definition of a default is the failure to make the payments when due. The security deed will usually have a similar definition of default. Most notes provide if the payor does not make the payments on time, the lender may charge late fees. Most notes also include an acceleration clause, which makes the entire amount of the note due if the borrower defaults. Without the acceleration clause, the lender would have a right to sue only for the payments which the borrower had already missed.

(g)	OTHER AGREEMENTS - The borrower and lender may agree to other provisions in the note, such as attorney's fees if the lender is forced to sue to collect the debt.
(h)	RECOURSE PROVISIONS - Based upon lenders' rights, there are two kinds of promissory notes: recourse notes and nonrecourse notes. In a recourse note, the lender may look to either the promissory note or the security deed to satisfy the debt. That is, the lender may elect to sue the borrower on the note, which is a personal promise to repay the debt, or the lender may elect to foreclose on the security deed. In a nonrecourse note, the lender's remedy is limited to foreclosing on the property under the security deed. Thus, if the foreclosure sale does not produce the total amount of the debt, the borrower in a nonrecourse loan would not be liable for any deficiency resulting from the foreclosure.
(i)	PREPAYMENT - The borrower does not have a right of prepayment unless the loan documents provide for one. The lender and borrower are contracting for payments over a long time, such as 30 years; and the lender has a right to expect payments over the full contract term. However, most residential loans allow the borrower to prepay the loan. Lenders and borrowers negotiate the prepayment rights in commercial loans, and the lender frequently charges a prepayment penalty.

Promissory Note Template

Promissory Note

Amount: _____ **Date:** DD/MM/YYYY
Place: _____

I Mr. ABC, make commitment to pay XYZ Company, the Sum of \$ _____. Repayment is to be made in the form of 200 equal payments at the interest rate of _____ of \$ _____ payable on the 10th of each month, beginning 10/01/2011 until the total amount of debt is paid.

IN WITNESS WHEREOF, I set my hand under seal this ____ [the day] of _____ [month], 20____ and I acknowledge receipt of a completed copy of this instrument.

Name & Address: [Party name]

Sign: [Signature of borrower]

Notary Public - SEAL

My Commission Expire

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SECTION 7

DEFAULT AND FORECLOSURE

DEFAULT AND FORECLOSURE DEFINED

Default occurs when the borrower fails to keep the promises they made in the promissory note or the security deed. The borrower's principal promises are the following:

(a)	to make the periodic principal and interest payments specified in the note;
(b)	to make the property tax and hazard/liability insurance payments directly or to place funds for those payments into the lender's escrow account;
(c)	to keep the property in good physical condition by proper maintenance and repair; and
(d)	to retain all structures and site improvements unless allowed by the lender in writing to demolish and remove any of them.

The result of a failure to keep these promises is default. The lender's options under a default appear in the default clause of the promissory note and in the acceleration clause in non-uniform covenants of the security deed. In addition to failure to pay the debt as it becomes due, most mortgages contain other provisions, the violation of which will result in default. These provisions include failure to pay taxes on the property, failure to insure property, selling the property without the permission of the lender, and failure to keep the property in good repair. The breach of any mortgage covenant gives the holder of the mortgage the right to foreclose or exercise remedies. Briefly, upon default the lender receives the right to call for the full and immediate repayment of the remaining loan balance. The acceleration clause identifies the procedure by which the lender must give notice to the borrower of the lender's actions. If the borrower is unable to repay the remaining loan balance, the lender has the right of foreclosure which is the right to end the borrower's ownership or other legal interest in the real property.

FORECLOSURE OPTIONS

Each state establishes the foreclosure procedure for loan defaults in such state. The first major distinction in foreclosure approaches is between judicial and non-judicial. Georgia uses non-judicial foreclosure, which means the lender does not have to sue the borrower and obtain a court decree before foreclosing.

The equity of redemption period is the period between the default and the foreclosure when the borrower may correct the default and stop the foreclosure process. They may redeem the property by paying off the loan and compensate the lender for all expenses incurred because of the default. If the default occurs for some reason other than nonpayment of the monthly mortgage payment, the equity of redemption period is the time during which the borrower corrects all deferred maintenance and repair. Some states provide for statutory redemption by

which the debtor may redeem the property even after foreclosure. Georgia allows redemption after foreclosure only for tax sales.

There are two non-judicial foreclosure procedures. The first or "entry and possession" procedure gives the lender the right to inform the defaulted borrower the lender will take possession on a given date. If the borrower does not peacefully give the property to the lender, the lender goes to court to have the borrower removed from the property. The second or "power of sale" procedure gives the lender the right to advertise the property and then hold an auction to sell the property. The latter is the non-judicial foreclosure procedure used in Georgia.

GEORGIA FORECLOSURE PROCEEDINGS

The security deed in Georgia passes title to the lender upon the borrower's default. However, lenders normally use the non-judicial power of sale which gives the lender the right to sell the property to receive the unpaid loan balance. The borrower gives the lender this right by signing the security deed which contains a power of sale clause. Although this procedure does not require a court judgment, Georgia real estate law strictly regulates the method and frequency of advertising and the timing and conduct of the sale.

	(a)	THE PARTY ENTITLED TO SELL THE PROPERTY - The only person or financial institution allowed to sell the property of a borrower in default is the party identified in the security deed as the lender. The lender may use an agent, an attorney, or a representative. If the original lender sold the security deed, the power of sale right transfers to this "successor." If the original lender is a deceased individual, the security deed transfers to the heir to the lender's estate the power of sale.
	(b)	NOTICE OF THE SALE - Once the lender notices the default, they notify the borrower as provided in the acceleration clause. At the appropriate time, the lender advertises the property in the newspaper which is "the official organ of the county." This designation simply means the citizens of the county and/or the county officials accept a particular newspaper as the source of legal notices such as foreclosure sales. In some counties this organ is a private legal publication, in others, a general circulation newspaper. The advertisement must appear in the newspaper once a week for four consecutive calendar weeks preceding the week in which the sale will occur. A sale in the same week as the last of the four notices is legally invalid.
	(c)	FORM AND CONTENT OF THE ADVERTISEMENT - The published advertisement must contain:

	(1)	the complete legal description of the property;
	(2)	the name of the lender;
	(3)	the name of the attorney who will conduct the sale;
	(4)	the place of the proposed sale which by custom is the steps of the county courthouse, but may be another location if ordered by a superior court judge and such new location is applicable to all such public sales;
	(5)	the day and starting time of the sales for such day (the advertisement cannot identify the exact sale time of a specific property because the number of sales for such day are unknown); and
	(6)	the application of any proceeds of the sale to special purposes such as the payment of taxes or another lien.
		<p>The advertisement also typically states the terms of the sale as "cash" but does not have to contain this provision. Even if the advertisement states "cash," the highest bidder may make a deposit. A cashier's check is as good as cash. However, <i>a bidder who fails to provide cash may be passed over in favor of another bidder who may give cash.</i> The advertisement is supposed to contain the name of the person who possesses the property (the borrower in default), but this requirement is largely ignored. The advertisement does not require information about the unpaid loan amount or the cause of the default. Great care goes into the construction and the printing of the advertisement since mistakes or misleading statements involving the required elements of the advertisement may invalidate the sale.</p> <p>A mortgagor has the right to pay the debt secured by the mortgagee in full at any time prior to the time when the property is foreclosed upon. The right to pay the debt in full and to prevent a foreclosure is known as the mortgagor's equity of redemption. This equity (right) of redemption cannot be waived by the mortgagor, nor may a mortgagee refuse to accept payment in full and therefore defeat the mortgagor's right of redemption. Many states only recognize the mortgagor's right of redemption prior to a foreclosure sale.</p>
	(d)	<p>THE CONDUCT OF THE SALE - Both state statutes and the principle of fairness govern the conduct of the sale. Since there is no requirement for the auctioneer to be a disinterested third party, the lender or the lender's agent may conduct the sale. However, the person conducting the sale must act fairly and impartially. The lender must withdraw the property from sale if unfavorable circumstances prevail and offer it for sale at another time. The purpose of the foreclosure sale is to</p>

		obtain the "fair market value" of the property. However, in actual circumstances, the usual interpretation of this legal requirement is an "adequate price."
	(e)	THE BIDDERS AT THE FORECLOSURE SALE - The bidders at the foreclosure sale may include third parties, members of the public, or the lender and the borrower, who have an interest in the proceedings and in the property. The lender or the lender's agent or attorney may bid for the property but to the greatest extent possible, cannot act to injure the borrower or any junior lien holders. The borrower in default or their agent or representative, if bidding for the property, must also not act to injure the junior lien holders. A creditor may find it is the only bidder at the sale and decide to bid less than the fair market value of the property. The low bid price does not pay the debtors debt.
	(f)	CONFIRMATION OF THE SALE - Georgia law does not require a judicial confirmation of the non-judicial foreclosure sale except under the situation in which the lender seeks a "deficiency judgment" against the borrower because the sales price of the property is less than the unpaid loan balance and expenses of sale. A deficiency judgment is a request made by the lender to the judge to issue a court order to have the borrower make up the difference between the sales price of the property and the unpaid loan amount plus any expenses of the foreclosure sale. To confirm a sale, the lender files a report of the sale with the judge of the superior court within thirty days of the sale. The judge schedules a hearing in which the borrower in default may provide evidence about the legality of the advertisement, the fairness of conduct at the sale, and the adequacy of the sales price. The judge evaluates the evidence from both sides and makes a ruling either to confirm the sale or to set it aside.
	(g)	DISTRIBUTION OF THE PROCEEDS FROM THE FORECLOSURE SALE - The person conducting the foreclosure sale is responsible for the proper distribution of the proceeds from the sale. When they receive the funds from the foreclosure sale, the first payment goes to cover the costs of the sale including the attorney fees. The second payment goes to the lender holding the first lien on the property. If funds remain from the sale, the junior lien holders receive payment. Lastly, the remaining funds, if any, go to the borrower who defaulted. Any encumbrance, mortgage, easements, etc., which has been created after the date of the mortgage which is being foreclosed will be terminated at the foreclosure sale. If the total payments to the lien holders and for the expenses exceed the sales price, a deficiency exists. Following the sale, the power of sale creditor then brings a civil proceeding, against the debtor for the balance of the debt. Then the lien

		holder affected by the deficiency may request the confirmation of the sale and a deficiency judgment.
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ALTERNATIVES TO FORECLOSURE

When a borrower defaults on a loan, the lender may foreclose under the power of sale provision, or the parties to the loan may choose an alternative to foreclosure. These alternatives are very often the preferred courses of action because they may be more direct and less expensive solutions to the default problem, and they may consume less of the lender's and/or the borrower's time.

	(a)	THE BORROWER SELLS THE PROPERTY - Facing a foreclosure and sale, the borrower may attempt to sell the property to a buyer who may pay cash; obtain a new loan; or with the approval of the lender to whom the borrower is in default, assume the existing loan. At the closing the borrower/seller pays off the loan and keeps any equity which remains.
	(b)	DEED IN LIEU OF FORECLOSURE (VOLUNTARY CONVEYANCE) - The simplest solution for the parties involved in a default is a voluntary transfer of the property from the borrower to the lender. The borrower simply deeds title and possession of the property to the lender. Depending on the circumstances, the borrower's deed to the lender could be a full warranty deed or even a quitclaim deed. The lender must seek legal advice concerning the appropriate deed to accept. One complication of voluntary conveyance is the issue of the borrower's equity. If the market value of the property is equal to the unpaid loan balance, the equity is zero and the borrower simply gives the property to the lender. However, if the equity is positive, the lender may take the property and compensate the borrower for the equity at 100% or at a lower negotiated rate. If the market value is less than the unpaid loan balance, the lender could absorb the loss to avoid the foreclosure process, or the borrower could promise to pay the difference at some time when they are able to make the payments.
	(c)	FORBEARANCE OR MORATORIUM - Upon default of the loan, the lender may choose to be lenient and forgive the missed payments if the borrower has resumed making the required payments on time; or the lender and borrower might negotiate a new agreement. For example, the lender might add the unpaid interest to the loan balance and extend the term of the loan so the borrower may resume the payments at the same level or at a lower and more affordable level.
	(d)	EXTENSION AGREEMENTS - Borrowers very often recognize in advance they will default on the loan because of a job layoff or a termination. At this point, the borrower could approach the lender and inform them of the impending default.

		<p>They might then work out an arrangement in which the lender agrees to a suspension of monthly payments until the borrower goes back to work or finds a new job. The extension agreement in its simplest form states the lender will defer, but not cancel, mortgage payments for an appropriate time. The borrower and the lender might agree to a six-month's extension during which time the lender will charge the borrower interest for the six months at a reasonable rate (the same rate as in the note or the current market rate) with this interest to be added to the loan balance. At the end of the extension the borrower will resume making payments in the same amount, but the term of the loan will increase to allow time to pay off the larger balance.</p>
	(e)	<p>RECASTING THE LOAN AGREEMENT - A different solution might address the problem of a borrower who recognizes they will default on the loan because of a job change which results in a lower salary or, in the case of income property, the loss of anticipated income because of high vacancy rates. At this point, the borrower could approach the lender and inform them of the impending default because of a change in their ability to continue making the loan repayment. The borrower and the lender might agree to recast the original loan. Recasting involves a major modification of the original loan terms. To avoid a foreclosure resulting in a loss which could not be recovered through a deficiency, the lender might agree to reducing the amount of the monthly payments by either changing the term of the loan or lowering the interest rate or both. The original loan is recast; the lender cancels the original note; and the borrower signs the new note. In commercial transactions, a recasting of the loan may be accompanied by a reduction of the original loan amount. The lender's reason for accepting such a loss involves the lesser of two evils. The lender's choice is to agree to a loan reduction or to take a troubled property through foreclosure and then sell it at a loss and try to get a deficiency from a firm in financial trouble.</p>
	(f)	<p>SALE OF THE LOAN - The lender may avoid the problem of foreclosure by selling the security deed at a discount to an individual who is willing to deal with the borrower in default and to take the risk regarding the sales price at the foreclosure sale. Their relative positions in the negotiation rest on their knowledge of the market.</p>

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**SECTION 8
PUBLIC AND PRIVATE LIMITS AND CONTROLS
ON REAL PROPERTY**

PUBLIC LIMITS AND CONTROLS ON REAL PROPERTY

INTRODUCTION

The rights of ownership are not absolute rights because there are public constraints on the owner's ability to use the property. There are property rights which are reserved by law for the public (government) exercise and thus limit an owner's full enjoyment of property rights. There also may be private restrictions on the use of real property. The limits and controls fall into five groups: the police powers of the state, eminent domain, taxation/assessment powers, escheat, and forfeiture for crime. Governments use these controls and limits to provide social benefits to the citizens of the community. However, each property owner loses a degree of their individual rights in the process.

THE POLICE POWERS OF THE STATE

The police powers of a local government derive from the "police power" clause in the federal and state constitutions which provide for government to promote the "health, welfare and safety" of the citizens. The exercise of the police power results in various laws affecting real estate, including (1) zoning ordinances, (2) subdivision regulations, (3) construction codes, and (4) housing codes. These police power of government restrict the use of real estate.

THE ZONING ORDINANCE

Zoning is an exercise of police power by a municipality or County to regulate private activity by enacting laws which benefit the health, safety, and general welfare of the public. The main objective of zoning is to improve living and working conditions in congested areas by preventing the liberties of one property owner from interfering with the rights of another.

Zoning regulations typically include the following:

- Permitted uses
- Minimum lot size requirements
- Types of structures permitted
- Limitations on building size and height
- Minimum setbacks from lot lines
- Permitted density (for example, the number of buildings per acre)

Zoning consists of:

- (a) dividing the city or County into districts;
- (b) prescribing within each district the type of structures and architectural designs for buildings to be located there; and
- (c) prescribing the uses for the buildings within each district.

For example, a city council may divide the city into four districts. One district may be reserved for single-family residential use; another district may be reserved for multifamily use, such as apartments, condominiums, and town houses; a third district may be retail commercial, in which there may be stores and offices; and the fourth district may be industrial, in which there could be manufacturing plants.

A city or County zoning ordinance usually contains three distinct elements: (1) land-use restrictions, (2) height restrictions, and (3) area or bulk restrictions.

The land-use restriction section of the zoning ordinance classifies all parcels of property in a community into four diverse categories: industrial, commercial, residential, and agricultural. The effect is to create a geographic distribution of land uses in the local community. Such land-use restrictions may legally allow only the use specified and exclude all other land uses (exclusive zoning), or the land-use restriction may legally allow the stated use and all other compatible or suitable land uses, such as residential activity in a commercial zone (inclusive zoning). The larger categories may contain more specific subcategories. For example, a residential zone may include subcategories for single-family detached houses on large lots, single-family detached houses on small lots, duplexes, and other multifamily units.

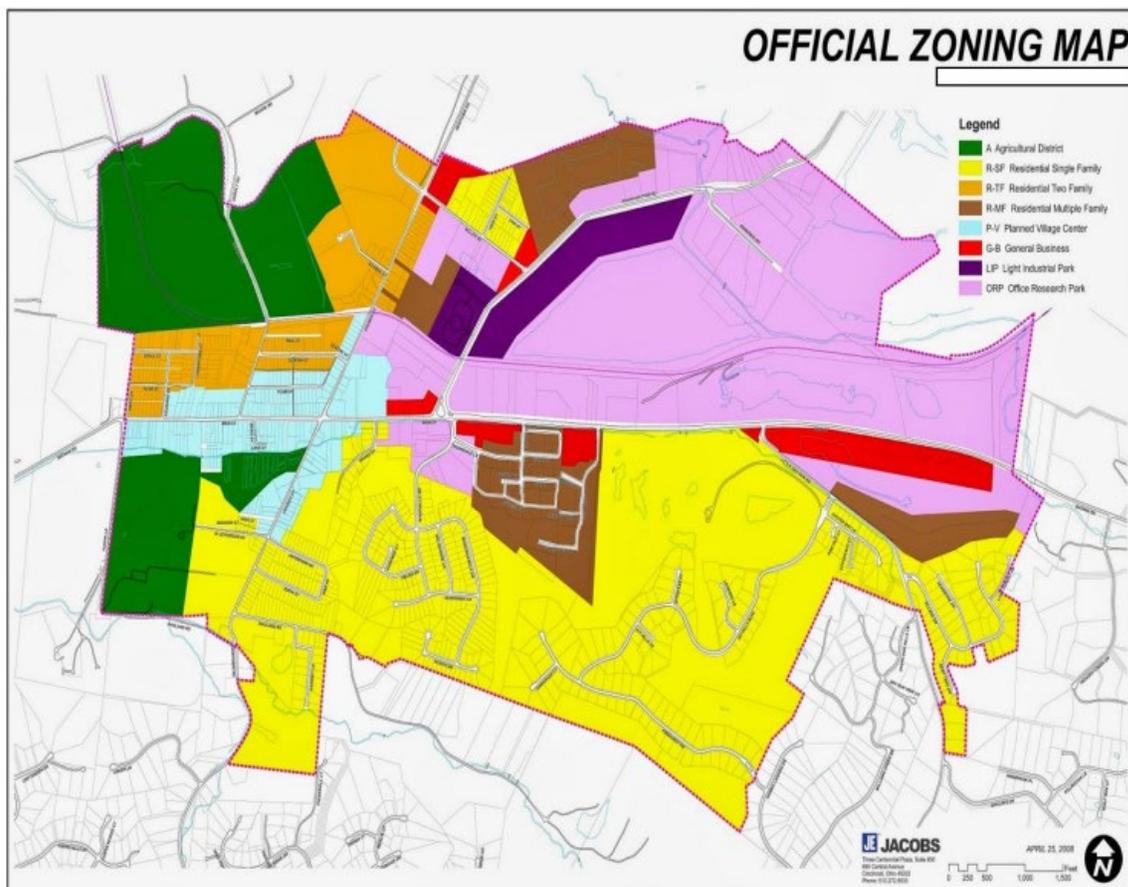
Height restrictions in the zoning ordinance specify the legal height of structures by land-use category and by geographic area. They could state a maximum height for apartment buildings in the multifamily residential subcategory and a different maximum height for structures in the single-family detached residential subcategory. The height restrictions could also differ by geographic area. For instance, they could prohibit tall structures near municipal airports but allow such structures in the central business district.

Area regulations in the zoning ordinance specify the relationship between the structure and the land on individual parcels of property. For residential property, the area regulations could contain setback rules which establish the minimum distance between the street and the location of the structure. The regulations could also establish the size of side yards and the

minimum size of the building lot. For commercial property, area regulations could dictate whether the structure is at the front or at the rear of the property. They could also regulate the location of parking areas by dictating such parking be in front of or behind the building.

Zoning is a political process; it usually is considered a legislative function of governmental authority. Zoning requires procedural due process. This means a notice must be given, and a hearing held before a zoning regulation may be passed. It is not required the landowners be given personal notice of any intentions to change the zoning on their property. All zoning hearings are public. A property owner does have the right to appeal a zoning decision or classification to a court of law.

Real property which has been used for a particular purpose, but it later changed by the zoning regulations is deemed to be a preexisting or nonconforming use. These uses are permitted to continue, provided they are not expanded. The issuance of building permits is a way to enforce a zoning ordinance. A building permit will be refused unless the proposed improvement and its intended use comply with zoning. Most cities and counties do not permit a building to be constructed and occupied without a permit and final inspection by the building department.



CHANGES IN ZONING REGULATIONS

The property owner may try to change the impact of a zoning ordinance in several diverse ways. One way is to obtain a variance, whereby the owner asks permission to deviate from the current land-use regulation in some way. An owner might request a different setback, for example, or a different allowable height. Usually, the owner argues the variance will eliminate a hardship. Another procedure is the rezoning application, whereby the owner asks for a change in the ordinance to allow a different land use on a specific piece of property. For example, a request to change the zoning from single-family detached to multifamily or commercial use is a rezoning request.

If the local government decides not to grant the request for a variance or a rezoning, it sustains the legally allowable use in the zoning ordinance.

SUBDIVISION REGULATIONS

Subdivision regulations are another use of the police power to promote and protect the health, safety, and general welfare of the community. A local agency, such as a planning body, reviews and approves builders' plans for new residential developments within the local jurisdiction. The regulations prevent construction on floodplains, on land with poor or inadequate drainage capabilities, and on land which has unacceptably steep slopes coupled with soil conditions which could cause mud slides.

Subdivision regulations also require the developer to meet locally acceptable standards for street systems, building-lot specifications, and block size. The street system standards include the street layout, the design and frequency of intersections, street widths, maximum slopes and grades, curb cuts, and minimum construction standards for the roadway. Other standards stem from additional areas of concern for health and safety. For instance, the fire department might require a minimum radius for cul de sacs to allow the maneuvering of firefighting equipment, and the health department may enforce standards for septic systems or wells where public sewer or water is unavailable.

By means of building-lot specifications, the subdivision regulations may discourage the creation of building lots and residential blocks which are inefficient in size and shape, such as lots which are very deep but also very narrow and lots having irregular shapes.

The subdivision regulations require the developer to file a plat map for approval. A subdivision plat is a graphic representation of the subdivision's size and shape. It includes the street system, blocks, and building lots, all represented in scale. An approved subdivision plat becomes part of the public record. Prospective buyers of a lot may examine the plat to verify the shape and the dimensions of the land parcel, as well as other restrictions such as setbacks, lot size and height requirements which may have been imposed on the subdivision as conditions for approval of the plat.

IMPACT FEES

Some local governments charge developers impact fees to pay for capital improvements necessitated by their new developments. Increasingly, local governments are charging these fees as an exercise of the police power. While impact fees have received much publicity in recent years, they are an outgrowth of local subdivision regulations. Since the 1920's, some local governments have required dedication of the streets within a development, and starting in the 1970's, local governments have expanded this power to charge the developers fees proportional to the "impact" caused by their developments. Courts in most states have upheld these fees provided there is a "rational nexus" between the fee and the impact of the development. First, there must be some evidence the development creates a special need, and the fee must be proportional to such need. Second, the fee must be used to provide some benefit to the development. An example would be the need for a school created by a large new subdivision.

CONSTRUCTION CODE

A third example of the police power is the construction code which establishes the minimum acceptable standards for construction within a local jurisdiction. It specifies the type and positioning of structural members in the floors, walls, ceiling, and roof of a building (for example, placing 2 x 4's every 16" on center in the walls and using 2 x 8 x 12's as floor joists). It also specifies the minimally acceptable standards for plumbing systems with respect to water-supply lines and waste-disposal lines, and for electrical systems regarding the minimum gauge of electric wires and the minimum number and positioning of outlets and switches.

A local community's construction code will also require the installation of fire-protection devices in buildings, such as multiple exits, fire escapes in multiple-story units, sprinkler systems, and exit signs. Moreover, the code may prohibit dead-end corridors and structural obstacles which could impede the steady flow of traffic in case of a fire.

Local governments check compliance to the construction code by requiring the contractor apply for a building permit with the local government's department of building or construction. To complete the application for a building permit, the contractor must submit copies of the construction specifications for examination by local authorities. If the authorities approve the application, they issue a building permit. The regulations may be many and complex. A prudent purchaser would make the purchase of undeveloped land contingent upon the ability to obtain a construction permit. For example, in rural areas with no sewers, local authorities will not issue a building permit unless the land has adequate soil percolation and is large enough to support a septic tank system.

While the work is under way, inspectors from the building department check the work at various stages of completion to see the contractor is complying with the construction specifications. A government inspector does a final inspection when the job is complete. If the

work meets the specifications of the building code, the government issues a certificate of occupancy, and the structure is then ready for occupancy and use.

HOUSING CODE

A fourth police power regulation of real estate is the housing code. This code establishes officially acceptable minimum standards for safe and healthy occupancy of existing and newly constructed buildings. One aspect of the housing code governs the structural quality and physical condition of existing units. Any building which needs major repairs violates the local housing code. Moreover, any structure which lacks certain plumbing facilities, such as hot running water and/or private toilet facilities for individual dwelling units, also violates the housing code.

The housing code may also cover such items as unprotected stairways, improper lighting in hallways, falling plaster, exposed electrical wiring, and the use of lead-based paints. The government may fine the owner of a building which has any of these safety or health defects and require the owner to pay the cost of repair. Depending on the extent of repairs, the owner may have to obtain a building permit at the outset of the repair work and a certificate of occupancy upon completion.

EMINENT DOMAIN

Another public limitation on the rights of property owners is eminent domain. Eminent domain is a right vested in the state government and delegated by statute to local governments, and sometimes even to certain agencies and private entities, to acquire or reassert its ownership over the land of a private property without the consent of the property owner. Private ownership of all real property is held subject to a perpetual repurchase option in favor of the United States; the various states; the County, city, and other numerous government agencies; and, in some cases, even privately owned public utilities. Any type of private property may be acquired through eminent domain.

There must be due notice and a hearing on the matter following the equal protection and due process clauses of the Federal and State Constitutions, and the government must pay adequate and just compensation to the owner of land. "Condemnation" is the name for the act of taking the private property by using the power of eminent domain. In condemnation proceedings under the governments right of eminent domain, courts will frequently require separate site and building valuations as part of the determination of the property's fair market value.

The constitution does not expressly grant eminent domain power to the federal government. Without this power, it would be difficult for governments to build vital projects-highways, hospitals, universities- which would benefit all citizens. Because the taking of private property for public use may have a harsh and disastrous effect on the private owner, constitutional safeguards have been set up to protect the owner against any arbitrary or unreasonable use of

eminent domain power.

Three crucial factors limit the local government's ability to acquire private property under eminent domain:

- (1) public use, purpose, or benefit,
- (2) fair or just compensation,
- (3) due process of law.

Either the legislature or the courts may decide what is a public use, purpose, or benefit. The courts may pass judgment on an existing law with its specific statement on public use and purpose, or the courts may decide the legality of some specific public purpose. To date, the legal system in this country has found the following activities to be acceptable public purposes:

(a)	establishment of public transportation systems;
(b)	establishment of a community water system;
(c)	clearance of slums and blighted areas;
(d)	construction of off-street parking;
(e)	construction of public facilities such as municipal and state offices, public schools and institutions of higher learning, public parks, and recreation centers;
(f)	preservation of historic sites;
(g)	building irrigation projects, erection of dams, and establishing flowage areas for waterpower generation; and
(h)	construction of canals, widening of streams, and construction of piers and docks.

The Fifth Amendment provides *“Nor shall private property be taken for public use, without just compensation.”*

An unbroken line of Supreme Court decisions defines “just compensation” as the fair market value of the property when the taking occurs. “Fair Market Value,” in turn, means the amount a willing buyer would pay in cash to a willing seller.” The goal is to put the owner in as good a monetary position as if the property had not been taken, but rather voluntarily sold on the open market.

Fair Market Value is usually established by evidence concerning recent sales of the property at issue or sales of comparable properties. However, they may not be a “willing seller.” It is quite possible she would never voluntarily sell the property, in this sense, it is “priceless.” Yet, by definition, fair market value is measured only by the market. It does not consider the

sentimental or subjective value the property may have for any particular owner. Similarly, fair market value does not necessarily compensate the owner for the full economic value of the land. The Supreme Court found fair market value does not include the special value of property to the owner arising from its adaptability to a particular need. In a free market transaction, the prudent buyer of land will evaluate the future uses for which the property may be suitable.

As a rule, property must be valued at the highest and best use for which it could be adapted, not merely its existing use.

In the law, fair or just compensation means payment for the actual loss which the property owner sustains because of the condemnation process, including damage done to the owner's remaining property and the expenses caused by the proceedings. (Title 22, Georgia Code) Generally, the standard applied is the market value of the condemned real property. The courts recognize the three methods for estimating market value or the potential selling price which appraisers use: comparable sales, the present value of future net income from the property, and the construction cost of a comparable structure.

However, the market value of the property is only one aspect of the question of compensation. The owner may sustain certain losses other than the market value of the real property taken. Some of these losses may require compensation above the market value. Such losses could be:

(a)	an increase in commuting costs or the costs of doing business at a new location due to the forced move;
(b)	loss of the business because of an inability to find a suitable or comparable alternate site; or
(c)	loss of access to a better street system or pedestrian flow when only part of the property is taken.

For partial condemnations, one of two approaches may decide the compensation. The first attempts to discover the market value of the condemned portion of the property. Generally, this approach applies if the property is unimproved land. The second approach is to attempt to discover and quantify the impact of the taking on the remaining portion of the property. Will the market value of the remaining property increase because it is next to the public use? Or will the market value of the remaining portion decrease because of proximity to the public use? For example, the city might take part of Mr. Smith's property to construct a municipal office building or a landfill. Construction of the office building could have a positive effect on Smith's remaining property, whereas the construction of a landfill could be very detrimental.

The third requirement in eminent domain proceedings is “due process.” The United States Constitution and the state constitutions provide no person shall be deprived of the rights to life, liberty, or property without due process of law. The property owner must have every legal opportunity to plead their case before the courts if the level of compensation offered is not satisfactory or if there is doubt about the public nature of the proposed use of the property. The property owner is entitled to due notice and a hearing before the time the private property may be taken. The property owner at the hearing, has an opportunity to be represented by counsel and to approve the taking is not necessary for public use or the compensation being offered is unreasonable.

The procedure for eminent domain varies widely from state to state. The process usually begins with the government’s efforts to negotiate a voluntary purchase from the owner. Statutes in many states require such negotiations, often on the basis of an appraisal performed by the condemning agency and provided to the owner. If negotiations fail, the agency will typically file suit to condemn the property. In the vast majority of cases, the only issue is the fair market value of the property. Thus, the central focus of the garden variety eminent domain action is a battle between expert appraisal witnesses on the issue of fair market value.

The government's right of eminent domain is more than a limit on the rights of ownership because the government may deny the individual's property rights of use, possession, and disposition. This denial of rights imposed under eminent domain is more severe than the restrictions imposed under the police-power provisions. The police power limits the right of use, but the owner retains the right of disposition. Eminent domain requires compensation to the owner, whereas the government is not required to give such compensation under the zoning ordinance or the use of its other police powers.

Eminent domain may also be used to acquire personal property. Tangible and intangible personal property are also subject to condemnation.

TAXATION AND ASSESSMENT POWERS

Governmental bodies have the right to tax real property which is located within its jurisdiction. It is not unusual to find real property taxed at both the city and the County levels.

The right of taxation enables the government to collect taxes and to sell the property if the taxes are not paid. Local jurisdictions have a legal remedy if an owner does not pay the property tax. The local government has a specific lien, the property tax lien, against the delinquent property, and by this lien, it may force the sale of the property to obtain the delinquent taxes. This forced tax sale overrides the property owner's rights of possession and disposition.

Tax liens arise out of two types of property taxes. Special assessments are charges which a local government levies against property owners for public services such as streets, storm-drain

systems, and water and sewage disposal systems. These charges directly affect the value of the individual parcels. One reason for the excessive cost of land for new buildings in many areas is the rising level of development fees used to build roads, sewer systems and other infrastructure improvements. Such costs are, of course, passed on to the taxpayer. Assessment charges are value-enhancers for specific properties. In contrast, the services provided and paid for under the ad valorem property tax enhance the value of all property in the community. Ad Valorem (according to value) taxation historically has taken the form of property taxes based on assessed value.

If the property owner fails to pay either the ad valorem taxes or a special assessment, the taxing authority, under the specific lien against the delinquent property, may sell the property to obtain the delinquent payments. This forced sale overrides the property owner's rights of possession and disposition. The taxes become a lien or debt charged against the real property on the first day of the tax year. For example, if the tax year is the calendar year, then on January 1 the taxes for such year would become a lien, even though the taxes may not be due and payable until sometime later in the year.

Liens for property taxes are high priority liens. They will take priority over security deeds recorded before the taxes became due. This priority of tax liens is an exception to the normal rule which courthouse recording dates determine lien priority. Lenders realize the risk property tax liens may pose, so often the lenders require escrow accounts when granting loans. The borrower pays one-twelfth of the annual tax bill each month to the lender, and the lender then pays the taxes each year from this escrow account, to be sure the County or city does not file a lien for delinquent taxes.

The federal and state governments have the right to file a lien against the property of any delinquent taxpayer. A federal tax lien, once filed, becomes a lien on all property owned by the taxpayer at the time of filing as well as all future property acquired by the taxpayer until the lien has been paid in full.

ESCHEAT

Another public limit on private ownership rights is escheat. When a property owner dies without leaving a will or legal heirs, the real estate tentatively belongs to no one. In this event, the state government uses the power of escheat to claim the land for the state. In this sense, the power of escheat is not really a limit, but the government asserting itself as the ultimate property owner. When the possession and disposition of property are uncertain because of the lack of heirs, the state assumes possession and all other rights of ownership of the property.

FORFEITURE OF LAND FOR CRIME

The State of Georgia and the federal government both have Racketeer Influenced and Corrupt Organizations (RICO) Acts. These acts allow the state or federal government to seize personal and real property used for racketeering purposes or purchased with proceeds from racketeering activities.

PRIVATE LIMITS AND CONTROLS ON REAL PROPERTY

INTRODUCTION

The rights of ownership are also subject to private constraints on the owner's ability to use the property. The limits and controls include (1) the easement, (2) the lien, and (3) the restrictive covenant.

THE EASEMENT

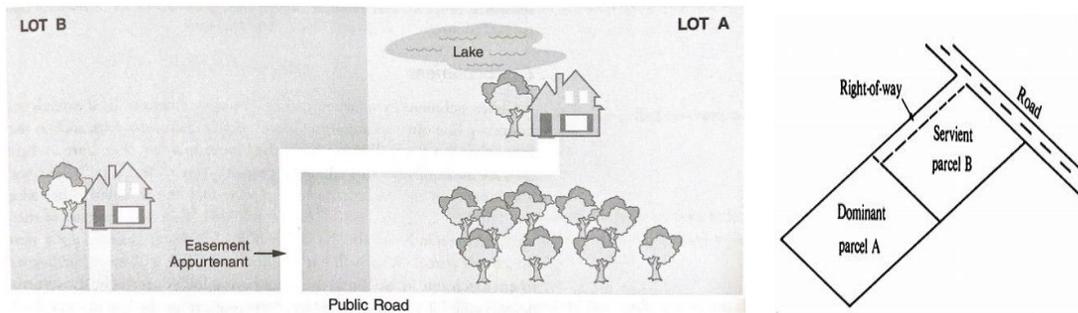
An easement, although an encumbrance, may be a benefit to real property. An easement is the right of one person to use the property of another for a specified purpose and under certain conditions, such as the right to travel over a parcel of land. The person holding the easement does not possess the property nor does the person have the right to dispose of the property. However, someone holding easement rights may transfer those rights to others.



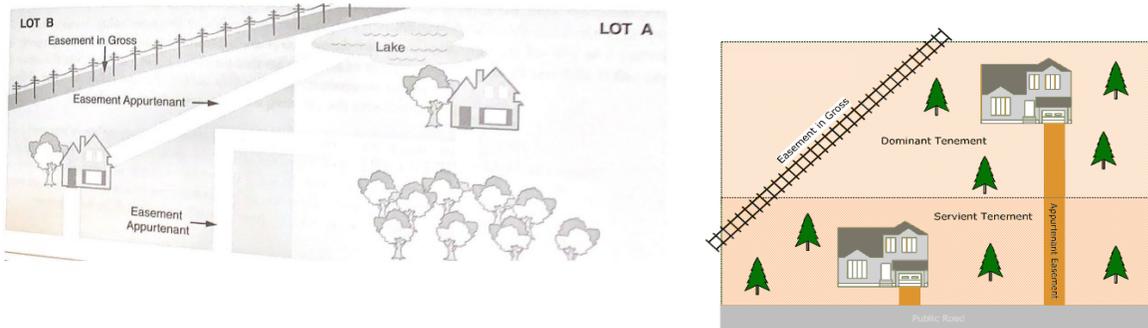
Two types of easements exist - the easement appurtenant and the easement in gross. The easement appurtenant exists when there are at least two parcels of land and one of those parcels (the dominant estate) receives benefits from the use of the other parcel of land (the servient estate). An example of an easement appurtenant is the right of the owner of parcel A to use an access road across parcel B. The owner of parcel A enjoys the easement and parcel A is the estate which receives the benefits from the access road. Parcel B is the servient estate, the estate which provides the benefit or service.

The appurtenant easement right held by the owner of parcel A, over the land described as parcel B, is irrevocable by the owner of parcel B when the owner of parcel A uses and maintains the easement. Thus, the easement "runs with the land." An easement appurtenant is deemed attached to a particular dominant parcel. Any transfer of title to the dominant land also automatically transfers the benefit of the easement unless there is a contrary agreement. One owner of parcel A may pass the right to use parcel B to successive owners of parcel A. Subsequent purchasers of parcel B take possession of the real estate subject to the

appurtenant easement against the property, and they must continue to honor it.



The second type of easement, the commercial easement in gross, also "runs with the land," but it involves only one parcel of real estate. An easement in gross is personal to the holder, individual or business. It benefits the holder in a personal sense, whether he owns any other parcels of land. It is attached to the holder, not the land. They do not own the underlying land but have the right to use it. For example, an electric power company acquires an easement to locate a high-tension electric power line across several owners' properties. The easement benefits the power company but does not benefit any particular parcel of real property.



Because it is considered a "personal" interest, an easement in gross cannot be assigned to anyone else and will terminate on the death of its owner. Examples of this type of easement are the rights-of-way which private corporations, such as railroad companies, pipelines, and public utilities, have across an individual parcel of land.

The intentions of the parties determine whether a particular easement is appurtenant or in gross. A well drafted express easement will specify the party's intent. Absent this evidence, courts determine intent based on the circumstances surrounding the creation of the easement. Typically, an easement appurtenant will facilitate the holders use of a particular parcel of dominant land. If an easement contributes to the use or enjoyment of a particular parcel owned by the holder, it will usually be classified as appurtenant. The law favors the easement appurtenant over the easement in gross because the result facilitates the productive use of the

land. Thus, if a court cannot determine the party's intent, it will classify the easement as appurtenant.

Every easement is classified as either affirmative or negative. An affirmative easement authorizes the holder to do a particular act on the servient land. Most easements are affirmative. Examples of an affirmative easement allow the holder to use the servient land for benefit such as power lines, drainage, road right of ways, etc. In contrast, a negative easement entitles the dominant owner to prevent the servient owner from doing a particular act on the servient land. A negative easement entitles the holder to prevent the owner of the servient land from doing a particular act on the land, much like a veto power. Modern courts recognize the negative easement and other private land use restrictions may enhance the productive use of the land.

There are many ways to create easements. The most common way is by agreement between the parties involved. In this situation, the parties strike an acceptable agreement about the nature of the use and, sometimes, the duration of the right to use the property. A second way to create an easement is by necessity or implication. Sometimes the law implies an easement if the circumstances warrant. The buyer and seller may fail to create a written easement due to an oversight or error. For example, Mr. Jones sells Mr. Smith the back forty acres of his farm. Other owners bound the land on all sides, and there is no access to a road. Here, the court would recognize Smith has an easement across Jones's land by implication or necessity, if the court determines under the circumstances surrounding the sale, a prudent buyer and seller would have decided the need for such an easement and would have created it.

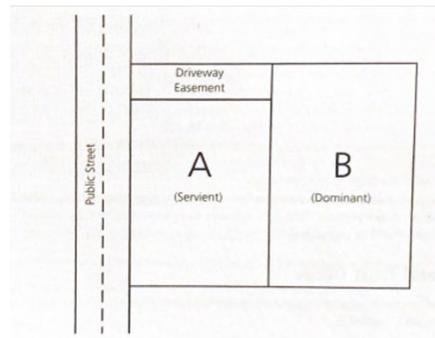
Easements carry certain rights and duties for each party involved. The easement holder has a limited right of use, and the owner of the land burdened by the easement cannot interfere with the easement. The easement holder, however, cannot use the land in a prohibited manner. Moreover, the easement holder must maintain the physical part of the servient estate affected by the easement. To do this, the easement holder has the right to enter the property and to do the necessary maintenance and repair work. For example, if the servient estate contains an underground drainage system serving the dominant estate, the owner of the dominant estate, who is the easement holder, has the duty to maintain the drainage system and the right to enter upon the servient estate to do so.

Today the law recognizes five basic categories of easements:

- (1) Express easements
- (2) Easements implied from prior existing use
- (3) Easements by necessity
- (4) Prescriptive easements
- (5) Irrevocable licenses or "easements by estoppel"

EXPRESS EASEMENTS

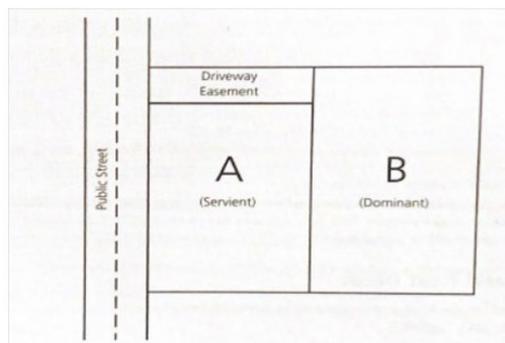
The first type of easement- the express easement- arises only when a landowner agrees to burden their land. The vast majority of easements are express easements. The express easement may arise either by grant or by reservation. The distinction between the two methods turns on who is obtaining the easement. An easement by grant is typically created when a grantor conveys or “grants” an easement to another person. The easement by reservation arises when a grantor conveys land to another but retains or “reserves” an easement in such land. Creation of an express easement by grant is conveyed by a deed.



Today the deed is the standard method to transfer interests in real property, and there is no justification for ignoring the grantors clear intent to create an easement. The law recognizes these interests because it presumes honoring such easements will facilitate the efficient use of land. The deed conveying the easement must:

- (1) Be in writing,
- (2) Identify the grantor and grantee,
- (3) Contain words manifesting an intention to create an easement,
- (4) Describe the affected land, and
- (5) Be signed by the grantor.

Under limited circumstances, the law will impose an easement without consent of the burdened landowner. The remaining four types of easements all arise as a matter of law, without any express agreement to create an easement.



IMPLIED EASEMENT (PRIOR EXISTING USE)

Implied easements are based on a theory when personal property is conveyed, the conveyance contains whatever is necessary for the beneficial use and enjoyment of the real property or retains whatever is necessary for the beneficial use and enjoyment of real property retained by the grantor. If an existing use is sufficiently apparent and continuous when a parcel is divided, the parties were on notice of the use and presumably expected- or should have expected- it would continue. Under this view, the failure to grant or reserve an express easement is merely an oversight which the law rectifies by recognizing an implied easement.

EASEMENT BY NECESSITY

Easements by necessity are created by statutory procedures. The easement by necessity requires a high degree of necessity when title is severed- as the name suggests- but does not require prior use. All decisions finding an easement by necessity involve road easements to reach landlocked parcels. Most courts recite the traditional rule strict necessity is required. Generally, this means the property be absolutely “landlocked.”

- a) The parcel must be entirely surrounded by privately owned land, without touching any public road, and
- b) The owner must not hold an easement or other legal right of access to cross the adjoining land to reach a public road.

Under this view, if the owner has any legal means of reaching the land- regardless of how inconvenient, expensive, or impractical it may be- no strict necessity exists. The policy rationale underpinning the easement by necessity is to encourage productive use of the land and the party’s presumed intent. Courts feared landlocked parcels might remain idle and wasted, but by allowing easements by necessity, it allowed the cultivation, improvement, and occupancy of these lands. The courts also consider the presumed intent of the parties. Under this view, a grantor presumably intends to convey everything which is necessary for the grantee to make beneficial use of the land.

PRESCRIPTIVE EASEMENT

The prescriptive easement is closely related to the doctrine of adverse possession. Both share the central concept property rights in the land of another may be acquired by conspicuous, long-term use. The vast majority of cases involving prescriptive easements are affirmative easements for access over a road or driveway. For example, a landowner notices his neighbor is using a corner of his property as a right-of-way to a public street. The landowner does nothing to prevent his neighbor from the use the corner of his property for a right-of-way. The

continued, undisputed use of the property could provide the neighbor perpetual prescriptive rights to continue use of the property, even if the landowner at a later date attempt to cease use of the property. Prescriptive easements once created are perpetual.

Prescriptive easements may also be acquired for uses including power lines, drainage, encroaching buildings, bathing, and airplane overflights. However, negative easements cannot be established through prescription.

IRREVOCABLE LICENSES OR EASEMENTS BY “ESTOPPEL”

Irrevocable licenses give consent by providing a license to the use of the property, such as to use a road for access. Ordinarily, an owner who gives a license may revoke it at any time. However, under limited circumstances, a license may become irrevocable through estoppel. Estoppel applies when one owner misleads a neighbor about the true location of a common boundary line, and the neighbor relies on the misrepresentation to his detriment.

Under this approach, if the licensee expends substantial money or labor in reasonable reliance on the license and the licensor should reasonably expect such reliance, the licensor is estopped to revoke it. The policy rationale for the irrevocable license is usually explained in terms of equity: it would be unfair to allow the licensor to revoke the license after the licensee has substantially relied to his detriment. This doctrine also facilitates productive use of the land.

Easements may be terminated for a number of reasons.

- (a) Creating parties might impose an express limitation on the easement,
- (b) The easement holder might voluntarily agree to release their rights to the easement,
- (c) The dominant and servient land are merged therefore extinguishing the easement,
- (d) an easement may also be terminated by eminent domain or estoppel,
- (e) abandonment,
- (f) Misuse, and
- (g) Prescription

ABANDONMENT

Abandonment is nonuse with the intent to never use again.

Abandonment will be found if the holder both:

- (a) Stops using the easement for a long period and
- (b) takes other actions which clearly manifest intent to relinquish the easement.

Evidence of abandonment may be the permanent removal of physical installations, such as rail or bridges, which permit the use of the easement, or actions which permit others to maintain obstructions to prevent the exercise of the easement. For example, a railroad has an easement

for a spur/sidetrack. After a number of years, the railroad stops using the spur/sidetrack and even removes the rails and ties. A strong argument could be made the railroad has abandoned the easement and the easement has terminated.

MISUSE

Some courts hold misuse by the easement holder will extinguish the easement in cases where injunctive relief is wholly ineffective. Just as the dominant owner may acquire an easement by prescription, the servient owner may terminate an easement by prescription. However, to extinguish an easement by prescription, the servient owners conduct must substantially interfere with the holder's use of the easement, such as blocking the holder from using the easement at all. If the blockage continues for the prescriptive period, it will terminate the easement.

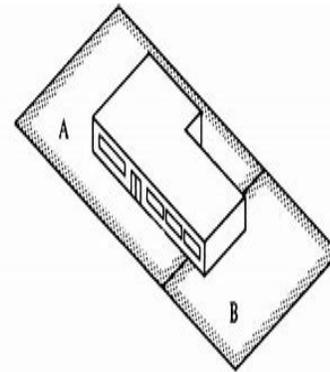
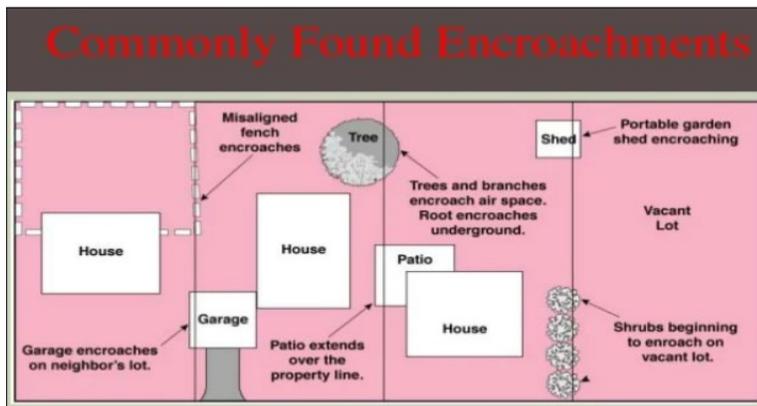
LICENSE

A license is a temporary permission to come onto the land of another for a specific purpose. A license is distinguished from an easement in an easement is a property interest and a license is mere permission to perform a certain act. A license may be created orally or in writing, or it may be implied from the conduct of the parties. An oral license without any consideration being paid for the license is revocable at the will of the person granting the license. On the other hand, a license in writing for which compensation and consideration has been paid usually is irrevocable. An implied license is revocable at any time, and once revoked, if the licensee does not leave the property, the licensee becomes a trespasser.

The use of the land conveyed by a license is nonexclusive because the holder of a license has no right to keep anyone else from the property. A license may be terminated at any time without notice and is considered personal property rather than real property. An example of a license is the purchase of hunting rights on private property.

ENCROACHMENT

An encroachment exists when part of an improvement to land extends over the boundary line onto an adjoining parcel. Some encroachments, such as a fence which is a few millimeters over the border in a few places, are so slight they are meaningless to the adjoining property owner. Occasionally, however, even a few inches of encroachment may be a grave matter, particularly when a high-rise building in a congested urban area is involved. Then a few inches of encroachment may seriously impede the ability of the adjoining owner to make maximum use of such parcel. An encroachment may also lead to title problems, creating an impediment to a property transfer.



THE LIEN

The most frequently encountered private limitation on use is the lien created by the security instrument used to purchase the property. The lien is the right of a creditor to force the sale of a debtor's property to obtain payment when the debtor does not pay the debt. When the creditor's right to petition to force a sale affects a certain parcel of real estate only, the lien is a **specific lien**. When the creditor's claim affects all properties owned by an individual within a particular jurisdiction, the lien is a **general lien**.

One example of general lien is a judgment lien, which would affect any and all property owned by the judgment debtor in the County where the judgment was obtained. Examples of specific liens include materialmen's liens and tax liens. The tax lien is the most common specific lien. If a landowner fails to pay their property tax bill, the local government has the right to force the sale of such specific piece of property to collect the unpaid taxes, but not other property owned by the same person. If the property sells for more than the amount of the unpaid taxes, the former owner receives a cash settlement from the local government which is the difference between the sale price and the unpaid tax bill.

RESTRICTIVE COVENANT

A **restrictive covenant** is a private limitation on the use of real property. It is not unusual for real property which has been subdivided, such as single-family home subdivisions, industrial parks, or condominiums, to have restrictions regarding the use of the property by future real property owners. Private restrictive covenants often perform the same function as public zoning regulations. The private restrictions attempt to regulate the development of the real property in such a manner as to enhance the value of each individual owner's lot or share of the real property. For example, restrictive covenants found in residential subdivisions usually restrict the size of the home which may be built on the lots, subject the homes to architectural review committees, regulate the height of homes, and require certain portions of the property be left vacant for purposes of creating front, rear, and side yards. All these restrictions are

designed to create a nice residential environment which will enhance the value of each individual owners' homes.

Restrictive covenants may be placed in a deed or in a separate recorded document called a "declaration." Since the owner of the property has control of such property subject to public limits, the owner may sell the property on whatever terms they choose. One of these terms could be a restriction on the future use of the land. However, unreasonable restrictions may adversely affect the marketability of the property. Also, an owner may not create covenants which violate the law, such as restrictions contrary to the Civil Rights Act.

There are two major categories of restrictive covenants. First, an owner who sells one parcel but retains possession of adjacent parcels may place restrictions on the parcel sold. The owner may not want an industrial site next to their property, for example, so the owner might place a restrictive covenant in the deed forbidding industrial use of the adjacent land they are conveying to the purchaser. Second, a land developer may impose restrictions to make a residential subdivision more attractive. In this case, the restrictions could limit the types of dwelling units constructed and the types of allowable additional structures, such as storage buildings or fences.

The second class of restriction is the general plan restriction. Under the subdivision-regulation provisions of the local government, the developer must file a plat, or map, of the subdivision's street layout and building lots. At this point, the developer may also record a declaration of restrictive covenants. Upon sale, the deed for each lot should contain (but is not required to contain) a clause stating the parcel of land is subject to the restrictive covenants. Restrictive covenants are limited by statute to a twenty-year period in areas subject to zoning laws, but there is an exception for subdivisions of 15 or more lots. (O.C.G.A. § 44-5-60)

The purpose of these general plan restrictions is to create a rule which any landowner may enforce against any other landowner in the subdivision, although most modern subdivisions are governed by homeowners' associations with powers to enforce the covenants. The restrictions are enforceable because each landowner buys the parcel with knowledge of the restrictions and, through the act of purchase, agrees to abide by the subdivision's plan and its restrictions. To enforce the restrictions, all which needs to be shown is the violator purchased a lot and received either notice of the restrictions, such as some evidence of their existence in the deed or had constructive notice of the restriction by virtue of the declaration having been recorded in the public records.

Constructive notice is the legal fiction that signifies that a person or entity should have known, as a reasonable person would have, of a legal action taken or to be taken, even if they have no actual knowledge of it.

The various contracts used in real estate transactions may impose other restrictions. For example, security deeds contain clauses restricting the owner's right to alter, remove, or demolish portions of the real estate, and requirements to keep the property in good

repair. These clauses thus limit the owner's freedom to destroy the improvements constructed on their property or to ignore the condition of the physical real estate.

ARTICLE VI
GENERAL COVENANTS AND RESTRICTIONS

1. **Application.** The covenants and restrictions contained in this Article 6 shall pertain and apply to all Lots and to all Structures erected, maintained or placed thereon.
2. **Single Family Residences.** Lots shall be used for single-family residences only and for no other purpose. Multi-family residential, town homes, duplexes, commercial, fraternity, sorority, club, and rooming houses are prohibited.
3. **Uniformity of Structures.** All Dwellings constructed in the development must be significantly uniform according to the following standards.
 - a. **Mass** - The visual relationship of architectural elements of various sizes to one another and to the immediate environment.
 - b. **Proportion** - the relationship of height to width, voids and solids, and the bulk of the structure relative to other nearby structures and parts of the whole.
 - c. **Scale** - the visual relationship of architectural and landscape elements to one another and to the immediate environment.
 - d. **Colors and Materials** - including siding, trim, doors, windows, gutters, downspouts, roofing, and all other architectural and site elements must be in context with their environment.
4. **Colors and Materials.** Colors that harmonize with the natural landscape are strongly encouraged. Muted shades are considered to be most appropriate. Muted shades of white are acceptable. Black and other less muted shades are permitted for trim paint. Gloss paint is not permitted.
 - a. Care should be taken to avoid the use of an excessive number of materials and colors. Colors and materials must be compatible with each other so as to develop a cohesive appearance for the dwelling appropriate to its architectural character and to the neighborhood. Generally speaking, the fewer number of different colors and materials, the better the result.
 - b. *Construction materials must be compatible with the original architectural character of the existing dwelling and neighborhood. When enlarging, extending or remodeling an existing improvement, the materials must be compatible with those of the existing improvement. Materials must harmonize with the natural landscape.*
5. **Minimum Dwelling Size.** Any Dwelling constructed on a lot shall have not less than 1,600 square feet of Living Space for dwellings of not more than one (1) story, and 1,800 square feet of Living Space for dwellings of more than one (1) story. The ground floor area of a dwelling of more than one-story shall have not less than 1400 square feet of Living Space, unless otherwise approved. Living Space as used herein means fully enclosed heated and cooled areas of the dwelling and specifically excludes garages and porches.
6. **Height.** A home or attached garage may not exceed a two story height plate unless expressly permitted by the ACC. A detached garage may not exceed a height of twenty-five feet from the grade of the Lot at its lowest point.

7. **Exterior Construction.** The following Design Standards apply to the exterior construction:
- a. **Material.** The front exterior of all dwellings from the bottom of the foundation to the top plate shall be constructed of one hundred percent (100%) brick, stucco, stacked stone, or drivet. Accents may be stone, hardie board, and stucco. Vinyl and other acceptable siding may be used for trim and in the soffits, if approved by the ACC. The roof and exterior of all outbuildings must have shingles and exterior siding of the same type and color as the dwelling, unless otherwise approved. Brick must be either eight inch (8") or twelve inch (12") Norman, Norwegian or Queen brick.
 - b. **Foundation Elevation.** The top of the foundation shall be a minimum of twelve inches (12") above ground level or grade at its lowest point, or at such higher level as may be necessary to assure positive drainage away from the dwelling and lot.
 - c. **Doors and Windows.**
 - i. All Dwellings shall have wooden front doors or any doors that can be seen from any street.
 - ii. Aluminum doors (including sliding doors) that can be seen from the street and aluminum windows shall not be approved.
 - iii. Vinyl clad windows shall be used, the color of which shall be specified in the plans submitted to the Architectural Control Committee for approval.
 - iv. Screens must be brown, black, bronze or charcoal gray in color.
 - v. Window coverings must be consistent with the character of the neighborhood.
 - vi. Tinted glass is acceptable. Reflective materials, such as, mirrored glass or foil is not acceptable. Security bars are not permitted.
 - d. **Garages.**
 - i. All garage doors must have the prior approval of the ACC before installation.
 - ii. Garage doors must be wood or fiberglass, must be architecturally compatible with the approved colors of the home, and must not adversely impact the overall character of the neighborhood.
 - iii. All changes in material or color to the garage door require an application. All garage doors must be painted to match or be compatible with the colors of the home or the garage.
 - iv. Garage doors shall not be removed at any time.
 - v. Each Dwelling must have at least a two car garage. Each car must have direct access to the driveway.
 - vi. Garages may not be converted to living area unless at least a two car garage remains after any such conversion.
 - vii. When adding a third (or fourth) bay to a garage that is set back less than 40 feet from the street property line, the front plane of the additional garage area must be off-set from the plane of the existing garage to soften the impact of the garage expansion.
 - e. **Roofs.** All roofs shall have a pitch of not less than 19/12, and only architectural shingles shall be allowed unless otherwise approved by the Architectural Control Committee. Metal roofing will be allowed in accent areas, with ACC approval.

HOMEOWNERS' ASSOCIATIONS

Condominiums and many subdivisions have homeowners' associations. These associations act as private governments to carry out the common purposes of the property owners. Homeowners' associations collect assessments, maintain recreational facilities, maintain common areas, and provide insurance and management services. Some subdivisions, particularly those created prior to the 1990's, do not have homeowners' associations. For more information on these associations, see the chapters on property management.

HOMEOWNERS ASSOCIATION : RULES AND REGULATIONS.

1. INTRODUCTION.

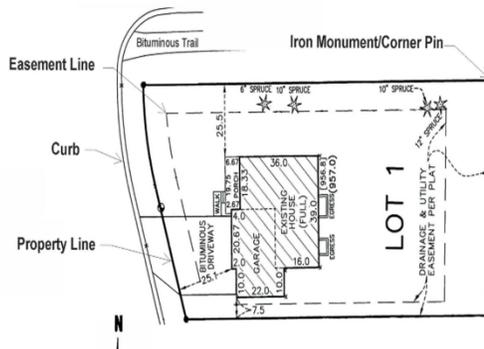
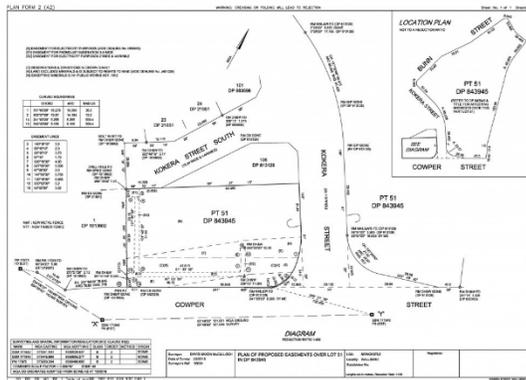
- 1.1 The objective of Sable Hills Waterfront Estate is the provision of a high quality lifestyle for residents, and the intention of these rules is for the protection of this lifestyle.
- 1.2 The rules have been established in terms of the Memorandum and Articles of the Sable Hills Waterfront Estate Homeowners Association (HOA). They are binding upon all occupants of the Estate, as is any decision taken by the Directors of the HOA interpreting these rules.
- 1.3 The registered owners of the properties are responsible for ensuring that members of their families, tenants, visitors, friends and all their employees abide by these rules.
- 1.4 Happy and harmonious community living is achieved when residents use and enjoy their private property as well as the public areas of the Estate.
- 1.5 In respect of the interpretation of these rules, the decision of the Directors of the HOA is final and binding.
- 1.6 These rules are subject to change from time to time, as, and how, it may become necessary.
- 1.7 Members may propose changes for consideration by the Directors of the HOA to submit such proposals at an Annual General Meeting of members.
- 1.8 This document may be amended from time to time to cater for conditions that may not have been foreseen at the time of writing, and the Directors reserve the right to make such amendments as they deem fit and which shall be binding upon all residents in the Estate. The developer shall remain a director on the HOA and will have veto rights as said director.

1. Valuation of common areas. The appraisal staff shall take into account the extent that the fair market value of individually owned units in a residential subdivision, planned commercial development, or condominium also represents the fair market value of any ownership interest in any common area that is conveyed with the individually owned units. When the appraisal staff determines that the fair market value of the common area is included in the fair market value of the individually owned units, the appraisal staff may recommend a nominal assessment of the common area parcel. When the appraisal staff makes such a determination, the fair market value of residual interests not conveyed to the owners of the individually owned units shall be appraised and an assessment recommended to the Board of Tax Assessors.

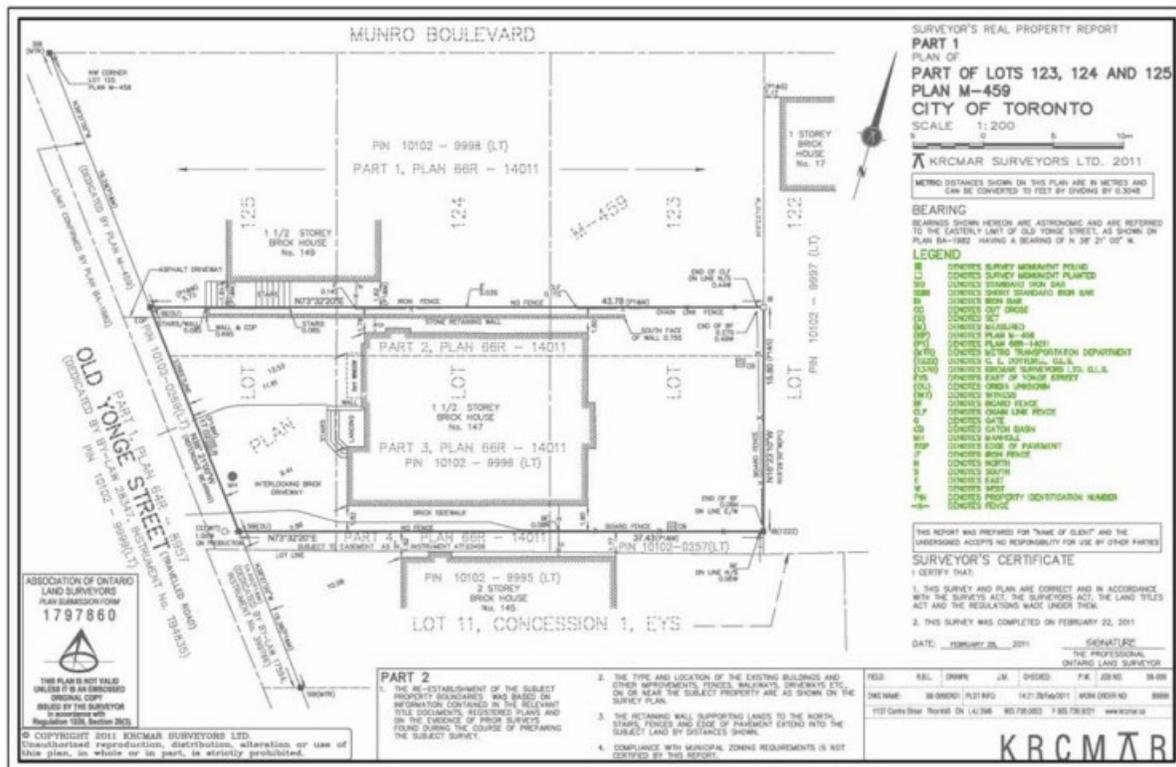
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SECTION 9

LAND DESCRIPTION SYSTEMS



A survey should show all adjacent streets, roads, and highways and indicate whether the accesses are public or private. The survey should be reviewed carefully to determine whether the property has access to a public street. The survey should also include setback lines, which may be required by private restrictions or zoning regulations. The setback line requirements provide improvements must be located a certain distance from the street or from the boundary of the property. Most property is serviced by utilities, so the survey should locate evidence of these utilities. Basic survey information includes a north arrow indicating in which direction is north and a legend describing any symbols the surveyor used to mark different items on the survey.



For purposes of land description, a survey should provide:

- (a) The state, County, land district, and section in which the property surveyed is located;
- (b) An indication of which direction on the survey is north;
- (c) A point of beginning for a land description;
- (d) Courses and distances for each property line;
- (e) The name of the surveyor;
- (f) A scale for distances not shown on the survey; and
- (g) A legend of abbreviation or symbols used.

It is also important to locate all buildings and other improvements and to trace around the property boundary to see the improvements do not encroach onto an adjoining neighbor's property or over or upon easements located on the survey.

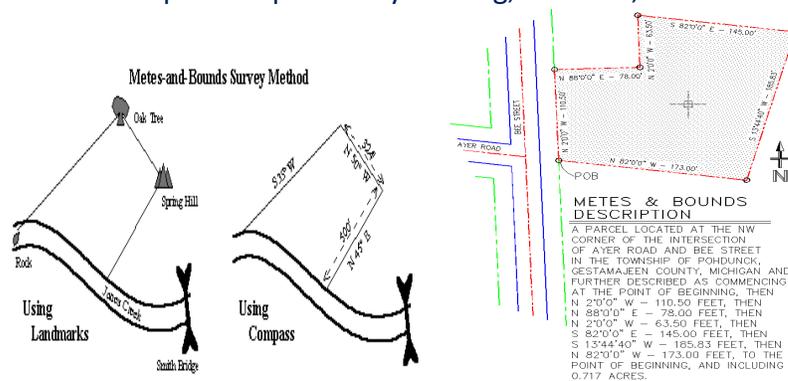
While local methods of land description will normally conform to historically accepted practices, there are four basic survey-related methods of describing the land. Two of these methods, the metes, and bounds (distance and bearing) system and the rectangular survey system, are the most used forms of land description. The best, but least used, method of land description is the coordinate system.

LAND DESCRIPTION TECHNIQUES

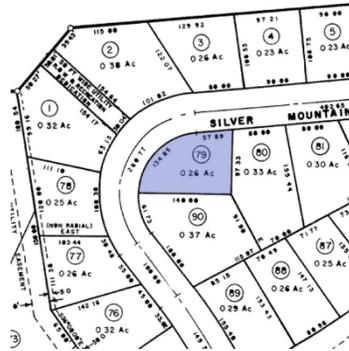
Land descriptions may be divided into two categories--*written and graphic*.

Written land descriptions may be based on one of several acceptable survey methods, such as:

- Metes and Bounds--description of parcels by bearing, distance, and land references.

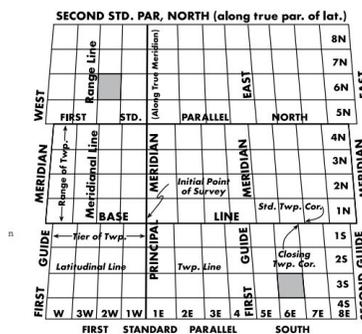


- Land Lot--description of parcels by Land District/Land Lot.

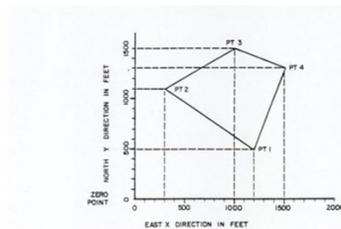


- Rectangular Survey--description of parcels by section, township, and range. Based on a national network of survey lines: principal meridian lines (which run north-south) and base lines (which run east-west).

(Where these lines intersect as starting points, land was divided into square tracts called townships, each measuring six miles by six miles, containing 36 square miles. Each township was further subdivided into 36 square tracts called sections, each containing one square mile.)



- Coordinates--description of parcels by latitude and longitude or state plane coordinates.



Description by Coordinates

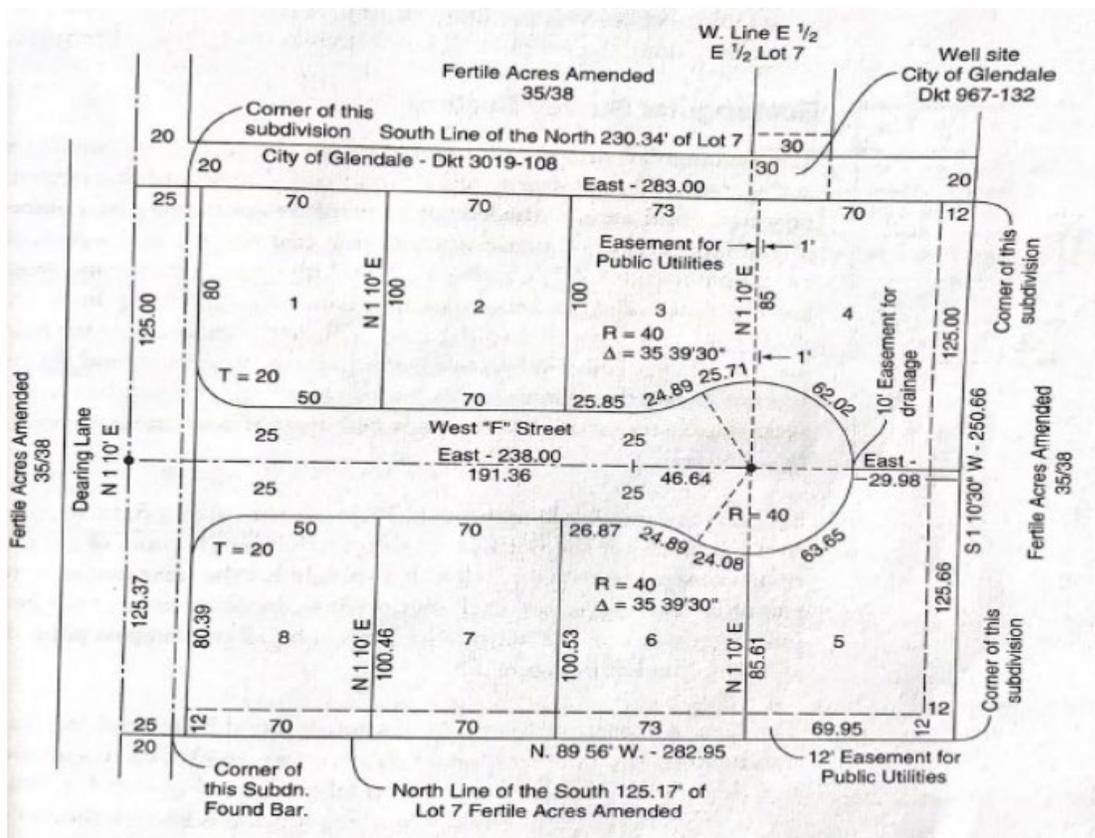
Pt 1: X = 1,200, Y = 500 Pt 2: X = 300, Y = 1,100
 Pt 3: X = 1,000, Y = 1,500 Pt 4: X = 1,500, Y = 1,300
 Pt 1: X = 1,200, Y = 500

PLATTED DESCRIPTION

The platted, or short form, description describes a piece of land by reference to a recorded survey or plat. Most counties maintain a plat index and copies of all plats which have been recorded within the County. The index to the plats usually is based on one of the following criteria:

- (a) land lot and district (location designation)
- (b) name of the owner designation, or
- (c) subdivision designation

The plat contains a legal description of the property. Plats often have restrictive covenants on them which are binding on the owner of the property. Plats also show building setback lines, easements, and other matters. The legal description may change over the course of time, as a current parcel of property may have been included within larger tracts in the history of the property.



LAND LOT

The land lot system, also called the lot, block, and tract system and the subdivision system, is the method used to describe most residential and commercial building lots. Individual parcels are referred to by the tract, block, and lot numbers by which they are identified in the subdivision map filed in the County recorder's office. The description will also name the city and County in which the tract is located and should provide the book and page number in the County recorder's office where the subdivision map appears.

RECTANGULAR SURVEY

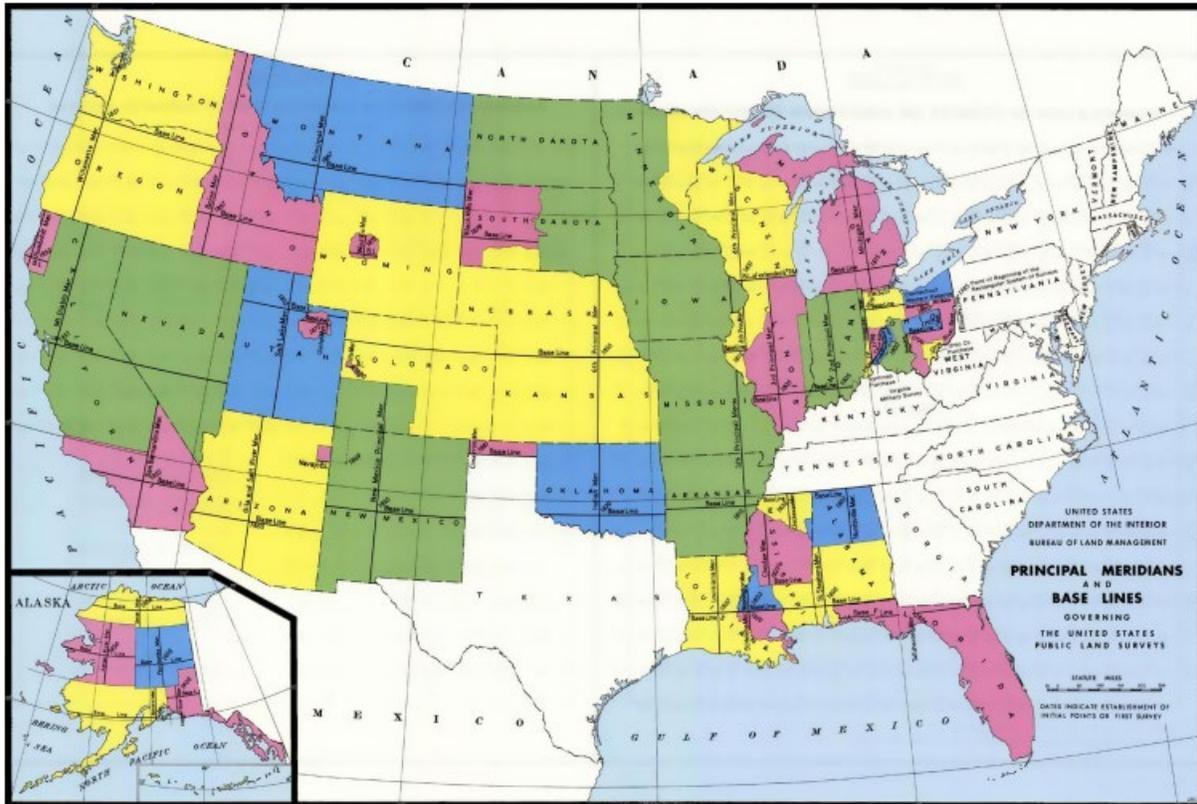
The rectangular survey system, also called the U.S. Government survey system and section and township system, is most useful in identifying large tracts of rural property. When the United States was first being established, a standard system of describing land was needed to make areas of land easy to locate and available for sale by federal land offices.

The rectangular survey system is based on sets of intersecting hypothetical lines: principal meridians and base lines. Principal meridians are vertical lines which run north and south. Base lines are horizontal lines which run east and west.

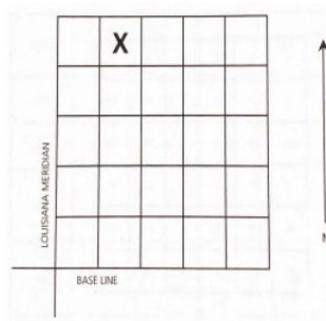
Principal meridians are identifiable in terms of their distances in degrees, minutes, and seconds west of the Greenwich meridian.



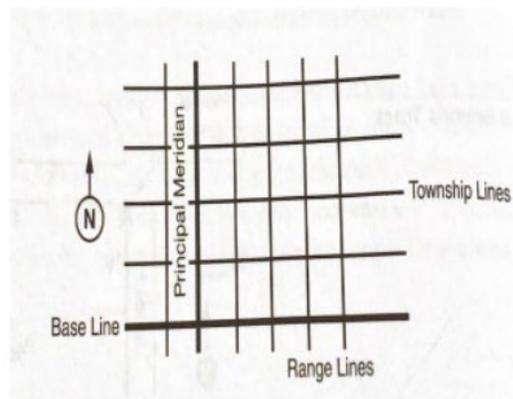
The United States contains thirty-five principal meridians, and each is assigned a name or number for identification purposes.



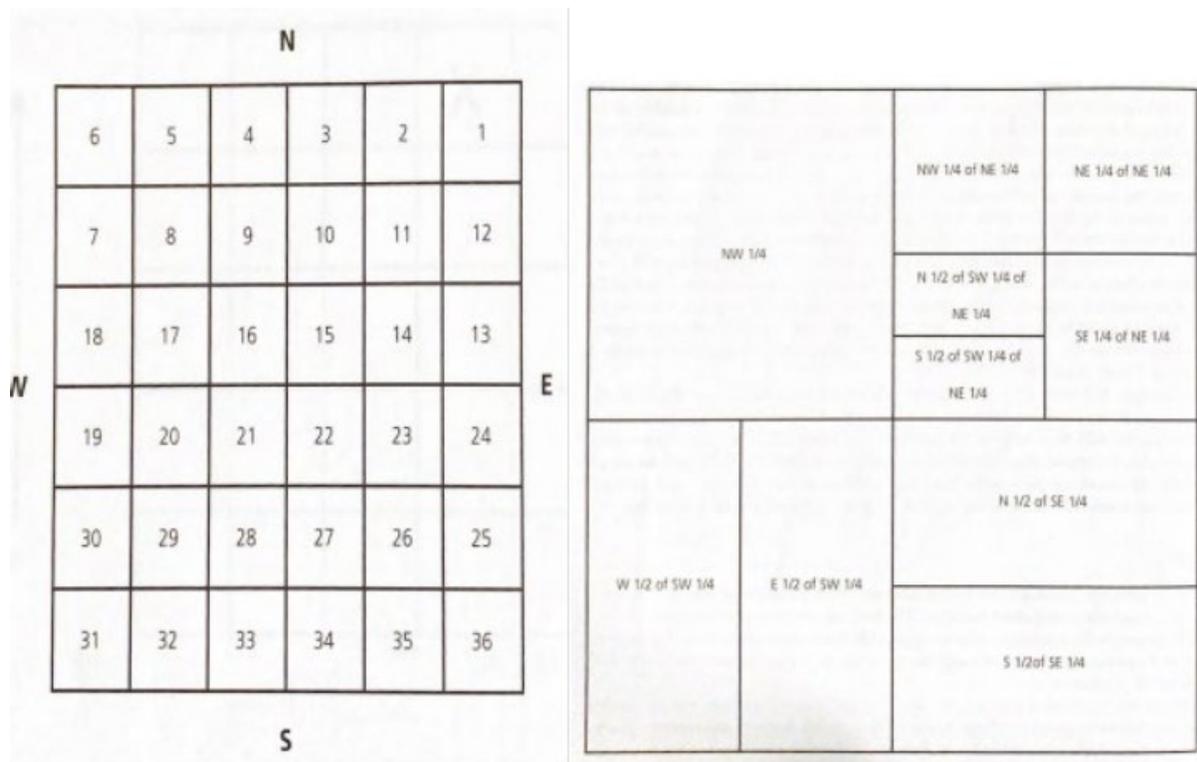
A base line is a surveyor's line which runs due east and west and is identified as being a certain number of degrees north of the equator. Only one base line will cross each principal meridian, therefore, a parcel of land may be described as a certain distance east or west of a given principal meridian and a certain distance north or south of a given base line.



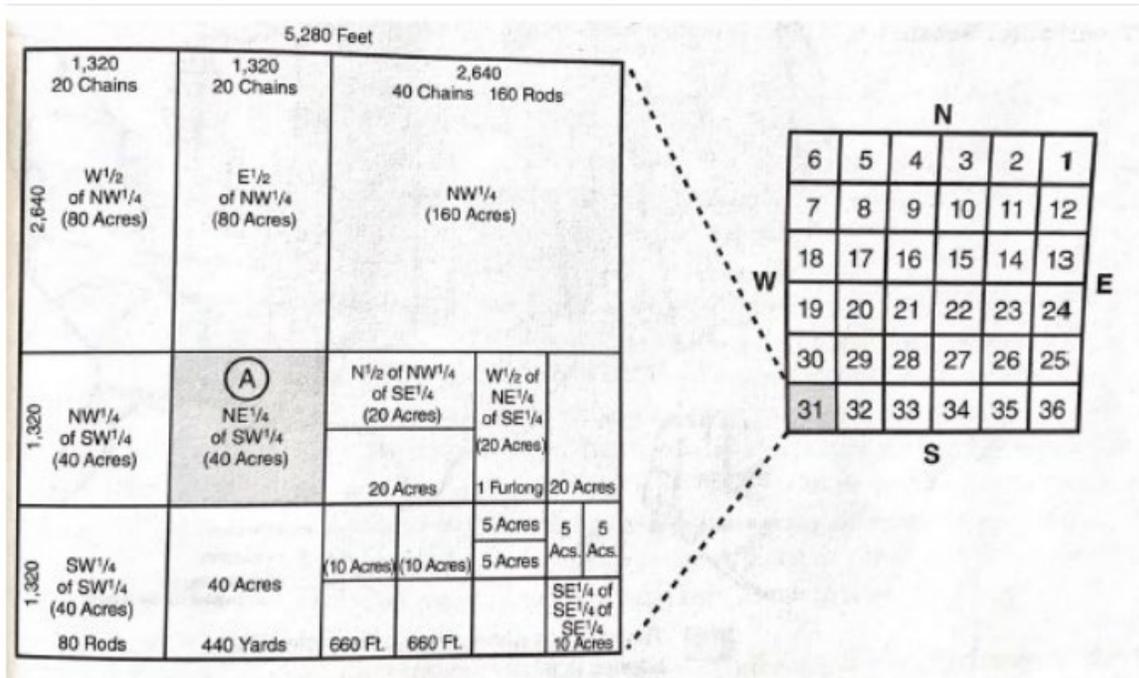
Using only principal meridians and base lines, the areas of land are still large. To simplify the task of identifying smaller parcel, township and range lines have been established.



Land area is divided into townships measured and numbered starting at the intersection of a base line running east to west and a principal meridian running north to south. Lines running east and west, parallel to the baseline and spaced six miles apart, are called township lines. Lines which run north and south, parallel to the principal meridian, are also six miles apart and are called range lines. When the horizontal township lines and the vertical range lines intersect, they form squares called townships. The 36-mile township is further divided into 36 sections.



A section of land contains 640 acres and is 1-mile square, or 5,280 feet by 5,280 feet. These townships make up the basic units of the rectangular survey system.



Because the Earth is round, all range lines gradually approach one another to the point where they eventually meet at the north pole. Thus, an accurate survey of a township would show its north boundary line to be about 50 feet shorter than its south boundary line. In the case of the fourth township north of the base line, the difference is four times as great, or about 200 feet.

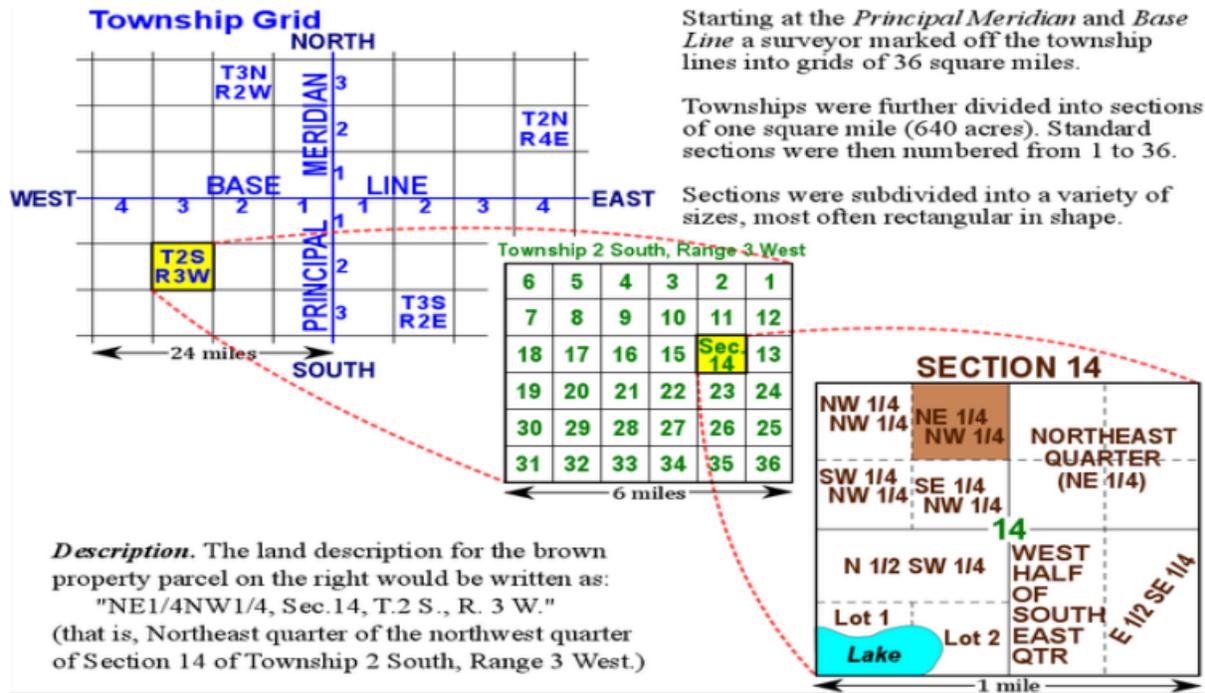
The rectangular survey system uses correction lines to compensate for these resulting shortages. Each fourth township line (24 miles) north and south of a base line is designated as a correction line. At each correction line, the east and west range lines are remeasured to the full distance of 6 miles apart. Each correction line serves as a new base line for townships which lie between it and the next correction line. Guide meridians are lines running due north and south at 24-mile intervals (every fourth range line) on either side of the principal meridian. They begin at the base line and extend to the first correction line in either direction. Guide meridians are not parallel to the principal meridians or to one another. Combined with the correction lines, these guide meridians divide land territories into areas about 24 miles apart.

A township square is identified by using:

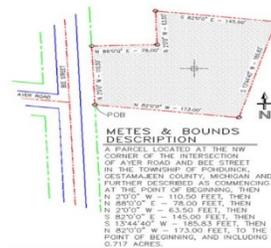
- (a) The location of the townships strip in which a township is located;
- (b) The designation of the range strip, and
- (c) The name or number of the closest principal meridian

A SECTION OF LAND	ACRES	LINEAR CHAINS (1 Chain = 66 feet)	LINEAR RODS (1 Rod = 16 1/2 feet)	LINEAR FEET	SQUARE MILE
ONE FULL SECTION	640	80	320	5,280	1
QUARTER SECTION	160	40	160	2,640	1/2
QUARTER QUARTER SECTION	40	20	80	1,320	1/4
QUARTER QUARTER QUARTER SECTION	10	10	40	660	1/8
QUARTER QUARTER QUARTER QUARTER SECTION	2 1/2	5	20	330	1/16
QUARTER QUARTER QUARTER QUARTER QUARTER SECTION	5/8	2 1/2	10	165	1/32

A government rectangular survey description is read backward. That is, you read from the end of the description to the beginning to determine the location and size of the property.



is used predominately in the eastern states.



Originally, adjacent landowners, trees, rocks, rivers, traveled ways, etc. were used to describe the extent or bounds of an individual property.

Beginning at a pine stump on the east bank of a brook easterly of where the James McLucas home used to stand and running down said brook to the end of a wall close by a large water course on said brook; thence southerly by said wall as it tends up the mountain to a bunch of birches marked;

Further development of the metes and bounds description was augmented by the evolution of surveying technology and equipment. A metes and bounds legal description usually cannot be prepared without a survey.

PROPERTY DESCRIPTION TRACT 2

A part of the Southeast Quarter of the Northeast Quarter of Section 34, Township 23 North, Range 14 West of the 5th P.M., described as follows: Beginning at the Northwest corner of the Southeast Quarter of the Northeast Quarter of said Section 34; thence S 89°15'20" E 247.92 feet along the North line of said Southeast Quarter of the Northeast Quarter for the true place of beginning; thence continuing S 89°15'20" E 307.13 feet along said North line; thence S 00°44'40" W 575.69 feet; thence S 67°12'29" W 335.00 feet; thence N 00°44'40" E 709.47 feet to the true place of beginning. Subject to all easements of record. Description as per Survey C-6058 made by Carmack Surveying, Inc.

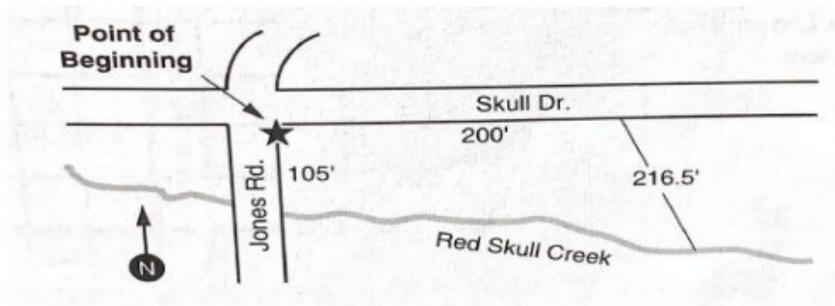
In the eastern part of the United States, individuals acquired the first land titles by gift or purchase from the European governments which were trying to establish colonies. Surveys and maps were either lacking or inadequately made, and descriptions could be given only in general terms. The remaining land in the thirteen colonies was transferred to the states at the close of the Revolutionary War. Later, this land was parceled out to individuals, generally in irregular tracts.

Many original transfers, and subsequent ownership and subdivisions were not recorded. Those which were legally registered usually had scanty or defective descriptions, and the trees, rocks, and natural landmarks defining the corners were soon disturbed. Numerous problems in land surveying stem from the confusion of early property titles, descriptions, and compass surveys. The locations of many corners have been established by compromise after resurveys or by court interpretation of their original or intended positions. Other corners have been fixed by "squatters' rights" or adverse possession. Many boundaries are still in doubt, especially in areas where the cost of a survey exceeds the value of the property.

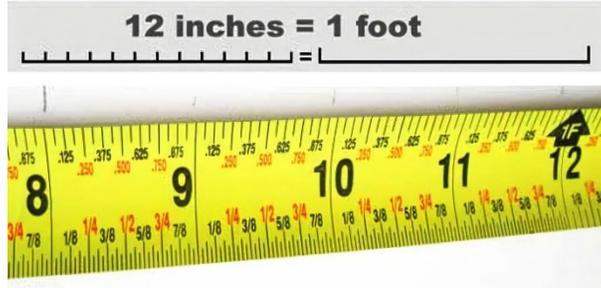
PROPERTY DESCRIPTIONS

Each metes and bounds description must begin somewhere, and this somewhere is called the point of the beginning, usually a physical feature such as a stake, fence post, or road intersection. The beginning point must be precise, or the entire description will be incorrect; it must be a definitely ascertainable point and a point which may be located on the ground. Therefore, a beginning point must be either:

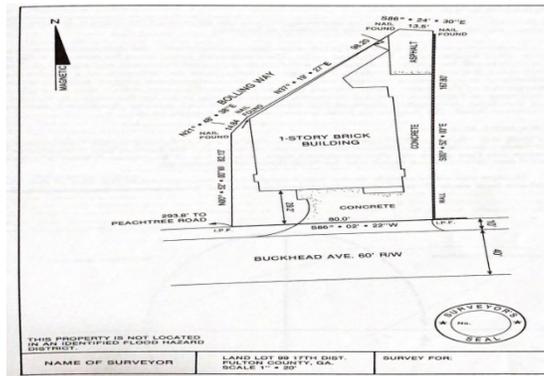
- (a) At a known point (a monument, man-made or natural) such as a land lot corner, street corner, street intersection, intersection of the street with a railroad, or intersection of a street with a stream; or
- (b) A certain course and distance from a monument



In recent years, the use of artificial permanent monuments such as metal pipes, steel pins, or concrete posts have replaced the use of natural features. It is incorrect to say as a beginning point, "Begin at an iron pin (found on a certain street)" or "begin at a point (on a certain street)" because there are an infinite number of iron pins or points along such street. Once the beginning point has been fixed, the metes and bounds description proceeds along a series of calls, each call being a course and distance describing a boundary line of the land. The distance of a call usually is measured in feet or hundredths of feet.



For example, a call which is 56.8 feet is 56 and 80/100ths of a foot in length.



Early descriptions, especially in rural areas, had lengths shown in chains, poles, and rods. A rod is 16.5 feet. A chain is 100 links, with each link being 0.66 feet; so, the entire chain is 66 feet. These are being replaced by measurements in feet and decimals. Bearings may be to the magnetic north or to the true north, the latter being preferable. Current descriptions, even while developed with the use of modern surveying technology and equipment, will still often refer to the natural features found. This enables someone other than the surveyor to locate the points and trace the description on the ground.

When relocating the lines of an old survey or where a discrepancy exists between two tracts, the following precedence (weight of importance) is usually applied:

1. Monuments (natural and manmade)
2. Adjoining owners
3. Course and distance
4. Size

The following example may be used to show how a call for one item takes precedence over another. A description states a certain line goes from the road a distance of 500 feet to a stream. If the distance from the road to the stream is actually 1,000 feet, the line should go to the stream and the distance given should be ignored. (A call for a monument takes precedence

over a call for distance.)

"Intent" is a term used to describe the probable intentions of the grantor and grantee. Surveyors, lawyers and occasionally individuals write descriptions. A single error such as an improper numerical value or a misplaced word or punctuation mark may result in litigation for several years or more if the intentions of the grantor and grantee are not fulfilled. Every attempt should be made to interpret what the actual intent was, as this is the only correct solution of the problem.

A basic requirement for a metes and bounds legal description are:

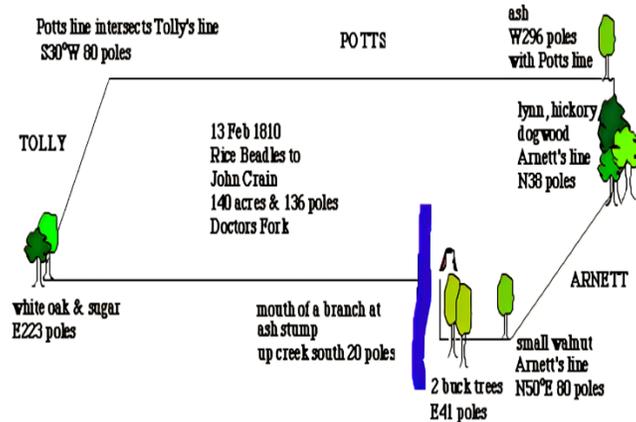
- (a) Identification of land lot, district, section, County, and state in which the property is located;
- (b) Definite beginning point;
- (c) Compass direction and distances from one point to the next; and
- (d) Return to the beginning point.

A metes and bounds description of a piece of property should always contain the following information.

1. **Point of beginning** - this should be easily identified, permanent, well referenced, and near the property.
2. **Definite corners** - clearly defined points are preferable, with reference to monuments such as iron pins.
3. **Lengths and directions of the sides of the property** - all lengths (in feet and decimals) and directions (by angles) must be given. Omitting a distance or bearing, even one to the point of beginning, may throw off the calculations. The date of the survey is also important, especially if the bearings are computed from magnetic north.
4. **Names of adjoining property owners** - these should be given to avoid claims for land in case an error in the description leaves a gap.
5. **Area** - to help identify the property, the amount of area included in the description is usually shown.

Occasionally, a description is encountered which does not include the above-mentioned information. For example, early descriptions would contain only references to the owners of the adjoining property. This type of description is referred to as a "bounded by" description and is considered inadequate today.

A metes and bounds description must close. This means the legal description starts at the beginning point, follows each boundary line by course and distance, and ends back at the beginning point. If the land description does not close, it is defective.

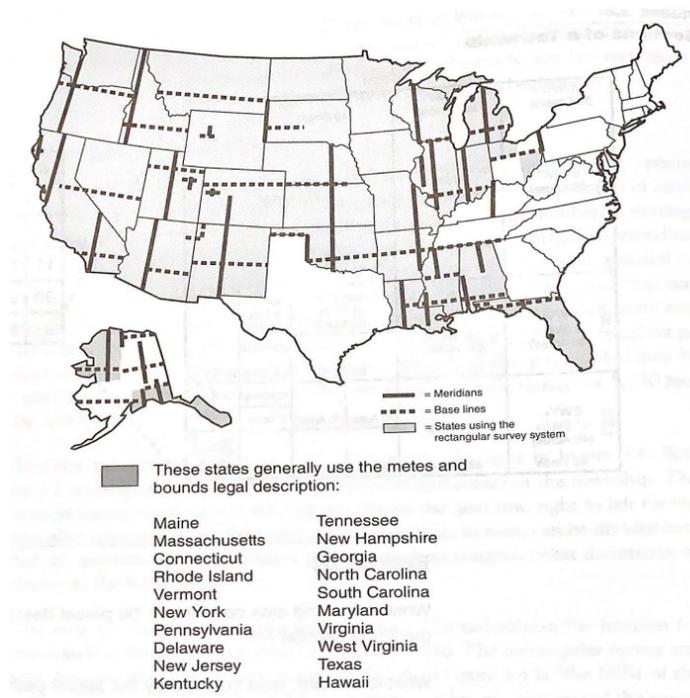


The following is an example of a proper metes and bounds description:

Beginning at an iron pin located in the South Right of Way of Main Street. Said iron pin is located N 88° 15' E at a distance of 284' from the intersection of the South ROW of Main Street and the East ROW of Maple Street. Said point is also located at the Northeast corner of a lot now owned by John Smith; thence along Wilson's North line S 82° 41' E a distance of 197.3 feet to a point in Cook's West line, thence N 46° 10' E a distance of 1434.5', thence N 5° W a distance of 210 feet to an iron pin in the South ROW of Main Street, thence along the South ROW of Main Street S 84° 50' W a distance of 300 feet to the point of beginning 1.65 acres more or less.

Advantages and Disadvantages

The metes and bounds system is useful in describing irregularly shaped parcels which could not normally be described by other accepted methods of land description. In many areas, points of beginning have been replaced by permanent markers, and the transits used by modern surveyors give extremely accurate results. The main disadvantage is it may produce inadequate location of ownership due to inaccuracies of measuring methods and reliance on natural and cultural land features of a temporary rather than permanent nature.

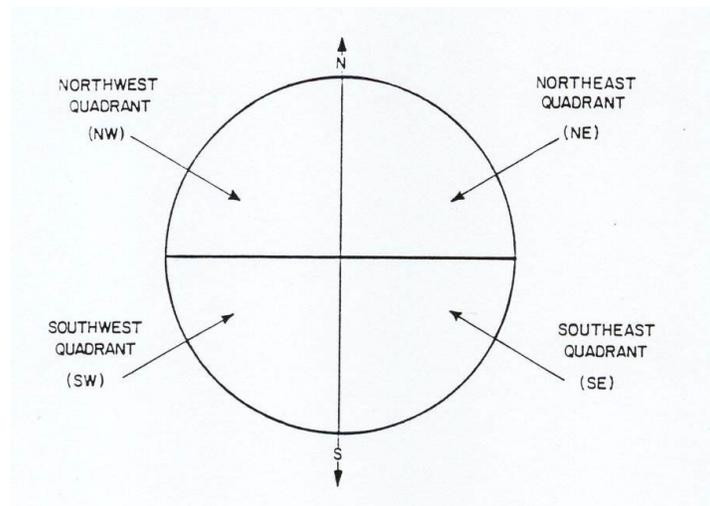


BEARINGS

The course (the direction) of a boundary line usually is done by course bearings. The bearing of a line is the angle between the meridian and the line. These bearings and angle are measured from either the north or south toward to east or west. These bearings are based on true north or true south compass readings, and each course is based on a north-south direction. This is best explained in reference to the four quadrants of a surveyor's compass. The compass directions are based on a 360-degree radius, for which there are four 90-degree quadrants: northwest, northeast, southeast and southwest. Each quadrant has 90 degrees; each degree has sixty minutes; and each minute has sixty seconds.

Figure below shows a surveyors compass with the four quadrants identified.

Quadrants
of a Surveyor's Compass



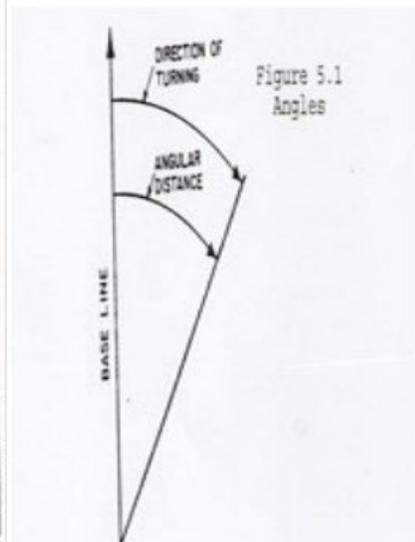
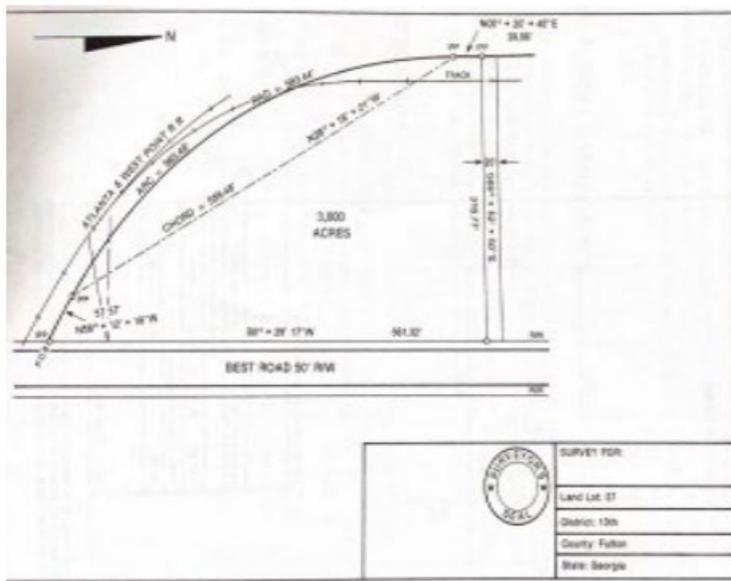
MEASUREMENT OF ANGLES

Sometimes surveyors use angles to measure the exact direction of a property line instead of or in addition to bearings. An angle is the difference in direction of two intersecting lines. A purely arbitrary unit is used to define the value of an angle. A circle has 360 degrees, and this is the basis for angles used in legal descriptions. The standard units in the United States are the degree, the minute, and the second.

The only thing an angle has in common with the bearings is the use of the term's degrees, minutes, and seconds. A line running northeasterly at an interior angle of $60^{\circ}14'30''$ is not the same thing as a line running $60^{\circ}14'30''$ east. An angle runs from the last described course and is either interior (inside the property boundary) or exterior (outside the property boundary).

There are three basic requirements in the determination of an angle. As shown in figure, they are

- (1) the base line,
- (2) the direction of turning, and
- (3) the angular distance.



When reviewing a survey in which angles are used to describe courses, think of a property corner as an intersection of two lines. At the point of the intersection, draw a circle, using this point as a center of the circle. The arc of the circle within the property boundary is the interior angle, and the arc outside the property is the exterior angle.

When angles are used, the interior- exterior angles are always the same, even though the property lines are described from different directions. Most surveyors locate only one interior- exterior angle at a corner, not necessarily both; but a circle always has 360 degrees, and the omitted angle may easily be computed if necessary.

The direction of a line is its angle from an established line of reference, called a meridian. The reference line adopted is either the true (geographic) meridian or the magnetic meridian. The true meridian for any one place upon the surface of the earth is a line which passes through the

observer's position and the north and south geographic poles. If a survey is based upon a plane coordinate system, such as a state plane coordinate system, a grid meridian is used as the reference meridian.

These three types of meridians are often referred to as the three types of north: true north, magnetic north, and grid north. In simpler terms it may be said such true north is a line from a point directly to the geographic North Pole, Magnetic north is a line from a point directly to where the compass points (the magnetic north pole), and grid north is an assumed line indicated by a line on a map sheet.

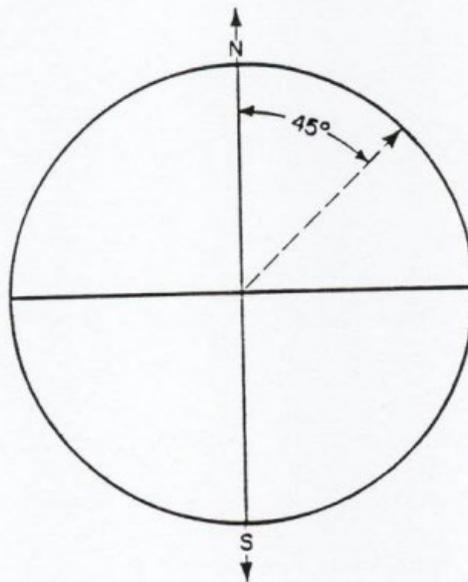
DECLINATION

Declination is the horizontal angle between the magnetic meridian (magnetic north) and the geographic meridian (true north). (A horizontal angle is one measured left of or right of true north and on the same plane as true north.) On only one line will magnetic north and true north be the same. This may be explained by the fact the compass points to the magnetic north pole, which is located approximately 1,000 miles from the true geographic pole. As an observer moves either easterly or westerly from the "O"* line the difference known as declination appears. The greater the distance either east or west, the greater the declination. If an attempt is being made to retrace a survey, it is necessary to know if magnetic north or true north was previously used.

* The "O" line refers to the point where magnetic north and true north are the same and thus no declination exists.

The proper quadrant is identified by first giving the letters N or S, then the angular amount, and then the letters E or W. An example is N 45° E. This example tells us the line is in the NE quadrant and is 45° from north in an easterly direction.

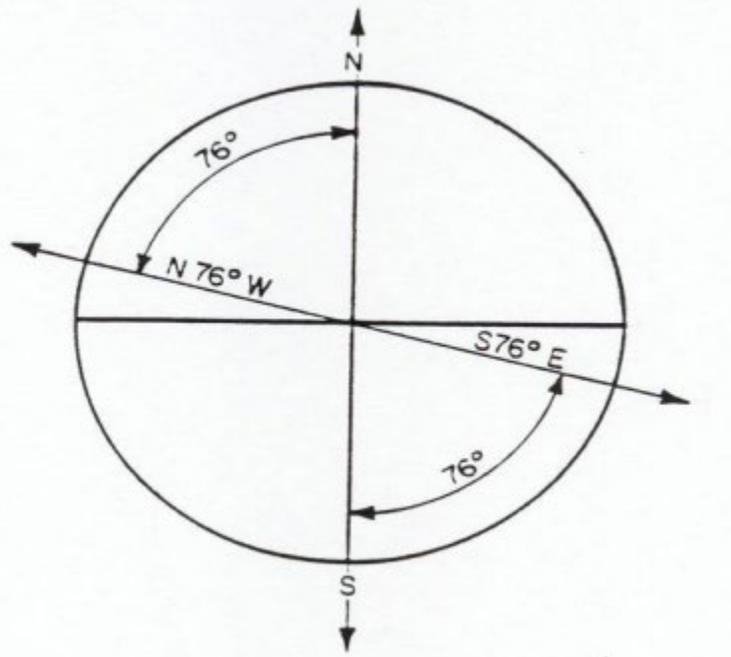
Line Bearing N45E
(Northeast Quadrant)



Different types of bearings are sometimes encountered. A true bearing is one measured from the geographic meridian (true north), while magnetic bearings are measured from magnetic meridians (magnetic north).

When working with bearings it is important to remember the direction is indicated as North 76(West or South 76(East and never West 76(North or East 76(South. Also, a bearing of North 76(East is not the same as North 76(West, nor is South 76(East the same as South 76 (West. This is illustrated in figure 5.4.

Direction of Bearings



The opposite of a bearing is referred to as the reverse of the bearing. The process of using the opposite bearing to find the bearing in question is termed "reversing a bearing." When a bearing is reversed, the degree stays the same while both directions are changed. The reverse of N76(W is S76(E, as illustrated in figure 5.4. This is often helpful when a call has been left out of a description. It is sometimes possible to reverse one or more of the bearings and find the one which has been omitted.

As previously stated, an angle is measured using degrees, minutes, and seconds. Each degree is divided into 60 minutes, and each minute is divided into 60 seconds. This may be illustrated as:

N 59(30' 15" E

° = Degrees (= Minutes " = Seconds

While it is important for surveyors to be very precise in their work, due to the equipment usually used by ownership mappers it is often impossible to plot a bearing any more accurately than to the nearest half degree. Using an example of N59(30' 15" E, it would be practical to ignore the 15" and plot only N59(30' E. If N59(55' E is given, it would be practical to round to N60(E.

TIME TO SEE WHAT YOU HAVE LEARNED

Parcel 9-7

That tract of land in Land Lot 246 in the 22nd Land District of [] County, Georgia, containing 74.3 acres, more or less, as partially shown according to a plat of survey made by J. D. Glover, Surveyor, dated June 5, 1968, recorded in Deed Book 260, Page 522, [] County Records, and being the northwest half of said land lot lying north of Interstate Highway I-16. There is specifically excepted from the description herein the purpose of said northwest half of said land lot lying on the southerly side of Interstate Highway I-16. Said tract of land herein conveyed is a portion of the lands described in a Warranty Deed from Mrs. Agnes G. Hughes to Herman Harper dated June 14, 1968, recorded in Deed Book 260, Page 523, [] County Records.

Parcel 9-10

All that certain tract of land containing 130.29 acres, more or less, and being all of Land Lot 266 and a portion of the southeast corner of Land Lot 277 in the 22nd Land District of [] County, Georgia that lies south of the right of way of U.S. Route 80.

LESS AND EXCEPTED from the above described Tract No. Three are the following parcels of land:

Parcel A: All that tract or parcel of land situate, lying and being in Land Lot 266, in the 22nd Land District of [] County, Georgia, containing 1 acre, more or less, as more particularly described and delineated on a plat of survey prepared by Daniel R. Riggs, Georgia Registered Land Surveyor No. 1533, dated January 31, 1974, recorded in Deed Book 318, Page 147, in the Office of the Clerk of the Superior Court of [] County, Georgia. Said plat and the record thereof are by reference incorporated herein and made a part hereof.

Parcel B: All that tract or parcel of land situate, lying and being in Land Lot 266, in the 22nd Land District of [] County, Georgia, containing 1.53 acres, more or less, as more particularly described and delineated on a plat of survey prepared by Larry C. Jones, Georgia Registered Land Surveyor No. 2189, dated August 6, 1985, recorded in Deed Book 434, Page 56, in the Office of the Clerk of the Superior Court of [] County, Georgia. Said plat and the record thereof are by reference incorporated herein and made a part hereof.

Parcel C: All that tract or parcel of land situate, lying and being in Land Lot 267, in the 22nd Land District of [] County, Georgia, containing 14.885 acres, more or less, as more particularly described and delineated on a plat of survey prepared by Thomas W. Hurley, Georgia Registered Land Surveyor No. 2468, dated August 12, 1994, recorded in Plat Book 7, Page 219, in the Office of the Clerk of the Superior Court of [] County, Georgia. Said plat and the record thereof are by reference incorporated herein and made a part hereof.

Parcel 9-12

That tract of land lying and being in Land Lots 264, 265 and 277 of the 22nd Land District of [] County, Georgia containing 99.2 acres.

Parcel 10-17A

That tract of land lying and being in Land Lots 247, 265 and 277 of the 22nd Land District of [] County, Georgia containing 55.42 acres more or less, and being bounded on the North by Interstate 16; West by Georgia Highway 278; East by L.A. Parker, property of Alma Leroy Parker and B. J. Powell; and South by property of Harold Harrison.

Parcel 9-8

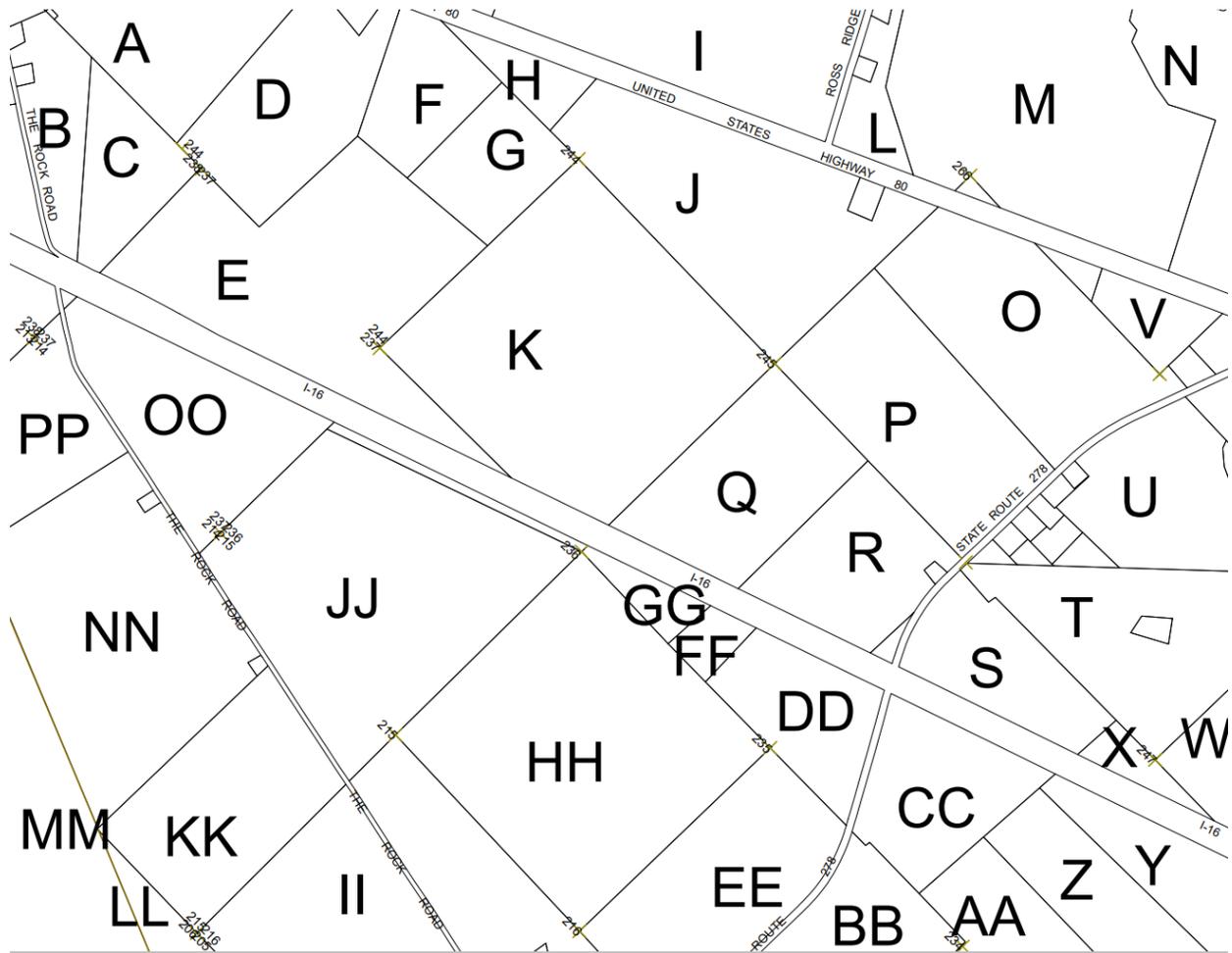
All that tract or parcel of land lying and being in Land Lot 245 of the 22nd Land District of [] County, Georgia, containing 201.84 acres, more or less, and being the whole of said land lot. Said property is also the same property described in a deed from the John Allen and Isabella Allen to Ira E. Dupree, and recorded in Deed Book Y, page 108, [] County Records. []

Parcel 9-5

All that tract or parcel of land lying and being in Land Lot 265 of the 22nd Land District of [] County, Georgia, containing 99.6 acres, more or less, and being the western half of said land lot. Said property is also the same property described in a deed from the estate of Joshua Walker to I.E. Dupree, dated March 7, 1898 and recorded in Deed Book 6, page 206, [] County Records. []

Parcel 10-19

All that tract or parcel of land lying and being in Land Lot 235 of the 22nd Land District of [] containing 203.6 acres, more or less, and being the whole of said land lot. Said parcel is further designated as Tax Parcel []



A BRIEF HISTORY OF GEORGIA LAND DISTRICTS AND LAND LOTS

Eight times between 1805 and 1833 Georgia held lotteries to distribute land, the largest held in the United States. The lotteries followed a simple pattern:

The General Assembly passed an act which authorized the lottery and spelled out who would be eligible to participate and the grant fees which would apply.

Eligible citizens registered their names in their County of residence and paid a small fee. The names were sent to the governor's office at the state capital. Beginning with the second lottery the names were copied onto slips of paper called "tickets" and placed in a large drum called a "wheel."

The land to be distributed was surveyed and laid out in districts and lots. The surveyors sent the district and lot numbers to the governor's office. These were placed in a separate wheel. (At first, blank tickets were added to this wheel, so the number of tickets would equal the number of persons drawing.)

Commissioners appointed by the governor drew a name ticket from one wheel and a district/lot ticket from the other wheel. If the district/lot ticket was blank, the person received nothing. If the ticket contained a district/lot number, the person received a prize of such parcel of land. A ticket which contained a number was called a "Fortunate Draw." With later lotteries (after 1820), when blank tickets were not added to the prize wheel, individuals whose names remained in the second wheel were considered to have drawn blanks.

Anyone who received a Fortunate Draw could take out a grant for the lot he drew, after paying the grant fee. If he did not take out a grant, the lot reverted back to the state to be sold to the highest bidder.

1805

Counties

- Baldwin: 5 Districts (1-5)
- Wayne: 3 Districts (1-3)
- Wilkinson: 5 Districts (1-5)

Size of Land Lots

- Baldwin: 202 ½ acres
- Wayne: 490 acres
- Wilkinson: 202 ½ acres

1807

Counties

- Baldwin: 15 Districts (6-20)
- Wilkinson: 23 Districts (6-28)

Size of Land Lots

- Baldwin: 202 ½ acres
- Wilkinson: 202 ½ acres

1820

Counties

- Appling: 13 Districts (1-13)
- Early: 26 Districts (1-23; 26-28)
- Gwinnett: 3 Districts (5-7)
- Habersham: 10 Districts (1-6; 10-13)
- Hall: 5 Districts (8-12)
- Irwin: 16 Districts (1-16)
- Rabun: 5 Districts (1-5)
- Walton: 4 Districts (1-4)

Size of Land Lots

- Appling: 490 acres
- Early: 250 acres
- Gwinnett: 250 acres
- Habersham: [Districts 1-4; 10-13] 250 acres; [Districts 5-6] 490 acres
- Hall: 250 acres
- Irwin: 490 acres
- Rabun: [Districts 1; 3-5] 490 acres; [District 2] 250 acres
- Walton: 250 acres

1821

Counties

- Dooly: 16 districts (1-16)
- Fayette: 4 districts (6,7,9,14)
- Henry: 18 districts (1-18)
- Houston: 16 districts (1-16)
- Monroe: 15 districts (1-15)
- 37 undrawn lots remaining from the 1820 lottery

Size of Land Lots

- All new (1821) counties: 202 ½ acres

1827

Counties

- Carroll: 16 districts (1-16)
- Coweta: 9 districts (1-9)
- Lee: 13 districts (1-13)
- Muscogee: 24 districts (1-24)
- Troup: 12 districts (1-12)

Size of Land Lots

- All counties: 202 ½ acres

1832(1)

Counties

The original Cherokee Indian territory became Cherokee County by an Act of December 26, 1831. A law passed on December 3, 1832, divided original Cherokee County into ten counties: Cass (renamed Bartow), Cherokee, Cobb, Floyd, Forsyth, Gilmer, Lumpkin, Murray, Paulding, and Union. In the drawing of tickets and in the granting of the land, the area was treated only as Cherokee territory. It was divided between land lots distributed by the sixth land lottery and “gold” lots which were distributed by the seventh land lottery.

Sections and Land Districts

The territory was so expansive Cherokee County was divided into four sections, and each section was divided into districts. There was a total of 60 land districts, and each was divided into land lots. Fractional lots of 100 acres and more were counted as whole lots.

First Section

Districts 6-10, 16-19.

Second Section

Districts 4-14, 20, 22-27

Third Section

Districts 5-16

Fourth Section

Districts 4-15, 18-19

Size of Land Lots

- 160 acres

1832(2)

Counties

The original Cherokee Indian territory became Cherokee County by an Act of December 26, 1831. A law passed on December 3, 1832, divided original Cherokee County into ten counties: Cass (renamed Bartow), Cherokee, Cobb, Floyd, Forsyth, Gilmer, Lumpkin, Murray, Paulding, and Union. In the drawing of tickets and in the granting of the land, the area was treated only as Cherokee territory. It was divided between land lots distributed by the sixth land lottery and “gold” lots which were distributed by the seventh land lottery.

Sections and Land Districts

The territory was so expansive Cherokee County was divided into four sections, and each section was divided into districts. There were 33 gold districts, and each was divided into gold lots.

First Section

Districts 1-5, 11-15

Second Section

Districts 1-3, 15-19, 21

Third Section

Districts 1-4, 17-21

Fourth Section

Districts 1-3, 16-17

Size of Gold Lots

- 40 acres

1833

Counties

Original Cherokee territory and a handful of land lots not placed in the prize wheels during earlier lotteries.

Sections and Districts

Fractional lots of fewer than 100 acres from the 60 land districts and 33 gold districts. Twenty-two undrawn lots from the previous Cherokee lotteries.

Size of Land Lots and Gold Lots

Lots varied in size, but the fractional lots from the 1832 Land Lottery were fewer than the 100 acres specified in the laws authorizing such lottery. Fractions result from irregular boundaries which prevent measurements in square lots.

-Courtesy of the Georgia Archives

HEADRIGHT SYSTEM

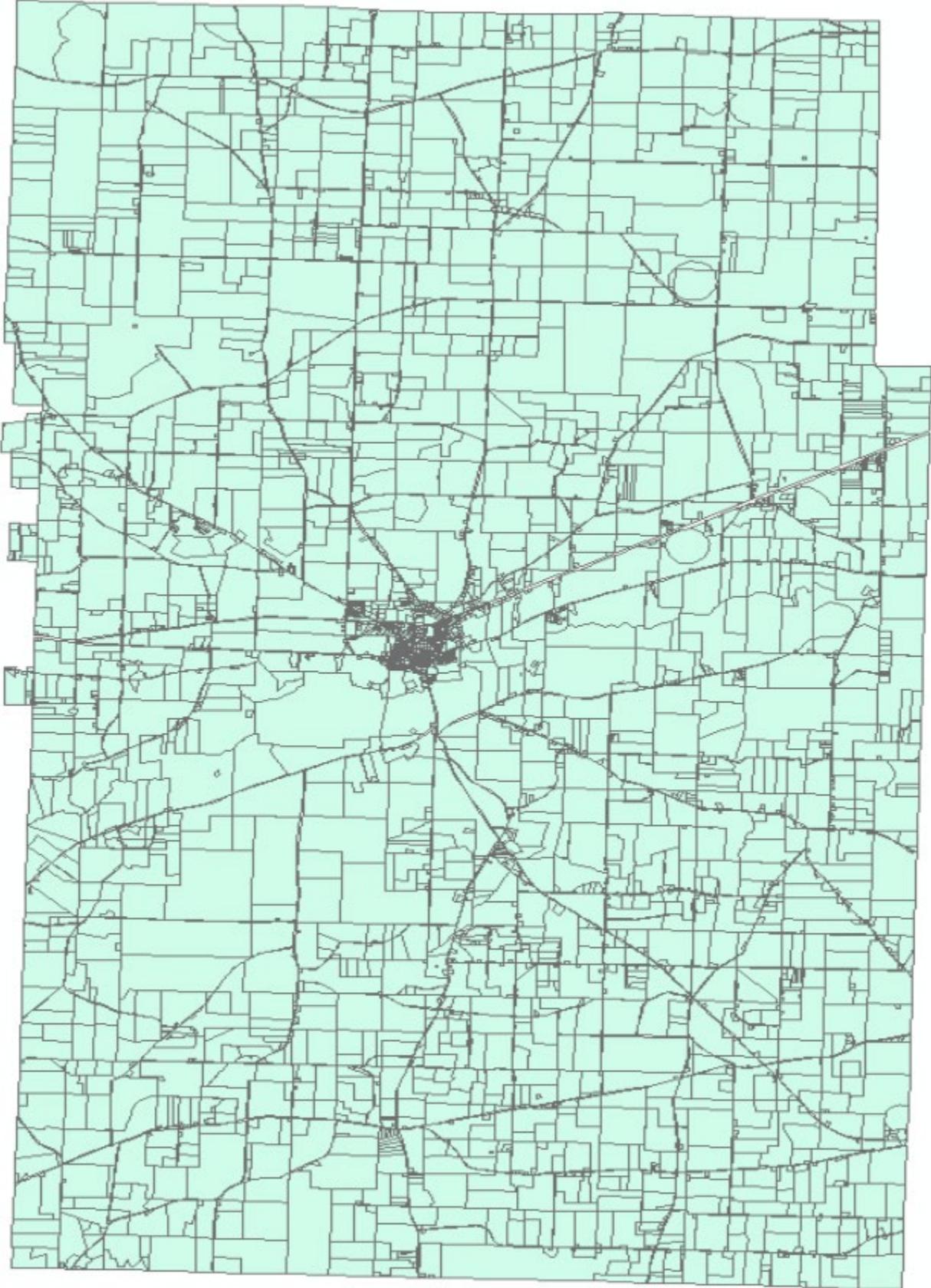
Under the Colonial headright system in Georgia, each head of family was entitled to 100 acres of land for himself, plus an additional 50 acres for each dependent. An additional 1000 acres could be purchased for a nominal price. With legislation passed in 1783, land was granted for Revolutionary War service, with specific amounts of land allotted for each military rank. Privates were entitled to 200 acres of land, plus an additional 50 acres for each dependent, the total not to exceed 1000 acres. After 1786, ungranted land was opened to headright settlers. From 1783 to 1785, the first 200 acres were free, but the applicant paid a cost on a sliding scale for more land. Fees for land were dropped in 1785 but were reinstated in 1831. In all cases the applicant paid surveying and recording fees.

The applicant obtained a warrant for survey after describing the tract of land he wanted and swearing he was legally entitled to it before the County land court. The applicant then presented his warrant to the County surveyor, who was responsible for surveying the land and making plats. The surveyor transmitted a copy of the plat to the Secretary of State's office. This plat was attached to the land grant which was signed by the governor and registered by the Secretary of State. It was then sent back to the County surveyor for recording in the County records and delivered to the grantee. If grant and office fees were not paid to the state within a year of the date of the warrant, the grant was considered lapsed.

Land warrants were bought and sold as commodities in the 1780s, which enabled persons to buy up several warrants, present them to the County surveyor, and, by following legal procedures, acquire a single grant for thousands of acres. This mechanism enabled the Pine Barrens fraud of the 1790s, where land speculators, through wildly inaccurate land surveys, had issued to themselves plats for hundreds of thousands of acres of land.

-Courtesy of the Georgia Archives





SECTION 10 DEED VERIFICATION

VERIFICATION OF SALES

The Georgia Constitution requires all taxation be uniform within each jurisdiction levying the tax. Georgia property tax code specifically defines the terms ‘bona fide arm’s length transaction’ and ‘fair market value’ and further requires such fair market value be the basis for taxable value for most real and personal property. An initial step in the determination of uniform fair market value requires the County appraisal staff to verify and qualify each sales transaction occurring in the market.

The value the assessor is trying to achieve is defined by Georgia law as “Fair Market Value”. The “Fair Market Value” is the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm’s length bona fide sale. Fair market value is the most probable price real estate should bring in an arm’s length transaction in which neither party is acting under duress; the property has been on the market a reasonable length of time; the property’s assets and defects are known to both parties; and there are no unusual circumstances.

An arm’s length transaction is a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and willing seller, each acting in his or own self-interest. Every comparable property must have been sold in a transaction where neither buyer or seller is acting under duress (greater duress, strictly speaking, than what is felt by the buyer and seller in the average transaction).

Market demand is a reflection of the number of possible buyers competing for the available products and services.

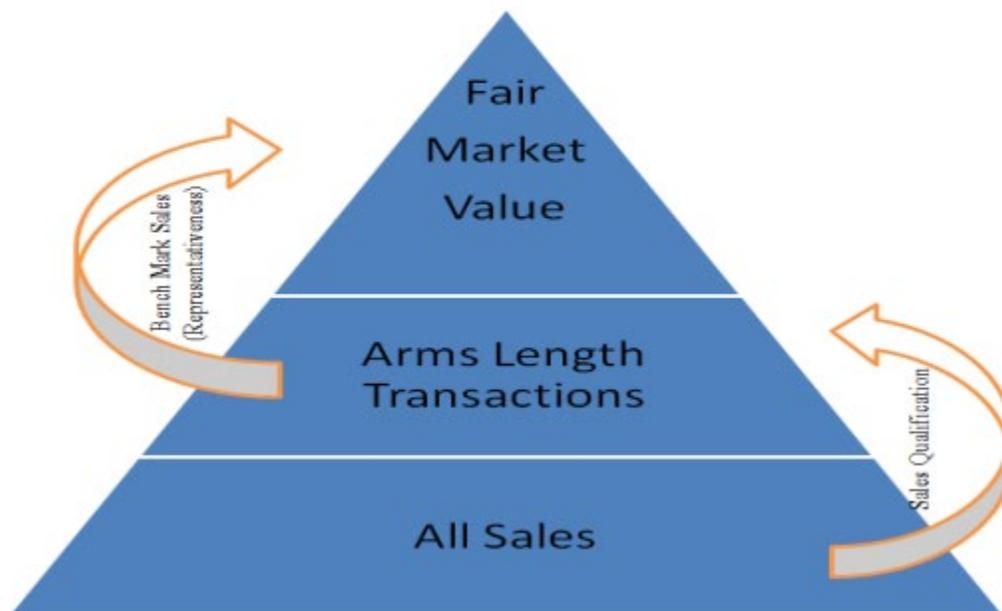
Sales price is what a property sells for- its transaction price. This price may differ from market value because many factors may prevent a sale from being an arm’s length transaction. Asking prices of properties currently listed but not yet sold are not considered in fair market value. The appraiser should also note any previous sales of comparable property within the last three years. Close analysis of prior sales of similar property could indicate general market condition.

The price someone is willing to pay for a property is influenced by the cost of acquiring a substitute or comparable property. The amount paid for a good or service is its cost. The cost to purchase a parcel of real estate may or may not be the same as the price it may command when it is sold to someone else. Cost may or may not be same as the item’s estimated value and its subsequent resale price. The cost to the owner of an item includes the labor and materials required to produce it. An extensively remodeled kitchen usually will not contribute its entire cost to the value of a house. A second

bathroom, however, may very well increase a houses value by more than its installation cost. The appraiser will estimate the cost to produce features of similar quality, using currently available construction materials and methods. When a good or service may be used to acquire another good or service, the commodities have what is termed a value in exchange. The amount of money required to bring about the exchange is the price paid for the good or service. Because it reflects conditions in the marketplace, value in exchange is what is described as market value.

Sales qualification is the process by which the County staff determines whether a transaction meets quality standard reflective of “bona fide arm’s length transaction” and “fair market value”. The research and analysis the appraiser will perform such as a thorough study of the appraised property, its geographical area, historical values, and economic trends will assist in determining a property value. This process includes a review of the circumstances of the transaction and motivations of the buyer and seller. The appraiser’s review should include deed and security deed research; a physical inspection of the property (an appraiser must have some sort of knowledge of building construction to recognize the quality and construction of the subject property); and an interview of the buyer and seller in person, by phone or through questionnaires. Once qualified, such fair market arm’s length transactions are added to a data bank and used in the estimation of value for other properties. The appraiser must know market conditions- why some properties are more desirable than others. At every step in the Appraisal process, an appraiser makes use of data which has been collected and carefully analyzed for its applicability to the property being appraised.

Fair Market Value vs Arm's Length Transaction



QUALIFYING SALES FOR ARM'S LENGTH TRANSACTION

48-5-2. Definitions.

As used in this chapter, the term:

(.1) 'Arm's length, bona fide sale' means a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and a willing seller, each acting in his or her own self-interest, including but not limited to a distress sale, short sale, bank sale, or sale at public auction.

(1) "Current use value" of bona fide conservation use property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale and shall be determined in accordance with the specifications and criteria provided for in subsection (b) of Code Section 48-5-269.

(2) "Current use value" of bona fide residential transitional property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale.
The Tax Assessor shall consider the following criteria, as applicable, in determining the current use value of bona fide residential transitional property:

(A) The current use of such property;

- (B) Annual productivity; and
- (C) Sales data of comparable real property with and for the same existing use.

(3) 'Fair market value of property' means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale. The income approach, if data is available, shall be considered ~~utilized~~ in determining the fair market value of income-producing property, and, if actual income and expense data are voluntarily supplied by the property owner, such data shall be considered in such determination. Notwithstanding any other provision of this chapter to the contrary, the transaction amount of the most recent arm's length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year. With respect to the valuation of equipment, machinery, and fixtures when no ready market exists for the sale of the equipment, machinery, and fixtures, fair market value may be determined by resorting to any reasonable, relevant, and useful information available, including, but not limited to, the original cost of the property, any depreciation or obsolescence, and any increase in value by reason of inflation. Each Tax Assessor shall have access to any public records of the taxpayer for the purpose of discovering such information.

(A) In determining the fair market value of a going business where its continued operation is reasonably anticipated, the Tax Assessor may value the equipment, machinery, and fixtures which are the property of the business as a whole where appropriate to reflect the accurate fair market value.

(B) The Tax Assessor shall apply the following criteria in determining the fair market value of real property:

- (i) Existing zoning of property;
- (ii) Existing use of property, including any restrictions or limitations on the use of property resulting from state or federal law or rules or regulations adopted pursuant to the authority of state or federal law;
- (iii) Existing covenants or restrictions in deed dedicating the property to a particular use;
- (iv) Bank sales, other financial institution owned sales, or distressed sales, or any combination thereof, of comparable real property;
- (v) Decreased value of the property based on limitations and restrictions resulting from the property being in a conservation easement; and

~~(vi) Rent limitations, operational requirements higher operating costs resulting from regulatory requirements imposed on the property, and any other restrictions imposed upon the property in connection with the property being eligible for any income tax credits described in subparagraph (B.1) with respect to real property which are claimed and granted pursuant to either Section 42 of the Internal Revenue Code of 1986, as amended, or Chapter 7 of this paragraph title or receiving any other state or federal subsidies provided with respect to the use of the property as residential rental property; provided, however, that such properties described in subparagraph (B.1) of this paragraph this division shall not be considered comparable real property for the assessment or appeal of assessment of other properties not covered by this division; and~~

(vii)(I) In establishing the value of any property subject to rent restrictions under the sales comparison approach, any income tax credits described in division (vi) of this subparagraph that are attributable to a property may be considered in determining the fair market value of the property provided that the Tax Assessor uses comparable sales of property which, at the time of the comparable sale, had unused income tax credits that were transferred in an arm's length bona fide sale.

(II) In establishing the value of any property subject to rent restrictions under the income approach, any income tax credits described in division (vi) of this subparagraph that are attributable to property may be considered in determining the fair market value of the property provided that such income tax credits generate actual income to the record holder of title to the property; and

~~(vii)~~ (viii) Any other existing factors provided by law or by rule and regulation of the (Revenue) Commissioner deemed pertinent in arriving at fair market value.

(B.1) The Tax Assessor shall not consider any income tax credits with respect to real property which are claimed and granted pursuant to either Section 42 of the Internal Revenue Code of 1986, as amended, or Chapter 7 of this title in determining the fair market value of real property.

(B.2) In determining the fair market value of real property, the Tax Assessor shall not include the value of any intangible assets used by a business, wherever located, including patents, trademarks, trade names, customer agreements, and merchandising agreements.

(C) Fair market value of "historic property" as such term is defined in subsection (a) of Code Section 48-5-7.2 means:

(i) For the first eight years in which the property is classified as "rehabilitated historic property," the value equal to the greater of the acquisition cost of the property or the appraised fair market value of the property as recorded in the County tax Digest at the time preliminary certification on such property was received by the County Board of Tax Assessors pursuant to subsection (c) of Code Section 48-5-7.2;

(ii) For the ninth year in which the property is classified as "rehabilitated historic property," the value of the property as determined by division (i) of this subparagraph plus one-half of the difference between such value and the current fair market value exclusive of the provisions of this subparagraph; and

(iii) For the tenth and following years, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph.

(D) Fair market value of "landmark historic property" as such term is defined in subsection (a) of Code Section 48-5-7.3 means:

(i) For the first eight years in which the property is classified as "landmark historic property," the value equal to the greater of the acquisition cost of the property or the appraised fair market value of the property as recorded in the County tax Digest at the time certification on such property was received by the County Board of Tax Assessors pursuant to subsection (c) of Code Section 48-5-7.3;

(ii) For the ninth year in which the property is classified as "landmark historic property," the value of the property as determined by division (i) of this subparagraph plus one-half of the difference between such value and the current fair market value exclusive of the provisions of this subparagraph; and

(iii) For the tenth and following years, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph.

(E) Timber shall be valued at its fair market value at the time of its harvest or sale in the manner specified in Code Section 48-5-7.5.

(F) Fair market value of "brownfield property" as such term is defined in subsection (a) of Code Section 48-5-7.6 means:

(i) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6, for the first ten years in which the property is classified as "brownfield property," or as this period of preferential assessment may be extended pursuant to subsection (o) of Code Section 48-5-7.6, the value equal to the lesser of the acquisition cost of the property or the appraised fair market value of the property as recorded in the County tax Digest at the time application was made to the Environmental Protection Division of the Department of Natural Resources for participation under Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended; and

(ii) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6, for the eleventh and following years, or at the end of any extension of this period of preferential assessment pursuant to subsection (o) of Code Section 48-5-7.6, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph.

(4) "Foreign merchandise in transit" means personal property of any description which has been or will be moved by waterborne commerce through any port located in this state and:

(A) Which has entered the export stream, although temporarily stored or warehoused in the County where the port of export is located; or

(B) Which was shipped from a point of origin located outside the customs territory of the United States and on which United States customs duties are paid at or through any customs district or port located in this state, although stored or warehoused in the County where the port of entry is located while in transit to a final destination.

(5) "Forest land conservation value" of forest land conservation use property means the amount determined in accordance with the specifications and criteria provided for in Code Section 48-5-271 and Article VII, Section I, Paragraph III(f) of the Constitution.

(6) "Forest land fair market value" means the 2008 fair market value of the forest land; provided, however, that when the 2008 fair market value of the forest land has been appealed by a property owner and the ultimate fair market value of the forest land is changed in the appeal process by either the Board of assessors, the Board of equalization, a hearing officer, an arbitrator, or a superior court judge, then the final fair market value of the forest land shall replace the 2008 fair market value of the forest land. This final fair market value of the forest land shall be used in the calculation of local assistance grants. If local assistance grants have been granted to either a County, a County Board of education, or a municipality based on the

2008 fair market value of forest land and subsequently the fair market value of such forest land is reduced on an appeal, then the County or the municipality shall reimburse the state, within 12 months unless otherwise agreed to by the parties, the difference between local assistance grants paid to the County or municipality and the amount which would have been due based on the final fair market value of the forest land. Such 2008 valuation may increase from one taxable year to the next by a rate equal to the percentage change in the price index for gross output of state and local government from the prior year to the current year as defined by the National Income and Product Accounts and determined by the United States Bureau of Economic Analysis and indicated by the Price Index for Government Consumption Expenditures and General Government Gross Output (Table 3.10.4).

2. Market research and verification. The appraisal staff shall build and maintain an up-to-date file system of qualified sales as provided in *Rule 560-11-10-.09(2)(d)(1)(ii)*. Other preferred information to be considered is the motivations of the buyer and seller, as obtained from actual interviews of the parties to the sales. Adjustments to the sales to be considered by the appraiser include, but are not limited to, time of sale; location; physical characteristics; partial interest not conveyed; trades or exchanges included; personal property included; leases assumed; incomplete or unbuilt community property; atypical financing; existing covenants; deed restrictions; environmental, economic, governmental, and social factors affecting the sale property and the subject parcel. These adjusted qualified sales may then be used to appraise the subject property.

560-11-10-.09 Real Property Appraisal

(ii) Sales information. The appraisal staff shall maintain a record of all sales of real property that are available and occur within the County. The appraisal staff should also familiarize themselves with overall market trends within their immediate geographical area of the state. They should collect and analyze sales data from other jurisdictions having market and usage conditions similar to their County for consideration when insufficient sales exist in the County to evaluate a property type, especially large acreage tracts. The Real Estate Transfer Tax document, Department of Revenue Form PT-61, shall be a primary record source. However, the appraisal staff may also review deeds of transfer and security deeds recorded in the Office of the Superior Court Clerk, and probated wills recorded in the Office of the Probate Judge to maintain a record of relevant information relating to the sale or transfer of real property. Records required to be maintained shall include at a minimum the following information: map and parcel identifier; sale date; sale price; buyer's name; seller's name; deed book and page number; vacant or improved; number of acres or other measure of the land; representativeness of sale using the confirming criteria provided in Rule 560-11-2-.56 (1)(d); any income and expense information reasonably available from public records; property classification as provided in Rule 560-11-2-.21, and; when available, the appraised value for the tax year immediately following the year in which the sale occurred.

In some situations, sales are determined to be 'bona fide arm's length transactions' which may have an impact on market value, but which are not reflective of the greatest percentage of the properties being appraised. One example includes bank sales where bank-owned vacant residential homes represent less than 1% of the property owned in the market. The application of these bank-owned sales in the valuation process must be weighted for representativeness. The quality standards employed by the appraisal staff in the sales qualification process should be set in policy by the Board of Assessors, so the data bank of sales is reliable and representative. Such standards will be dependent upon the influences in the local market area.

SALE - Any transaction which has occurred where consideration is involved.

ALT –

- Good faith without fraud or deceit
- Unrelated or unaffiliated parties
- Willing buyer and willing seller
- Includes distress sale, short sale, bank sale or sale at public auction.

FMV –

- Sales data which fairly and legally represents the market for the subject property type. (Representativeness)
- Knowledgeable buyer would pay, and willing seller accept
- Arm's Length bona fide sale

The International Association of Assessing Officials Standard on the Verification and Adjustment of Sales is a valuable resource for creating a local sales quality standard policy; however, remember Georgia law requires the appraiser to apply distress sales, bank sales, and sales at public auction.

DISTRESSED SALES

Short Sale

* A pre-foreclosure sale

* Bank or mortgage lender (middleman) discounts loan balance due to economic or financial hardship on the part of the mortgagor

* Sale negotiated between 2 parties in which a lender takes less than the total amount due.

* Arm's length transaction as defined by 48-5-2(.1)

Bank Sale

Real Estate Owned (REO or Previously Foreclosed Property)

- * Resale of property formerly owned or previously foreclosed on by a financial institution (the seller is the financial institution).

- * A foreclosure is a complex legal process, not a sale. Black's Law Dictionary (2001) defines foreclosure as:

 - A legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale to satisfy the unpaid debt secured by the property.

Deed in Lieu of Foreclosure

- * "Soft sale,"

- * Mortgagee and the mortgagor have agreed "in lieu" of being foreclosed upon the seller executes warranty deed to lender.

- * Total purchase price is the amount of the loan in default, plus associated fees.

- * Lender does not incur the costs and time incurred in the foreclosure process.

- * Sale is not exposed to open market.

- * Affiliated party and not arm's length.

- * Arm's length transaction as defined by 48-5-2.1 so long as parties are unrelated or unaffiliated.

Sale at Public Auction

- * Arm's length transaction as defined by 48-5-2.1 when parties are unrelated or unaffiliated.

Government Sale

- * Arm's length transaction as defined by 48-5-2.1 when documentation is available to validate the consideration and parties are unrelated or unaffiliated.

- * In the Court of Appeals of Georgia A14A2268. CPF INVESTMENTS, LLLP v. FULTON COUNTY BOARD OF ASSESSORS.

IAAO Standard on Verification and Adjustment of Sales Extract

*Portions of the material in this manual used courtesy of the IAAO, extract on IAAO Standard on Verification and Adjustment of Sales, Revised Approved, April 2020
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Sales verification

All sales require diligent verification. A verified sale is more reliable than an unverified sale.

Sale Verification Form

JURISDICTION: _____

SALE NO: _____

Parcel Contacted: _____

Buyer Seller (if Seller) _____

Other (if Seller) _____

E-Mail Address: _____

Amount	Date	Time	Result
34			
2nd			
3rd			

Parcel Contacted: _____

Buyer Seller (if Seller) _____

Other (if Seller) _____

E-Mail Address: _____

Amount	Date	Time	Result
34			
2nd			
3rd			

Sale Price: \$ _____

Adjusted Sale Price: \$ _____

Sale Date: _____

Reason for Adjustment: _____

COMM / IND PROPERTY ONLY

N To Be Owner Occupied

F Fully Finished When Sold

P At Least Partially Finished

V Vacant, but for rent or will be

D To Be Demolished

T Extension Resubmitting/No

Was the Price paid for the property a fair indication of Market Value? Yes No Don't Know

Was the property exposed to the Open Market? Yes No

If yes, how was the property marketed? _____

If through realtor, name of Realtor? _____

Was a fee agreement prepared for Buyer? Yes No

Was a fee agreement prepared for Seller? Yes No

Use at time of sale? _____

1 Buyer

2 Seller

3 Salesperson

4 Agent/Broker

5 Title Company

6 Financial Institution

7 Private/Car Appr.

8 Multiple Listing Service

9 Listing/Property Management Co.

10 Attorney

Source Code _____

CONCLUSIONS / COMMENTS:

Valid

Adj. Sale Price (Valid)

Multiple Parcel

Not Open Market

Property Charged New L.I.

Title

Lost deed

Staged Conditions

Technical Criteria

Date Outside Range

Discounted/Vacant Lot

Bank/Financial Institution Sale

Government Sale

Target Acquired/Developed/Severed

Unverified

RESEARCH ANALYST SIGNATURE _____

APPROVER SIGNATURE _____

DATE FORM COMPLETED _____

By analyzing market data, the price the property being appraised would bring in the marketplace, on the date of appraisal, may be determined. Sales verification is important to determine whether the sale reflects the market value of the real property which is transferred. These are the sales which meet the definition of market value with appropriate adjustments to be used in estimates. All sales meeting the definition of market value should be considered as valid transactions unless one of the following two conditions exist:

1. Data for the sale is incomplete, unverifiable, or suspect
2. The sale fails to pass one or more specific tests of acceptability

Verification of sales should be administered and completed as close as possible of sale date to minimize loss of information. Sales should be validated within three months of occurrence. The fewer the sales, the less common or more complex the property, and the more atypical the sale price, the greater the effort should be to confirm the particulars of the sale.

Sales verification should be performed in a timely, uniform, and transparent manner with guidance on when a sale should be considered valid and what methodologies are acceptable for the validation process. Guidelines and procedures for sales verification should be consistent and in writing.

Accuracy is dependent upon proper verification and adjustment of sales data. The integrity of the property tax system is dependent on the accuracy of these estimates of value.

Primary sources of sales data include:

- Real Estate transfer documents (PT-61s, deeds, sales contracts, etc.)
- Sales verification questionnaires
- Parties to the transaction
- Third party sources

Attempts should be made to contact the buyer and seller of real property directly to confirm sales data. When buyers or sellers are parties to the sale, it is important to contact both parties to verify agreement on the data. The completeness and accuracy of sales data are best confirmed by requesting the particulars of a sale from parties to the sale. By contacting the parties to a sale as close to the sale date as possible may improve response rates and accuracy of responses, as parties are more likely to recall circumstances and details of the sale. People consent to interviews if they know what is expected of them, understand the importance of the request, and are treated with respect.

Third party sources

Other sources of sales data are important when transfer and disclosure documents do not provide full disclosure or omit important data. Any data collected from interviews and third-party sources which are entered into the system of records, must be verified, and noted for their reliability as a data source.

Sources may include:

- Multiple Listing Services
- Financial Institutions
- Property managers
- Real estate brokers and agencies

Parties to a transaction may be contacted by:

- Sales Survey Questionnaire
- Telephone Interviews
- Personal Interviews

Sales Verification Questionnaires

Sales may be verified with sales verification questionnaires. A sales verification questionnaire is affirmed or sworn statements regarding the sale of the property.

DEED BOOK	PAGE	COV #	CO. NO.	MAP	SEC	SHEET	QTR.	BLOCK	PARCEL	OWN
RECORDING DATE ____/____/____		TYPE OF INSTRUMENT CR RA DE		SPLIT <input type="checkbox"/> MO YR TY MULTI <input type="checkbox"/>		AMOUNT		S V		
SELLER (Grantor) NAME _____				BUYER (Grantee) NAME _____						
MAILING _____				MAILING _____						
CITY/ST/ZIP _____				CITY/ST/ZIP _____						
PHONE NO. (____) _____ email (optional) _____				PHONE NO. (____) _____ email (optional) _____						
IF AN AGENT SIGNS THIS FORM, BOTH BUYER AND SELLER TELEPHONE NUMBERS MUST BE ENTERED.										
BRIEF LEGAL DESCRIPTION _____ _____ _____				Property / Situs Address: Name and Mailing Address for Tax Statements _____ _____ _____						
<p>1. Check any special factors that apply:</p> <input type="checkbox"/> Sale between immediate family members: Specify the relationship _____				<p>6. Were any changes made to the property since January 1st?</p> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Demolition <input type="checkbox"/> New construction <input type="checkbox"/> Remodeling <input type="checkbox"/> Additions Date completed _____ Amount \$ _____						
<input type="checkbox"/> Sale involved corporate affiliates or related entities <input type="checkbox"/> Auction sale (absolute auction <input type="checkbox"/> Yes <input type="checkbox"/> No) <input type="checkbox"/> Short sale (amount of lien(s) exceeds sale proceeds) <input type="checkbox"/> Transfer in lieu of foreclosure or repossession <input type="checkbox"/> Sale involved a build-to-suit or leaseback arrangement <input type="checkbox"/> Sale by judicial order (by a guardian, executor, conservator, administrator, or trustee of an estate) <input type="checkbox"/> Sale involved a government agency or public utility <input type="checkbox"/> Buyer (new owner) is a religious, charitable, or benevolent organization, school or educational association <input type="checkbox"/> Buyer (new owner) is a financial institution, insurance company, pension fund, or mortgage corporation <input type="checkbox"/> Sale of only a partial interest in the real estate <input type="checkbox"/> Sale involved a trade or exchange of properties <input type="checkbox"/> None of the above				<p>7. Were any delinquent property taxes paid by the buyer? Amt. \$ _____</p> <input type="checkbox"/> Yes AND the amount was included in the total sale price <input type="checkbox"/> Yes but the amount was not included in the total sale price <input type="checkbox"/> No delinquent property taxes were included in the sale						
<p>2. Check use of property at the time of sale:</p> <input type="checkbox"/> Single family residence <input type="checkbox"/> Agricultural land <input type="checkbox"/> Farm/Ranch with residence <input type="checkbox"/> Mineral rights included? <input type="checkbox"/> Condominium unit <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Vacant land <input type="checkbox"/> Apartment building <input type="checkbox"/> Other: (Specify) _____ <input type="checkbox"/> Commercial/Industrial bldg.				<p>8. Method of financing (check all that apply):</p> <input type="checkbox"/> New loan(s) from a financial institution <input type="checkbox"/> IRS 1031 Exchange <input type="checkbox"/> Seller financing <input type="checkbox"/> Assumption of an existing loan(s) <input type="checkbox"/> All cash <input type="checkbox"/> Trade of property <input type="checkbox"/> Not applicable						
<p>3. Was the property rented or leased at the time of sale?</p> <input type="checkbox"/> Yes (number of years remaining on lease _____) <input type="checkbox"/> Tenant is buyer <input type="checkbox"/> No				<p>9. Was the property offered to other potential buyers?</p> <input type="checkbox"/> Yes: Advertised (listed, Internet, yard sign, word-of-mouth, etc.) <input type="checkbox"/> No: Private purchase (not offered on the open market)						
<p>4. Did the sale price include an operating business?</p> <input type="checkbox"/> Yes (estimated value \$ _____) <input type="checkbox"/> No				<p>10. Does the buyer hold title to any adjoining property?</p> <input type="checkbox"/> Yes <input type="checkbox"/> No						
<p>5. Was any personal property included in the sale price (such as furniture, equipment, inventory, machinery, crops, etc.)?</p> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please describe _____				<p>11. Are there any additional facts that would cause this sale to be a distressed, forced, or non-arm's length exchange?</p> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please describe _____						
Estimated value of all personal property items included in the sale price \$ _____				<p>12. TOTAL SALE PRICE \$ _____</p> DEED DATE ____/____/____						
If Mobile Home: Year _____ Model _____				<p>13. I have read the instructions for completing this form and certify that the above information is true and accurate.</p> Print name _____ Signature _____						
				<input type="checkbox"/> Grantor (Seller) <input type="checkbox"/> Grantee (Buyer) <input type="checkbox"/> Agent Daytime phone number (____) _____						

Mailing sales verification questionnaires may be the least expensive method of obtaining or verifying information subsequent to the sale, this method also has its disadvantages including:

- Response is not immediate.
- Additional contact may be needed.
- Information will be limited to what is stated on the sales verification questionnaire.
- Printing and mailing costs are incurred.

Mailed sales verification questionnaires should be as concise as possible and include the following:

- Postage-paid return envelope
- Official stationery
- Purpose of the sales verification questionnaire
- Contact person (name, telephone number, and email address for additional information)
- Authorized signature (of person completing the questionnaire)

While comprehensive sales survey questionnaires reduce the number of follow-up verifications required, the surveys do not eliminate them. Any information obtained should never be considered absolutely trustworthy.

Telephone Interviews

Telephone interviews provide quick responses and the opportunity for immediate clarification. However, they do have their disadvantages including:

- Inability to prove caller's identity.
- Need for trained staff.
- Difficult in reaching the party to the sale.

When conducting interviews by phone, an opening script should be written which includes the name of the person conducting the interview, the office they represent, and the purpose behind the telephone call. If the individual is unable to talk at such time, ask for a specific time which would be more convenient for the interviewee. When interviewing parties, it is important you use simple conversational words the party will understand while avoiding any slang and industry jargon.

Personal interviews

One of the most costly but effective methods of sales verification include personal interviews. This form of sale verification is most effective for the following reasons:

- Refusals are less frequent.
- Information is more reliable.
- More unusual or special considerations are revealed.

These interviews should be conducted by qualified appraisers. When conducting personal interviews all paperwork and forms should be available and organized before the interview begins. It is crucial to be on time for personal interviews. The style and tone of the conversation should be geared to the interview setting. It may sometimes be helpful to establish rapport through brief small talk. Throughout the entire conversation be sure to maintain eye contact, smile, and always remain friendly and respectful.

Questions for verifications:

Preparing a list of basic questions for staff to ask during the interview ensures uniformity and consistency and often leads to discovery of problems regarding the transaction.

- How was the property marketed (realtor [name of realtor], word of mouth, newspaper ad, for sale by owner, internet, etc.)?
- How long was the property exposed to the open market?
- What was the asking price?
- What was the selling price (or verify the amount on the sales survey questionnaire)?
- What was the condition of the property at the time of sale?
- Is there an intended change in the use of the property?
- Was a “fee appraisal” made on the property (if so, in what amount)?
- Was any personal property of significant value included in the sale price (if so, was the amount specified in the purchase or contract agreement)?
- What is your estimate of value of personal property included in the sale price (if the personal property is not specified in the contract)?
- Are you aware of any changes to property characteristics which have recently occurred (if so, when)?
- Was there any undue compulsion to buy or sell?
- Were there any circumstances which might cause the sale to be considered a non-arm’s length transaction?

In addition to the basic questions listed above various situations may involve additional questions. Specific questions should be prepared, and have staff trained for sales involving:

Adjoining property owners

- Was the seller aware of the buyers need or interest in the property?
- Was the property exposed to the open market?
- Could the property have been sold for an approximately similar price to another party?

Auction Sales

- Did the seller have the right of first refusal (a low bid clause or bid with reserve)?
- Was the auction well-attended?
- Was the auction well-advertised?
- How many parties were bidding on the property?

Property characteristic changes

- What types of changes were made (repair, remodeling, addition, or demolition)?

Related party sales

- What is the specific nature of the relationship?
- Was the sale price influenced by the relationship?

Uninformed buyers

- Did you look at other property in the area?
- How long did you search for property in the area?
- Did you talk to local realtors?
- Was the property purchased sight unseen?

Uninformed sellers

- How did you determine your asking price for the property?
- Where there any other offers?

Real Estate Transfer Documents

Real estate transfer documents include deeds, sales contracts, and transfer affidavits which are completed at the time of sale. These documents must be reviewed to determine:

- The type of interest transferred.
- The rights conveyed.
- Other conditions which could affect the arm's-length nature of the sale.

Real Estate Listings

Property listed with a real estate broker or agency is the most prevalent method of marketing. Additional marketing methods include:

- Auctions
- Sealed bids
- For sale by owner (FSBO)
- Internet
- Newspaper Advertisements
- Word of mouth
- Social media posting

Auctions/ Sealed Bids

Auctions fall into two general groups:

1. Absolute auctions in which the property will sell at any price to the highest bidder.
2. Reserve auctions in which a minimum acceptable bid is set.

Those properties which are marketed and sold by sealed bids should follow the guidelines for property which is sold at auction. However, it is crucial to discover how many bids were received. If only one bid was offered and there is not a current fee appraisal for the property, the sale should not be considered a valid transaction.

For Sale by Owner (FSBO)

This type of marketing may be defined as the process of selling real estate without the representation of a real estate broker or agent.

Internet

Property which sells on the internet and meets the criteria of being an open market arm's length transaction and should be included as a valid transaction. When using internet sales, the primary focus should be whether the parties to the sale are informed buyers and sellers. With the increasing popularity of social media marketing, appraisers are able to gather more

information regarding the circumstances of the sales transaction as well as specific characteristics of the property at the time of sale.

Uninformed buyers may have no knowledge of the market in the area in which the property was purchased. If there was not a broker or realtor involved, other similar properties in the area may have not been examined and, in most situations, will be bought sight unseen.

Newspaper

A newspaper advertisement is a method of marketing real property which requires no further verification if a comprehensive sales validation questionnaire has been completed and no factors exist which would require further verification and/or adjustment. Newspaper advertising has become uncommon with the increased use of social media marketing.

Word of Mouth

Word of mouth marketing is generally more prevalent in small rural areas. This type of sale will require additional verification to determine:

- How did the buyer discover the property was for sale?
- How widely was the property marketed?
- Is word of mouth typical exposure for the area?
- How was the sale price determined?
- Was a fee appraisal made on the property, and if so, what was the amount?
- What was the condition of the property at time of sale?
- Was the seller actively marketing the property at the time of sale?

Database CAMA System

There must be a system of record which tracks and digitally stores information collected. Collection of data must be administered in a consistent and timely manner and any data collected must be as comprehensive and accurate as possible. Essential databases should track:

- Changes in ownership.
- Type of interest transferred.
- Rights conveyed.
- Other conditions specific to the transaction and property at the time of sale.

Sales data files should reflect the physical characteristics of the property at the time of sale. The goal of data collection is to ensure the database contains sufficient information to verify the sale occurred as an arm's length transaction and the sales price reflects the market value of the real property transferred. Sales database should contain the factual information of the sale:

- Date of transfer
- Legal names of buyers and sellers as title is acquired
- Address and other contact information of buyer and seller
- Type of transfer
- Full Consideration
- Legal Description, Address, and Parcel ID
- Deed instrument number
- Unique sale number

Date of transfer is the date on which the sale was closed or completed. If a copy of a deed is unavailable, the date on the sales verification questionnaire should be used.

Names of buyers and sellers permits the assessor to maintain a current record of all owners of all property in the jurisdiction.

Address and contact information are important in the event the buyer will not reside at the property. The buyer's address will be needed for future correspondence.

The ***type of transfer*** determines whether the sale is verified and usable. A warranty deed is associated with a usable sale; sheriff's deeds are not; and quit-claim deeds are questionable.

Full consideration is the total amount paid for the property. The actual sale price is the most essential item of information concerning the sale and its accuracy should be carefully analyzed.

Each parcel should be assigned a ***unique parcel identifier***. This information links the sale to the assessors' records and identifies the property's location.

Deed instrument number is the deed book and page the deed may be located in the clerk's office and is an important asset in researching sales

A ***unique sale number*** should be assigned to sales verification questionnaires completed at the time of processing the deed.

Property Characteristics

It is important to document and verify details of the property including its use, any non-reality components included in the sale, and its geographical information system (GIS) coordinates. Property use is important in determining the economic condition of the property to determine whether adjustments to the sale price are warranted.

Property Use

The use and occupancy of the property at the time of sale may influence the sale price. During the sale verification process, use of the property should be grouped by other comparable properties such as:

- Residential Properties (single family homes, condominiums, attached townhomes, and mobile homes)
- Commercial Properties (office, retail, hotel, apartments, warehouse/industrial, and special property such as amusement park, gas station, car wash, bowling alley, etc.)
- Vacant Land

Occupancy

During sales verification, an appraiser should determine whether the space was occupied or vacant at the time of sale. Vacant spaces may be subject to highest and best use consideration, which could affect pricing and thus proper classification for appraisal analysis.

Highest and Best Use Considerations

Sales verification should not assume the sale price reflects current use. An appraiser should obtain any information they may in regard to the sale, including whether the sale was influenced by changes in zoning or intended use. Some instances where a sale could reflect a use change include:

- Areas of transition
- Sales of dilapidated buildings
- Sales of vacant property

Property Type

An appraiser needs to determine whether the property use at the time of sale was residential or commercial. Commercial sales are more complex and require more information to verify whether the sale reflects market value such as:

- Any necessary adjustments if to be used as a comparable.
- Identify whether the sale may be used in the development of capitalization for the income approach.
- Type of use and occupancy.
- Highest and best use consideration (intended use after the sale).

Lease Questionnaires (For Commercial Properties)

When a property sells, which includes commercial space, lease questionnaires may accompany or be an effective follow-up to a sales questionnaire. The use of lease questionnaires helps

determine whether contract rents are above or below market rent. When collecting data from commercial properties for income model purposes the following information should be acquired:

- Use of the space
- Size of the space (Typically the space is measured as net rentable square feet.)
- Remaining lease term (It is important to verify whether the sale price reflects contract or market rents to make the appropriate adjustments.)
- Total rent at sale including pass-throughs (A common pass-through expense is common area maintenance.)
- Type of lease (Whether a lease is gross or net, and the type of expenses paid by tenants. This is important if gross rents are considered typical since net rents must be grossed up to market to enable comparison.)

For commercial properties, a documentation form should be completed for all sales which have had follow-up requests for lease information. The form should document whether and how the requested lease data was used to adjust the price. Documentation codes should indicate whether adjustment to the price was warranted and whether the lease information received was sufficient to calculate the price adjustment. Documentation of the results of the lease verification process should contain sufficient information to understand the derived adjusted numbers. Helpful items on the form are as follows:

- *Market rental rate* by use. The market rental rate may be gross or net depending on what is typical in the market. Rental rates may be estimated from collected income data or derived from market reports.
- *Total rent including pass-throughs*. This information is collected through lease verification questionnaires. It is the base rent, including step-ups or inflationary adjustments up to the sale date, plus pass-throughs received by the landlord including common area maintenance (CAM).
- *Remaining lease term*. This information is part of the lease verification questionnaire and should be part of the documentation form. It is used in the calculation of the price adjustment due to long-term leases.
- *Discount rate*. The assumed discount rate must be documented. The rate is used in discounting the present value difference between contract and market rent.
- *Lease verification code*. The code should indicate whether the lease follow-up information is sufficient to determine and calculate the adjustment to price.

Lease Verification Questionnaire (By Use)

For commercial properties, this form supplements the Sales Verification Questionnaire.

Current Date _____
 Property Address _____

Sale Information

Sale Date: _____ Sale Price: _____
 Did the sale price reflect an intended use change of the property? Yes _____ No _____

Building Information

Building # _____ of _____
 Gross Square Feet _____

Lease Information

A rent roll and operating expense statement may be submitted as an alternative to completing this section.

USE	Total		Vacancy		Owner Occupancy		Leased Space			Average Lease Term		Leased Income		Additional	Additional
	Number of Units	Rentable Square Feet	Number of Units	Rentable Sqft	Owner Occupied Number of Units	Owner Occupied Rentable Sqft	Number of Units Leased (Tot - Vac-Occ)	Total Rentable Under Gross Leases	Total Rentable Under NET Leases	Income under Gross Leases (\$ Annualized)	Income under Remaining Gross Leases	Income under Net Leases (\$ Annualized)	Average Lease Term Remaining under NET Leases	Income from Pass Throughs under Gross Leases (\$ Annualized)	Income from Pass Throughs under NET Leases (\$ Annualized)
Residential:															
Office:															
Retail Tenants:															
Loft:															
Factory:															
Warehouse:															
Storage:															
Garage/Parking:															
Other:															
Other:															

Building Operating Expense (\$/sq ft/year) _____
 (sq ft based on Gross Square Feet)

Personal Property

Sales questionnaires should note the type and value of any significant personal property included in the sale to determine and isolate the value of the realty component of a sale. Personal property values, which may be included in the sale price, are either tangible or intangible. Sales verification includes determining the contributory value of any significant personal property included in the sale price. If these sales are to be included as potentially valid transactions, the value of these contributory items should be subtracted from the sale price to determine the price paid for the real estate. Personal property includes such tangibles as machinery, furniture, and inventories and such intangibles as franchises, licenses, and noncompete agreements.

It is necessary to decide whether each item included in the sale should be classified as real or personal property. Sale prices should be adjusted by subtracting the contributory value of personal property received by the buyer and noted on the sales screen with appropriate documentation and explanation. Ordinary window treatments, outdated models of freestanding appliances, and common grade used furniture included with residential property do not usually influence the sale price of real property and do not require an adjustment unless

the items were specifically broken out in the contract as personal property included in the sale price. If the value of personal property appears to be substantial, 10 percent for residential and 25 percent for commercial/industrial, the sale should be excluded as a potential valid transaction unless the sample sizes are small.

GIS Location

The creation of the GIS coordinates of a parcel should be done to conform to the following:

- Physical location of the sale parcel must be identified in a standardized manner.
- Location should be confirmable by the widest possible audience.
- Location should be presented in a form to allow spatial analysis.

The process which creates the GIS record is called geocoding:

- *Geocoding* is the process of converting addresses, parcel numbers, valuation account numbers, common place names, and other local identifiers into geographic coordinates, which may be used to study locational relationships between sales and other data.
- *Reverse geocoding* is the process of converting geographic coordinates into a human-readable address or common location identifier.
- Geocoding systems often use the *internal centroid* of the parcel. The internal centroid is a point within the boundary of the parcel uniquely identifying its location. This is of great importance when aerial imagery is used for analyses and verification of physical attributes.
- For parcels in which the elevation (typically referred as the “Z” axis) could be a significant indicator of value, for example, the floor level in high-rise condominiums, the floor elevation data should be collected in a standardized and reproducible method.
- Measures of appraisal valuation performance may use the elevation as stratification criteria to test for uniformity based on the floor level of parcels.

Multiple-Parcel Sales

A multiple-parcel sale is a transaction involving more than one parcel of real property. These transactions present special considerations and should be researched and analyzed prior to being used for valuation or ratio studies. If appraisers need to include multiple-parcel sales, they should determine whether the parcels are contiguous and whether the sale is a single economic unit or multiple economic units. Regardless of whether the parcels are contiguous, any multiple-parcel sale which involves multiple economic units should not be used in valuation or ratio studies. The sum of the appraised values for the parcels involved in the transaction should be compared to the total sale price. Table 7 presents an example of a multiple-parcel sale.

Table 7. Example of a multiple-parcel sale

Parcel No.	Appraised Value	Sale Price
001	\$150,000	
002	\$50,000	
003	\$100,000	
Total	\$300,000	\$315,000

The three parcels in Table 7 are separately appraised, and their summed appraised value of \$300,000 should be compared to the multiple-parcel sale price of \$315,000 to determine whether the price is within market.

Adjustments

It is important to verify whether the sale occurred as an arm's length transaction or with conditions which would require an adjustment to reflect market prices. Sales which have special conditions and would otherwise meet the definition of fair market value, may be adjusted to reflect market value. Sales should be adjusted to represent only the value of the real property as of the assessment date.

Additional verification regarding the circumstances surrounding the transaction may be useful in determining whether the sale is usable or requires an adjustment prior to use as a comparable sale in ratio studies. Adjustments should include documentary evidence showing how they are derived, and the sources used. Transfers conveying less than full interest are rarely usable, in mass appraisal or ratio studies, without adjustments, unless the appraised value and sale price reflect the same ownership rights. Adjustments to sale prices may be a result of factors underlying the transaction, property conditions at time of sale, and market trends.

Principles

- Jurisdictions should provide training on the methodology for adjustments including assumptions, such as market rates and interest rates, used in the adjustment process.
- Jurisdictions which require follow-up lease questionnaires for commercial properties should provide guidance on the structure of the questionnaire and training on the use of collected data.
- There should be a program to track changes in price levels over time and adjust sale prices for time as required so such time adjustments are based on market analysis and are appropriately supported.

The conditions which may require adjustments to the sale price are especially true for non-residential properties. The real property tax is based on the market value of real property, alone, as of a specific date. This value may not be the same as investment value (i.e., the monetary value of a property to a particular investor) and does not include the value of personal property or financing arrangements. If adjustments for more than one purpose are to be made, they should be made in the following order:

1. Adjustments which convert the price to a better representation of the market value as of the date of sale (including adjustments for financing, assumed long-term leases, and special assessments).
2. Adjustments which develop or isolate the price paid for taxable real property (including adjustments for personal property received by the buyer, property taken in trade by the seller, the combination of partial interest sales, delinquent real estate taxes, and incomplete or unbuilt common property).
3. Adjustments for differences in market value levels between the date of sale and the date of analysis (time trends).

Transaction Conditions

Transaction conditions include situations, settlements, or arrangements surrounding a sale. Adjustments to the sale price may be considered for the following transaction conditions:

- Sales with special conditions
- Acquisitions or divestments by large property owners
- Adjoining property owners
- Leasebacks
- Short sales

Sales with Special Conditions

Sales with special conditions may be open-market transactions; however, they should be verified thoroughly. The following are types of sales with special conditions:

- Trades
- Partial interests
- Land contracts
- Incomplete or unbuilt common property
- Auctions.

Trades

In a trade, the buyer gives the seller one or more items of real or personal property as all or part of the full consideration. If the sale is a pure trade, with the seller receiving no money or securities, the sale should be excluded from analysis. If the sale involves both,

money, and traded property, it may be possible to include the sale in the analysis if the value of the traded property is stipulated, may be estimated with accuracy, or is small in comparison to the total consideration. However, transactions involving trades should be excluded from the analysis whenever possible, particularly when the value of the traded property is substantial.

Partial Interest

A sale involving a conveyance of less than the full interest in a property should be excluded as a valid transaction. Sometimes all the partial interest owners of a property may agree to syndication and sell their portions of the estate to a buyer (typically on the same day). However, the sum of all the sale prices may not necessarily indicate the market value of the whole property. These transfers should not be used as valid sales without thorough testing, analysis, and documentation.

Land Contracts

Land contracts, also known as contracts for deeds, and other installment purchase agreements, in which title is not transferred until the contract is fulfilled, require careful analysis. Deeds in fulfillment of a land contract often reflect market conditions several years in the past, and such dated information should not be considered. Sales data from land contracts also may reflect the value of the financing arrangements. In such instances, if the transaction is recent, the sale price should be adjusted for financing, if warranted, and included as a valid transaction. Because the contract itself often is not recorded, discovery of these sales is difficult until the deed is finally recorded. The sale then is likely to be too old to be used.

Incomplete or Unbuilt Common Property

Sales of condominium units and of units in planned unit developments or vacation resorts often include an interest in common elements (e.g., golf courses, clubhouses, or swimming pools) which may not exist or be usable on the date of sale or on the assessment date. Sales of such properties should be examined to determine whether prices might be influenced by promises to add or complete common elements at some later date. Sales whose prices are influenced by such promises should be excluded or the sale price should be adjusted to reflect only the value of the improvements or amenities in existence on the assessment date.

Auction Sales

In general, auction sales of real property tend to be at the lower end of the price spectrum and are more prevalent in rural areas. Absolute auctions do not have a low bid clause or right of refusal and typically are advertised as absolute auctions. The property is sold to the highest bidder whatever such bid may be. All absolute auctions should be considered invalid. Before auction sales are considered as valid transactions, the following criteria should be met.

- Was the auction well-advertised?
- Was the auction well-attended?
- Did the seller have a minimum bid or the right of refusal on all bids (with reserve)?

Acquisitions or Divestments by Large Property Owners

Acquisitions or divestments by large corporations, pension funds, or real estate investment trusts (REITs), which involve multiple parcels, typically should not be considered for analysis.

Adjoining Property Owners

Sales in which the buyer already owns adjoining property should be examined carefully to determine whether the buyer possibly paid more or less than the property is worth on the open market. In some cases, because of the neighbor relationship, the buyer may even receive a deal on the property. These sales should not be excluded solely because the buyer owns adjoining property unless one or more of the following reasons exists:

- Buyer is willing to pay more than the asking price.
- Buyer is willing to pay more than the fee appraisal.
- Selling price is substantially less than the asking price.
- Buyer is under undue stimuli to purchase the adjoining property.

Leasebacks

A leaseback is defined as the sale of a building, land, or other property to a buyer under special arrangements for simultaneously leasing it on a long-term basis to the original seller, usually with an option to renew the lease. These transactions are also referred to as sale and leaseback and sale-leaseback. Leasebacks occur in commercial and industrial classes of property. Sales involving leasebacks should be analyzed to ensure they are market transactions. This may be determined only by further verification of the sale. Typically, the land and location are purchased, the building erected, and the property sold with a long-term leaseback clause.

Short Sales

Short sales are difficult to recognize because the parties to the sale are typical buyers and sellers. In a short sale, the lien holder agrees to accept a payoff for less than the outstanding balance of the mortgage or loan. This negotiation is achieved through communication with a bank's loss mitigation or workout department. The homeowner or debtor sells the mortgaged property for less than the outstanding balance of the loan and turns over the proceeds of the sale to the lender. In such instances, the lender would have the right to approve or disapprove a proposed sale. Extenuating circumstances influence whether banks will discount a loan balance. These circumstances are usually related to the current real estate market and the borrower's financial situation. A short sale is typically faster and less expensive than a foreclosure. A short sale is nothing more than an owner negotiating with lien holders a payoff

for less than what the financial institution is owed, or rather a sale of a debt on a piece of real estate short of the full debt amount. It does not extinguish the remaining balance unless settlement is clearly indicated on the acceptance of offer. As with all foreclosure-related sales, the element of undue stimuli exists. Therefore, these sales should be treated like other foreclosure-related sales and considered for model calibration and ratio studies when, in combination with other foreclosure-related sales, they represent more than 20 percent of all sales in the market area, but only after a thorough verification process for each sale. Again, care should be taken when validating these types of sales to account for changes in property characteristics.

Transactional Adjustments

Transactional adjustments to the sale price may be considered if the following exist.

- Buyer's closing costs are paid by seller.
- Delinquent taxes are paid by buyer.
- Financing for non-market rates.
- Real estate commissions.

Buyer's Closing Costs Paid by Seller

Closing costs are settlement fees and expenses incurred in transferring property ownership which are paid at the real estate closing. Expenses charged commonly include:

- Attorney's fee
- Costs of recording the deed and mortgage
- Survey
- Title insurance
- State transfer taxes (if any)

These costs do not affect the sale price of the property, and no adjustment should be made when they are paid by the buyer. *However, when paid by the seller, the costs should be deducted from the sale price.*

Delinquent Taxes Paid by Buyer

Prepaid property taxes or current tax liabilities are usually prorated to the buyer and the seller and have no bearing on the sale price. *However, if the buyer agrees to pay delinquent taxes, this amount should be added to the sale price.*

Real Estate Commissions

The real estate commission is the fee the seller pays to a real estate broker to obtain a buyer for the property. A knowledgeable seller may avoid the fee by advertising and showing the property, negotiating with potential buyers, and performing the necessary paperwork. The

commission then represents the cost of such services, and the sale price cannot be expected to be any more or any less if these services are performed by a real estate broker or by the seller. Therefore, a real estate commission should not be subtracted from the sale price. *The sole exception to this rule occurs when the buyer agrees to pay the seller's commission, in which case the amount of the commission is added to the sale price.*

Typical marketing time

Sales of properties may not represent market value if they have been exposed to the open market too long, not long enough, or not at all. Appraisers should continually monitor the market to determine typical marketing time. In depressed markets, marketing times may be longer and require adjustments to achieve true market values.

Market/Time Adjustments

There should be a program to track changes in price levels over time and adjust sale prices for time as required. Time adjustments should be based on market analysis and be appropriately supported. Valid time adjustment techniques are as follows:

- Tracking sales-to-appraisal ratios over time.
- Including date of sale as a variable in regression or feedback models.
- Analyzing resales.
- Comparing per-unit values over time in homogeneous strata, such as a subdivision or condominium complex.
- Isolating the effect of time through paired sales analysis.

These techniques are discussed in *Mass Appraisal of Real Property* (Gloudemans 1999), *Property Appraisal and Assessment Administration* (Eckert, Gloudemans, and Almy 1990, Appendix 5-3), and *Improving Real Property Assessment* (IAAO 1978, Section 4.6). If sale prices have been rising, ratios for sales which occurred after the assessment date tend to understate the overall level of appraisal. Similarly, sales ratios for sales which occurred before the assessment date tend to overstate the level of appraisal. If prices are declining, an opposite pattern results. When tracking sale-to-appraisal ratios over time (using the inverse ratio technique) for determining time adjustments, it is important such ratios for chased sales be excluded, since there is no correlation of such sales ratios with the date of sale. Changes in price levels should be monitored and time adjustments made by geographic area and type of property, because different segments of the market tend to change in value at different rates.

Types of financing

Certain types of financing may affect the sale price. Some of the information needed to determine the amount of adjustment to the sale price includes:

- The amount of the down payment
- Type of loan
- Interest rate
- Amortization provisions
- The type and value of any trade

Ratio Studies

The reliability of any valuation model or sales ratio study depends on the quality and quantity of its data. Sales data should be collected, verified, and adjusted to obtain valid indicators of market value if they are to be used for ratio study purposes. When verifying sales, all sales which occurred during the time frame being tested or modeled should be included. All sales should be considered as valid sales unless sufficient information may be documented to show otherwise. Sales without substantiation removed from ratio studies may appear to be subjective. Sales should only be invalidated when they fail to meet the requirements of an open market arm's length transaction. Those sales failing to meet the requirements and determined to be invalid, should be excluded for use in ratio studies or other modeling. If significant legal, physical, or economic changes have occurred between the sale date and the assessment date, the sale should not be used for ratio studies.

Property Characteristic Changes

Sales data files should reflect the physical characteristics of the property when sold. For ratio studies, if significant physical changes have occurred to the property between the date of sale and the appraisal date, the sale should not be included. The sale may still be valid for mass appraisal modeling by matching the sale price to the characteristics existing on the date of sale. For consistency in application, written guidelines should be provided as to what constitutes significant change. For example, an improvement of \$3,500 may not be significant for a property with a selling price of \$255,000 (1.4 percent) but is significant for a property selling for \$21,000 (16.7 percent).

Property Change in Use

In ratio studies, property in which the use has changed between the date of appraisal and the date of sale should be excluded from further analysis. However, the sale may be used for analytical purposes if it may be matched with its use and physical characteristics at the time of sale.

Sales considered invalid

Government agencies- Sales to government agencies may involve an element of compulsion and often occur at prices higher than would otherwise be expected. When the governmental agency is the seller, values typically fall on the low end of the value range. The latter should not be considered in model calibration or ratio studies unless

an analysis indicates governmental sales have affected the market in specific market areas or neighborhoods. Each sale in this category should be thoroughly researched prior to use.

• HUD	Department of Housing and Urban Development
• FCA	Farm Credit Administration
• FCB	Farm Credit Bank
• FSA/USDA	Farm Service Agency
• FAMC	Federal Agricultural Mortgage Corporation (Farmer Mac)
• FDIC	Federal Deposit Insurance Corporation
• FHLMA	Federal Home Loan Mortgage Corporation (Freddie Mac)
• FHA	Federal Housing Administration
• FLB	Federal Land Bank
• FLCA	Federal Land Credit Association
• FNMA	Federal National Mortgage Corporation (Fannie Mae)
• FSLIC	Federal Savings & Loan Insurance Corporation
• GSA	General Service Administration
• GNMA	Government National Mortgage Association (Ginnie Mae)
• HAP	Homeowners Assistance Program (US Army Corps of Engineers)
• MGIC	Mortgage Guarantee Insurance Group
• RTC	Resolution Trust Corporation
• RFTHP	Rural First-Time Homebuyer Program (Federal Home Loan Bank)
—	Habitat for Humanity
• USDA	Rural Housing & Development Administration
• SBA	Small Business Administration
• USMS	United States Marshal's Service
• VA	Veteran's Administration
—	• American Housing Trust 1 through 10 (VA holding companies)
—	• Vinnie Mac—Vendee Mortgage Trust (VMT 1,2,3,4 VA holding companies)

Charitable, Religious, or Educational Institutions- A sale to such an organization may involve an element of philanthropy, and a sale by such an organization may involve a nominal consideration or restrictive covenants. These sales often involve partial gifts and therefore are not representative of market value.

Financial Institution as Buyer- These sales are often made in lieu of foreclosure and are not exposed to the open market. However, open market sales in which a financial institution is a willing buyer, such as the purchase of vacant land for a branch bank, may be considered potentially valid transactions.

Financial Institution as Seller- A foreclosure is not a sale but the legal process by which a lien on a property is enforced. Most of the sales in which the financial institution is the seller are properties which were formerly foreclosed on by the financial institution. Also, they are easily identified because the seller is the financial institution. These sales typically are on the low side of the value range because the financial institution is highly motivated to sell and may be required by banking regulations to remove the property from its books. The longer the property is carried on the books by the financial

institution, the lower the asking price is likely to be. If the financial institution was ordered by banking regulators to dispose of the property regardless of the sale price, the sale should not be included as a valid transaction. Sales in which a financial institution is the seller typically should be considered as potentially valid for model calibration and ratio studies if they account for more than 20 percent of sales in a specific market area. Care should be taken in validating this type of sale to account for changes in property characteristics. Any properties which have been vandalized should be excluded.

Between Relatives or corporate affiliates- Sales between close relatives (parents, children, aunts, uncles, nephews, nieces, grandparents) or corporate affiliates are usually non-open-market transactions and may not reflect market value. If the following factors apply during the follow-up verification, the sale may be considered a valid transaction:

- The property was exposed on the open market.
- The asking and selling price was within the range which any party purchasing the property would be expected to pay.
- The sale meets all other criteria of being an open-market, arm's-length transaction.

Settling an Estate- A conveyance by an executor or trustee under powers granted in a will may not represent fair market value, particularly if the sale takes place soon after the will has been filed and admitted to probate in order to satisfy the decedent's debts or the wishes of an heir.

Forced sales resulting from a Judicial Order- These sales should never be considered for model calibration or ratio studies. The seller in these sales is usually a sheriff, receiver, or other court officer. A partition sale is an example. A partition sale is a term used in the law of real property to describe an act, by a court order or otherwise, to divide a concurrent estate into separate portions representing the proportionate interests of owners in the property. It is sometimes described as a forced sale. It is often the result of a dissolution of marriage or the division of an estate among heirs.

Doubtful Title- Sales in which title is in doubt tend to be below market value. When a sale is made on other than a warranty deed, there is a question of whether the title is merchantable. A quit-claim deed is an example.

END OF IAAO EXTRACT

Portions of the material in this manual used courtesy of the IAAO, extract on IAAO Standard on Verification and Adjustment of Sales, Revised Approved, April 2020

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**SAMPLE
DOCUMENTS AND PROCEDURES**

****The following information is simply suggestions and does not represent the official opinions of the Georgia Department of Revenue.*****

SAMPLES OF DOCUMENTS WHICH MAY NEED TO BE PRINTED

<i>Copy/Print</i>	<i>Do not Copy/Print</i>
<i>Warranty Deed</i>	<i>Security Deed</i>
<i>Quitclaim Deed</i>	<i>Deed to secure debt</i>
<i>Deed Under Power</i>	<i>UCC Financing</i>
<i>Foreclosure</i>	<i>Easement</i>
<i>Deed of Assent</i>	<i>Power of Attorney</i>
<i>Deed of Gift</i>	<i>Covenants and Restrictions</i>
<i>Trustees Deed</i>	<i>Affidavit- Concerning Money</i>
<i>Years Support</i>	<i>Satisfaction of Mortgage</i>
<i>Adminstrator/Executor Deed</i>	<i>Cancellation</i>
<i>Scriveners Affidavit</i>	<i>Limited Power of Attorney</i>
<i>Surveyors Affidavit</i>	<i>Assignment</i>
<i>Affidavit of Survivor</i>	<i>Subordination Agreement</i>
<i>Letters of Administration</i>	
<i>Last Will and Testament</i>	
<i>Special Warranty Deed</i>	
<i>Limited Warranty Deed</i>	
<i>Receivers Deed</i>	

SUGGESTED PROPERTY TRANSFER POLICIES

1. Make note of Life Estates.
2. Make note of Quit-Claim Deeds.
3. Make note of all portions of interest. Ex. 1/4; 1/2; etc.
4. If a deed is dated after January 1st, it is for the coming year. (Date of deed, not date recorded).
5. Make note of Survivorships.

6. Have a quality checklist for the entire property transfer procedures to ensure uniformity. (An example will be available at the end of this chapter).
7. Have a coding sheet which ensures all staff are coding deeds uniformly. (An example will be available at the end of this chapter.)
8. If possible, have a Deed Manager which completes quality checks on coding and system input to minimize errors.
9. If available, include newest plat of property and MLS of sale date and sale price if

- County has current subscription.
10. Send out Sales Survey Questionnaires to assist in qualifying sales. (You will print these forms out of WinGAP in bulk). To print in bulk, you will need to select survey at time you input sale into system.

The screenshot shows the WinGAP - Sales Information window. At the top, the window title is "WinGAP - Sales Information - [User ID = dor] - 005 010 OLD" and the user name is "baldwin". The form contains the following fields and sections:

- Owner:** GEORGIA POWER COMPANY
- Parcel #:** 005- -010. + +OLD
- Key:** 0
- Load Image** button
- Table:** A table with columns: Grantee, Grantor, Date, Deedpage, Rsn, Saleprice, Cs. The table is empty with the text "(There are no records to view)".
- Sales Information Section:**
 - Buyer:** [Redacted]
 - Seller:** [Redacted]
 - PT-61 #:** 0
 - Sale Date:** / /
 - Deed:** [Redacted]
 - Book:** [Redacted]
 - Page:** [Redacted]
 - Print Survey** button (highlighted with a red box)
 - Survey Sent** checkbox (unchecked)
 - Survey Received** checkbox (checked)
 - Sale Price:** 0
 - Adjustment:** 0
 - State (Y/N):** [Redacted]
 - FMV:** 0
 - MAVVVAL:** 0
 - Qualifier:** [Redacted]
 - Net Saleprice:** 0
 - Instrument:** [Redacted]
 - Acres:** 0.00
 - Class:** [Redacted]
 - Strat:** [Redacted]
 - RSN:** [Redacted]
 - Land Class / Strat:** U5
 - Asmt Reason:** Not Applicable
- Comments:** [Redacted]
- Buttons:** Edit History, Cancel, New, Delete, Apply, OK

Baldwin County Board of Tax Assessors
 Local Government Services Division
 4125 Welcome All Road SW Suite 701

Atlanta GA 303491824

Phone:(404)724-7000

Fax :(404)724-7011

Email :

2/24/2021

Current Sales Questionnaire

GEORGIA POWER COMPANY

Legal Desc	9-26
Map ID	005 011A 170
Total Acres	0.00

The Board of Assessors is conducting a survey for information concerning sales that have occurred in the prior year. Please answer the questions below in order for the appraisal staff to properly qualify sales data to ensure that arm-length sales are used to develop valuation tables for property. Once completed, please fax, email, or mail the information in the provided self-addressed stamped envelope. Thank you for your cooperation.

ARE THE BUYER & SELLER RELATED? YES / NO IF YES, RELATION _____

IN YOUR OPINION, WAS THIS AN ARMS-LENGTH TRANSACTION REPRESENTATIVE OF FAIR MARKET VALUE? YES / NO IF NO, WHY NOT? _____

DID THE SALE INVOLVE ANY PERSONAL PROPERTY? i.e.: BOAT, TRACTOR, INVENTORY, ETC YES / NO IF YES, ESTIMATE OF VALUE \$ _____

DID YOU TRADE ANYTHING IN ADDITION TO CASH? YES / NO IF YES, ESTIMATE OF VALUE \$ _____

WAS THERE ANY OWNER FINANCING IN THE SALE? YES / NO IF YES, DOWN PAYMENT _____ # OF YEARS FINANCED _____ % INTEREST RATE _____

WAS THERE ANY TIMBER ON THIS PROPERTY AT THE TIME OF THE SALE? YES / NO IF YES, ESTIMATE OF VALUE \$ _____

DID YOU PURCHASE THIS PROPERTY FOR AGRICULTURAL USE? YES / NO

DOES THIS PROPERTY ADJOIN PROPERTY ALREADY OWNED BY YOU? YES / NO

WERE THERE ANY OTHER CONSIDERATIONS IN THIS SALE? YES / NO IF YES, WHAT? _____

WHAT WAS THE PURCHASE PRICE OF THE PROPERTY? _____
 (If the PT61 showed no consideration, please include your closing statement in order for the purchase price to be considered as the taxable value for one year on arm length transactions.)

HAS ANY REMODELING/RENOVATION OCCURRED, OR IS ANY PLANNED TO OCCUR, TO ANY IMPROVEMENT(S) ON THIS PROPERTY? YES / NO If yes, circle one: REMODEL COMPLETED / REMODEL PLANNED FOR FUTURE

Current Sales Information

Code	Previous Owner	Property Use	Sale Price	Deed Date	Deed Ref	Plat Ref
Land Market	BROWN JUNE KENNEDY	U	180000	3/13/2019	1354 528	

ADDITIONAL SUGGESTIONS/ NOTES:

* Anytime you have a bank sale, federal home loan, foreclosure sale, etc., you will need to make a note if it does not list a sales price - PT61 fails to include a sale price and is not shown on deed – No transfer tax paid

* Anytime you have any deed (Fair market, land market, etc.) which states Survivorship, you need to make sure to include a note in the comments section providing it is a right of survivorship.

* If it states the passing of an owner, you need to make a note in the comments with the date of death.

* Do not remove a name which has not conveyed their ownership (unless a death certificate is attached to the deed).

* If a sale price exceeds the valuation on what appears to be vacant land, put a note to check for improvement in the sales comments. Print out property record card with a note to Check for improvement and indicating sale price and give a copy to the Appraiser.

* Please check to see if the parcel being sold is in a rental program. If it is, make the note “In rental program at time of sale” in the comments of the sales screen and give a copy to the personal property appraiser. Properties in rental programs may be sold furnished or turnkey.

* Make sure to print a copy of the MLS (if there is one -only properties with improvements) and save a copy of the plat into the parcel from the clerk of court website (if there is one recorded).

*Check for a Sellers Property Disclosure Statement or HUD Statement

A. Settlement Statement

U.S. Department of Housing
and Urban Development

OMB Approval No. 2502-0265
(expires 9/30/2006)

B. Type of Loan

1. FHA 2. FmHA 3. Conv. Unins
4. VA 5. Conv. Ins.

6. File Number:

7. Loan Number:

8. Mortgage Insurance Case Number:

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "if any" were paid outside the closing. They are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:

E. Name & Address of Seller:

F. Name & Address of Lender:

G. Property Location:

H. Settlement Agent:

Place of Settlement:

I. Settlement Date:

J. Summary of Borrower's Transaction

K. Summary of Seller's Transaction

100. Gross Amount Due From Borrower

400. Gross Amount Due To Seller

101. Contract sales price

401. Contract sales price

102. Personal property

402. Personal property

103. Settlement charges to borrower (line 1400)

403.

104.

404.

105.

405.

SELLER'S PROPERTY DISCLOSURE STATEMENT EXHIBIT " _____ "



2005 Printing

For property located at _____ Georgia, _____
together with all improvements thereon ("Property")

NOTICE TO BUYER AND SELLER: This disclosure statement is designed to assist Seller in disclosing to prospective buyers all known material adverse facts relating to the physical condition of Property that may not be readily observable, disclosing historical information and past problems with Property, and identifying those fixtures/items that are included with the sale of Property. All questions are to be answered with respect to the above referenced Property.

IF THE ANSWERS TO ANY OF THE QUESTIONS LISTED BELOW ARE "YES," PLEASE EXPLAIN IN DETAIL IN THE "ADDITIONAL EXPLANATIONS" SECTION.

	Yes	No	Don't Know
1. OCCUPANCY:			
(a) Is Property vacant?	_____	_____	_____
If yes, how long has it been since Seller occupied Property? _____			
(b) Are there any leases, written or verbal, on Property or any part thereof?	_____	_____	_____
2. SOIL, TREES, SHRUBS AND BOUNDARIES:			
(a) Are there any landfills (other than foundation backfill), graves, mine shafts, trash dumps or wells (in use or abandoned) on Property?	_____	_____	_____
(b) Is there any sliding, settling (other than normal settling), earth movement, sinkholes, upheaval, or earth stability/expansive soil problems?	_____	_____	_____
(c) Are there any diseased or dead trees on Property?	_____	_____	_____
(d) Are there any encroachments, leases, unrecorded easements, or boundary line disputes?	_____	_____	_____
3. ROOF, GUTTERS AND DOWNSPOUTS:			
(a) Approximate age of roof: _____ years.			
(b) Has the roof, or any part thereof, been repaired during your ownership?	_____	_____	_____
(c) Are there any roof leaks or other problems with the roof, roof flashing, gutters or downspouts?	_____	_____	_____
4. TERMITES, DRY-ROT, PESTS, AND WOOD-DESTROYING ORGANISMS:			
(a) Is there any past or present damage to Property caused by infiltrating pests, termites, dry-rot, or other wood-destroying organisms?	_____	_____	_____
(b) Is your Property currently under a transferable bond, warranty or other coverage for termites or other wood destroying organisms by a licensed pest control company?	_____	_____	_____
If yes, check type of coverage: <input type="checkbox"/> re-treatment and repair, or <input type="checkbox"/> re-treatment only			
(c) Is there a cost to transfer the bond, warranty or other coverage?	_____	_____	_____
If yes, what is the cost? \$ _____			
(d) Is there a cost to maintain the bond, warranty or other coverage? If yes, what is the annual cost? \$ _____	_____	_____	_____
(e) Have any termite/pest control reports or treatments for Property been done in the last five years?	_____	_____	_____
(f) Does any dwelling or garage on Property have any untreated wood or exterior siding/cladding, such as rigid board insulation, foam plastic, synthetic stucco, hard coat stucco, wood or masonry siding (excluding brick), below grade or within six inches of finished grade?	_____	_____	_____
5. STRUCTURAL ITEMS, ADDITIONS AND ALTERATIONS:			
(a) What year was the main residential dwelling constructed? _____			
(b) Has there been any movement, shifting, settling (other than normal settling), cracking, deterioration, or other structural problems with any dwelling or garage on Property?	_____	_____	_____
(c) Has there been any additional structural bracing, underpinning, or other structural reinforcement added to any dwelling or garage on Property?	_____	_____	_____
(d) Are there any problems with driveways, walkways, patios, or retaining walls on Property?	_____	_____	_____
(e) Have there been any additions, structural changes, or any other major alterations to the original improvements on the Property?	_____	_____	_____
(f) Has there been any work done on the Property where required permits and/or approvals (public or private) were not obtained?	_____	_____	_____
(g) Has any work been done to Property that was not in compliance with building codes or zoning regulations?	_____	_____	_____
(h) Does any part of the exterior siding or cladding of any dwelling or garage on Property consist of synthetic stucco?	_____	_____	_____

	Yes	No	Don't Know
6. DRAINAGE, FLOODING AND MOISTURE:			
(a) Has there been any water leakage, water accumulation, or dampness within the basement, crawl space or other parts of the main dwelling at or below grade?	_____	_____	_____
(b) Have any repairs been made to control any water or dampness problems in the basement, crawl space, or other parts of the main dwelling at or below grade?	_____	_____	_____
(c) Is the Property or any improvements thereon located in a flood zone?	_____	_____	_____
(d) Does water regularly stand on Property for more than one day after it has rained?	_____	_____	_____
(e) Has there been any past flooding on Property?	_____	_____	_____
(f) Are there any problems with siding or exterior cladding, swelling, chipping, delaminating or retaining moisture?	_____	_____	_____
(g) Does mold appear on interior heated and cooled portions of any dwelling on Property other than on the walls, floors or ceilings of showers, sinks, and bathtubs?	_____	_____	_____
7. PLUMBING RELATED ITEMS:			
(a) What is your drinking water source: <input type="checkbox"/> Public <input type="checkbox"/> Private <input type="checkbox"/> Well on Property			
(b) If your drinking water is from a well, has it been tested within the past twelve months?	_____	_____	_____
(c) Do you have a water softener, filter or purifier? If yes, <input type="checkbox"/> Leased <input type="checkbox"/> Owned	_____	_____	_____
(d) What is the type of sewage system: <input type="checkbox"/> Public <input type="checkbox"/> Private <input type="checkbox"/> Septic Tank			
(e) Is the main dwelling served by sewage pump or lift system?	_____	_____	_____
(f) Do you know if any septic tank or cesspool on Property has ever been professionally serviced? If yes, please give the date of last service: _____	_____	_____	_____
(g) Do you know of any past or present leaks, backups, or other similar problems relating to any of the plumbing, water and/or sewage-related items?	_____	_____	_____
(h) Is there any polybutylene plumbing, other than primary service line, on Property?	_____	_____	_____
8. OTHER SYSTEMS AND COMPONENTS:			
(a) What type of heating system(s) serve the main dwelling? <input type="checkbox"/> gas <input type="checkbox"/> electric <input type="checkbox"/> other			
(b) What is the approximate age of heating system(s): _____ years			
(c) What type of air conditioning system(s) serve the main dwelling? <input type="checkbox"/> gas <input type="checkbox"/> electric <input type="checkbox"/> other			
(d) What is the approximate age of air conditioning system(s) _____ years			
(e) Is any portion of the main dwelling not served by a central or zoned heating and/or air conditioning system?	_____	_____	_____
(f) How is water heated in the main dwelling? <input type="checkbox"/> Electric <input type="checkbox"/> Gas <input type="checkbox"/> Solar			
(g) What is the approximate age of water heater: _____ years			
(h) Does the main dwelling have aluminum wiring other than the primary service line?	_____	_____	_____
(i) Is there any system or appliance which is leased or for which the buyer must pay a transfer fee to continue to use? If yes, what is the transfer fee? \$ _____ If yes, what is the current use fee to be paid by the buyer? \$ _____	_____	_____	_____
(j) Are any fireplaces not working or in need of repair?	_____	_____	_____
(k) When was each fireplace, wood stove or chimney/flue last cleaned? Date: _____	_____	_____	_____
9. TOXIC SUBSTANCES:			
(a) Are there any underground tanks, toxic or hazardous substances on Property (structure or soil) such as asbestos, urea-formaldehyde, methane gas, radioactive material, radon, mold, benzene or other environmental contaminants?	_____	_____	_____
(b) Has Property ever been tested for radon, lead, mold or any other potentially toxic substances?	_____	_____	_____
10. COVENANTS, FEES AND ASSESSMENTS:			
(a) Is Property part of a condominium, community association or subject to covenants, conditions and restrictions (CC & R's)?	_____	_____	_____
(b) Is there a mandatory community association fee or assessment? If yes, what is the amount? \$ _____ per _____ Is there an initiation fee? If yes, what amount? \$ _____	_____	_____	_____
(c) Are there any recreational facilities in the community for which the obligation to pay and the right to use are optional? If yes, please describe the nature of the facilities and the optional fee or charge. _____	_____	_____	_____
(d) In purchasing Property, will any initiation, transfer, or other similar fee be owed to the Association? If yes, what is the amount? \$ _____	_____	_____	_____
(e) Are there any special assessments approved by but yet not owing or due to a community Association that are not yet owed or due?	_____	_____	_____

The following list of sales qualifiers were once included in Rule and Regulation 560-11-.2-56

1. Sales involving government agencies and public utilities;
2. Sales involving charitable, religious, or educational institutions;
3. Sales in which a financial institution is the buyer or seller;
4. Sales between relatives or corporate affiliates;
5. Sales between adjacent property owners;
6. Sales of convenience;
7. Sales settling an estate;
8. Sales of doubtful title;
9. Sales involving trades;
10. Sales conveying partial interest or land contracts;
11. Sales conveying additional interests or property other than the real property;
12. Sales involving incomplete or unbuilt community property;
13. Sales involving multi-County property;
14. Sales forced by legal difficulties;
15. Sales using non-conventional financing;
16. Sales in which the consideration is not greater than \$1000.
17. Short Sales – ALT
18. Government Resales after Foreclosure – ALT
19. Sales of Bank Resales after Foreclosure – ALT
20. Sales of Individual resales of previously foreclosed property – ALT
21. Sales of Qualified Improved between unaffiliated parties - ALT
22. Sales of Qualified Vacant between unaffiliated parties - ALT

SAMPLE SALES CODE EXPLANATIONS

ADJOINING PROPERTY- The purchase of a parcel which is adjoining to property the buyer already owned prior to the purchase of the new parcel.

*Must touch

*Include the adjoining parcel number in the comments section of the sale screen

****ADMINISTRATION DEED-** Code as admin deed if no money is involved or if there is money involved and it is family. If money is involved and it is not family then you will need to code it so it will get allocated as such Fair Market, Land Market, Multiple Lot. Then, make a note it was also an admin deed.

AFFIDAVIT- Deed states it, no money involved (No PT-61) make notes in comments.

BANK SALE- Sale from a bank after the property has been foreclosed on in a separate deed. *(May or may not have a sale price)*

BANK TRANSFER- Deed after a foreclosure. This would be from the bank which foreclosed on the property and deeding it over to a different bank. *(May or may not have a sale price)*

CIVIL ACTION- Usually states it is a Civil Action (CA), and you need to reference the CA number. *(Sometimes the CA number is not included but if it states it anywhere as a CA, even if no CA number provided, then this is what it needs to be coded)*

CORPORATION TO CORPORATION- Going from one corporation to another corporation *(may or may not be the same address) (may or may not have a sale price)*

CORPORATION TO PERSONAL- Same address on the PT-61 just going from corporation to their personal name *(may or may not have a sale price)*

DEED OF ASSENT- Usually no money involved- executor of the estate or heirs conveys to themselves.

DEED OF CORRECTION- A correction of some sort usually states in the corrected deed. Make sure you make a note of what the deed is correcting.

DEED OF GIFT- No money involved. Usually deeding it to someone or adding someone's name. Sometimes the deed says gift, or it may be on the PT-61. If it is a Quit Claim, Warranty Deed, etc. and no money is involved and PT-61 says DOG then it is coded a gift, except if it is a deed of survivorship then it will be coded survivorship.

DEVELOPER- You must confirm and verify they are a developer before you code (*usually only used by the appraisers*)

DIVORCE- Usually states somewhere on the deed it is a divorce and reference the divorce action # (*sometimes the divorce number is not included but if it states anywhere, it is a divorce, or the PT-61 states divorce then this is what it needs to be coded*)

****ESTATE DEED-** Code estate deed if it states it and no money is involved. If money is involved and it is not family, then you will need to be sure to code it so it will get allocated as such Fair Market, Land Market, Multiple Lot. Then, make a note it was also an estate deed. (*Appraiser will make determination if it needs to be an estate deed if money is involved*)

****EXECUTIVE DEED-** Code exec deed if there is no money involved and it must be family. If money is involved and it is not family, you will need to code it so it will get allocated as such FM, LM, ML. Then, make a note it is also an exec deed. (*Appraiser will make determination if it needs to be an executive deed if money is involved*)

FAIR MARKET VALUE- Money sale where any residential/ commercial/ industrial improvement or any accessory improvement is included.

FAMILY SALE- Sale which is done within the family. Must confirm and verify before coding a family sale.

FEDERAL HOME LOAN SALE (FH)- Fannie Mae or Federal Home Loan sale. This is a specific type of bank sale coming from these two specific entities. (*May or may not state a sales price*)

FORECLOSURE- Bank taking ownership of a property (*may or may not provide a sale price*)

FORECLOSURE SALE- Bank taking back ownership and selling the property all in one deed (*may or may not provide a sale price*)

INVENTORY INCLUDED- Sales which are sold with furnishings, machinery and equipment, inventory, or any other considerations of value other than the property and its improvements. Can include properties which are currently in rental program and sold as working rentals.

LAND MARKET VALUE- Money sale where it is land only. Make a note in the comments which states exactly "land vacant at time of sale" (*this must be on the first line in the comments section to allocate*)

LIFE ESTATE- Somewhere in the deed it states it is a life estate, leave in current owner's name and make notes it is a life estate deed and note who the property will go to upon termination of the life estate.

MOBILE HOME SALE- Money sale where it has a mobile home on the property and is included in the sale (*give a copy of the deed to the mobile home appraiser*)

****MULTIPLE LOT SALE-** The purchase of more than one lot and is all included in one sale price on one deed but apply to different parcels which have not been combined. (*If it is a bank sale with multiple lots, you need to code multiple lot and make a note in the comments section it is also a bank sale and note what other lots were included and their parcel numbers*)

PERS TO CORP- Same address, same people just going from their personal name to a corporation name (*may or may not include a sale price*).

****QUITCLAIM-** Usually states Quit Claim. Deed should never have money, if money is involved it needs to be coded as a sale either Land Market, Fair Market, Multiple Lot, Bank Sale, etc. Also, if there is no money involved and you see the on the PT-61 says DOG, it is a gift.

****RECEIVERS DEED-** Usually from a bank and will state it is a receiver's deed, but if for some reason it is from a bank to a person as a sale, you will need to code bank sale and make a note it is also a receiver's deed.

SCRIVENERS AFFIDAVIT- Usually the deed states it, no money involved (no PT61).

****SURVIVORSHIP DEED-** Usually states it is a survivorship deed. It will only be coded as a Survivorship deed if no money is involved, and the grantor still retains ownership.

SUSPICIOUS SALE- Sales in which there may be inventory included, machinery and equipment, inventory, sold as working rental, or included any other considerations of value other than the property and its improvements but not verified as inventory included.

TAX SALE- Deed from the Tax Commissioner selling the property (grantor will be (Tax Commissioner), ex officio.) Then in comments list the names of owners to show who the tax sale was against.

****TRUSTEE/TRUST-** No money involved. There will never be money involved and it will only ever be coded as a trust if the grantor is an owner in the trust or the trust is their own.

WARRANTY DEED- We do not use a lot. No money involved and will only be coded this if there is nothing else such as a gift or survivorship which it may be coded. (*May also at times be referred to as a limited warranty deed*).

YEARS SUPPORT- Will provide the document is a Years Support. Will need to have comments in sales who is the beneficiary for the years support, the date it was created, the Probate Officials name, and the recording information.

Documents which you should try to find in addition to deeds

- Newest Plat
- MLS of Sale with the Correct Date and Sale price
- Sellers Property Disclosure Statement
- Security Deed
- HUD Statement
- Other supporting documents

* Please remember all owner information should be correctly referenced on Property Record Card

Owner Screen-

Exactly as on deed with all initials, last name always first, in order of ownership provided on deed.

Front Screen-

- Previous Owner in Comments Box
- New Deed Reference in Legal Description

Assessment Reason-

Always "change in ownership"
Only new splits will require a different reason.

Sales Info-

- New Record
- Double Check buyer and seller information correct
- Sale Date
- Deed Number
- Plat Number
- Sale Price
- In Comments
 - Land Vacant at time of sale (always first line) if vacant
 - MLS Information and number recorded.
 - Ex or Admin of Estate Listed
 - Record of day of death if provided in deed.
 - If survivorship always note SS in the comments box

Notes:

If Deed of correction, affidavit, civil action, or divorce, always put all information in Comments box.
If from estate seller info would be deceased person name with estate following comments ex of estate

i.e.

John Smith owns property; he has passed, and Pocahontas is selling
Seller - Smith John Estate
Comments box- Pocahontas as Admin or Ex

When checking for MLS

Ways to Search:

Street Name without number- sort by prices and see if any match your sale price.

If in a subdivision, search either by subdivision name, or road property touches,
sort by price

if property is east, west, north, south deed street check all three ways:
(East Deed Street), (E Deed Street), (Street without location (Deed Street))
always look for your sale price.

1. Select property which has ownership change.

Parcel Number	Realkey	Total Acres	Last Name
006 001	188294	0.23	GEORGIA TRANSMISSION CORP
006 002	188295	0.60	JACKSON E M C
006 003	188281	0.09	WINDSTREAM Georgia Inc
006 005	188295	0.60	NORFOLK SOUTHERN CORP

WinGAP - Real Property General Information - GEORGIA TRANSMISSION CORP : 006 001 : Banks - [User ID = dor]

Account Number: 188294 | Duplicate | Notice | Non-Operating

PIN (1): 006- -001. + | Tax District: 35 - County Unincorporated | Asmt Reason: Ownership Change

Street Information: House # 0, Ext, Dir, Street Name, Type, Post, Units, U-Type, Latitude 17268883, Longitude 3801573, Zip Code

Property Information: LL, LD, GMD, Zoning, Legal: HOMER S.S. 23 AC, Neighborhood: Athens, Company #: 0830, Total Acres: 0.23, Subdivision, Lot, Blk, Sec, Phase

Values: Previous 65,138, Current 75,435, PC Retn 65,138, Cur-MAV 0, Prev-MAV 0

History: 2017 65,138, 2016 65,138, 2015 65,138

75,435 FMV, MAV

Land (1) 8,000, Res Imp 0, Com Imp (1) 0, Acc Imp (5) 67,435

Edit Information: Data Entry gmhilton, Review 05/24/2002, Appraiser, Alternate

Comments: Georgia Transmission Corp

Buttons: Cancel, Delete, New, Apply, OK

2. Select Owner Head at bottom left corner of main screen.

Lot, Blk, Sec, Phase

Covenant

Comp Retn 65,138
DOR Value 65,138
Float Base2 0
Float Curr2 0
State HS Val 0
299(c) Value 0
299(c) Year 0

Help, Owner Head icon (circled in red)

3. Select Edit button in the top left corner of owner information screen.

WinGAP - Owner Information - [User ID = dor] Banks

Last: [] First: [] Mid Init: [] Edit

Corp Name: GEORGIA TRANSMISSION CORP

Address: []

City, ST Zip: [] [] []

Country: []

Email: []

Numbers

Home: () - [] FEI: 58-2231201

Work: () - [] SSN: []

Fax: () - [] SSN 2: []

Cell: () - []

Entity Type: []

Owner Key: 180830

Assessment Information

Real Prop Parcels	1
Personal Prop Accts	0
Prebill Mobile Homes	0
Owner's Total Acres	0.23
Value	
Land	8,000
Improvement	67,435
Personal Property	0
Mobile Homes	0
Totals	75,435

Filing Period: [] [] [] []

Spouse BD: [] [] [] []

Non-Disclosure: 50-18-72(a)(21) & (b)

Multiple Owners List: []

Property Items List: Real PINs: 006 001; Pers Accts; MH Accts

Comments: []

Comment Flag

Buttons: Help, Cancel, Delete, New, Apply, OK

WinGAP - Owner Information - [User ID = dor] Banks

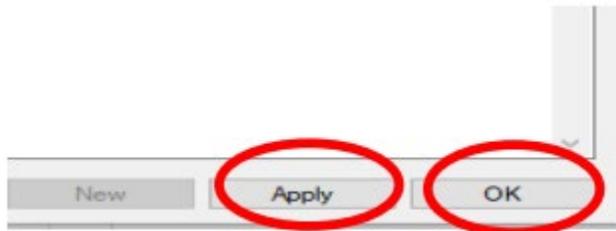
Last: [] First: [] Mid Init: [] **Edit**

4. Remove previous owner information.

5. Input new ownership information. Exactly as on deed with all initials, last name always first, in order of ownership listed on deed. (Make sure you fill the information out exactly as written on deed, except for putting last name first)

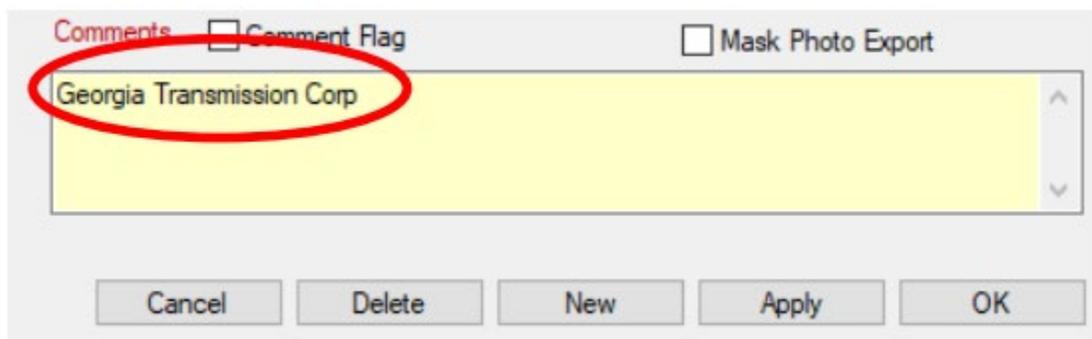
Corp Name	Owens Christina		
Address	1618 Unicom Way		
City, ST Zip	Blue Ridge	GA	30513-

6. After new ownership information input, select apply in the bottom right-hand corner, and click ok.



A screenshot of a dialog box with a light gray background. At the bottom, there are three buttons: 'New', 'Apply', and 'OK'. The 'Apply' and 'OK' buttons are circled in red. The 'New' button is disabled (grayed out).

7. On main screen put previous owner in the comments section of bottom right-hand corner



A screenshot of a 'Comments' section in a software interface. At the top, there are two checkboxes: 'Comment Flag' and 'Mask Photo Export', both of which are unchecked. Below the checkboxes is a large text area with a yellow background. The text 'Georgia Transmission Corp' is entered in the text area and is circled in red. At the bottom of the text area are scroll-up and scroll-down arrows. Below the text area are five buttons: 'Cancel', 'Delete', 'New', 'Apply', and 'OK'.

8. Input new deed reference in legal description

The screenshot shows a 'Property Information' form. At the top, there are fields for 'LL', 'LD', 'GMD', and 'Zoning'. Below these is a 'Legal' field containing 'DB 1618-004', which is circled in red. Other fields include 'Neighborhood' (Athens), 'Company #' (0830), 'Total Acres' (0.23), and 'Subdivision'. At the bottom, there are fields for 'Lot', 'Blk', 'Sec', and 'Phse'.

9. Select notice box in upper right-hand corner and select an assessment reason change of Ownership change.

The screenshot shows an assessment details form. At the top, there are navigation buttons: '<< Top', '< Prev', 'Next >', and 'End >>'. To the right, there is an 'Account Number' field with '188294', a 'Duplicate' button, a checked 'Notice' checkbox (circled in red), and an unchecked 'Non-Operating' checkbox. Below this, there are fields for 'PIN (1)' (006- -001. +), 'Tax District' (35 - County Unincorporated), and 'Asmt Reason' (Ownership Change), with the latter circled in red. An 'Alt PIN' field is also present.

10. Select sales button to input sale information

The screenshot shows a menu with various options. The 'Sales' button is circled in red. Other buttons include 'Prebill', 'Future', 'Personal', 'Transfer Items', 'Permits', 'Appeals', 'Dup Items', 'Bus Lic', 'Income', 'ACO', 'Third Party', 'Documents', 'Schedules', 'Timber Agent', 'Appointment', 'Growth', 'Custom Flags', 'Stats', and 'BPC'. There is also a 'Mask Photo Export' checkbox at the bottom.

11. Select New to input new sale information

The screenshot shows the 'WinGAP - Sales Information' window. At the top, the title bar reads 'WinGAP - Sales Information - [User ID = dor] - 006 001'. Below the title bar, there are fields for 'Owner' (GEORGIA TRANSMISSION CORP), 'Parcel #' (006- -001. +), and 'Key' (0). A 'Load Image' button is located to the right of the 'Key' field. Below these fields is a table with columns: 'Grantee', 'Grantor', 'Date', 'Deedpage', 'Rsn', and 'Saleprice'. The table is currently empty, with the text '(There are no records to view)' centered below it. Below the table is a section titled 'Sales Information'. This section contains several fields: 'Buyer' (red text), 'Seller', 'PT-61 #' (0), 'Sale Date' (/ /), 'RETT' (0.00), 'Deed' and 'Plat' buttons, 'Book' and 'Page' fields, 'Sale Price' (0), 'Adjustment' (0), 'State (Y/N)', 'FMV' (0), 'MAVVAL' (0), 'Qualifier', 'Net Saleprice' (0), 'Instrument', 'Acres' (0.00), 'Class', 'Strat', and 'RSN'. There are also checkboxes for 'Survey Sent' and 'Survey Received', and a 'Print Survey' button. Below the 'Sales Information' section is a 'Comments' text area. At the bottom of the window, there are buttons for 'Edit History', 'Cancel', 'New' (circled in red), 'Delete', 'Apply', and 'OK'. The 'New' button is highlighted with a red circle.

12. Complete Sales information.

- Buyer (Grantee)
- Seller (Grantor)
- PT 61 Number (if available)
- Sale Date
- Deed Book and Page
- Plat Book and Page
- Sale Price (if applicable)
- Class
- Strat
- Sale Reason

The screenshot shows the WinGAP - Sales Information window. The window title is "WinGAP - Sales Information - [User ID = dor] - 006 001". The "Owner" field contains "GEORGIA TRANSMISSION CORP", "Parcel #" is "006- -001. +", and "Key" is "0". A table below shows a header with columns: Grantee, Grantor, Date, Deedpage, Rsn, Saleprice, Cs. The table content is empty with the message "[There are no records to view]".

The "Sales Information" section contains the following fields:

- Buyer: [Red circle]
- Seller: [Red circle]
- PT-61 #: [Red circle]
- Sale Date: [Red circle]
- RETT: [Red circle]
- Deed Book Page: [Red circle]
- Plat: [Red circle]
- Sale Price: [Red circle]
- Adjustment: [Red circle]
- Net Saleprice: [Red circle]
- Instrument: [Red circle]
- Acres: [Red circle]
- Class: [Red circle]
- Strat: [Red circle]
- RSM: [Red circle]
- Land Class / Strat: U2
- Asmt Reason: [Red circle]
- Ownership Change: [Red circle]

The "Comments" section is a large text area with a red circle around it. At the bottom, there are buttons for "Edit History", "Cancel", "New", "Delete", "Apply", and "OK".

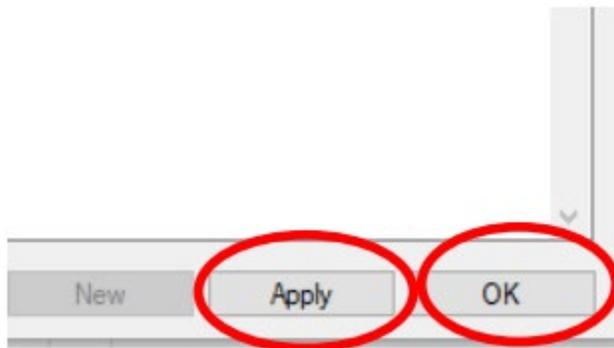
*****The following suggestions in the comments section is simply a County sample and***

does not reflect the opinion of the Department of Revenue.

In comments make notes such as:

- *If vacant "Land vacant at time of sale"
- *MLS information noted (if available)
- *If deceased, include date of death (if provided in deed)
- *Also note survivorship (if applicable)
- *If deed of correction, note what is being corrected
- *Always list Civil Action or Divorce Action (if provided)
- *If affidavit, make notes of what the affidavit is for
- *Executor or Administrator of Estate (if listed)
 - i.e., John Smith owns property, he has passed, and Richard York is selling from his estate
 - Seller- John Smith Estate
 - Comments Box: Richard York as Admin or Executor

13. Select apply in the bottom right-hand corner and click ok.



14. Double check all changes have been saved.

560-11-10-.02 Definitions.

(n) Most Recent Arm's Length Sale. As referenced in OCGA 48-5-2(3), transactions must occur prior to the statutory date of valuation to become eligible for the value limitations imposed in 48-5-2(3). Furthermore, where the exchange of property is defined as an arm's length transaction, the sum of the value of the exchanged real estate property components, land, and improvements, in the year following the property exchange shall not exceed the transaction's sale price adjusted for non-real estate values such as but not limited to, timber, personal property, etc. The adjustment to the value of the real estate shall remain in effect for at least the Digest year following the transaction. With respect to changes in the exchanged real estate property components since the time of exchange (sale date), the value of new improvements, value of additions to existing improvements (footprint of exchanged structure has been altered), major remodeling or renovations to existing structures (footprint of exchanged structure has not been altered), and adjustments to land due to consolidation of tracts, new surveys, zoning changes, land use changes, etc. shall be added to the sales price adjusted values. In the event an exchanged real estate property structure is renovated or remodeled, the term major shall be construed such that both the property owner and BOA would reasonably conclude a major renovation/remodeling has occurred. If either party, acting reasonably, could debate that the renovation/remodeling effort was not major in nature, the renovation/remodeling effort does not qualify and shall not be added to the sales price adjusted values. Any modifications made to the exchanged real estate property after the sale date that result in a lower value of the exchanged property shall be considered in the final valuation of property for the Digest.

SECTION 11 CALCULATING AREA

AREA FORMULAS

Square --	A rectangle with all four sides congruent. Formula: Area = Base X Height
Rectangle --	A parallelogram with four right angles. Formula: Area = Base X Height
Parallelogram--	A quadrilateral with opposite sides parallel. Formula: Area = Base X Height
Rhombus --	A parallelogram whose sides are congruent. Formula: Area = Base X Height
Trapezoid --	A quadrilateral with one pair of parallel sides Formula: Area = Median X Height
Triangle --	A three-sided polygon Formula: Area = 1/2 of the Base X Height
Circle --	A plane figure with all its points the same distance from a given point called the center. Formula: Area = π X Radius Squared The symbol for Pi is π . π equals 3.14.
Circumference --	The distance around a circle Formula: $C = 2 \pi X R$
Radius --	The distance from the center of the circle to any point on the circle. Formula: $R = C (2 \pi$

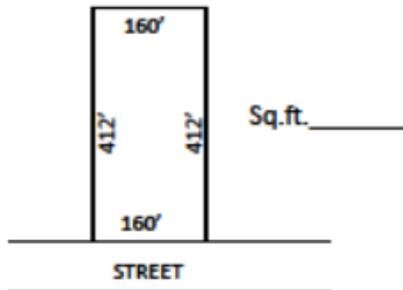
1. Square



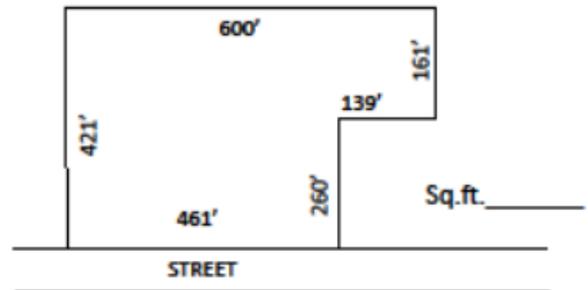
2. Rectangle



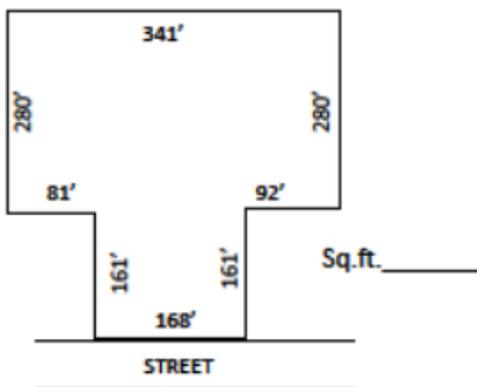
3. Rectangle



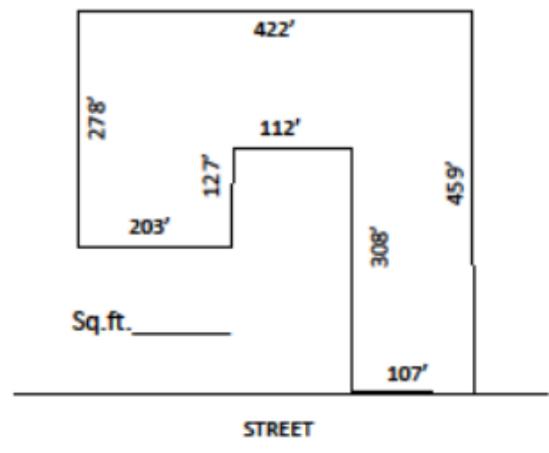
4. Combination



5. Combination



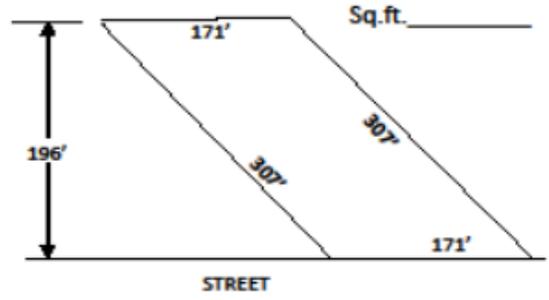
6. Combination



7. Parallelogram



8. Parallelogram



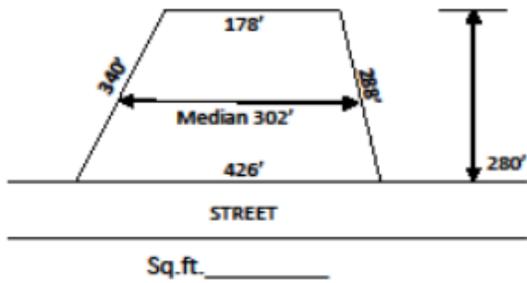
9. Rhombus



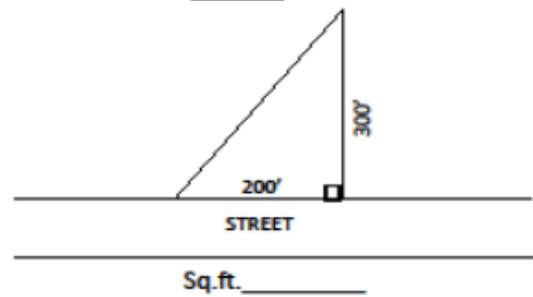
10. Trapezoid



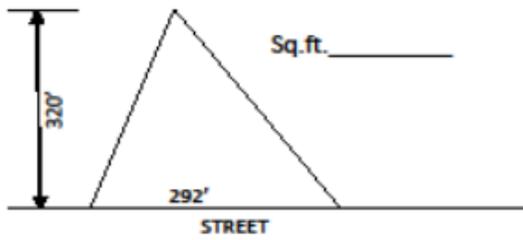
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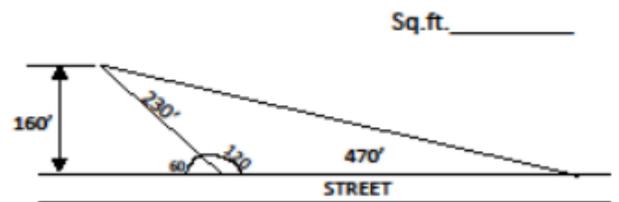
12. Triangle



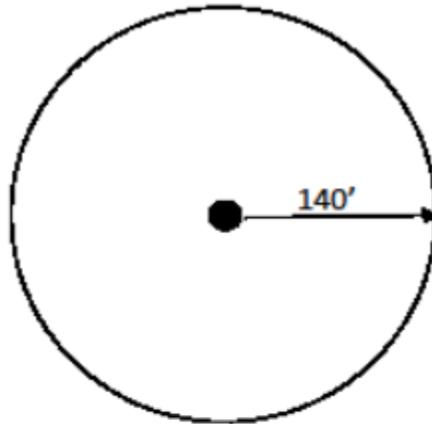
13. Triangle



14. Triangle

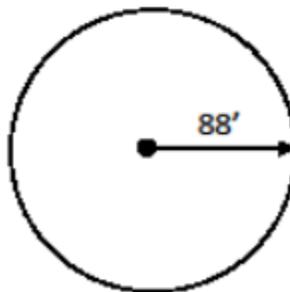


15. Circle

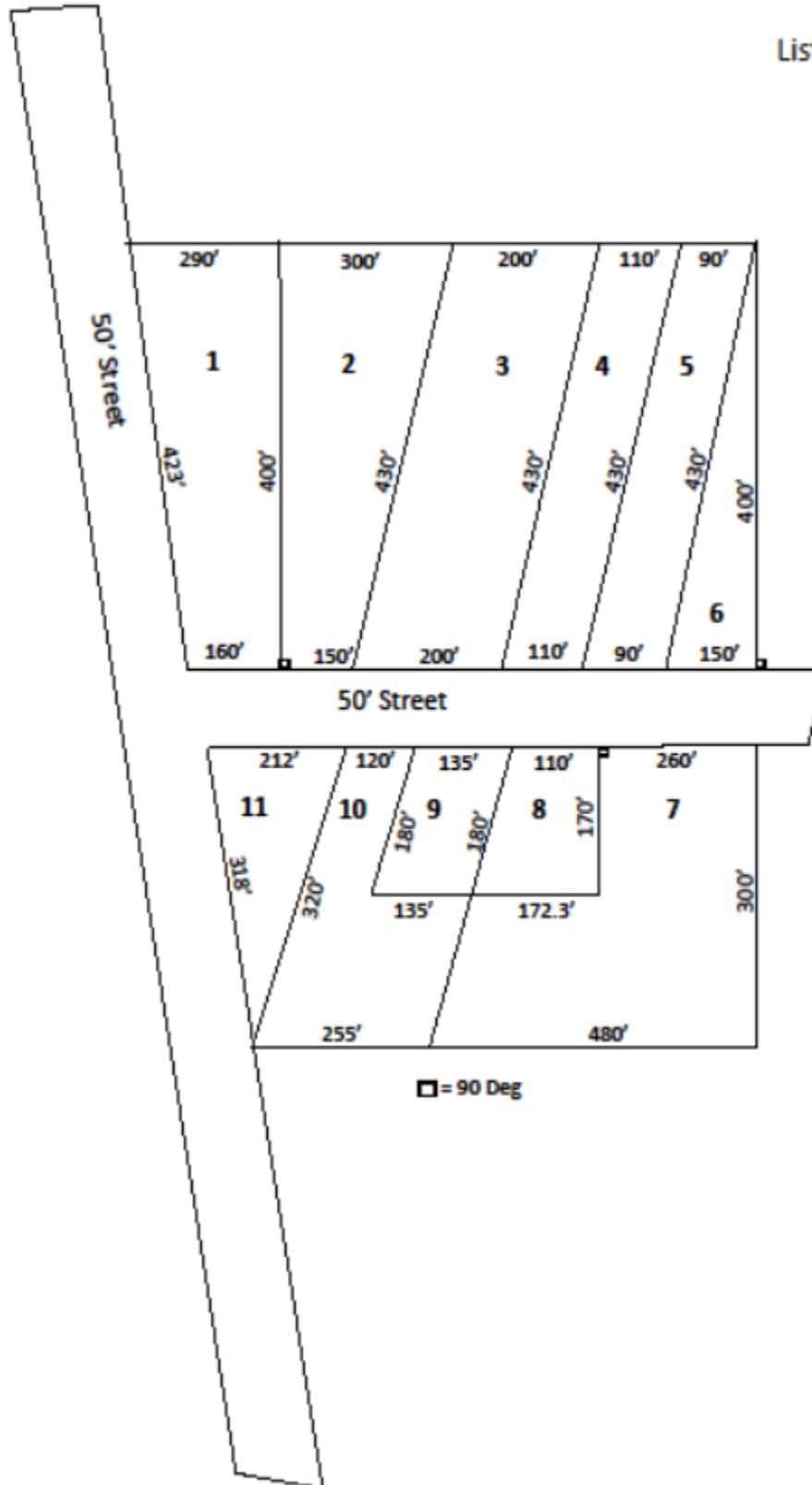


SQ.FT. _____

16. Circle



SQ.FT. _____



List SQ. Footage of Each Lot:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____

Georgia Department of Revenue

1 Acre	43,560 square feet	1 Meter	39.37 inches	1 Township	36 square miles
1 Acre	160 square rods	1 Meter Square	10.764 square feet	1 Yard	36 inches
1 Acre	10 square chains	1 Mile Square	5,280 feet	1 Yard	3 feet
1 Acre	160 perches	1 Mile Square	8 furlongs	1 Yard Square	9 square feet
1 Acre	160 poles	1 Mile Square	320 rods		
1 Acre	.4047 hectare	1 Mile Square	80 chains		
1 Acre	4047 square meters	1 Mile Square	1.60935 kilometers		
1 Acre	is about 208 3/4 feet square	1 Mile Square	320 perches		
1 Centimeter	.3937 inches	1 Mile Square	320 poles		
1 Centimeter	.032808 feet	1 Mile Square	8,000 links		
1 Chain	66 feet	1 Mile Square	1,609.2655 meters		
1 Chain	4 rods	1 Mile Square	a regular section of land		
1 Chain	4 perches	1 Mile Square	27, 878, 400 square feet		
1 Chain	4 poles	1 Mile Square	640 acres		
1 Chain	100 links	1 Mile Square	259 hectares		
1 Chain	20.1168 meters	1 Mile Square	2.59 square hectares		
1 Foot	12 inches	1 Perch	25 links		
1 Foot	.36 varas	1 Perch	1 pole		
1 Foot	0.3048006 meter	1 Perch	1 rod		
1 Furlong	660 feet	1 Perch	16.5 feet		
1 Furlong	40 Rods	1 Pole	16.5 feet		
1 Hectare	10,000 square meters	1 Pole	1 perch		
1 Hectare	2.471 acres	1 Pole	1 rod		
1 Inch	.0254 meter	1 Rod	1 pole		
1 Kilometer	3280.83 feet	1 Rod	1 perch		
1 Kilometer	.62 mile	1 Rod	16.5 feet		
1 Link	7.92 inches	1 Section	1 mile long, by 1 mile wide		
1 Link	.66 feet	1 Section	640 Acres		
1 Link	.2017 meter	1 Township	6 miles long, by 6 miles wide		
1 Meter	3.280833 feet	1 Township	36 sections		

PRACTICAL EXERCISE ON ACREAGE CALCULATION

QUIZ 1

PROBLEM 1

Figure the acreage in a square tract which measures 1,276' x 1,276'.

ANSWER _____

PROBLEM 2

Figure the acreage in a square tract which measures 62 chains x 62 chains.

ANSWER _____

PROBLEM 3

Figure the acreage in a square tract which measures 379 yards x 379 yards.

ANSWER _____

PROBLEM 4

Figure the amount of acreage in a rectangular tract which measures 2,327 feet x 4,681 feet.

ANSWER _____

PROBLEM 5

Figure the acreage in a rectangular tract which measures 31 chains x 49 chains.

ANSWER _____

PROBLEM 6

Figure the acreage in a triangle which measures 473 feet on the base and has a height of 984 feet.

ANSWER _____

PROBLEM 7

Figure the acreage in a triangle which measures 23 chains on the base and has a height of 49 chains.

ANSWER _____

QUIZ 2

PROBLEM 1

Figure the acreage in a square tract which measures 3,500' x 3,500'.

ANSWER _____

PROBLEM 2

Figure the acreage in a square tract which measures 44 chains x 44 chains.

ANSWER _____

PROBLEM 3

Figure the acreage in a square tract which measures 156 yards x 156 yards.

ANSWER _____

PROBLEM 4

Figure the amount of acreage in a rectangular tract which measures 1,909 feet x 5,212 feet.

ANSWER _____

PROBLEM 5

Figure the acreage in a rectangular tract which measures 72 chains x 14 chains.

ANSWER _____

PROBLEM 6

Figure the acreage in a triangle which measures 823 feet on the base and has a height of 1,009 feet.

ANSWER _____

PROBLEM 7

Figure the acreage in a triangle which measures 36 chains on the base and has a height of 63 chains.

ANSWER _____

QUIZ 3

PROBLEM 1

Calculate the square footage of a tract consisting of 5.5 acres.

ANSWER _____

PROBLEM 2

Calculate the square footage of a tract which is 330 yards x 330 yards.

ANSWER _____

PROBLEM 3

Calculate the square footage in a square tract which measures 250 feet x 250 feet.

ANSWER _____

PROBLEM 4

Calculate the number of yards in a 660-foot line.

ANSWER _____

PROBLEM 5

Calculate the square feet in a rectangular tract which measures 34 chains x 24 chains.

ANSWER _____

PROBLEM 6

Calculate the square feet in a triangle which measures 487 feet on the base and has a height of 616 feet.

ANSWER _____

PROBLEM 7

Calculate the square feet in a triangle which measures 11 chains on the base and has a height of 22 chains.

ANSWER _____

SECTION 12
GEORGIA MILITIA DISTRICTS
GMD'S

GEORGIA MILITIA DISTRICTS

By Alex M. Hitz

[Reprinted from Georgia Bar Journal, Vol. 18, No. 3 (February 1956), and published with the permission of the Georgia Bar Association.]

The active, organized Georgia Militia, in the sense that it existed during the Revolutionary War, the War of 1812 and the various Indian uprisings until 1840, is today practically extinct. Its place was taken by the Volunteer organizations, both before and after the War Between the States, and later by the National Guard when it was organized in 1916. In fact, although detailed provisions for the government of the organized Georgia Militia were contained in the 1863 Code, later Codes dropped all but a few references to it although containing equivalent provisions relating to the Volunteers. The 1910 Code omitted all references to the Militia as a military force. It is true that the Act of Aug. 21, 1916 (Chap 86-2 of the 1933 Code) and the Act of Feb. 19, 1951 (Chap. 86-1 of the 1933 Code Supplement) contain references to the unorganized Militia, but it is obvious that they are included only to provide for a reservoir of manpower who could be made subject to the draft and duty in the defense of the State in emergencies of the gravest nature. Technically, every citizen of the State, between the ages of 17 and 45, who is not a member of the National Guard or other organized military force, is today a member of the unorganized Georgia Militia in the Militia District in which he resides.

But although the organized Georgia Militia is dead, the Georgia Militia Districts are very much alive and enter daily into the activities of all of our citizens in anything connected with (1) the territorial jurisdiction of Justice of the Peace Courts; (2) the boundaries of election districts; (3) the return of property for taxation; (4) stock and fence laws; (5) the conveyancing of land in headright Counties; and (6) in all other circumstances specifically referred to in the laws of the Senate as presently codified.

It must be borne in mind that, as was stated by Chief Justice Fish in the case reported in 150 Ga 370 (p.396), " it clearly appears *** that Captain's and Company Districts were the same as what are now known as Militia Districts." The words Captain's, Company and Militia appear interchangeably in all of the legislation where Militia District is the subject or is referred to. Militia Districts had their origin in the colonial Acts of Jan. 24, 1755¹ and Sept. 29, 1773,² and the basic principles were adopted and adapted in all subsequent enactments of the State Legislature. Originally the Provincial Governor, as Commander in Chief, was empowered to create Regimental and Company Districts and the field officers commissioned by him would define the lines of the

King's Militia Company Districts and designate the number of men constituting the Militia company in that District. The Captain of each Company would enroll the names of every male, between the ages of 16 and 60, residing in the Company District, and his action automatically made those men members of that Militia Company.

The first Militia Act of the newly formed State was passed on Nov. 15, 1778.³ Practically the only changes from the Colonial Acts were in the lowering of the minimum age to 15 years and the election of the Captain and Lieutenants by the Militiamen residing in that Company District. The Act of Feb. 26, 1784,⁴ passed at the close of the Revolutionary War to amend the 1778 Act, placed the age limits between 16 and 50, but still made the enrolling of the names of all residents in a Company District, by the Captain thereof, an automatic and compulsory enlistment. Under both Acts the boundaries of each Company District were determined by the Governor and Commander in Chief and were controlled by the number of militiamen residing therein, a Company being limited to a maximum of sixty-three men. It was under these Acts that there was originated the custom of identifying the District in which the Company was contained by the name of the Captain of that Company. Thus, with each election of a Captain, the same Militia Company District could be known successively as Smith's District, Jones' District, Brown's District or Robinson's District. The name of a Georgia Militia Company and of the District in which the Company was located changed each time its Captain died, resigned, or was removed, and it then became known as the District of his successor.

Following the passage, on May 8, 1792,⁵ of the Act of Congress establishing uniform Militia laws for all of the States, Georgia again revised and amended her former Militia laws by her act of Dec. 14 (or 24), 1792.⁶ The only new revisions, so far as the Militia Companies and Militia Districts were affected, called for elections of Captains in all Company Districts "within ten days after such Company District shall have been defined by the Executive." Governor Telfair issued a proclamation on Dec. 21, 1792⁷ to the effect that the Company Districts "will remain as at present established." The appointment of an Adjutant General was first provided for by this Act.

The amending Act of Feb. 18, 1798⁸ gave to the field officers of each Regiment the power to arrange and define Company Districts, subject to the approval of the Brigade Commander.

No act can be found, dated prior to 1807, which required that Captain's or Company Districts should be numbered. Up to and including April 8, 1804, no commission issued to a Company officer mentioned the name of his Company, but all commissions issued on or after May 2, 1804, designated the number of the Company District for which issued. Presumably, the numbering of Militia Districts or Captain's Districts originated as a regulation of the Adjutant General, but it was soon after written into the laws by the Act of Dec. 10, 1807.⁹ Sect. 4 of that Act read:

"Every division, brigade, regiment, battalion and company district shall be numbered throughout the State, by order of the commander in chief, in such manner that every corps of the same denomination shall bear a different number, by which numbers every district shall be designated in the commissions of officers commanding therein."

Prior to the passage of the 1807 Act, the Adjutant General had given numbers to 275 Militia Districts or Company Districts, all in twenty-six headright Counties, and as each new County was thereafter formed and Militia Districts were designated therein, they were likewise numbered in consecutive order. The highest numbered Militia District is 1892. In the course of time 281 Districts have been abolished through consolidation or otherwise, but those losses have been somewhat offset by clerical errors in duplicating 54 numbers, so that there are approximately 1665 Militia Districts in the State, as of 1955. As new Counties were formed from older Counties or large tracts were transferred from one County to another, the Militia Districts retained their identities and numbers – thus, Long County which was created in 1920 contains Militia Districts Nos. 16 and 24 which had been numbered in 1804 when part of Liberty County.

Practically all of the Georgia Militia Districts are known by name as well as number and those names remain unchanged year after year, in contrast to the earlier years when the name of the Captain then commanding was given to his District. The fact that names instead of numbers were formerly more popular is evidenced by the fact that the drawers in all six Land Lotteries between 1805 and 1832 entered their residences as being in (for example) Captain Smith's District in Burke County, instead of giving the number of that same district. An unsuccessful applicant who never drew a Land Lot in any of the Land Lotteries could enter his name in each successive Lottery, and it was quite possible that his residence, although never changed, could have been shown in as many as five differently numbered Captain's Districts in two or more Counties. It is today impossible to identify (for example) Captain Wiggins' District of Washington County, as it was known in 1807, with any of the numbered Districts as they existed in that County that year or any following year.

From 1755 to 1776 the power to lay out, alter and define the boundary lines of Militia Districts was vested in the Provincial Governor; and from 1778 to 1799 it was vested in the State's Governor, as Commander in Chief. The first Adjutant General of the Militia evidently inaugurated a form of muster roll for each Company, which included a description of that Company District. Among the fragmentary records of his office there can be found the descriptions, as of the year 1793, of thirty-seven Militia Districts in Columbia, Elbert, Franklin, Greene, Washington and Wilkes Counties.¹⁰ This was changed by the Act of Feb. 18, 1799¹¹ which gave to the field officers of the Militia in each County the power to lay out new Company Districts and to alter the lines of old districts, subject to the approval of the Brigadier General in command over that County. The Act of Dec. 10, 1807¹² gave to the commanding officer of each regiment, sitting with all his junior officers as a court of inquiry, the power to alter existing Company Districts and to lay out new Districts, and provided that such changes be recorded by the regimental clerk. The same provisions were included in the Militia Acts of Dec. 6, 1813¹³ and Dec. 19, 1818.¹⁴ Only one complete report of a clerk of a regimental court of inquiry can be found today.¹⁵ That report shows that the officers of the Gwinnett County Regiment convened on June 18, 1830, and, in great detail, defined the lines of new and altered Company Districts.

However, the two Acts of Dec. 21, 1819, organizing Appling, Early, Irwin and Rabun Counties gave to the Inferior Court of each County the right to lay out the Captain's Districts. As each new County was thereafter created similar powers were given to the Justices of the Inferior Court, and the minutes books of those Courts should contain recorded data as to each such District. It must be noted that those Acts relating to newly created Counties did not change the laws respecting Militia Company Districts in the older Counties. But on Dec. 23, 1839¹⁶ a general law was passed, which gave to the Justices of the Inferior Courts of all Counties the right to lay out and alter the Militia Districts in their respective Counties. An amendatory Act of Dec. 23, 1840¹⁷ required that the Governor be immediately notified as to the changes in District lines.

When the Inferior Courts were abolished by the Constitution of 1868,¹⁸ their former jurisdiction over County matters, including the laying out and altering of Militia Districts, was conferred upon the Ordinaries.¹⁹ An Ordinary's powers over Militia Districts were expressly set out in Sect. 337 of the 1873 Code and in all subsequent Codes, including Sect. 23-701 of the 1933 Code.

The creation of the office of County Commissioner(s) of Roads and Revenues was first authorized by the Constitution of 1868²⁰ and repeated in the Constitution of 1877,²¹ and today 150 of the 159 Counties have such Commissioners or Boards of Commissioners. Up until 1922 the various local Acts creating County Commissioners for the various Counties defined their powers and duties, and unless the Act specifically gave them power to lay out new Militia Districts, or to alter or abolish existing Districts, that power remained vested in the Ordinary.²² The Act of Aug. 21, 1922 (Acts 1922, p.82) gave to the Boards of County Commissioners of all Counties exactly the same powers and authority which had formerly been vested in the Inferior Courts, therefore, today the provisions of Chap. 23-2 of the 1933 Code apply alike to Ordinaries in Counties which have no County Commissioners and to County Commissioners in all other Counties, in which latter case the word "Ordinary" as it appears in each Section (except 23-208) of that Chapter should be construed as reading "County Commissioners of Roads and Revenues." Any action and order by Ordinary or County Commissioners, as the case may be relative to Georgia Militia Districts, is final and not subject to review or appeal, unless void on its face by reason of fraud or abuse of discretion.²³

The territorial jurisdiction of Justice of the Peace Courts was first made coterminous with Militia Company Districts by Sec. 68 of the Judiciary Act of Feb. 9, 1797.²⁴ The Constitution of 1798²⁵ declared that "there shall be two Justices of the Peace in each Captain's District." Originally these Justices were nominated and appointed by the Inferior Courts, but after the Act of Dec. 21, 1819²⁶ they were elected by the citizens residing in each Militia District. The Constitution of 1968 reduced the number of Justices in each Militia District from two to one, and the actual wording of the law as it stands today is "there shall be one Justice of the Peace in each Militia District."²⁷

Beginning in 1804²⁸ the Tax Receiver in each County took and made up the tax returns by and in the Militia Districts, and it was the duty of the Captain of each District Company to furnish him with a list of all persons in the District. These laws remained in force until 1830,²⁹ when the justices in each Captain's District were required to render similar assistance to the Tax Receiver. The practice of segregating taxpayers by Militia Districts on the tax Digests continues to this day.

Originally all elections were required to be held at the seat of government in each County, but beginning in 1817 and continuing each year thereafter, local laws were passed for the various Counties, permitting general elections for Governor, Senators, and all other officials to be held in the Militia Districts. Election Districts were established by varying phraseology such as "muster ground of the 27th Company, Captain Wilson's District" or " at the place of holding Justice courts in each Captain's District." Sec. 34-801 of the 1933 Code prescribes that voters deposit their ballots at the voting precinct in the Militia District in which they are registered.

The original Act of Dec. 23, 1839, as amended by the Acts of Dec. 23, 1840 and Dec. 14, 1899 (now codified as Chapter 23-2), prescribing the method of creating, changing, abolishing, or consolidating Georgia Militia Districts, has been considered and construed by the Supreme Court of Georgia in a number of decisions.³⁰⁻⁴⁰ The most studious research into the State's history before these Acts was made by Chief Justice Fish in his dissenting opinion in the case reported in 150 Ga. 370 (pp. 392-396), but even he overlooked the first fifty years of the evolution of the District system. Perhaps the most remarkable instance in which the Supreme Court voided an order by the Commissioners of Roads and Revenues, wherein they had abused their discretion to the extent of removing certain isolated sections of one Militia District to another, even though those two Districts were physically separated by still another District, is illustrated in the case reported in 99 Ga. 544.

CERTIFICATE OF CONVERSION

§ 14-11-212. Conversion to limited liability company

(a) A corporation, foreign corporation, foreign limited liability company, limited partnership, foreign limited partnership, general partnership, or foreign general partnership may elect to become a limited liability company. Such election shall require (1) compliance with Code Section 14-2-1109.1 in the case of a Georgia corporation, or (2) the approval of all of its partners, members or shareholders (or such other approval or compliance as may be sufficient under applicable law or the governing documents of the electing entity to authorize such election) in the case of a foreign corporation, foreign limited liability company, limited partnership, foreign limited partnership, general partnership, or foreign general partnership.

(b) Such election is made by delivering a certificate of conversion to the Secretary of State for filing. The certificate shall set forth:

- (1) The name and jurisdiction of organization of the entity making the election;
- (2) That the entity elects to become a limited liability company;
- (3) The effective date, or the effective date and time, of such election if later than the date and time the certificate of conversion is filed;
- (4) That the election has been approved as required by subsection (a) of this Code section;
- (5) That filed with the certificate of conversion are articles of organization that are in the form required by Code Section 14-11-204, that set forth a name for the limited liability company that satisfies the requirements of Code Section 14-11-207, and that shall be the articles of organization of the limited liability company formed pursuant to such election unless and until modified in accordance with this chapter; and
- (6) A statement setting forth either (A) the manner and basis for converting the ownership interests in the entity making the election into interests as members of the limited liability company formed pursuant to such election or canceling them, or (B)(i) that a written operating agreement has been entered into among the persons who will be the members of the limited liability company formed pursuant to such election, (ii) that such operating agreement will be effective immediately upon the effectiveness of such election, and (iii) that such operating agreement provides for the manner and basis of such conversion or cancellation.

(c) Upon the election becoming effective:

(1) The electing entity shall become a limited liability company formed under this chapter by such election except that the existence of the limited liability company so formed shall be deemed to have commenced on the date the entity making the election commenced its existence in the jurisdiction in which such entity was first created, formed, incorporated, or otherwise came into being;

(2) The ownership interests in the entity making the election shall be converted or canceled on the basis stated or referred to in the certificate of conversion in accordance with paragraph (6) of subsection (b) of this Code section;

(3) The articles of organization filed with the certificate of conversion shall be the articles of organization of the limited liability company formed pursuant to such election unless and until amended in accordance with this chapter;

(4) The governing documents of the entity making the election shall be of no further force or effect;

(5) The limited liability company formed by such election shall thereupon and thereafter possess all of the rights, privileges, immunities, franchises, and powers of the entity making the election; all property, real, personal, and mixed, all contract rights, and all debts due to such entity, as well as all other choses in action, and each and every other interest of or belonging to or due to the entity making the election shall be taken and deemed to be vested in the limited liability company formed by such election without further act or deed; and the title to any real estate, or any interest therein, vested in the entity making the election shall not revert or be in any way impaired by reason of such election; and none of such items shall be deemed to have been conveyed, transferred, or assigned by reason of such election for any purpose; and

(6) The limited liability company formed by such election shall thereupon and thereafter be responsible and liable for all the liabilities and obligations of the entity making the election, and any claim existing or action or proceeding pending by or against such entity may be prosecuted as if such election had not become effective. Neither the rights of creditors nor any liens upon the property of the entity making such election shall be impaired by such election.

(d) A conversion pursuant to this Code section shall not be deemed to constitute a dissolution of the entity making the election and shall constitute a continuation of the existence of the entity making the election in the form of a limited liability company. A limited liability company formed by an election pursuant to this Code section shall for all purposes be deemed to be the same entity as the entity making such election.

(e) A limited liability company formed by an election pursuant to this Code section may file a copy of such certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the County where any real property owned by such limited liability company is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of deeds in such County with the entity electing to become a limited liability company indexed as the grantor and the limited liability company indexed as the grantee. No real estate transfer tax under Code Section 48-6-1 shall be due with respect to recordation of such election.

Control No. 11022776

STATE OF GEORGIA

Secretary of State
Corporations Division
315 West Tower
#2 Martin Luther King, Jr. Dr.
Atlanta, Georgia 30334-1530

CERTIFICATE OF CONVERSION

I, **Brian P. Kemp**, the Secretary of State and the Corporations Commissioner of the State of Georgia, do hereby certify under the seal of my office that a certificate of conversion has been filed on **03/16/2011** converting

HEROES MUSIC FESTIVAL INC
a Domestic Profit Corporation

to

HEROES MUSIC FESTIVAL, LLC
a Domestic Limited Liability Company

The required fees as provided by Title 14 of the Official Code of Georgia Annotated have been paid. Conversion of the above-named entity is effective upon issuance of this certificate.

WITNESS my hand and official seal in the City of Atlanta
and the State of Georgia on March 16, 2011



A handwritten signature in black ink that reads "B. P. Kemp".

Brian P. Kemp
Secretary of State

Control No: 11022776
Date Filed: 03/16/2011 12:47 PM

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SECTION 13
COMMON QUESTIONS ANSWERED

AD Valorem Taxation

What is Ad Valorem Taxation?

Property tax is the tax liability imposed on property owners for owning real estate. Every municipality enforces property taxes on residents, using the revenue to fund programs and services for the entire community. The municipal tax authority sets a percentage rate for imposing taxes, called a levy rate, which is then calculated against the assessed value of each homeowner's property ad valorem ("according to value"). The final determination is the individual property tax levy for such resident. Collectively, every resident's tax levy determines the total revenue of the municipality's property tax levy.

How may one determine the county is taxing appropriately?

REVIEW OF COUNTY DIGESTS

The purpose of the digest review procedure is to equalize county property tax digests between and within the counties. This procedure is designed to require the county Boards of Tax Assessors to make adjustments in the valuation of property to ensure uniformity and equity. The Revenue Commissioner may use any reasonable measure in order to accomplish uniformity **O.C.G.A. 48-5-340**.

APPROVAL OF DIGESTS

A county's digest is approved in their digest review year if the digest meets the following criteria: The average assessment ratio for each class of property shall be reasonably close to the assessments provided for in O.C.G.A. 48-5-7 which is a 40% assessment for most real and personal property. The average assessment variance for each class of property shall not be excessive. The assessment ratios of the properties shall not reveal any significant assessment bias.

FAILURE TO BE IN COMPLIANCE WITH DIGEST REVIEW BY REVENUE COMMISSIONER

If it is determined the overall average assessment ratio deviates substantially from the assessment required by O.C.G.A. 48-5-7, the Revenue Commissioner shall assess against the county governing authority additional state tax in an amount equal to the difference between the amount the state's levy, as prescribed in Code Section 48-5-

8, would have produced if the digest had been at the proper assessment ratio and the amount the digest which is actually used for collection purposes will produce.

O.C.G.A. 48-5-345.

In addition, to the above proposed penalty, under O.C.G.A. 45-5-346

(2) a specific penalty is levied which shall be \$5.00 per taxable parcel of real property located in the county as of January 1 of the year in which the penalty is levied and it shall be paid by the governing authority of the county to the commissioner.

Legislative Background

LEVEL OF ASSESSMENT

RULE 560-11-2-.56 (2)(d)

Standard For Level of Assessment:

The standard for level of assessment for all classes of property will be in compliance with the Code if the upper limit of a ninety-five percent confidence interval about the average level of assessment, as established by the State Auditor, is equal to or greater than thirty-six percent, or the lower limit of a ninety-five percent confidence interval about the average level of assessment as established by the State Auditor, is less than forty four percent.

36% - 44%

UNIFORMITY

RULE 560-11-2-.56 (2)(f)

Standard for Uniformity:

The standard for uniformity will be deemed to have been met if the resulting coefficient does not exceed fifteen percent for the residential class of property or twenty percent for the non- residential classes of property.

A.K.A. COD

>15% Residential or >20% Commercial

ASSESSMENT BIAS

RULE 560-11-2-.56 (2)(h)

Standard for Assessment Bias:

The level of assessment bias within each class of property shall be measured by the price- related differential as established by the State Auditor. It shall be deemed to be in compliance if the resulting price- related differential is in the range of **(0.95 to 1.10)**, inclusive. **A.K.A. PRD**

How may one determine if one county is taxing consistently with the rest of the State of GA?

Adoption of the Appraisal Procedure Manual O.C.G.A Sec 48 -5-269.1

The Appraisal Procedures Manual adopted by the State of Georgia to govern the taxation of Georgia properties statewide and passed into law Sec 48-5-269.1 of the Official Code of Georgia Annotated (O.C.G.A) which became effective statewide as of October 10, 1999.

Appraisal Procedures Manual 560-11-10-.01(2) Specific Procedures

In order to facilitate the mass appraisal process, specific procedures are provided within this Chapter which are designed to arrive at a basic appraisal value of real and personal property. These specific procedures are designed to provide fair market value. In all instances, the appraisal staff will apply Georgia law and generally accepted appraisal practices to the basic appraisal values required by this manual and make any further valuation adjustments necessary to arrive at the fair market values.

How does one determine the value of a property?

Property valuation consists of 2 components:

Improvement Value and ***Land Value***

How does one determine how much an improvement is worth and maintain consistency among taxpayers?

Residential Building Schedule

How does a county know how to compile the Residential Building Schedule?

Appraisal Procedure Manual

Rule 560-11-10-.09(4)(a)

Real Property Appraisal Improvement valuation

(a) Cost Approach. The appraisal staff shall use the following three steps when applying

the cost approach:

Determine replacement cost new of the improvements
Subtract Accrued Depreciation
Add the value of the land

How does a county determine the replacement cost new of improvements?

Appraisal Procedure Manual

Rule 560-11-10-.09(4)(a)(1)(1)

Real Property Appraisal Comparative Unit Method

The appraisal staff shall determine benchmark per-square-foot, costs for base structures using cost guides or local cost information. Such benchmark per-measurement-unit costs may then be applied to the subject improvements to determine typical replacement cost new. All forms of depreciation are then applied as a lump sum factor based on the age and useful life of the subject improvement.

Where do the values utilized in the Residential Building Schedule come from?

Appraisal Procedure Manual

Rule 560-11-10-.09(4)(a)(I)(IV)(ii)

Real Property Appraisal

(ii) Sources of Cost Information

The appraisal staff may obtain cost information by directly collecting information from contractors, builders, developers, property owners, and other marketplace participants.

(iii) Updating Costs

Cost information shall be updated by the appraisal staff as necessary to reasonably reflect current construction costs for the various construction classes.

(v) Cost Models

The appraisal staff shall develop representative cost models which contain the manual or automated cost factors used in the cost approach. The models should be applicable to all building types in a county and be based on actual updated costs.

Once values are determined how does one implement them?

Individual components are any component of the home which is in addition to the base square foot footprint of the home. (Currently \$XXX a square foot) For example,

components such as types of exterior walls, roofing, bathrooms, basements, and their finishing, etc. are given their own value on top of the basic price per square foot. Therefore, the residential building schedule starts out at \$XXX a square foot for all residential homes then each component of such specific home is then added to this value to determine the fair market value of this home specifically.

I.e., for a 1,500 square foot home, the base price would be \$XXX for the entire 1,500 square feet of the home, then the value contributed to its exterior walls, roofing, etc. are compiled onto this base cost value to determine an overall replacement cost new for the home.

From this replacement cost new value, the home is then depreciated based on its age and condition to determine this specific home's fair market value. Aside from the base cost per square foot, each home will have its own individual value based upon the actual components of such specific home and each of its unique components. Essentially each home is assessed individually but uniformly based on the values in the residential schedule.

Once improvements are valued

How does one determine what the land value is?

Appraisal Procedure Manual

Rule 560-11-10-.09(3)(c)(1)

Site Valuation Valuation Methods with sufficient sales

The appraisal staff shall use of the valuation methods in this subparagraph when sufficient sales are available to reliably support the appraisal. These methods may be used to value the land directly.

BUT....

What if a county does not have any vacant land sales when reviewing urban land?

Appraisal Procedure Manual

Rule 560-11-10-.09(3)(c)(2)

Site Valuation Valuation methods with insufficient sales

When vacant land sales are limited, the appraisal staff may use alternative methods to determine residual land values. These residual land values may be used in the same way as vacant land sales in order to establish comparative unit or base lot values.

Appraisal Procedures Manual, Chapter 560-11-10.2(i)).

Counties may use the abstraction method to arrive at a site value as provided in the Appraisal Procedures Manual. The abstraction method as established in the Appraisal Procedures Manual provides:

"The appraisal staff estimates the land residual value by subtracting the depreciated replacement cost of improvements from the sale price of an improved property."

(Appraisal Procedures Manual, Chapter 560-11-10.2(ii)).

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SECTION 14
QUICK REFERENCE INFORMATION

AD Valorem Taxation (literally, "according to value")

REVIEW OF COUNTY DIGESTS

The purpose of the digest review procedure is to equalize county property tax digests between and within the counties. This procedure is designed to require the county Boards of Tax Assessors to make adjustments in the valuation of property to ensure uniformity and equity. The Revenue Commissioner may use any reasonable measure in order to accomplish uniformity **O.C.G.A. 48-5-340**

FAILURE TO BE IN COMPLIANCE WITH DIGEST REVIEW BY REVENUE COMMISSIONER

If it is determined the overall average assessment ratio deviates substantially from the assessment required by O.C.G.A. 48-5-7, the Revenue Commissioner shall assess against the county governing authority additional state tax in an amount equal to the difference between the amount the state's levy, as prescribed in Code Section 48-5-8, would have produced if the digest had been at the proper assessment ratio and the amount the digest which is actually used for collection purposes will produce. O.C.G.A. 48-5-345.

In addition, to the above proposed penalty, under O.C.G.A. 45-5-346 (2) a specific penalty is levied which shall be \$5.00 per taxable parcel of real property located in the county as of January 1 of the year in which the penalty is levied and it shall be paid by the governing authority of the county to the commissioner.

Legislative Background

Standard For Level of Assessment: (Ratio)	36%-44%	Rule 560-11-2-.56(2)(d)
Standard For Uniformity:	(COD) >15% Res or >20% Non Res	
Rule 560-11-2-.56(2)(f)		
Standard for Assessment Bias: (PRD)	0.95 to 1.10	Rule 560-11-2-.56(2)(h)

Adoption of the Appraisal Procedure Manual
Effective Statewide 10-10-1999

O.C.G.A. Sec 48-5-269.1

Appraisal Procedures Manual Specific Procedures

Rule 560-11-10-.01(2)

will apply Georgia law and generally accepted appraisal practices to determine fair market value

Improvement valuation (Residential Building Schedule)

Rule **560-11-10-.09(4)(a)**

(a) Cost Approach.

The appraisal staff shall use the following three steps when applying the cost approach:

Determine replacement cost new of the improvements

Subtract Accrued Depreciation

Add the value of the land

Cost Approach (Cost \$/SQ FT)- Comparative Unit Method

Rule **560-11-10-.09(4)(a)(I)(I)**

Comparative Unit Method- The appraisal staff shall determine benchmark per-square-foot, costs for base structures using cost guides or local cost information. Such benchmark per-measurement-unit costs may then be applied to the subject improvements to determine typical replacement cost new. All forms of depreciation are then applied as a lump sum factor based on the age and useful life of the subject improvement.

Development Guidelines (Residential Building Schedule)

Rule **560-11-10-.09(4)(a)(I)(IV)(ii)**

(ii) Sources of Cost Information

The appraisal staff may obtain cost information by directly collecting information from contractors, builders, developers, property owners, and other marketplace participants.

(iii) Updating Costs

Cost information shall be updated by the appraisal staff as necessary to reasonably reflect current construction costs for the various construction classes.

(v) Cost Models

The appraisal staff shall develop representative cost models which contain the manual or automated cost factors used in the cost approach. The models should be applicable to all building types in a county and be based on actual updated costs.

Site Valuation Methods with sufficient Land Only sales

Rule **560-11-10-.09(3)(c)(I)**

The appraisal staff shall use of the valuation methods in this subparagraph when sufficient sales are available to reliably support the appraisal. These methods may be used to value the land directly.

Site Valuation Methods with insufficient Land Only sales Rule **560-11-10-.09(3)(c)(2)**

When vacant land sales are limited, the appraisal staff may use alternatives methods to determine residual land values. These residual land values may be used in the same way as vacant land sales in order to establish comparative unit or base lot values.

The abstraction method as established in the Appraisal Procedures Manual provides:
*"The appraisal staff estimates the land residual value by subtracting the depreciated replacement cost of improvements from the sale price of an improved property."
(Rule 560-11-10.2(ii)).*

SALES RATIO STEPS

“RAMMACAP”

Ratio – if (Appraised Value, (Appraised value * .40 = Assessment) divided by Sale Price)
***Total Sale prices & Asmt Columns) ***

Array– Array the ratios from lowest to highest.

Mean – (total all ratios and divide by total number of ratios)

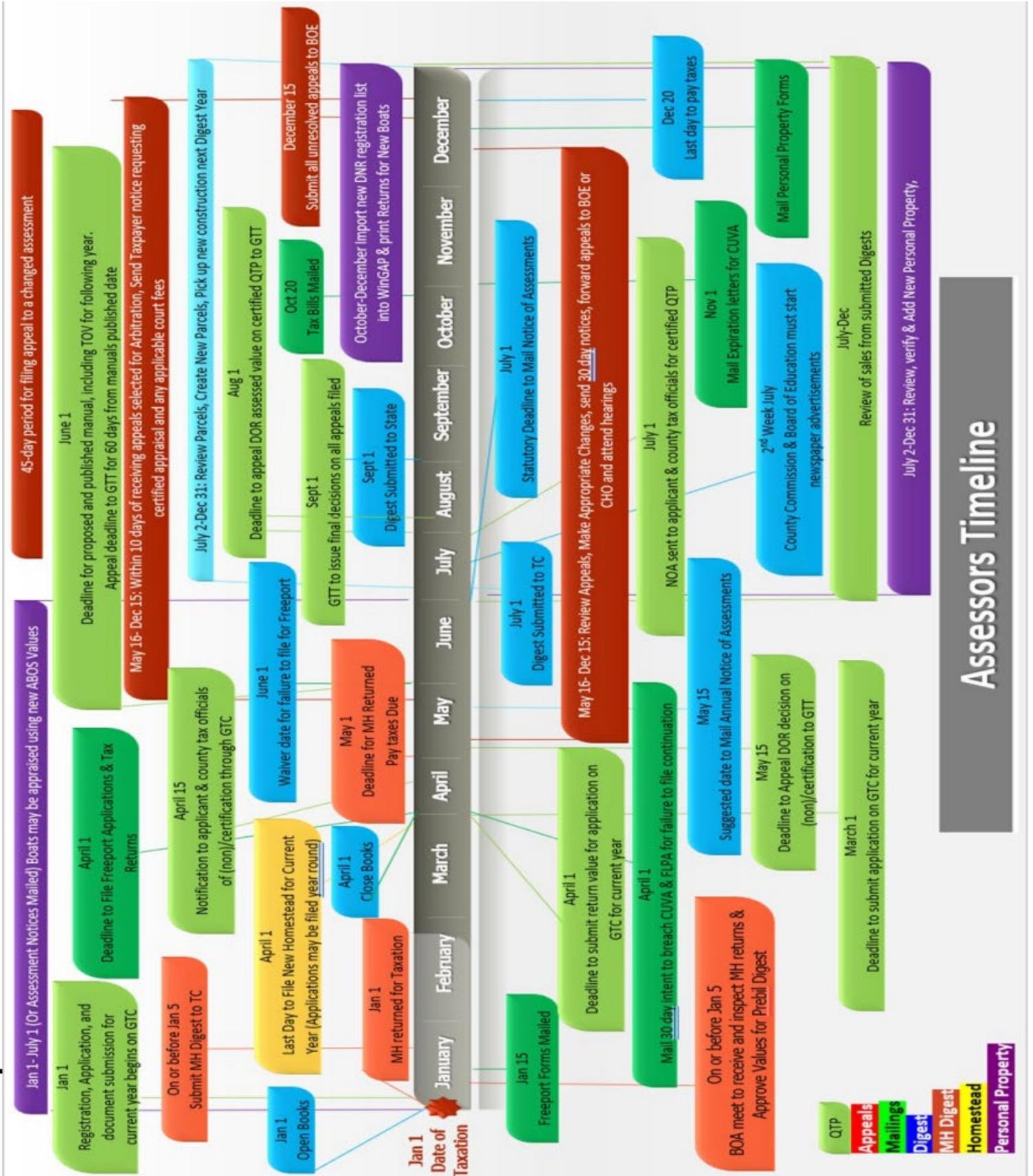
Median– Find the middle (median). If (even number of sales, add them, divide by 2)

AADeviation – subtract median from each ratio, ignore the negative sign, total deviations,
divide by number of ratios.

COD – AAD divided by Median.

Aggregate – total all assessments divided by total of all sales.

PRD – Mean divided by Aggregate.



Assessors Timeline

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GLOSSARY

Abstract - An abstract is a complete summary of all recorded documents affecting the title to a property. These documents include all conveyances, such as deeds or wills, and all legal proceedings relating to ownership of the property. Abstracts are arranged to show the history of ownership, describe the land and improvements, and give the name(s) of past and present owners(s). A brief statement of facts written in abbreviated words; a statement of the important parts of a deed or other legal instrument.

Abstract of Title - A compilation of abstracts of deeds and other pertinent data which affect the title to a piece of real property, all bound together in chronological order. It is a form of title evidence made for the purpose of title examination.

Absolute Ownership- Ownership of all real property rights and interests in real estate parcel. See also Fee Simple.

Abstracter - The individual who takes the information pertaining to a title in its full form and puts all facts into an abbreviated form, the form being called an abstract.

Accession to Real Property - Title to real property may be acquired by accession -- the addition to property by growth, increase, or labor. Land gradually deposited on the bank of a stream by imperceptible means becomes the land of the upland owner by accession.

Accretion - The process by which new soil is accumulated. The imperceptible addition of land to the shore of the ocean or bay, or to the banks of a river.

Acknowledgement - A formal declaration before some competent officer stating an act or deed; usually declared before a notary public.

Accuracy- Accuracy is the closeness of an estimated value (e.g., measured or computed) to a standard or accepted value of a particular quantity. Compare to Integrity, Precision, Validity.

Address -(1) A location, expressed in terms of a conventional spatial reference scheme, at which a property or person may be found. (2) In a computer file, a specific juncture of circuits in computer machinery at which information is stored in the form of magnetic polarities. (3) The name a programmer uses to refer to such a juncture.

Adjacent - "To be near," "close or contiguous," "in the neighborhood or vicinity of," or "adjoining or contiguous to" are the common meanings of the term "adjacent."

Adjoining - The word "adjoining" in a description of a premise conveyed means "next to" or "in contact with" and excludes the idea of intervening space.

Adjusted Sale Price- Defined under Price, Adjusted Sale.

Adjustments- Adjustments are modifications in the reported value of a variable, such as sale price. For example, adjustments may be used to estimate market value in the sales comparison approach by modifications for differences between comparable and subject properties.

Adverse Possession - The exclusive occupation and continuous possession of (another's) real property under an evident claim of title or right. The actual, exclusive, open, notorious, hostile, and continuous possession and occupation of real property under an evident claim of right or title.

Affidavit - A written form of an affirmed or sworn statement. A sworn statement made before a notary public or other authorized person. The one who makes the statement is called the "affiant."

Agreement - A general term describing a common view of two or more people regarding the obligations and rights of each with regard to a specific subject. Usually, a written instrument executed by two or more parties in which the parties agree to do or not to do certain things, a contract.

Air Rights- The right to use space above real estate.

Alienation- The transfer of title from one person to another.

Alienation Clause- A type of acceleration clause which calls for a debt under a deed or mortgage to be due in its entirety upon transfer of ownership from the secured party.

Along - "Along a line" means on and in the direction of the line. "Along the road" means along the center line or thread of the road unless qualified; for example, "Along the east side line of the road." "Along a line" may be changing in direction by curves or angles. The term "along" may mean "on"; thus "along" the shore means "on" the shore and includes the shore.

Annuity- (1) The right to receive money or its equivalent in (usually) fixed equal amounts or at regular intervals for a definite or indefinite term; (2) a level, increasing, or decreasing stream of scheduled and predictable income or payment amounts.

Approximate - Approximate often denotes uncertainty of dimensions to a greater degree than "more or less" and to a lesser degree than "about." Reasonable knowledge of dimensions is indicated by "approximate."

Appurtenances - A word employed in deeds, leases, etc., for the purpose of including any easement or other rights used or enjoyed with the real property, which are considered to be so much a part of the property they automatically pass to the grantee under the deed conveying the real property.

Arbitrary Map - A subdivision or map made by an office, title company, an assessor, or others for their own convenience in locating property in an area in which all the descriptions are by metes and bounds. On this "subdivision," the "lots" are given "arbitrary" numbers. The deeds and other instruments affecting these "lots" are posted to what is called an "arbitrary account."

Arm's-Length Sale- Defined under Sale, Arm's-Length.

Assemblage- Assemblage is the assembling of adjacent parcels of land into a single unit. Compare plottage.

Assembly Value- The excess of the value of a large parcel of land formed from a number of smaller parcels over the sum of the values of the unassembled parcels.

Assumption Fee- A lender's fee for processing records when a new buyer assumes an existing loan.

Assumption of Mortgage-An assumption of a mortgage is an agreement in which the buyer accepts liability for repayment of an existing debt. Unless the seller is released, they remain liable for the payment of such debt.

Affidavit of Equitable Interest-Affidavits are contracts for the purchase of real property under the terms of which legal title to the property is retained by the seller until such time as all the conditions stated in the contract have been fulfilled. These are commonly used for the installment purchase of real property; however, the deed is not recorded until the terms of the contracts have been fulfilled.

Amortize- The process of repaying a loan or recovering a capital investment by means of a series of scheduled payments, typically includes interest charges and principal repayment in each of the scheduled payments.

Assessment Ratio- (1) The fractional relationship an assessed value bears to the market value of the property in question. (2)By extension, the fractional relationship the total of the assessment roll years to the total market value of all taxable property in a jurisdiction.

Attachment- Property seizures by a court order.

Attestation Clause- The witness clause in a document which affirms the document is properly executed.

Attribute- Characteristic of a property.

Absolute Auction- An auction in which the property is sold to the highest bidder regardless of the amount. No minimum bid clause.

Auction- A method of marketing and selling real property. Property which sells by absolute auction should never be included in model calibration and ratio studies.

Bank of a Stream, Right or Left - When one is facing downstream, the right side is the right bank and left side is the left bank.

Beach - Used in conjunction with boundary lines, the word "beach" may mean the seaside or the land side of the beach. The meaning intended in a deed depends upon the other words used in the deed and upon the surrounding circumstances. In the absence of qualifying term, "beach" often conveys to the limits of private ownership, thus giving the greatest advantage to the buyer.

Bearing - Direction of a line measured as the acute angle from a reference meridian; usually expressed in the form "N 30 W" or "S 87 E."

Being - Denotes a secondary call. In "to the northeast corner of Brown's land, being also a 2-inch iron pipe," the 2-inch iron pipe is usually the secondary or informative call, whereas Brown's corner is normally the superior call. A "being clause" is frequently a controlling call.

Being Clause - The "being clause" of a deed denotes the origin or history of the present deed, such as "being the same land conveyed to Brown in Book 1237, page 672, of Official Records." If a change is made in the wording of a deed, there should always be inserted a being clause. Reference to a being clause generally does not operate to enlarge or restrict a particular and sufficient description of land conveyed.

Beneficial Estate- An estate of which the right to possession has not yet passed.

Beneficial Interests- The property interests resulting from equitable ownership in a property rather than legal ownership, for example, the interests of the beneficiary of a trust.

Beneficiary- (1) The person for whose benefit property is held in trust. (2) The person to whom the proceeds of an insurance policy are payable upon the happening of the event insured against or the nonhappening of the insured event.

Bisection of a Line - The cutting of a line into two parts, not necessarily two equal parts. Where mid-point is meant, use mid-point.

Blaze - A blaze is a mark on a tree caused by cutting off the bark and a portion of the live wood.

Block - A block is a square or portion of a city enclosed by streets, whether occupied by buildings or vacant lots. In addition, blocks are often enclosed by the boundary of the subdivision.

Bond, Loan- A written instrument, under seal, evidencing a participating interest in an obligation of a borrower and containing a formal promise to pay a sum certain (the par or face value) at a fixed future date (the date of maturity), with interest payable periodically at a fixed rate.

Note: This is the type of bond ordinarily referred to in the term "stocks and bonds." There are few exceptional bonds outstanding which have no date of maturity, or which bear interest at a rate varying with the issuer's income or with the general price level.

Boundary - A line which marks the outermost extent of an area, or a division between areas, such as a property or ownership boundary.

Bounded - Usually referred to in legal descriptions as being bounded by the adjoining landowners or by a road, stream, etc. Set off by a boundary.

Bounds - Bounds are the lines by which different parcels of land are divided. "Butts and bounds" or "butted and bounded" are phrases sometimes used to introduce the boundaries of land. "Buttal" means along the end of the land.

Breach of Contract- The failure to perform a contract, in whole or in part.

Bundle of Rights- The six basic rights associated with the private ownership of property: use; sell; rent or lease; enter or leave; give away; and refuse to do any of these.

Business Assets- Business assets are tangible and intangible resources employed by a business enterprise in its operation.

Buyer- (1) One who purchases property. (2) In real property sales, the grantee to whom property is transferred by deed or to whom property rights are granted by a trust instrument or other document.

Buyer's Market- A market in which the supply is greater than the demand.

By - In a deed, "by a road" is construed as including the land to the center of the street, but "by the east side of a road" means "along the east side" and not "along the center line."
"To," "on," or "by" means to the limits of the grantor's land.

Call - A "call" within a deed is the designation of visible natural objects, monuments, course, distance, or other matter of description as limits of the boundaries. Locative calls are particular or specific calls exactly locating a point or line. Descriptive calls are general or directory calls which merely direct attention to the neighborhood in which the specific calls are to be found.

Cardinal Direction - Cardinal direction is either due north, due east, due south, or due west.

Cash-Equivalent Sale Price- An indicator of market value which is a refinement over the raw sale price, in the effects of unusual financing arrangements and extraneous transfers of personal property have been removed.

Cash Lease- A written document transferring from one owner to another party the right to live in or to use property for a specified period of time for a specified amount of money.

Center Line of a Street - Applies to the center of a street prior to widening, or closing, i.e., the center line of the original street mid-way between the sides. To avoid ambiguous conditions, if the street has been narrowed or widened on one side or unequally, the center line should be defined.

Certificate of Redemption- The evidence of buying back or redeeming a property by the owner after loss through a judicial sale.

Certificate of Sale- A certificate, issued to the buyer at a judicial sale, which entitles the buyer to a deed upon confirmation of the sale by the court or if the property is not redeemed within a specified time.

Certificate of Title- A document which states the title to a property is believed to be clear based on the examination of the abstract of title for the property.

Cestui Que Trust- A beneficiary of property held in trust.

Chain - A land surveyor's measure -- 66 feet or one hundred links.

Chain of Title - A chronological list of documents which comprise the recorded history of title of a specific piece of real estate.

Chattel- Tangible personal property.

Chord - A straight line connecting the tangents of a curve.

Closing- The act of finalizing a real estate transaction which executes and delivers mortgage or property title documents.

Closing Costs- Settlement fees and expenses incurred in transferring property ownership which are paid at the real estate closing.

Closing Statements- A listing of incurred closing costs of the buyer and seller in closing a real estate transaction.

Cloud on Title- Any valid claim, encumbrance, or lien which may impair the title to real property.

Coding- The act of reducing a description of a unique object, such as a parcel of real estate, to a set of one or more measures or counts of certain of its characteristics, such as square footage, number of bathrooms, and the like.

Color of Title - An appearance of legal ownership which arises from irregular conveyances. If, for example, an owner's claim to property depended on a deed which had never been recorded, such owner would have color of title but would not have full legal title. Color of title cannot arise from fraudulent documents, such as forgeries. If a claim to a piece of real property is based upon some written instrument, although a defective one, the person with the claim is said to have "color of title."

Commercial Property- Generally any nonindustrial, nonresidential realty of a commercial enterprise. It includes realty used as retail or wholesale establishment, retail establishment with living quarters, office building, hotel or motel, gasoline service station, commercial garage, parking lot, warehouse, theater, bank, clinic, nursing home, proprietary school, and the like.

Common Area- The total area within a property which is not designed for rental or sale, which is available for common use by all tenants and owners. See also Undivided Interests.

Comparable Sales: Comparables- (1) Recently sold properties similar in important respects to a property being appraised. The sale price and the physical, functional, and locational characteristics of each of the properties are compared to those of the property being appraised in order to arrive at an estimate of value. (2) By extension, the term comparables is sometimes used to refer to properties with rent or income patterns comparable to those of a property being appraised.

Computer-Assisted Mass Appraisal System (CAMA)- A system of appraising property, usually only certain types of real property, which incorporates computer-supported statistical analyses, such as multiple regression analysis and adaptive estimation procedures, to assist the appraiser in estimating value.

Condominium/Condominium Unit- A separately owned unit of real property in the same structure with other such units; the unit owners hold an undivided interest in common elements of the property, such as a lobby, swimming pool, and grounds. See also Cooperative.

Conditions - Restrictions created by a qualification annexed the estate by the grantor of a deed, upon breach of which the estate is defeated and reverts to him.

Consideration - The amount of money and other valuable goods or services on which a buyer and a seller agree, to consummate a sale. The inducement, either money or other consideration, which moves a party to enter into a contract.

Contract, Land- Defined under Land Contract.

Contract for Deed- A contract for sale in which the seller retains title until the buyer completes the contracted payments for the property. The sale is not recorded until title passes to the buyer. See also Land Contract.

Contract Rent- The actual amount of rent, per unit of time, which is specified in the contract (lease). For very old contracts, the contract rent may be substantially less than the rent the property would bring today. Compare Market Rent.

Conveyances - Legal documents which transfer ownership of property. Deeds and wills are examples of conveyances. Compare Real Estate Transfer Documents.

Convex - The outside of a curve; away from the center of the circle.

Conveyance - Any instrument in writing by which any estate or interest in real property is created, alienated, mortgaged, or encumbered, or by which the title to any real property may be affected. (Except wills)

Conveyed - The land transferred in a fee title. "That land conveyed to Brown" would include the lot described plus adjoining streets.

Coordinates (grid) - Two distances which fix the position of a point on a grid the perpendicular distance to the point from the axis of Y, termed the abscissa or X coordinate; and the perpendicular distance from the axis of X, termed the ordinate of Y coordinate.

Coordinates (plane, rectangular) - The perpendicular distances (coordinates) of a point from a pair of axes which intersect at right angles, reckoned in the plane defined by those axes.

Corporation- A legal entity (business organization form) operating under a grant of authority from a state in the form of a charter and articles of incorporation.

Course - "Course" as used in surveying includes both bearing and distance. "Course and distance" where "bearing and distance" is meant is a common error. Because when a ship is set on a "course," a bearing is implied, and the word "course" is sometimes used in land description utilizing such meaning.

Covenant - A promise written into a legal agreement (such as a deed) which binds the parties to abide by or refrain from certain acts. A deed restriction is a special kind of covenant. A word used in deeds for the purpose of creating restrictions. It imports an agreement on the part of the grantee to make, or to refrain from making, some specified use of the land conveyed.

Cultural Detail - Features of the terrain which have been constructed by man. Included are such items as roads, buildings, canals, boundary lines, and in a broad sense, all names, and legends on a map. (See also "Details.")

Curves - (1) The center line of a curve is the mid-point along the arc of the curve and is not the "center of the circle" describing the curve. (2) Parallel curves are curves which are concentric. (3) The radius to extend beyond the arc should state "and on the prolongation of the radius." (4) Compound curves are tangent at the point of compounding (changing of radius). (5) Reverse curves are tangent at the point of reversal. (6) Tangent curves have a common tangent where the curves meet.

Date of Sale (Date of Transfer)- The date on which the sale is agreed, considered to be the date the deed or other instrument is signed. The date of recording may be used as a proxy if it is not unduly delayed as in a land contract.

Declaration of Restrictions- A set of recorded restrictions which apply to a specific area or subdivision.

Declaration of Trust- A written acknowledgment by the legal title holder to property specifying the property is held in trust for the benefit of another party.

Decree - A judgment by the court in a legal proceeding.

Decree of Distribution - The judicial decision made by a probate court determining who is legally entitled to the real and personal property of a decedent.

Deeds - A document (or written legal instrument) which, when executed and delivered, conveys an interest in or legal title to a property. A deed is evidence in writing of an executed contract for the sale of land. Its purpose is to define location and title to land. Several types exist. (1) Grant Deed. A grant deed conveys the fee title of the land described and owned by the grantee. If at a later date the grantor acquires a better title to the land conveyed, the grantee immediately acquires the better title without formal documents (after rights). In some states, by law, the grantor warrants the deed against acts of his own volition. (2) Quit-Claim Deed. A quit-claim deed passes on to the grantee whatever title the grantor has at the time at which the transaction is consummated. It carries no after rights, i.e., if the grantor acquires a better title at a later date, it is not passed on the grantee. The deed carries no warranties on the part of the grantor. (3) Agreement Deed. An agreement deed is an agreement between owners to fix a disputed boundary line. (4) Warranty Deed. A warranty deed conveys the fee title to the land described to the grantee and in addition guarantees the grantor to make good the title if it is found lacking. (5) Trust Deed. A written instrument by which a borrower (trustor) conveys his land to another (trustee) for the benefit of the lender (beneficiary) as security for the repayment of the money lent. In the event of a failure of the trustor to repay the money, the trustee conducts a foreclosure sale of the real property.

Deed, Bargain and Sale- Implicitly or explicitly asserts the grantor's ownership of the property conveyed but makes no guarantees to defend the title. It provides the grantee more protection than a quitclaim deed but less than a special warranty deed. The words of conveyance bargain and sale distinguish a bargain and sale deed.

Deed Book - A book of public record, usually found in the County courthouse, containing all property transfer deeds which have been recorded and made a matter of public record.

Deed, Quitclaim- A deed in which the grantor conveys or relinquishes all interests which they may have in a property, without warrant as to the extent or validity of such interest.

Deed, Special Warranty- A deed in which the grantor only covenants to warrant and defend the title against claims and demands of the grantor and all persons claiming by, through, and under him or her.

Deed, Tax- A deed by which title to real property, sold to discharge delinquent taxes, is transferred by a tax collector or other authorized officer of the law to the purchaser at a tax sale.

Deed, Trust- (1) Broadly, a deed by which title to property is transferred to a trustee to be held in trust. (2) Specifically, a deed by which title to property is transferred, conditionally or unconditionally, to a trustee to be held for the benefit of creditors or obligors of the grantor. (3) Loosely, the agreement made between an issuer of bonds and the holders of such bonds which is deposited with the trustee, whether or not such agreement involves the transfer of property to the trustee. A trust deed is also known as deed of trust.

Deed, Warranty- A deed containing a covenant of warranty whereby the grantor of an estate of freehold guarantees the title which he or she undertakes to transfer is free from defects and the property is unencumbered except as stated, and whereby the grantor, for himself or herself and his or her heirs, undertakes to defend and protect the grantee against any loss which may be suffered by reason of the existence of any other title or interest in the property existing at the time the deed was executed and not excepted therein. Compare to Deed, Quitclaim.

Deed Recordation- The process of registering a sale of real property with the appropriate public body, usually the County recorder's office.

Deed Restriction- A limitation to property rights which transfers with the property regardless of the owner.

Degree - One-360th of the circumference of a circle.

Degree of Curve - Along railroads the degree of curve is the central angle of a curve subtended by a 100-foot chord on the said curve. Along highways the degree of curve is usually, but not always, defined as the central angle subtended by a 100-foot arc of said curve.

Delinquent Taxes- Past due and unpaid taxes.

Description - The exact location of a piece of property stated in terms of lot, block, and tract, or by metes and bounds.

Details - The small items or particulars of information (shown on a map by lines, symbols, and lettering) which, when considered as a whole, furnish the comprehensive representation of the physical and cultural features of the earth's surface. The greater the omission of details, the more generalized the map.

Disclosure- (1) Act of disclosing. (2) Revelation. (3) To make known or public. (4) In real estate, a seller of real property must disclose facts which affect the value or desirability of the property. Unless exempt, the seller completes and signs specific disclosure forms, including the Real Estate Transfer Disclosure Statement, to disclose those material facts.

Distance Between Points - Distance between points is always assumed to be the shortest possible horizontal distance unless otherwise specified.

District - An area within a city, County, or state, set off from the surrounding territory for special reasons, such as school districts, voting districts, etc.

Divided Rights- Rights to property which have been divided among several owners in partnerships, joint tenancy, tenancy in common, and time-share units.

Due - Where monuments or other deed terms do not limit the calls, "Due north" means "astronomical north." "Due north" as originally used meant "true north" as determined by a declination correction to a magnetic reading. The word has become ambiguous in meaning because of careless usage. If astronomical north is meant in a deed, use "astronomical north," but not "true north."

Easement - An interest in land created by grant or agreement which confers a right upon owners to some profit, benefit, dominion, or lawful use of or over the estate of another; it is distinct from ownership of soil.

Egress - A place or right to exit from a person's property.

Eminent Domain - The right or power of government to take private property for public use by paying the owner a just compensation.

Encroach - To intrude or advance beyond the proper or usual limits, such as one property owner moving onto an adjoining property owner with a building, road, fence, etc.

Encumbrance- Any limitation which affects property rights and value.

Equitable Ownership- The interest or estate of a person who has beneficial right in property legally owned by another; for example, the beneficiary of a trust has equitable ownership in the trust property.

Equity- (1) In assessment, equity is the degree to which assessments bear a consistent relationship to market value. Measures include the coefficient of dispersion, coefficient of variation, and price-related differential. (2) In popular usage, a synonym for equity is a synonym for tax fairness. (3) In ownership, the net value of property after liens and other charges have been subtracted.

Equity of Redemption- A right recognized by courts of equity whereby a person who has transferred legal title to property as security for an obligation is permitted, after defaulting on the obligation, to retain possession of the property for such period as may be prescribed by law or by the court and to reacquire legal title to the property upon fulfillment of the obligation within such period.

Escheat - The reverting of land to the state.

Escrow - A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to conditions, it is called an escrow.

Estate- (1) The interest which a person possesses in a single concrete article of property; (2) the aggregate interests of any person in articles of property of all descriptions; and (3) the aggregate property of all descriptions left by a decedent. See also Tenancy; Real Estate.

Estate, Leasehold- Any possessory interest in land less than estate of freehold, which is, an estate for years, an estate from year to year (periodic estate), an estate at will, or an estate at sufferance. See Leasehold.

Estate for Years- A possessory interest in land which cannot endure beyond a date specified in the conveyance or a date precisely determinable at the time the interest becomes possessory.

Estate in Fee Simple- An inheritable, possessory interest in land which may endure until the extinction of all lineal and collateral heirs of the first owner, and which may be freely conveyed by its owner; the largest possible estate in land.

Estate of Freehold- Any one of the three types of possessory interest in land—fee simple, fee tail, and estate for life—which in feudal time were granted only to freemen. Note: Estates of freehold are said to be estates of indefinite duration and any other estate is said to be “less than freehold.”

Et. Al. - And others, and another.

Et. Seq. - And following.

Et. Ux. - And wife.

Et. Vir. - And husband.

Examiner - A person who analyzes a chain of title to land, passes on the validity of various instruments, and then renders an opinion.

Exception, Excepting - An exception withdraws a part of the thing described as granted, and which would pass but for the excepting clause. The word "except" means "not included." "Lot 12, excepting the east 30 feet" clearly conveys such portion of lot 12 lying westerly of the east 30 feet. "Lot 12 and 13, except the east 30 feet" is not clear since the exception might apply to either one lot or both. "Lot 12 and lot 13, except the east 30 feet of lot 13" is better.

Extrinsic Evidence - Evidence of matter not contained in the writings but offered to clear up an ambiguity.

Fannie Mae- Defined under Federal National Mortgage Association.

Federal Home Loan Mortgage Corporation (FHLMC) (Freddie Mac)- An organization which facilitates secondary residential mortgages for savings and loan associations, to increase availability of residential mortgage financing.

Federal National Mortgage Association (FNMA) (Fannie Mae)- A quasi-governmental agency which purchases mortgages from originators, to increase liquidity in the home mortgage market.

Fee - An estate of inheritance in land.

Fee Simple - Complete interest in a property, subject only to governmental powers such as eminent domain. Also known as fee simple absolute. An estate of inheritance in land without qualifications or restrictions as to the persons who may inherit it as heirs. Also called an "absolute fee or a fee title." Denotes absolute ownership.

Fee Simple Condition Subsequent- This gives an owner fee simple title to property so long as a specified event (usually a change in use) does not occur. The person granting fee simple condition subsequent title must file suit to recover ownership if the condition is not met.

Fee Simple Determinable- Identical to fee simple condition subsequent except the grantor (the original owner) does not need to file suit to regain title.

Fee Simple Title- Ownership which is absolute and subject to no limitation other than eminent domain, police power, escheat, and taxation.

Fiduciary- Any person who occupies a position of special trust in certain of their relationships to another person or persons, for example, an administrator, executor, guardian, receiver, or trustee.

Foreclosure- The legal process by which a lien on a property is enforced.

Foreclosure-Related Sale- These sales were formerly foreclosed on by the financial institution. The seller will be the financial institution. These sales typically are on the low side of the value range because the financial institution is highly motivated to sell and may be required by banking regulations to remove the property from its books.

Fractional Lot - A fractional lot is a portion of a section not subdivided in the regular manner and may be more than or less than the smallest division (40 acres). It is meaningless to refer to a lot in a subdivision, other than government sections as being a fractional lot.

Fractional Section - A fractional section is one reduced in size due to land grant, body of water, etc.

Freddie Mac- Defined under Federal Home Loan Mortgage Corporation.

Free and Clear- Property unencumbered by any liens or mortgages.

Freehold- Defined under Estate of Freehold.

Free Boundary - A free boundary is one which is not limited by a call for a monument.

General Warranty Deed- The most common type of deed. This deed implicitly promises (1) the grantor owns the property and may convey title; (2) there are no hidden liens against the property; (3) no one else has better title to the property; (4) the grantor will obtain and deliver any documents needed to make good the transfer; and (5) the grantor will be liable for damages if future competing claims to the property prove valid.

Ginnie Mae- Defined under Government National Mortgage Association.

Government National Mortgage Association (GNMA) (Ginnie Mae)- A government-owned and government-financed agency which subsidizes mortgages through its secondary mortgage market and issues federally insured mortgage-backed securities. This agency falls within the U.S. Department of Housing and Urban Development.

Government Survey (U.S. Rectangular Land Survey) - In 1785 the U.S. Congress authorized the first land survey of the United States. It specified this survey should divide the land into portions approximately 36 miles square. These portions are referred to as townships. The townships are surveyed from an east-west base line and from north-south principal meridians. Townships are laid off from these base lines and meridians.

To identify the townships, each is given an identification in which it was referred to by its relation to the base line and meridian. Horizontal tiers of townships are laid off north and south from the base line and numbered consecutively. Vertical columns of townships called ranges are laid off to the east and west of the principal meridians and numbered accordingly. The townships may be identified by listing the township tier number and the range number, such as township 2 north, range 2 west.

Each township is usually divided into thirty-six sections, each approximately one mile square and containing approximately 360 acres. This may vary considerably at rivers or where base lines or meridians converge, etc., but generally holds true.

Grant - The transfer of real property by deed.

Grant Deed - (See Deeds)

Grantee - One who acquires property by voluntary conveyance. The person to whom a grant is made, the one who acquires property.

Grantee Index- Lists alphabetically the name of every grantee whose name appears on a deed recorded for the year the index covers.

Grantor - One who voluntarily conveys property, whether by sale, gift, lease, or otherwise. The person by whom a grant is made, the one who transfers the property.

Grantor Index- Lists alphabetically the name of every grantor whose name appears on a deed recorded for the year the index covers.

Grid - A uniform system of rectilinear lines superimposed on aerial photographs, mosaics, maps, charts, and other representations of the earth's surface; used in defining the coordinate positions of points.

Habendum Clause - The part of a deed which follows the legal description and limits and defines the rights which the grantee is to have in the property conveyed.

Hack - A hack is a mark on a tree made by cutting out a V notch well into the live wood.

Heirs and Assigns as Used in Deeds - Unless the words "and heirs" are used, the estate conveyed is only for the life of the grantee (estate for life.) "And heirs" is not necessary in most states because of statutes abolishing the necessity. "And assigns" is included to take care of corporations, trustees, etc., which cannot have heirs.

High-Water Mark - The line which the water impresses on the soil by covering it for sufficient periods of time to deprive it of vegetation. In the absence of any statement to the contrary, it must be construed to mean "ordinary" high-water mark.

Highway Right of Way - Normally a highway or road right-of-way is the limit of property acquired to build the highway. It is usually marked by monuments or fences. Right-of-way for roads, where no property was acquired originally, is normally the limit being used as a road.

Incumbrances - The term "incumbrances" include taxes, assessments, and all liens upon real property.

Index Map - (1) A map of smaller scale on which as depicted the location with accompanying designations of specific data, such as larger-scale topographic quadrangles or geodetic control. (2) A map showing the location and numbers of flight strips and photographs, made by assembling individual photographs into their proper relative positions and copying the assembly photographically at a reduced scale.

Industrial Property- Any property used in a manufacturing activity, including a factory, wholesale bakery, dairy plant, foodprocessing plant, mill, mine, quarry, all locally assessed utility property, and the like.

Ingress - A place or right to enter onto a person's property.

Installment Contract- A purchase contract in which payment is made in prescribed installments which are usually forfeited if default occurs.

Instrument- A formal legal document such as a deed, contract, will, or lease.

Intangible Personal Property- Property which has no physical existence beyond neither merely representational, nor any extrinsic value; includes rights over tangible real and personal property but not rights of use and possession. Its value lies chiefly in what it represents. Examples include corporate stock, bonds, money on deposit, goodwill, restrictions on activities (e.g., patents and trademarks), and franchises. Note: Thus, in taxation, the rights evidenced by outstanding corporation stocks and bonds constitute intangible property of the security holders because they are claims against the assets owned and income received by the corporation rather than by the stockholders and bondholders; interests in partnerships, deeds, and the like are not ordinarily considered intangible property for tax purposes because they're owned by the same persons who own the assets and receive the income to which they attach.

Integrity- The quality of a data element or program being what it says it is; usually distinguished from validity; the quality of its being what it should be in terms of some ultimate purpose. After data are edited and encoded and programs are prepared, their integrity is ensured by safeguards which prevent accidental or unauthorized tampering with them. Compare to Accuracy; Precision.

Interest (Interest Transferred, Interest Acquired)- The ownership rights of a person in a property. Complete ownership is called fee simple interest. It is possible to sell (transfer) and to own separately the component interests, such as mineral rights and air rights, which make up the fee interest. See also Bundle of Rights.

Interest, Possessory- Defined under Possessory Interest.

Interest, Undivided- Defined under Undivided Interest.

Intestate- The state of having died without leaving a valid last will and testament.

Inventory- (1) The group of personal property items whose value is exhibited by value in exchange; which is, ownership is solely for the purpose of sale rather than use; (2) in general, any detail list showing quantities and descriptions, and usually values or prices of property; (3) frequently used in the plural form to designate all types of current, physical assets which are customarily listed by quantities, descriptions, and values or prices for regular accounting purposes (for example, raw materials, goods in process, finished goods, office supplies, stores; and (4) occasionally (e.g., in Vermont), a tax list.

Joint Tenants - An estate owned by two or more persons in equal shares created by a single transfer. Upon the death of a joint tenant, the surviving joint tenant takes the entire property, and nothing passes to the heirs of the deceased.

Juxtapositions of Numbers - Figures used in a description which have differing units as "thence easterly along the north line of lot 21, 21 feet" may easily be misinterpreted as "2,121 feet of 2121 feet." The insertion of a phrase as "thence easterly along the north line of lot 21, a distance of 21 feet" is preferred.

Lambert grid - An informal designation for state coordinate system based on a Lambert conformal map projection with two standard parallels.

Land Contract- An executory contract for the purchase of real property under the terms of which legal title to the property is retained by the vendor until such time as all conditions stated in the contract have been fulfilled; commonly used for installment purchase of real property. See also Contract for deed.

Latitude - A coordinate distance, linear or angular from an east-west reference line.

Legal Description- A delineation of dimensions, boundaries, and relevant attributes of a real property parcel which serve to identify the parcel for all purposes of law. The description may be in words or codes, such as metes and bounds or coordinates. For a subdivided lot, the legal description would probably include lot and block numbers and subdivision names.

Lease- A written contract by which the lessor (owner) transfers the rights to occupy and use real or personal property to another (lessee) for a specified time in return for a specified payment (rent).

Leaseback- The transfer of building, land, or personal property to a buyer under a special arrangement to simultaneously lease it back to the original builder/seller, usually involving a long-term triple net arrangement with options to renew the lease.

Leasehold- Defined under Leasehold Estate.

Leasehold Estate- Interests in real property under the terms of a lease or contract for a specified period of time, in return for rent or other compensation; the interest in a property associated with the lessee (the tenant) rather than the lessor (the property owner). The lease may have value when market rent exceeds contract rent.

Leasehold Improvements- Items of personal property such as furniture and fixtures associated with a lessee (the tenant) which has been affixed to the real property owned by a lessor.

Lessee- The person receiving a possessory interest in property by a lease, which is, the owner of a leasehold estate.

Lessor- Person granting a possessory interest in property by a lease, which is, the conveyor of a leasehold estate, the holder of a leased fee estate.

Lien- (1) The legal right to take or hold property of a debtor as payment or security for a debt; (2) any legal hold or claim, whether created voluntarily or by operation of law, which a creditor has on all, or specified portions of the property owned by a person indebted to him. Compare to Mortgage.

Life Estate- An interest in property which lasts only for a specified person's lifetime; thus, the owner of a life estate is unable to leave the property to heirs.

Life Tenant- The recipient of a life estate.

Link - A one-hundredth of a surveyor's chain, a linear measure of sixty-six hundredths of a foot or 7.92 inches.

Lis Pendens - A notice of pending suit. A person dealing with property after a lis pendens has been recorded takes the property subject to the decree of court which may be rendered.

Lot Excludes Street - "However clear it may appear that the owner of a lot holds title to the center of the adjoining street, subject to the public easement, and that the boundary of the lot is technically, therefore, the center of the street, in view of the fact that the owner of such a lot or land has no right to the possession or occupancy of any portion of such street, the word 'lot' as generally and customarily used does not include that portion of the street."

Lot line - Lot line is the line shown upon the map creating the lot. Lot line is permanent and does not change with street openings.

Low-Water Mark - Low-water mark is the line to which a body of water receded, under ordinary conditions, at its lowest stage.

Map - A representation (usually on a flat medium) of all or portion of the earth or other celestial body, showing the relative size and position of features to some given scale or projection; also, a representation of all or part of the celestial sphere. A map may emphasize, generalize, or omit the representation of certain features to satisfy specific requirements. Maps are frequently categorized and referred to according to the type of information which they are designed primarily to convey, to distinguish them from maps of other types. Topographic map - A map which represents the horizontal and vertical position of the features represented; distinguished from a planimetric map by the addition of relief in measurable form. A topographic map uses contours or comparable symbols to show mountains, valleys, and plains; and, in the case of hydrographic charts, symbols and numbers to show depth in bodies of water. Contour map - A topographic map which portrays relief by means of contour lines. Planimetric map - A map which presents only the horizontal positions for the features represented; distinguished from a topographic map by the omission of relief in measurable form. The natural features usually shown on a planimetric map include rivers, lakes, forest, and plains. The cultural features include cities, farms, transportation routes, and public utility facilities, political and private boundary lines. Base map - A map showing certain fundamental information, used as a base upon which additional data of specialized nature are compiled. Also, a map showing certain fundamental information from which maps showing specialized information may be prepared, a source map. Cadastral map - A map showing the boundaries of subdivisions of land, usually with the bearings and lengths thereof and the areas of individual tracts, for purposes of describing and recording ownership. A cadastral map may also show culture, drainage, and other features relating to the value and use of the land. Hydrographic map - A map showing a portion of the waters of the earth, including shorelines, the topography along the shores and the submerged portions, and as much of the topography of the surrounding country as is necessary for the purpose intended. Manuscript map - The original drawing of a map as compiled or constructed from various data (such as ground surveys or photographs). Static map - A map which portrays information as of a single date or time. Most maps are static maps, presenting information as of a given date. Static map presenting comparable data as of different dates may be combined into a dynamic map. Special-purpose map - Any map designed primarily to meet specific requirements. Usually, the map information portrayed on a special-purpose map is emphasized by omitting or subordinating nonessential or less important information. A word or phrase is usually employed to describe the type of information which a special-purpose map is designed to present - for example, route, tax, or index map.

Map Scale (fractional) - A fractional scale is the ratio which any small distance on the map bears to the corresponding distance on the earth. It may be written in the form of a fraction (1/100,000) or as a proportion (1:10,000).

Fractional scales are representative in any linear units. Usually the term representative fraction, however, is applied to a fractional scale whose numerator is unity (1) and is frequently referred to as the "R.F." of the earth.

Map Scale (graphic or bar) - A line on a map subdivided and marked with the distance which each of its parts represent on the earth.

Market- (1) The topical area of common interests in which buyers and sellers interact; (2) the collective body of buyers and sellers for a particular product.

Market Analysis- A study of real estate market conditions for a specific type of property.

Market Area- A geographic area, typically encompassing a group of neighborhoods, defined on the basis the properties within its boundaries are more or less equally subject to a set of one or more economic forces which largely determine the value of the properties in question.

Market Analysis- A study of real estate market conditions for a specific type of property.

Market Adjustment Factors- Market adjustment factors, reflecting supply and demand preferences, are often required to adjust values obtained from the cost approach to the market. These adjustments should be applied by type of property and area and are based on sales ratio studies and other market analyses. Accurate cost schedules, condition ratings, and depreciation schedules minimize the need for market adjustment factors.

Market Approach- A valuation term with several meanings. In its broadest use, it might denote any valuation procedure intended to produce an estimate of market value, or any valuation procedure which incorporates market-derived data, such as the stock and debt technique, gross rent multiplier method, and allocation by ratio. In its narrowest use, it might denote the sales comparison approach.

Market Modeling- Defined under Model.

Market-Related Adjustment- These adjustments account for changes in market conditions between the time a comparable sold and the effective date of the appraisal. See also Market Adjustment Factors.

Market Rent- The rent currently prevailing in the market for properties comparable to the subject property. Market rent is capitalized into an estimate of value in the income approach.

Market Value- Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. A current economic definition agreed upon by agencies which regulate federal financial institutions in the United States is as follows: The most probable price (in terms of money) which a property should bring in a competitive and open market under all condition's requisite to a fair sale, the buyer and seller each acting prudently and knowledgeable, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby

- The buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their best interest;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale

Mean High-Tide Line - The average height of the tide between all the lowest high tides and all the highest high tides.

Meander Line - A meander line is a traverse of a body of water for the purpose of determining the size and location of the body of water. Meander lines do not represent the boundary line; the body of water itself represents the true boundary lines.

Meridian Line - A meridian line is any line run due north and south. Since meridian lines converge at the North Pole, no two meridians are parallel. Practically within the limits of a property survey, all lines shown as north, or south are considered parallel.

Metes and Bounds - As commonly understood, descriptions of real property which are not described by reference to a lot or block shown on a map but are described by starting at a known point and describing the bearings and distances of the lines forming the boundaries of the property are called metes and bounds deeds. Parcels of land created in sequence by conveyances, but not all delineated on a map at one time, have senior and junior deed considerations.

Minute - One-sixtieth of a degree of the circumference of a circle.

Model- (1) A representation of how something works. (2) For purposes of appraisal, a representation (in words or an equation) which explains the relationship between value or estimated sale price and variables representing factors of supply and demand.

Monuments - Monuments are tangible landmarks indicating boundaries. (1) Physical Monuments - A physical monument is an existing feature such as a stone, stake, tree, hill, ocean, river, or lake, but not the line of an adjoiner. (2) Natural Monuments - A natural monument is a naturally occurring object such as a lake, river, tree, boulder, or hill. Although the courts sometimes refer to a record monument as a type of natural monument, such a broad meaning is excluded in these pages. (3) Artificial Monument - An artificial monument is a man-made object such as a stake, fence, set stone, etc. (4) Record Monument - An adjoiner property called for in a deed such as a street or particular parcel of land. Frequently the boundary line of the adjoiner is referred to as the record monument; actually, the entire property, rather than the line, is the monument. Physical monuments may or may not mark a record monument. In court reports, record monuments are often referred to as natural monuments, but such a meaning is excluded in these pages. (5) Legal Monument - Any monument controlling in a legal description. It is often limited in meaning so as to be synonymous with record monument.

More or Less - The words "more or less" in their ordinary use are to be taken as words of caution, denoting some uncertainty in the mind of one using them and a desire not to misrepresent. When used in connection with quantity and distance, "more or less" are words of safety and precaution, intended merely to cover some slight or unimportant inaccuracy. When "125 feet more or less to the point of beginning" is used in a deed, the "more or less" indicates the 125 feet is an informative term whereas "to the point of beginning" is the controlling term. "About 12 acres more or less" is indefinite and should be avoided since the word "about" is very broad in meaning.

Mortgage- A mortgage is a contract under the terms of which the legal, but not the equitable, title to a specific property of one person (the mortgagor) is conditionally conveyed to a second person (the mortgagee) as security for the payment of a debt or performance of some other act. Note: In some states, legal title to mortgaged property passes to the mortgagee on execution of the mortgage; in others, legal title passes when the debt secured by the mortgage is in default; in still others, the mortgage is simply a lien, and the legal title does not pass until foreclosure proceedings have been completed.

Multiple Listing Service (MLS)- A local or regional service which compiles available real estate for sale by member brokers. Detailed information about properties is provided to brokers, agents, and the public, generally online. Local MLS organizations have their own rules and systems for providing listing information.

Neatline - The limit or outline of detail as portrayed on a map.

Neighborhood- (1) The environment of a subject property which has a direct and immediate effect on value; (2) a geographic area (in which there are typically fewer than several thousand properties) defined for some useful purposes, such as to ensure for later multiple regression modeling such properties are homogeneous and share important locational characteristics.

Normal - Normal to a line is 90 to the line. Normal to a curve is a radial line.

Objective- The quality of being definable by specific criteria without the need for judgment. Quantitative variables are objective.

On Record - A deed, etc., is said to be on record when it has been filed or registered at the clerk's office and made a matter of public record.

Open Market- A freely competitive market in which any buyer or seller may trade and in which prices are determined by competition.

Origination Fee- A fee charged by a lender (called the loan originator for making a real estate loan.

Outliers- Observations which have unusual values; as is, they differ markedly from a measure of central tendency. Some outliers occur naturally; others are due to data errors.

Owner, Equitable- One who, under rules of equity, has rights to some or all of the benefits deriving from property, although legal ownership and actual possession may be vested in another person.

Owner, Legal- One who has dominion over property under the rules of law, as distinguished from rules of equity.

Ownership- The rights to the use of property, to the exclusion of others.

Parallel Lines - Parallel lines are two straight lines which are an equal distance apart. Parallel curves are always concentric curves. East-west lines are parallel. Technically, north-south lines converge at the poles and cannot be parallel; however, in a legal description or on a map, where two lines are shown with the same bearing, it is imposed the lines are parallel. The same bearing on different maps does not imply parallelism. On township plats, parallel lines may have different bearings due to convergence towards the North Pole. A line is parallel with, not to, another line. By mathematical definition, "parallel lines" are straight lines; but, in common speech about boundaries, the words are often used to represent lines which are not straight lines, but photographs of each other, and courts in passing on questions of boundaries, often used them in the latter sense.

Parcel - A continuous area of land described in a single legal description or as one of a number of lots on a plat; separately owned, either publicly or privately; and capable of being separately conveyed. In land ownership mapping for assessment purposes, a parcel is usually held to be a tract of land under one identical ownership. It may be a combination of two or more tracts acquired by separate deeds.

Parcel Identification Number- A numeric or alphanumeric description of a parcel which identifies it uniquely. Assessors use various systems, many with common features. A growing number of these systems include geocoding, in the thirty states where it exists, the Public Land Survey System, authorized by the United States Government in 1785, is often a basis for parcel identification.

Parcel Identifier- A code, usually numerical, representing a specific land parcel's legal description. The purpose of parcel identifiers is to permit reference to legal descriptions by using a code of uniform and manageable size, thereby facilitating recordkeeping and handling. Also called parcel identification number.

Parcel of Land- A contiguous urban or rural land area, which is considered as a unit, is subject to single ownership, and is legally recorded as a single piece.

Partial Interest- An interest (in property) which is less complete than a fee simple interest.

Patent - The instrument by which government lands are granted to private persons under the proceedings set forth in the general statutes. The title conveyed by the government describing land disposed of by the government is called a patent.

Personal Property- Every kind of property which is not real property, movable without damage to itself or the real estate; subdivided into tangible and intangible. Personal property is also known as personalty.

Personalty- A synonym for personal property

Planimeter - A mechanical device used for measuring the area of a parcel, on a map.

Plaintiff - The one who complains and brings action at law on a charge against another.

Plat - Same as plot, map, or chart.

Plat Plan - Sometimes referred to as a plat map; usually a survey drawing of an individual parcel of land showing special characteristics and the location of any buildings thereon.

Plot- (1) A relatively small area of land, generally used for a specific purpose; (2) a measured area of land (lot).

Plottage- (1) Those factors of size, shape, and location with reference to other plots which add or detract from the value of a plot by a given purpose (preferred). (2) The assembling of adjacent parcels of land into a single unit. (3) The excess cost of assembling adjacent parcels of land into a single unit under single ownership over the estimated cost at which such parcels might be acquired individually by independent purchasers. (4) Plottage value. Note: Because of the variety of meanings attached to this term and its derivatives, it is suggested the more descriptive term assemblage and its derivatives be used to convey all of the above meanings except the first. Compare Assemblage.

Plottage Value- (1) The increment of value ascribed to a plot because of its suitability in size, shape, and/or location with reference to other plots (preferred). (2) The excess of the value of a large parcel of land formed by assemblage over the sum of the values of the unassembled parcels

Point - "Point" in a boundary is the extremity of a line. "To the point" in a description is often meaningless since the end of a line is a point. If the point is to be referred to later, "to point A" or "to point #1" gives an easy later reference.

Point of Beginning - In a deed description, it is a reference point from which the description begins. It is abbreviated as P.O.B.

Possession- Physical control of personal or real property.

Possessory Interest- (1) An interest of a person in an article of property arising from a physical relationship to the article of such nature as to confer on him or her degree of physical control over it, coupled with the intent so to exercise such control as to exclude the general public from use of it. (2) The right to occupy and use any benefit in a transferred property, granted under lease, license, permit, concession, or other contract. (3) A private taxable interest in public taxexempt property, for example, a private service station in a federal military base. Assessment of this interest permits complex valuation problems. Among the issues are whether the ownership or the use is exempt, whether the parcel should be split, and whether market rent differs from contract rent.

Precision- The degree of refinement in the performance of an operation, or the degree of perfection in the instruments and methods used when making the measurements. Precision relates to the quality of the operation by which a result is obtained and is distinguished from accuracy, which relates to the quality of the results. Compare to Integrity; Validity.

Price, Adjusted Sale- The sale price which results from adjustments made to the stated sale price to account for the effects of time, personal property, atypical financing, and the like.

Price, Market- The value of a unit of goods or service, expressed in terms of money, as established in a free and open market. Note: This term is sometimes distinguished from market value on the ground the latter term assumes such buyers and sellers are informed, but this presumption is also implied by the term free and open market. Compare to Price, Sale.

Price, Sale- (1) The actual amount of money exchanged for a unit of goods or services, whether or not established in a free and open market (an indicator of market value); (2) loosely used synonymously with offering or asking price. Note: The sale price is the selling price to the vendor and the cost price to the vendee.

Principal Meridian - A line running through an arbitrary point chosen as a starting point for all sectionalized land within a given area.

Private Encumbrances- Private hindrances which affect value and sale price such as easements, condominium controls, and deed or subdivision restrictions.

Private Restrictions- Private parties, such as a group of homeowners, may establish private restrictions on ownership rights. Deed restrictions are a common form of private restriction.

Prolong - A line is prolonged, but a curve is continued. Prolongation of a curve is the extension of the tangent to the curve.

Property - (1) An aggregate of things or rights to things. Property rights are protected by law. There are two basic types of property: real and personal. (2) The legal interest of an owner in a parcel or thing. See also Bundle of Rights. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. The thing of which there may be ownership is called property.

Property Split- The result of the sale of property held by a single owner where different pieces of the property are owned by different owners. Splits may or may not occur along plat lines. Assessors need to monitor splits not only to ensure the correctness of the property listing, but also to monitor the land and its adequacy as a lien against past and present tax liabilities.

Quiet Title - An action at law to remove an adverse claim or cloud on the title of property.

Quit-claim Deed - (See Deeds)

Range - A vertical column of townships in the rectangular survey system.

Ratio, Assessment- See Assessment Ratio.

Ratio Study- A study of the relationship between appraised or assessed values and market values. Indicators of market values may be either sales (sales ratio study) or independent expert appraisals (appraisal ratio study). Of common interest in ratio studies are the level and uniformity of appraisals or assessments.

Real Estate- The physical parcel of land and all improvements permanently attached. Compare to Real Property.

Real Estate Transfer Documents- The various kinds of deeds whereby real property are conveyed. Compare to Conveyances.

Real Estate Transfer Affidavits- In written or electronic format, these documents are an affirmed or sworn statement regarding particulars to a sale of real property, such as personal property, financing, and so on. Typically, these forms are required in states and provinces in which sales disclosure statutes have been enacted and are filed prior to recording the deed. Comprehensive affidavits may limit the number of follow-up verifications required during the sales verification process. These questionnaires are also known as sales verification questionnaires.

Real Property- Real property consists of the interests, benefits, and rights inherent in the ownership of land plus anything permanently attached to the land or legally defined as immovable; the bundle of rights with which ownership of real estate is endowed. To the extent which real estate commonly includes land and any improvements, the two terms may be understood to have the same meaning. Real property is also called realty.

Rear - A deed reading "thence running to the rear of the said land" does not always mean the land extends to the rear line but may mean "towards the rear."

Realty- (1) Any tangible thing whose fee ownership constitutes real property, which is, land or improvements; (2) a synonym for real property.

Receiver- One who is appointed by a court of equity as its representative to manage property owned by an insolvent debtor until the claims of creditors have been met or to manage property which is the subject of a lawsuit pending its outcome.

Recordation/Recording- The filing of documents affecting real property for public record, which usually requires the witnessing and notarizing of the document. A deed, etc., is said to be recorded when it has been filed for record in the courthouse and made a matter of public record.

Redemption- The process by which the owner of real property sold at a tax sale buys back the property from the purchaser at an enhanced price within a specified redemption period.

Reject Code- A flag applied to a record (such as a sale) indicating such it should not be used for certain purposes.

Remainder - An interest in real property which does not give the right of possession until rights of the person in possession have been terminated either by his death or by lapse of time.

Representative Sample- A sample of observations from a larger population of observations, where statistics calculated from the sample may be expected to represent the characteristics of the population being studied.

Reserving - When a thing granted is taken back, it is reserved. Reserving is used when a new encumbrance is being created. A reservation creates some right or privilege for the grantor in the land described as granted.

Residential (Nonfarm) Single-Family- Includes each detached, semidetached, or attached house. If separately assessed and not on a farm, which is a residence for one family only. For detached houses, this would include one-family rural properties or suburban estates not used primarily for farming and mobile homes assessed as real property. This category includes each condominium unit in a multiunit dwelling structure, plus each condominium's share of the common area, unless the common area is separately assessed.

Restrictions – A described limitation on the use of a particular estate. Provisions in a deed which limits the use of the land.

Reversion - The estate or interest which will revert to, or be returned to, the grantor in a deed should restrictions be violated or the term of the conveyance end. The rights of possession commencing on the termination of a particular estate.

Right of Survivorship - The process of descent of ownership or title to property when so stipulated in an instrument of conveyance, such as a deed.

Right-Of-Way - Right to use or cross-over property of another.

Riparian Rights - The right an owner of land bordering on a river has in the water flowing in the river or underneath the land. Also, the rights of a person owning land bordering on a body of water in or to its banks, bed, or water.

Rod (or pole) - Is a surveyor's lineal measure of 16 1/2 feet or 1/4 of a chain.

Said - Said refers to someone previously mentioned with the same name.

Sale, Arm's-Length- A sale in the open market between two unrelated parties, each of whom is reasonably knowledgeable of market conditions and under no undue pressure to buy or sell.

Sale, Conditional- A sale, especially of chattels, in which the transfer of title is made to depend on the performance of a condition subsequent to the making of the sale contract and delivery of goods. Note: The most common condition is the remainder of the purchase price be paid. Property held under a conditional sales contract may be repossessed without foreclosure proceeding, and the former holder has no equity or redemption. Compare to Mortgage, Chattel.

Sale, Distressed- A sale made to meet the immediate and pressing needs of the seller at whatever price the property will bring.

Sale, Fraudulent- A sale to defraud the creditors of the owner of the property, by covering up or removing from their reach and converting into cash property which would be subject to the satisfaction of their claims. Such sales may be voided by bankruptcy court.

Sale, Forced- A sale made pursuant to law; usually an auction sale which is involuntary on the part of the owner.

Sale, Judicial- (1) A sale made under the process of a court having competent authority to order it, by an officer duly appointed and commissioned to sell, as distinguished from a sale by an owner in virtue of his right of property. (2) A court action which enforces a judgment lien by selling property to pay a debt.

Sale-Leaseback- A sale and subsequent lease given by the buyer back to the seller as part of the same transaction.

Sale, Normal- A sale in which neither the buyer nor the seller acts under legal or economic compulsion, in which both parties are reasonably well informed, and in which both are primarily actuated by economic motives. Compare to Market Value and Sale, Arm's-Length.

Sale of Convenience- A sale designed to correct defects in the title, create a joint or common tenancy, or serve some similar purpose (not an actual sale). Such sales generally retransacted at only a nominal price.

Sale Price- Defined under Price, Sale; Price, Adjusted Sale.

Sale, Private- A sale negotiated and concluded privately between buyer and seller, and not offered on the open market.

Sales Comparison Approach- One of three approaches to value, the sales comparison approach estimates a property's value (or some other characteristic, such as its depreciation) by reference to comparable sales.

Sales Data- (1) Information gathered about the nature of the transaction, the sale price, and the characteristics of a property as of the date of sale. (2) The elements of information needed from each property for some purpose, such as appraising properties by the direct sales comparison approach.

Sales File- A physical or electronic file of sales data.

Sales Ratio Study- A ratio study which uses sale prices as proxies for market value.

Sales Verification Questionnaire- In written or electronic format, these documents are an affirmed or sworn statement regarding particulars to a sale of real property, such as personal property, financing, and the like. Typically, these forms are required in states and provinces in which sales disclosure statutes have been enacted and are filed prior to recording the deed.

Sale Terms- The amount of down payment, the interest on the mortgage, and information on points and other fees involved in a real estate sale. Sales terms are also called terms of financing or financing terms.

Searcher - A person who assembles all the facts concerning the title to real estate for submission to a title examiner.

Second - is one-sixtieth of a minute of the circumference of a circle.

Section - A one square mile block of land containing 640 acres or one thirty-sixth of a township.

Seller- (1) The seller is the vendor. (2) A person who sells or contracts to sell goods. (3) In real property sales the seller is the grantor who transfers property by deed or grants property rights through a trust instrument or other document.

Screening Codes- Used to identify the source of the sales information or how the sale was verified; they are separate from the validity code.

Sealed Bid- A method of marketing property in which each bidder (buyer) is given just one chance to submit a bid in a sealed envelope, without knowing other bid amounts. All such bids are opened at one time. The seller may set a minimum bid.

Seller Financing- (1) A sale in which the seller provides financing to the buyer typically with a higher rate of interest than market and a lower sale price or a lower rate of interest than market with a higher sale price. Sales should be adjusted to market. See also Contract for Deed.

Settlor- One who transfers to a trustee title to property which constitutes the trust estate. Compare to Trustee.

Short Sale- The bank or mortgage lender agrees to discount a loan balance because of an economic or financial hardship on the part of the mortgagor.

Split- Defined under Property Split.

State Coordinate Systems - The plane-rectangular coordinate system established by the U.S. Coast and Geodetic Survey, one for each State in the Union, for use in defining positions of geodetic stations in terms of plane-rectangular (X and Y) coordinates. Each state is covered by one or more zones, over each of which is placed a grid upon a conformal map projection. The relationship between the grid and the map, projection is established by mathematical analysis.

Statute Law - Statute law consists of laws passed by the proper legislative bodies. A statute generally repeals all earlier conflicting laws whether statute or common law.

Stratify- To divide, for purposes of analysis, a sample of observations into two or more subsets according to some criterion or set of criteria.

Subdivision - A tract of land divided, by means of a map, into lots, or lots and blocks, for the purpose of resale, generally for residential or agricultural purposes.

Subject To - refers to something already existing.

Survey - The act or operation of making measurements for determining the relative positions of points on, above, or beneath the earth's surface; also, the results of such operations. Photogrammetric survey - A method of surveying which uses either ground photographs or aerial photographs. Aerial survey - A survey using aerial photographs. Ground survey - A survey made by ground methods. A ground survey may or may not include the use of photographs.

Tangible Personal Property- Personal property which has a substantial physical presence beyond merely representational. It differs from real property in its capacity to be relocated. Common examples of tangible personal property are automobiles, boats, and jewelry.

Tax Sale - A sale of a taxpayer's property by a public authority so delinquent taxes may be collected from the proceeds; usually preceded by a period during which the taxpayer may pay delinquent taxes and followed by a period during which the taxpayer may redeem the property from the purchaser. See also Certificate of Redemption; Redemption. An official sale of land by the state for the nonpayment of taxes assessed on them.

Tenancy- The act of using or occupying property, especially real property whose fee title is vested in someone other than the occupant.

Tenancy, Joint- A state of tenancy involving two or more persons owing undivided possessory interests which have arisen out of a single conveyance, no one of the tenants being free to create interests in the estate without the consent of the others, and the surviving tenants acquiring the interests of any tenant who may die. Compare to Tenancy in Common.

Tenancy in Common- A state of tenancy involving two or more persons owning undivided possessory interests which have arisen out of separate and distinct conveyances, any one of the tenants being free to create interest in his or her portion of the estate and the heirs or devisees acquiring the interest of any tenant who may die. Compare to Tenancy.

Tenancy in Severalty- A state of tenancy involving one person who owns a divided possessory interest.

Tenant- One who holds or possesses a property.

Tenement- (1) Real property and the rights to ownership, especially those of a permanent nature which relate to and pass with the land; (2) a building intended for rental residence.

Thence - "from the place."

Thread - "Thread of a road" is a line midway between the side lines. "Thread of a stream" is the line midway between banks.

Tie Points - Offset monuments set by the city engineer to mark street lines are commonly called tie points.

Tied - As used in surveying, monuments are tied together by measurements. A property corner is tied to offset monuments or to other property corners.

Time-Adjusted Sale Price- The price at which a property sold, adjusted for the effects of price changes reflected in the market between the date of sale and the date of analysis.

Title - Ownership. The union of all elements constituting proof of property ownership and the instrument which is evidence of ownership.

Title Search - The checking or reviewing of all documents affecting the ownership of a piece of property. An examination of public records to ensure the quality of the seller's title to a property. Preparation of an abstract of title requires a complete title search, as does foreclose on a property in a delinquent tax suit.

To - "To," "on," "by," "at," and "along" a road carry title to the center line unless otherwise qualified. "To" implies contact. "To" does not always include an object, as "to a certain property" does not include the property. But "to a stone" usually means "to the center of the stone." "To" is directional, as "90 to (not with)" or "at right angles to." "To" is a word of exclusion rather than inclusion. If you go to an object, you exclude other objects.

Township - Township is a nearly square area of land containing 36 sections.

Trust Deed - (See Deeds).

Trust- An agreement whereby the owner of property (the settlor) transfers legal title to a second party (the trustee), such property to be held, managed, or disposed of for the benefit of a third party (the beneficiary) or the settlor, or both, as set forth in the trust agreement.

Trustee- A trustee is one who holds legal title on property under a trust agreement. Compare to Settlor; Beneficiary.

Undivided Interest- An interest in a property which is not distinct from the interest or interests of one or more other persons as to the time during which the interest is possessory or as to the portion of the property to which the interest attaches, for example, the interest of a joint tenant or a tenant in common.

Unit-The property being appraised and everything used or useful to the ongoing economic operation of the business (property). Tangible and intangible personal property is included.

Unrecorded - A deed, etc., is said to be unrecorded when it has not been filed for record in the courthouse and made a matter of public record.

Validity- The quality of a data element or procedure being what it should be in terms of some ultimate purpose or use. See also Integrity. Compare to Accuracy, Precision.

Value- (1) The relationship between an object desired and a potential owner; the characteristics of scarcity, utility, desirability, and transferability must be present for value to exist. (2) Value may also be described as the present worth of future benefits arising from the ownership of real or personal property. (3) Value is the estimate sought in a valuation. (4) Any number between positive infinity and negative infinity. See also Market Value.

Verify- To check the accuracy of something. For example, sales data may be verified by interviewing the seller or purchaser of the property, and data entries may be verified by check digits.

Vest - To give title to or to pass ownership of property.

Warranty Deed - (See Deeds).

Will Book - A record book in the municipal clerk's office which contains all last will and testaments which have been probated.

Words of Exclusion - "To," "from," "by," "between," and "on" are words of exclusion unless there is something in the phrase which makes it apparent the words were used in a different sense. "To a stone mound," "on Brown's land," and "by the river" exclude other terms.

Word-of-Mouth- A method of marketing property without a realtor and/or broker involved. Typically, used for selling real property by for sale by owner and is more prevalent in rural areas.

Zoning- The exercise of the police power to restrict landowners as to the use of their land and/or the type, size, and location of structures to be erected thereon.

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REFERENCES

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