

GEORGIA DEPARTMENT OF REVENUE LOCAL GOVERNMENT SERVICES DIVISION



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LOCAL GOVERNMENT SERVICES DIVISION

Deed Research

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SECTION 1

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.

§ 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.

§ 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.



§ 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.

§ 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.

§ 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.

§ 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

(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, as required by paragraph (2) of subsection (b) of Code Section 15-6-67, as both the grantor and grantee.

(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 his or her deed together with all the entries on the execution.

§ 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.

§ 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 the superior court by the use of printing, typewriting, handwriting in ink, photostating, or photographing, which record shall be clear, legible, and permanent. The record may be made by any one or more of such methods. It shall be lawful to make a photostatic copy or copies of any plats, blueprints, or other copies of plats that are already of record in the clerk's office. These copies or photostatic copies thereof 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 any one 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 his or her 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.

§ 44-5-168. 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.

§ 44-5-32. 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.

§ 44-6-80. 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.

§ 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.



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. Divestment of taxes and liens for taxes

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 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. Petition for year's support; contents; filing

- (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. Citation and notice

- (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. Order for year's support; objections

(a) If no objection is made after the publication of the notice, or, if made, is disallowed or withdrawn, the probate court shall enter an 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 necessities 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. Title to property set aside

(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. Award of year's support as to property located inside or outside county where decedent domiciled at time of death

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. Order for year's support awarding interest in real property; identification; description; filing; recording; indexing; return

(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 and costs; fi. fa. against representative

(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. Year's support barred by sale made prior to award by personal representative

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 set apart as year's support subject to recorded 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 or contract by surviving spouse or trustee or guardian of minor superior to year's support

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. Inferiority to purchase money mortgage on real property

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. Inferiority to purchase money mortgage on personal property

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. Inferiority to lien on crops for rent and supplies

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 for joint benefit of surviving spouse and minor children

(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. Procedure for conveyance or encumbrance of property set aside for joint benefit of surviving spouse and minor children

(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 a 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.



SECTION 2

REAL PROPERTY AND PERSONAL PROPERTY



INTRODUCTION

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

The term **real estate** is difficult to define, and its meaning can 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.

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.

PERSONAL PROPERTY

Comparing and contrasting real property and personal property may seem like an academic exercise, but the distinction is a very important one. The rights of ownership and the methods by which these two categories of property are transferred are very different. Any items that 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. At closing, all items of real property will be transferred by deed, whereas items of personal property will be transferred by a bill of sale.

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 that 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 can 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, wallboard, 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 that, 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 that 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 that 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 that 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 that the seller will remove when selling the house. In other communities, these items are real property and customarily are left with the house.



TRADE FIXTURES

A trade fixture is an article of personal property that 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 that he or she installed in the course of business at the end of the lease term. (O.C.G.A. § 44-7-12). A residential tenant may also remove domestic fixtures installed for convenience. However, items that 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 can be removed without serious damage to the realty. 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 can the tenant normally remove replacement fixtures that the tenant installed to replace worn out fixtures originally installed by the landlord.

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 that the courts can 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 "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." 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:



		<p><i>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 that they are not included in the separate nomenclature of "fixtures."</i></p>	
	(c)	<p>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.</p>	
	(d)	<p>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.</p>	

FIXTURES AS COLLATERAL

The Georgia Uniform Commercial Code allows lenders to acquire security interests in personal property. If a lender finances items of an ambiguous character that will be placed on realty and attached, such as machinery, the borrower and lender may agree that the machinery will remain personal property but still be part of the collateral for the loan. In that 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.



SECTION 3

REAL PROPERTY AND OWNERSHIP RIGHTS



A. FORMS OF OWNERSHIP

ABSOLUTE OWNERSHIP

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.

LIMITED OWNERSHIP

Absolute ownership of realty in Georgia can be limited in a variety of ways. Restrictions can 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) can 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 that 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).

B. TYPES OF ESTATES

DEFINITION OF "ESTATE"

The term "estate" refers to the ownership interest one has in land. An estate is an interest that 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."



FEE SIMPLE ESTATE

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). 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.

ESTATE ON CONDITION

An estate on condition is an estate limited by some condition requiring performance before ownership of an estate will "vest" (endow) an individual with the absolute right of ownership in the property. 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 that ownership when remedies other than the loss of that land are available.

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). 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). Toward that end, the holder of a life estate must make



necessary repairs to preserve the property and pay taxes on the property.

ESTATE IN REMAINDER

The word "remainder" describes the form of estate granted to or owned by someone else. It indicates that 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 that 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 that he owns to Mrs. Adams for her lifetime and specifies that 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 can sell or assign the estate just as the holder of a fee simple or life estate can sell or assign that 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.

ESTATE FOR YEARS

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 for any number of years, but a lease of less than five years will not be considered an interest in land, unless the document that creates it provides otherwise. 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, that 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 contested the taxation. Eastern won the case, since the lease, although long enough to qualify as an estate for years, stated that no estate passed. The lease had other features similar to a short-term usufruct, and so the court held that Eastern owed no property taxes on the lease.

C. CONCURRENT OWNERSHIP

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.

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 of the property. 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.
(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. 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.



LIABILITIES OF TENANTS IN COMMON

(a)	A tenant in common is liable to the co-tenants if he or she receives more than his or her share of any rent or profit from the joint 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 his or her exclusive use or use the property in a way that 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. 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. 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.

JOINT TENANCY WITH RIGHT OF SURVIVORSHIP

Joint tenancy in Georgia is another form of co-ownership of property. The rights and privileges of a joint tenant are essentially the same as those of a tenant in common, except that 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). 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. For example, if a joint tenancy consists of joint tenants Able and Baker, and Baker sells her interest in the joint tenancy to Carr, that sale ends the joint tenancy. 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.

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.



SECTION 4

TRANSFER OF OWNERSHIP RIGHTS AND INTERESTS



A. 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 that 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.

GOOD AND MARKETABLE TITLE

A ***good and marketable title*** is one that is legally sufficient and free from reasonable doubt of defects. It is a title that 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.

Contrary to popular belief, there is no written instrument that evidences a seller's good and marketable title. 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 that the title is good and marketable. It only means that the seller will be liable if the title is not good. Consider a warranty on a product, such as a blender that a consumer purchases from a department store. The warranty does not mean that the blender is in good working condition. It means that if the blender is not in good working condition, the company will repair or replace it.

THE IMPORTANCE OF TITLE EXAMINATION

A prudent buyer would never buy real estate without receiving some assurance that 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. 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.

The above list is merely a representative sample. There are many other matters that can affect the quality of the potential buyer's 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, that a standard title examination would not disclose.

THE TITLE EXAMINATION

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.) 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.

Once the examiner has compiled a history of the title for the normal search period (a "back chain of title"), he or she examines 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 can proceed. If the title is not satisfactory, title clearance



work may be necessary.

TITLE INSURANCE

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 his or her ownership equity since the lender's policy only protects the lender.

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 that 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.

B. TRANSFER OF FREEHOLD RIGHTS

VOLUNTARY TRANSFER

Anyone who holds title to real property can transfer all or part of that title to another. Transfer can take place through gift, sale, or will. In a voluntary transfer, the owner can set the terms of the disposition within the bounds of the law.

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 can 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. 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 that occur in Georgia.

(a)	<p>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.</p> <p>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 that 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 that is invalid for some reason. The phrase "color of title" describes this type of evidence. 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 can perfect his title after seven years through prescription. (O.C.G.A. § 44-5-164).</p>
(b)	<p>ADVERSE POSSESSION - <i>Adverse possession</i> 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 that the period required to establish title is twenty years. (O.C.G.A. § 44-5-163).</p>
(c)	<p>EMINENT DOMAIN - <i>Eminent domain</i> 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.</p>



	(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.
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C. 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 that transfers the title to real property from one party to another.

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.



REQUIREMENTS OF A VALID DEED

A valid deed includes all of 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, sell, alien, and convey";
(e)	the deed must include a valid legal description of the land (see Chapter 27);
(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).

A deed is valid between the parties to the deed without any witnesses. However, to be recorded in the public records and to be valid as against third parties, a deed requires two witnesses, one unofficial witness and one official witness. Official witnesses under Georgia law include a notary public, a magistrate, a judge of a court of record, a clerk of Superior Court or his or her deputy, and a clerk of city court created by a special act or his or her deputy. (O.C.G.A. § 44-2-15)

WARRANTY DEED

A **warranty deed** (sometimes called a "general warranty deed") is a deed containing promises relating to the title, usually a general warranty. 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>	
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This language of general warranty means that 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.

LIMITED WARRANTY DEED

A **limited warranty deed** (known in some other states as a special warranty deed) is one that 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. The form in common use in Georgia has a limited warranty similar to the following:

	<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>	
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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 that arose before my ownership." 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 can 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.

QUIT CLAIM DEED

A **quit claim deed** conveys to the grantee whatever interest the grantor has in the property, without any warranties of 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.

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's deed does not contain any promises of warranty.

ADMINISTRATOR'S 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. Usually, the law imposes more formalities on an administrator than on an executor. A valid will can 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. The formalities can make the procedure of buying from an administrator very long and frustrating. Like an executor's deed, an **administrator's deed** does not contain any promises of warranty.

Brief descriptions of other frequently used deeds;

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

A **deed of correction** is used whenever an error is made in any deed or in the recording thereof. 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 that 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 **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 owners 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.

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.

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.

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.

A **deed of trust (mortgage)** is an instrument by which the legal title to real property is placed in one or more trustees to secure the repayment of a sum of money or the performance of other conditions. It serves the uses of a common law mortgage.

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.

A **tax deed sale** or **sheriff's deed sale** is the forced sale, conducted by a governmental agency, of real estate for nonpayment of taxes.

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.



Wills

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 takes legal effect only at the date of death.

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

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 of 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.



Contracts

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)

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

INSTRUMENTS RECORDED IN THE CLERK OF COURTS OFFICE

Instruments that 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 That 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



D. 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 his or her behalf. The parties to a sales 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, that 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



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).



Property Transfer Forms

PT-61 (Rev. 11/04) 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	\$0.00
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.



PT-61 (Rev. 11/04) 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

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) 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.

(d) 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.

(e) Other 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 that 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 that he is aware that 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 that the property described on form PT-61 has not been sub-divided 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 that 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 that 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 that 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.



SECTION 5

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; that 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 that 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.

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 he or she pays 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 that the security deed is an absolute conveyance of title, but that 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 can 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.

DEFINITION OF A SECURITY DEED

A security deed is an absolute conveyance of title to land from borrower to lender that includes the following provisions:

	(a)	a statement that the deed secures an indebtedness;
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	(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 he or she repays the debt. The grantor remains liable for property taxes, lawsuits for personal injuries (such as an injury to a third party while that 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; that is, the grantor (borrower) must put the deed into the possession of the grantee or the grantee's agent with the intention that 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 can 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 that 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 <i>escrow accounts</i>. 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 that the debtor maintain insurance against hazards and that the hazard policy proceeds be payable to the lender so that 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 that 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 <i>due-on-sale clause</i> 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 that would affect the rights of the lender to collect the debt.</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 that 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.
(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.
(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 that he or she promised to do in the real estate loan instruments will be a default. Thus, a default can 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.

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. Both the security deed and the promissory note are forms of contracts.



PROVISIONS OF THE PROMISSORY NOTE

The promissory note contains provisions that 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 that 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 can assign the right to collect the debt to a different party. It is this characteristic that 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 that 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 that 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)	<p>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.</p>
(i)	<p>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.</p>



SECTION 6

DEFAULT AND FORCLOSURE



DEFAULT AND FORECLOSURE DEFINED

Default occurs when the borrower fails to keep the promises he or she 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. 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 that state. The first major distinction in foreclosure approaches is between judicial and non-judicial. Georgia uses non-judicial foreclosure, which means that 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 can correct the default and stop the foreclosure process. He or she can 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 can 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 that 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 can 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, he or she notifies the borrower as provided in the acceleration clause. At the appropriate time, the lender advertises the property in the newspaper that is "the official organ of the county." This designation simply means that 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 that 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 can be another location if ordered by a superior court judge and that new location is applicable to all such public sales;
		(5) the day and starting time of the sales for that day (the advertisement cannot identify the exact sale time of a specific property because the number of sales for that 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 can make a deposit. A cashier's check is as good as cash. However, a bidder who fails to provide cash can be passed over in favor of another bidder who can give cash.</p> <p>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 can invalidate the 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 can 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 obtain the "fair market value" of the property. However, in actual circumstances, the usual interpretation of this legal requirement is an "adequate price."</p>



(e)	<p>THE BIDDERS AT THE FORECLOSURE SALE - The bidders at the foreclosure sale can 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 can 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 his or her agent or representative, if bidding for the property, must also not act to injure the junior lien holders.</p>
(f)	<p>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 can 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.</p>
(g)	<p>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 he or she receives 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. If the total payments to the lien holders and for the expenses exceed the sales price, a deficiency exists. Then the lien holder affected by the deficiency can request the confirmation of the sale and a deficiency judgment.</p>

ALTERNATIVES TO FORECLOSURE

When a borrower defaults on a loan, the lender can foreclose under the power of sale provision, or the parties to the loan can 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 can attempt to sell the property to a buyer who can 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 that 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 can 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 he or she is able to make the payments.
	(c)	FORBEARANCE OR MORATORIUM - Upon default of the loan, the lender can 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 that the borrower can resume the payments at the same level or at a lower and more affordable level.



	(d)	<p>EXTENSION AGREEMENTS - Borrowers very often recognize in advance that 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. 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 that 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 that he or she will default on the loan because of a job change that 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 him or her of the impending default because of a change in his or her ability to continue making the loan repayment. The borrower and the lender might agree to recast the original loan.</p> <p>Recasting involves a major modification of the original loan terms. To avoid a foreclosure resulting in a loss that 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.</p> <p>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 can 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>



SECTION 7

PUBLIC AND PRIVATE LIMITS AND CONTROLS ON REAL PROPERTY



A. 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. 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 his or her 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 that 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.

THE ZONING ORDINANCE

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 general 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 that 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 that parking be in front of or behind the building.

CHANGES IN ZONING REGULATIONS

The property owner can try to change the impact of a zoning ordinance in several different 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 that 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 that has unacceptably steep slopes coupled with soil conditions that 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 can discourage the creation of building lots and residential blocks that are inefficient in size and shape, such as lots that 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 can 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 that the development creates a special need, and the fee must be proportional to that 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** that 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 generally 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 can prohibit dead-end



corridors and structural obstacles that could impede the steady flow of traffic in case of a fire.

Local governments check compliance to the construction code by requiring that 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 that 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 that needs major repairs violates the local housing code. Moreover, any structure that is lacking 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 can 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 can fine the owner of a building that 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 private property without the consent of the property owner. Condemnation is the act of taking private property by using the power of eminent domain. The government must use the property for a public use, purpose or benefit and pay fair or just compensation to the owner. Moreover, the property owner is entitled to due process of law. Thus, three important 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, and (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 water power generation; and
(h)	construction of canals, widening of streams, and construction of piers and docks.

In the law, fair or just compensation means payment for the actual loss that 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 that 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 that 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 his or her 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 government's right of eminent domain is more than a limit on the rights of ownership, because the government can 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.



TAXATION AND ASSESSMENT POWERS

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 can 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 that 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. 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.

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, can sell the property to obtain the delinquent payments. This forced sale overrides the property owner's rights of possession and disposition.

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 that courthouse recording dates determine lien priority. Lenders realize the risk that property tax liens can 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.

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.

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.

B. 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** is the right of one person to use the property of another for a specified purpose and under certain conditions. The person holding the easement does not possess the property nor does that 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 that receives the benefits from the access road. Parcel B is the servient estate, the estate that 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." One owner of parcel A can 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. Examples of this type of easement are the rights-of-way that private corporations, such as railroad companies, pipelines, and public utilities, have across an individual parcel of 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 that Smith has an easement across Jones's land by implication or necessity, if the court determines that 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.

THE LIEN

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 his or her property tax bill, the local government has the right to force the sale of that 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 that 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. 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 that property subject to public limits, the owner can sell the property on whatever terms he or she chooses. One of these terms could be a restriction on the future use of the land. However, unreasonable restrictions can adversely affect the marketability of the property. Also, an owner may not create covenants that 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 his or her property, for example, so the owner might place a restrictive covenant in the deed forbidding industrial use of the adjacent land he or she is conveying to the purchaser. Second, a land developer can 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 can 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 that 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 that any landowner can 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 that needs to be shown is that 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.

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 his or her 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.



SECTION 8

LAND DESCRIPTION SYSTEMS

INTRODUCTION



Land Description Systems

Land descriptions should permanently and distinctly identify an individual parcel of land. A land description must be unique--it must apply to one and only one parcel.

While local methods of land description will normally conform to historically accepted practices, there are three 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 commonly used forms of land description. The third and perhaps 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/LandLot.
- Rectangular Survey--description of parcels by section, township, and range.
- Coordinates--description of parcels by latitude and longitude or state plane coordinates.



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



METES AND BOUNDS SYSTEM

The earliest known type of land description is the "bounded" description. This type of description is based on the land's relation to its natural and cultural features. Originally, adjacent landowners, trees, rocks, rivers, traveled ways, etc. were used to describe the extent or bounds of an individual property. Further development of the metes and bounds description was augmented by the evolution of surveying technology and equipment.

In the eastern part of the United States, individuals acquired the first land titles by gift or purchase from the European governments that 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 that 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

Property descriptions by metes and bounds must have a beginning point, usually a physical feature such as a stake, fence post, or road intersection. 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. Early descriptions had lengths shown in chains, poles, and rods. 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 can be used to show how a call for one item takes precedence over another. A description states that 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 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, can 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.

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 that could not normally be described by other generally accepted methods of land description. The main disadvantage is that 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.



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Georgia Transfer Tax Paid : \$0.00
CHES FOUNTAIN
Clerk Superior Court, TOOMBS County, Ga.
Bk 00898 Pg 0032



STATE OF GEORGIA

MONTGOMERY

COUNTY

THIS INDENTURE, made this 21 day of November

in the year of our Lord One Thousand Nine Hundred and Eighty-five
between JOHNIE H. CHAMBERS

of the State of GEORGIA and County of JEFF DAVIS party of the first part
and JESSIE M. CHAMBERS

of the State of GEORGIA and County of MONTGOMERY party of the second part.

WITNESSETH: That the said party... of the first part, for and in consideration of the
sum of EIGHT HUNDRED AND NO/100 (\$800.00) DOLLARS
in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby ac-
knowledged, has granted, bargained, sold and conveyed, and by these presents do
grant, bargain, sell and convey unto the said party... of the second part his
heirs, successors, legal representatives, and assigns, all that tract or parcel of land lying and being in

The 43rd G.M. District of Toombs County, Georgia, and partly in the Uvalda District
of Montgomery County, Georgia, and consisting of fifteen (15) acres, more or less,
and being the northern one-half of a thirty (30) acre tract formerly known as the
Jessie Robert Chambers home place. Said tract of land herein conveyed being bounded
now or formerly as follows: On the North by lands of Lewis Chambers; on the East
by the run of Waterfall Branch separating this property from property formerly
owned by H. B. McNatt; on the South by property of Jessie Mack Chambers; and on the
West by lands of Colquitt Mosley. This property is the northern 15 acres of said
30 acre tract, and the dividing line between this property and the property of
Jessie Mack Chambers, which represents the remainder of said 30 acre tract is
represented by a marker which is a buried road plow blade on the western side of
said property and on the eastern side of said property by a black gum tree with
three chops on both the southern and northern side, and a blazed mark on the
eastern side of said tree being a straight dividing line.

6600899

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights,
members and appurtenances thereof, to the same being; belonging or in any wise appertaining, to the
only proper use, benefit and behoof of JESSIE M. CHAMBERS the said party... of the second part,
his heirs, successors and assigns, IN FEE SIMPLE.

And the said party... of the first part, for his heirs, executors and administrators will
warrant and forever defend the right and title to the above described property unto the said party...
of the second part, his heirs, successors, legal representatives and assigns, against the
lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, The said party... of the first part ha.s. hereunto set his
hand... affixed his seal... and delivered these presents, the day and year above written.

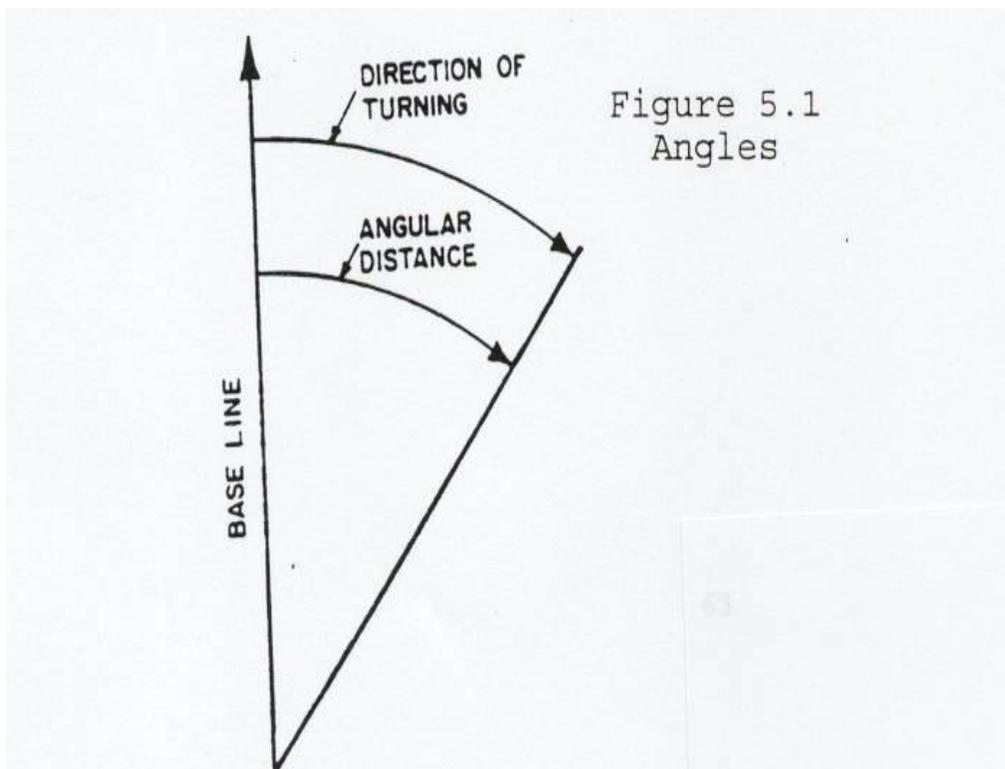
Signed, sealed and delivered in the presence of:
Quater G. Riden
Notary Public
Term Exp. 4-2-87

Johnie H. Chambers (Seal)
JOHNIE H. CHAMBERS
(Seal)
(Seal)
(Seal)
(Seal)



Measurement of Angles

An angle is the difference in direction of two intersecting lines. A purely arbitrary unit is used to define the value of an angle. The standard units in the United States are the degree, the minute, and the second. There are three basic requirements in the determination of an angle. As shown in figure 5.1, they are (1) the base line, (2) the direction of turning, and (3) the angular distance.

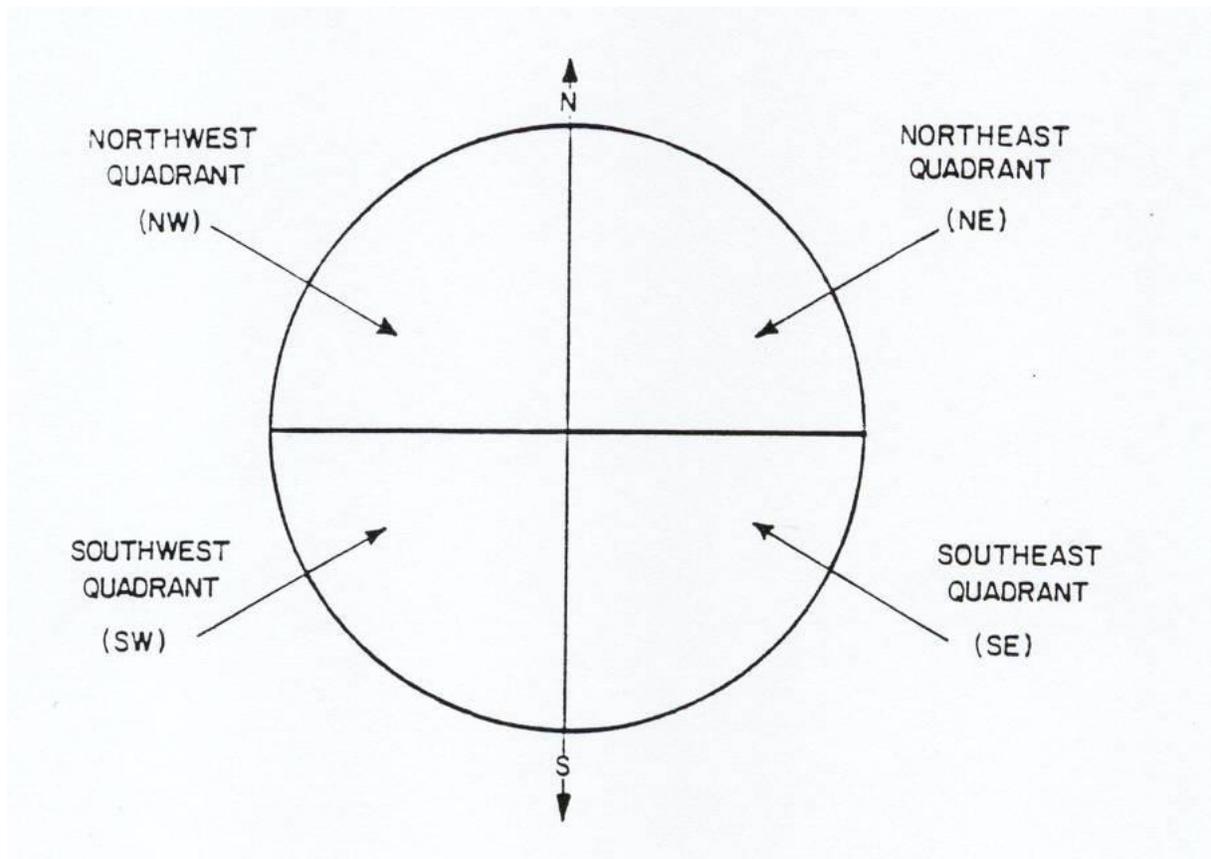




Bearings

The bearing of a line is the angle between the meridian and the line. An angle is measured from either the north or south toward to east or west. This is best explained in reference to the four quadrants of a surveyors compass. Figure 5.2 below shows a surveyors compass with the four quadrants identified.

**Figure 5.2
Quadrants
of a Surveyor's Compass**



The direction of a line is its angle from an established line of reference, called a meridian. The reference line generally 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 that 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

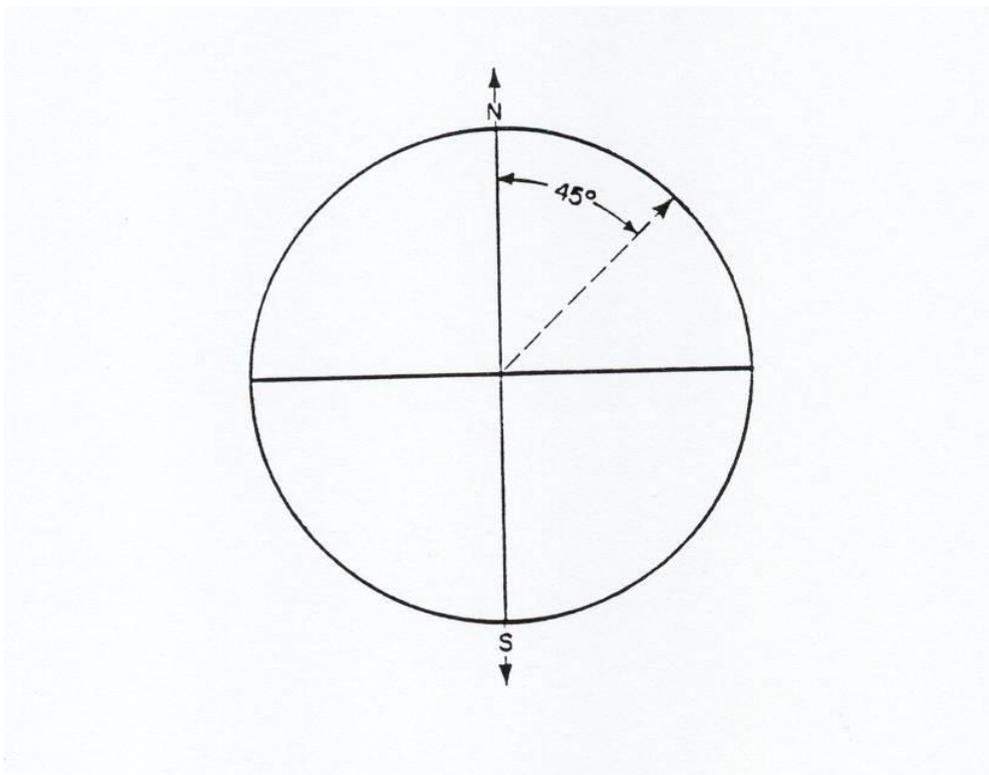
Declination is the horizontal angle between the magnetic meridian (magnetic north) and the geographic meridian (true north). (A horizontal angle is one measured left of or right of true north and on the same plane as true north.) On only one line will magnetic north and true north be the same. This can be explained by the fact that 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 that the line is in the NE quadrant and is 45° from north in an easterly direction. This is illustrated in figure 5.3.

Figure 5.3
Line Bearing N45E
(Northeast Quadrant)



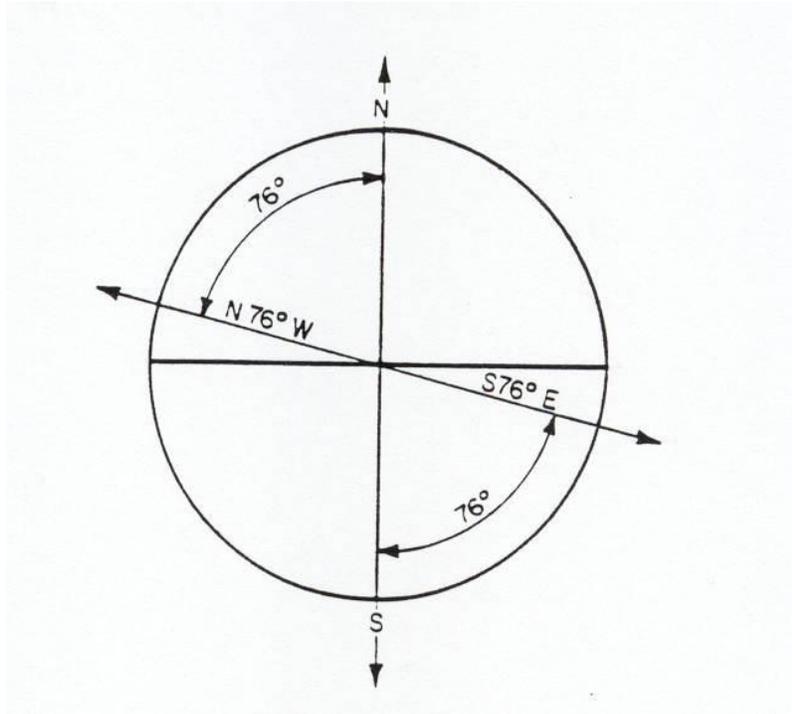
Different types of bearings are sometimes encountered. A true bearing is one measured from the geographic meridian (true north), while magnetic bearings are measured from magnetic meridians (magnetic north).

When working with bearings it is important to remember that 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 below.

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 $N76^\circ W$ is $S76^\circ E$, 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 can be illustrated as:

$$N 59^\circ 30' 15'' E$$

$$^\circ = \text{Degrees} \quad ' = \text{Minutes} \quad '' = \text{Seconds}$$

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 $N59^\circ 30' 15'' E$, 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.



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 that authorized the lottery and spelled out who would be eligible to participate and the grant fees that 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 that 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 that parcel of land. A ticket that 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 that were distributed by the seventh land lottery.



Sections and Land Districts

- The territory was so expansive that Cherokee County was divided into four sections, and each section was divided into districts. There were 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 that were distributed by the seventh land lottery.

Sections and Land Districts

- The territory was so expansive that 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.

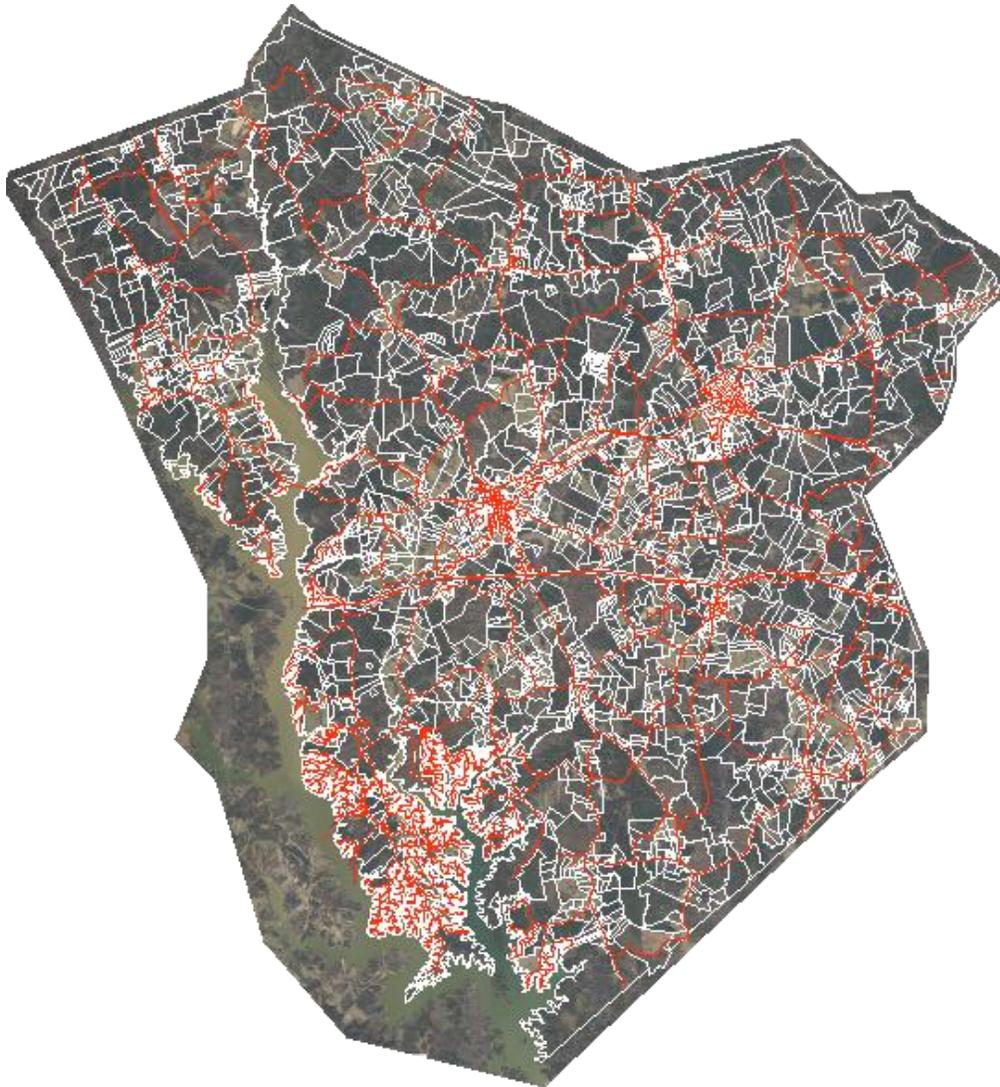
Sections and Districts

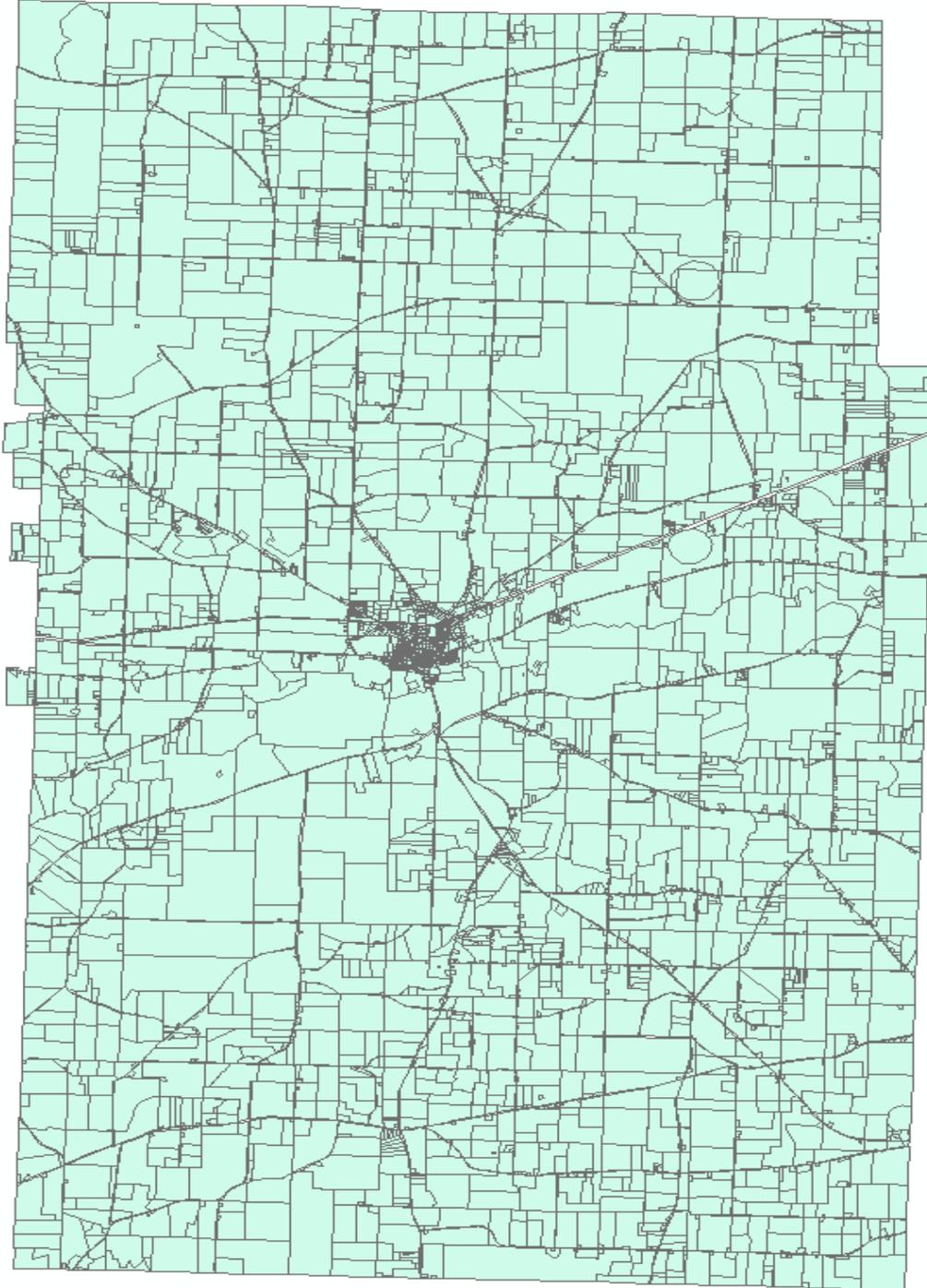
- Fractional lots of fewer than 100 acres from the 60 land districts and 33 gold districts.
- Twenty-two undrawn lots from the previous Cherokee lotteries.

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 that lottery. Fractions result from irregular boundaries that prevent measurements in square lots.

-Courtesy of the Georgia Archives







SECTION 9

Deed Qualification



Qualification of Sales

The Georgia Constitution requires that all taxation be uniform within each jurisdiction levying the tax. Georgia property tax code specifically defines the terms 'bona fide arms length transaction' and 'fair market value' and further requires that 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.

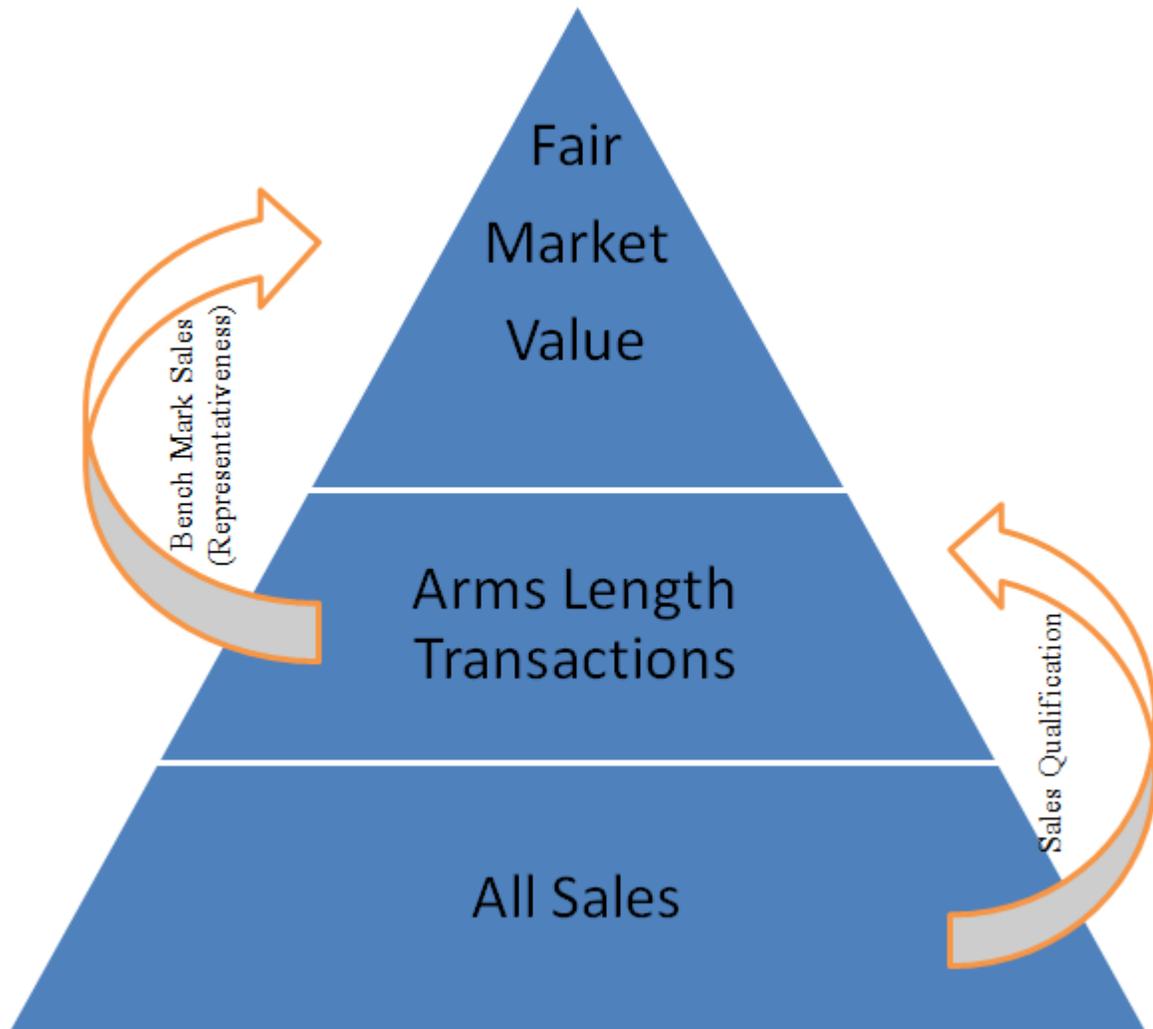
Sales qualification is the process by which the county staff determines whether a transaction meets quality standards reflective of "bona fide arm's length transaction" and "fair market value". This process includes a review of the circumstances of the transaction and motivations of the buyer and seller. The appraiser's review should include deed and security deed research; a physical inspection of the property; and an interview of the buyer and seller in person, by phone or through questionnaires. Once qualified, such fair market arms length transactions are added to a data bank and used in the estimation of value for other properties.

In some situations, sales are determined to be 'bona fide arms length transactions' that 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 that the data bank of sales is reliable and representative. Such standards will be dependent upon the influences in the local market area. 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.



Fair Market Value vs Arm's Length Transaction



Sale - Any transaction that 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 that 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

Qualifying Sales for Senate Bill SB 346 - 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 in determining the fair market value of income-producing property. **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, 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) of this paragraph 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 shall not be considered comparable real property for assessment or appeal of assessment of other properties; and

(vii) Any other existing factors provided by law or by rule and regulation of the 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).

Rule and Regulation from the Appraisal Procedures Manual

560-11-10-.02 Definitions.

(n) Most Recent Arms 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.

Fair Market Value

(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.

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



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.



The following list of sales qualifiers were once included in Rule and Regulation 560-11-.2-56

Sales Qualification Reasons

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.



SECTION 10

Calculating Area



SURVEYOR MEASUREMENTS

Inches	Feet	Yards	Rods*	Miles
12	1	0	0	0
36	3	1	0	0
198	16½	5½	1	0
63,360	5,280	1,760	320	1

*Rod or perch or pole

7.92 inches 1 link
 25 links 1 rod
 4 rods 1 chain
 10 sq. chains or 160
 sq. rods 1 acre
 640 acres 1 sq. mile
 36 sq. miles (6miles
 sq.). 1 township

One link is 7.92 inches
 One foot is 12 inches
 One vara is 33.3 inches
 One yard is 3 feet or 36 inches
 One rod is 16½ feet, 5½ yards or
 25 links
 One chain is 66 feet or 4 rods or
 100 links
 One furlong is 660 feet or 40 rods
 One mile is 8 furlongs, 320 rods,
 80 chains or 5,280 feet
 One square rod is 272¼ square feet
 or 30½ square yards
 One acre contains 43,560 square
 feet
 One acre contains 160 square rods

Inches	Feet	Yards	Rods*	Roods	Acres	Miles
39,204	272¼	30½	1	0	0	0
0	10,890	1,210	40	1	0	0
0	43,560	4,840	160	4	1	0
0	0	0	0	2,560	640	1

*Perch or square rods

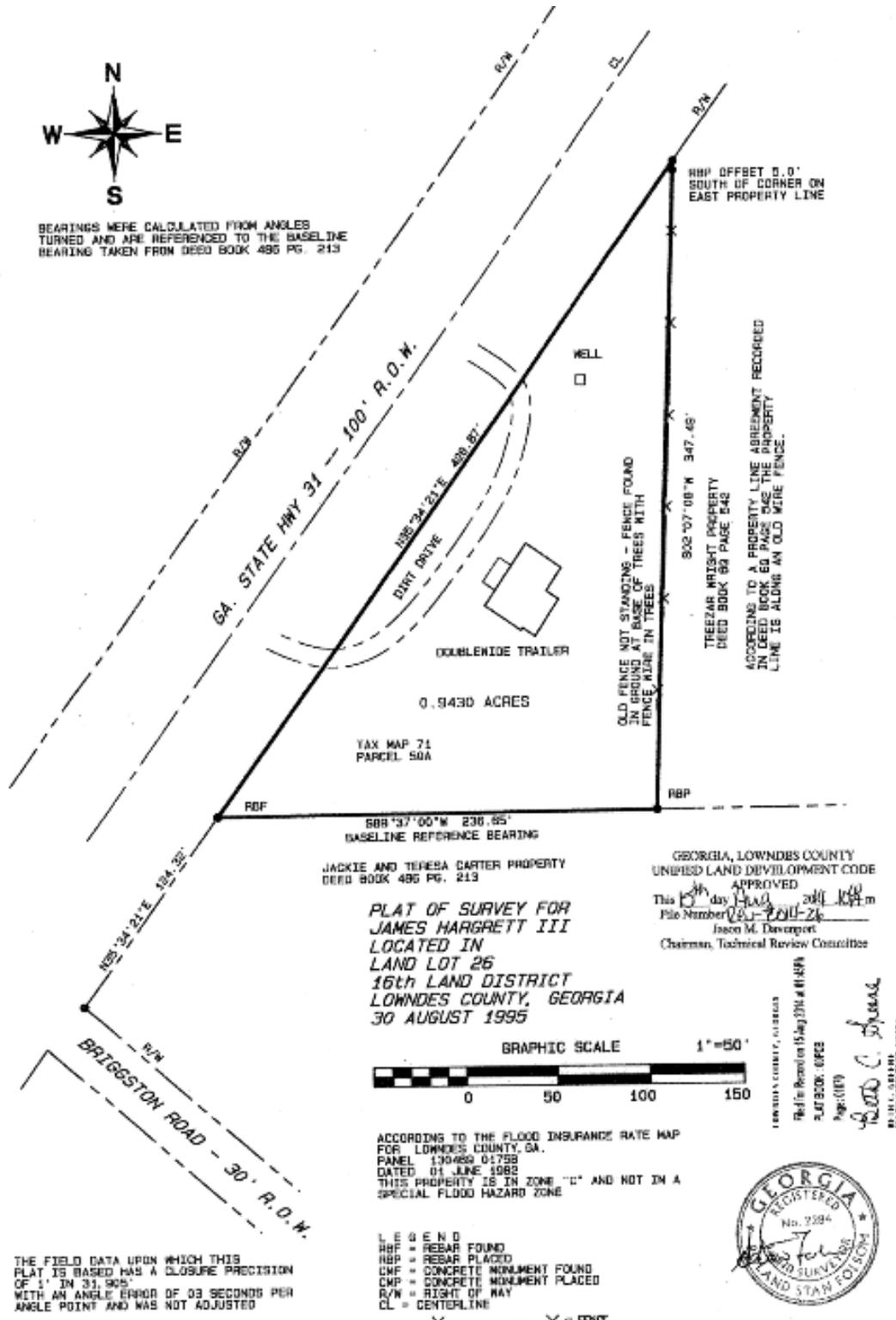
One acre is about 8 rods by 20 rods long or any two
 numbers (of rods) whose product is 160.

One acre may be divided into about 8 lots 30 x 125 feet.

5½ yards 1 pole
 16½ feet 1 pole
 66 feet 1 surveyor's chain
 7.92 inches 1 link
 100 links 1 chain
 4 poles 1 chain
 25 links 1 pole
 320 poles 1 mile
 1,760 yards 1 mile
 5,280 feet 1 mile
 160 square rods 1 acre
 4,840 square yards 1 acre
 43,560 square feet 1 acre
 5,645.37 square vara 1 acre
 70 x 70 yards (approximately) 1 acre
 210 x 210 feet (approximately) 1 acre
 640 acres 1 section
 4,428.4 acres 1 league



BEARINGS WERE CALCULATED FROM ANGLES TURNED AND ARE REFERENCED TO THE BASELINE BEARING TAKEN FROM DEED BOOK 485 PG. 213



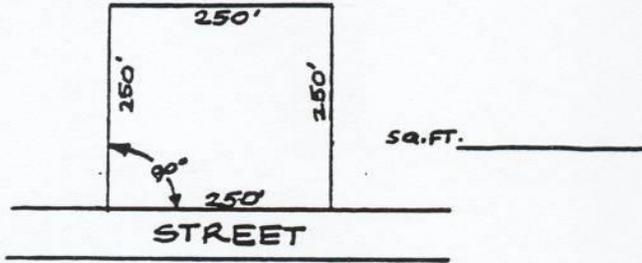


AREA FORMULAS

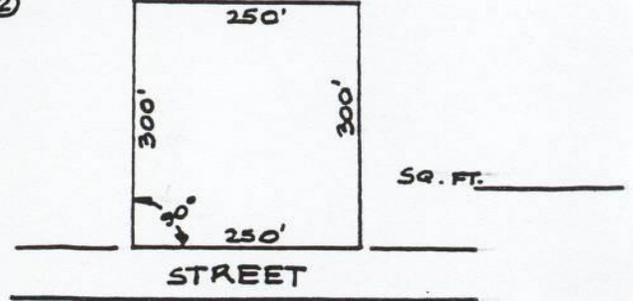
- Square -- A rectangle with all four sides congruent.
Formula: Area = Base X Height
- Rectangle -- A parallelogram with four right angles.
Formula: Area = Base X Height
- Parallelogram-- A quadrilateral with opposite sides parallel.
Formula: Area = Base X Height
- Rhombus -- A parallelogram whose sides 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 of 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: $R = C \div 2 \pi$



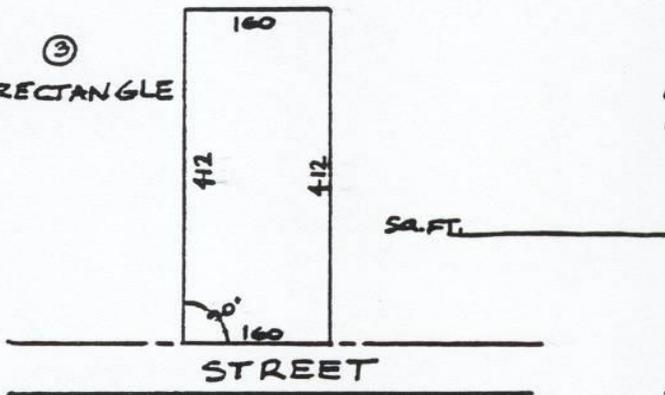
① SQUARE



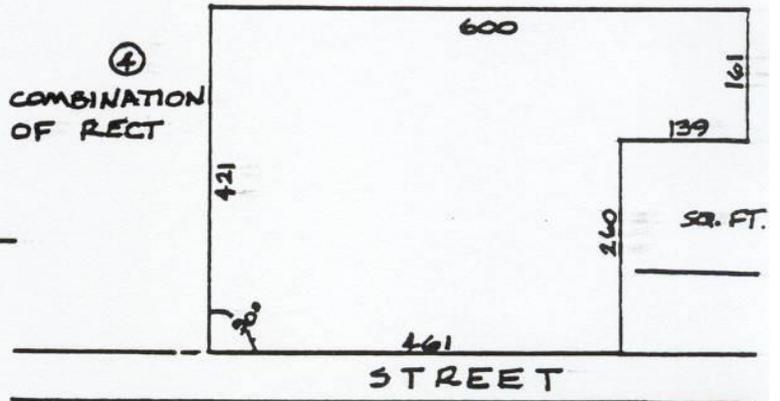
② RECTANGLE



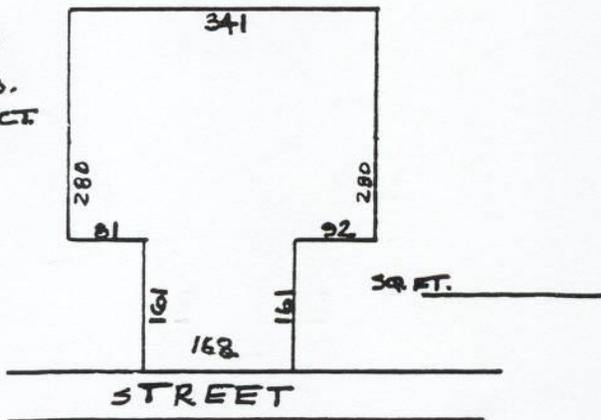
③ RECTANGLE



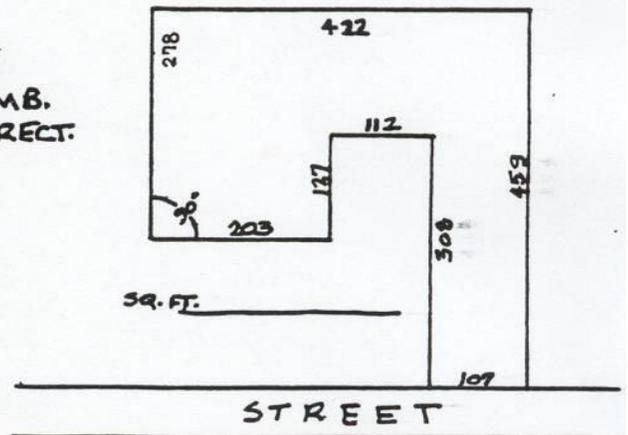
④ COMBINATION OF RECT

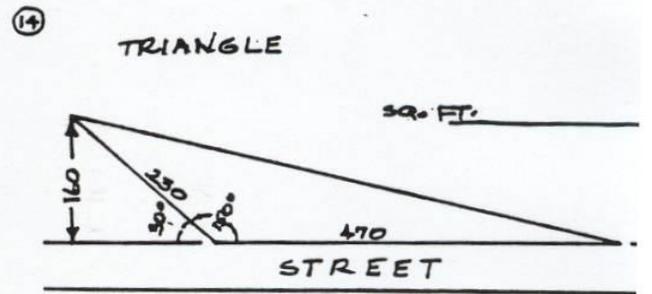
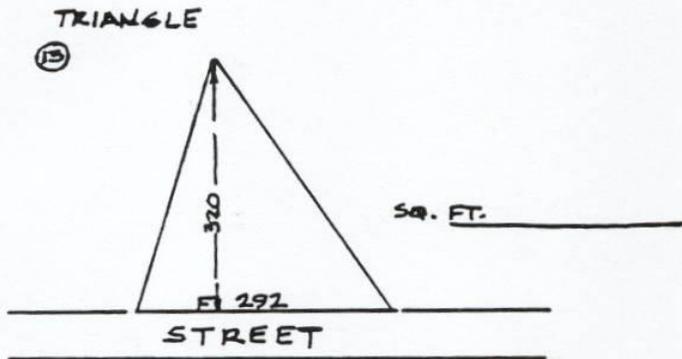
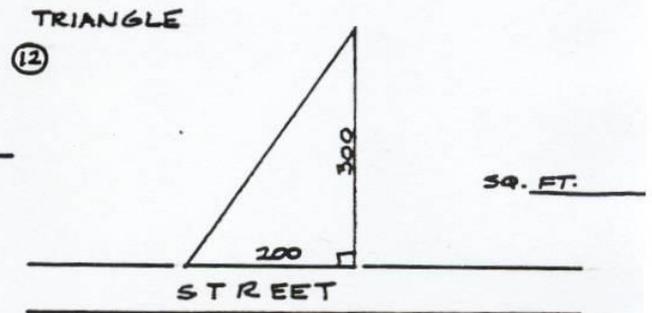
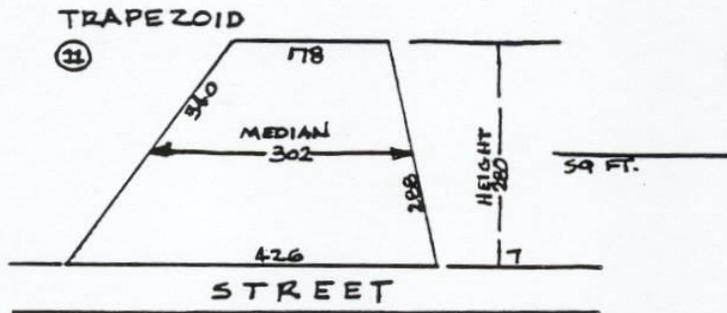
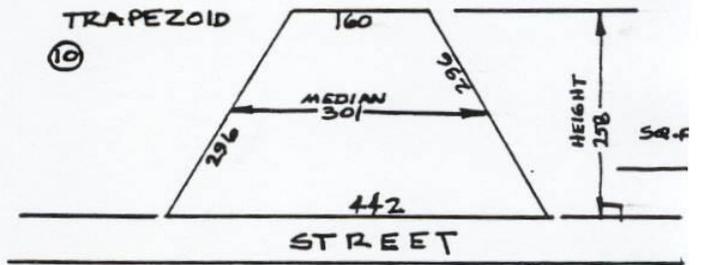
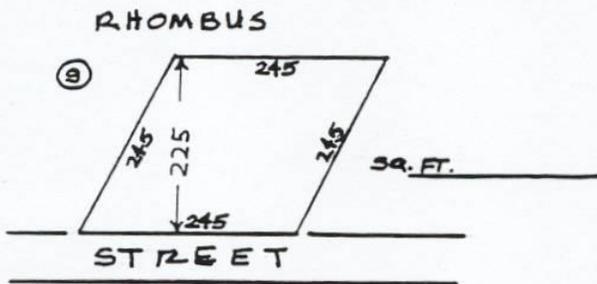
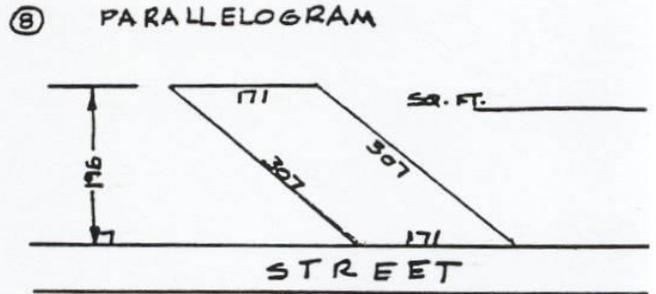
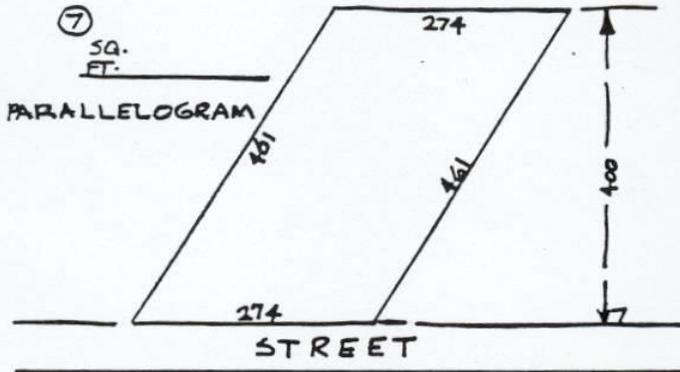


⑤ COMB. OF RECT



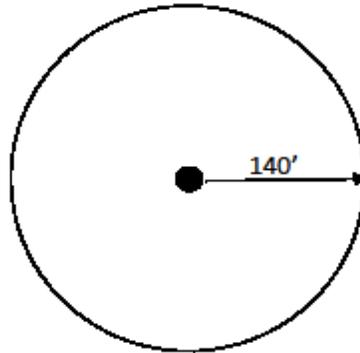
⑥ COMB. OF RECT.





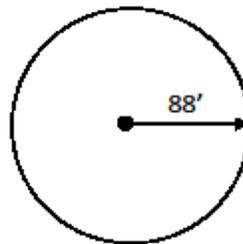


15. Circle

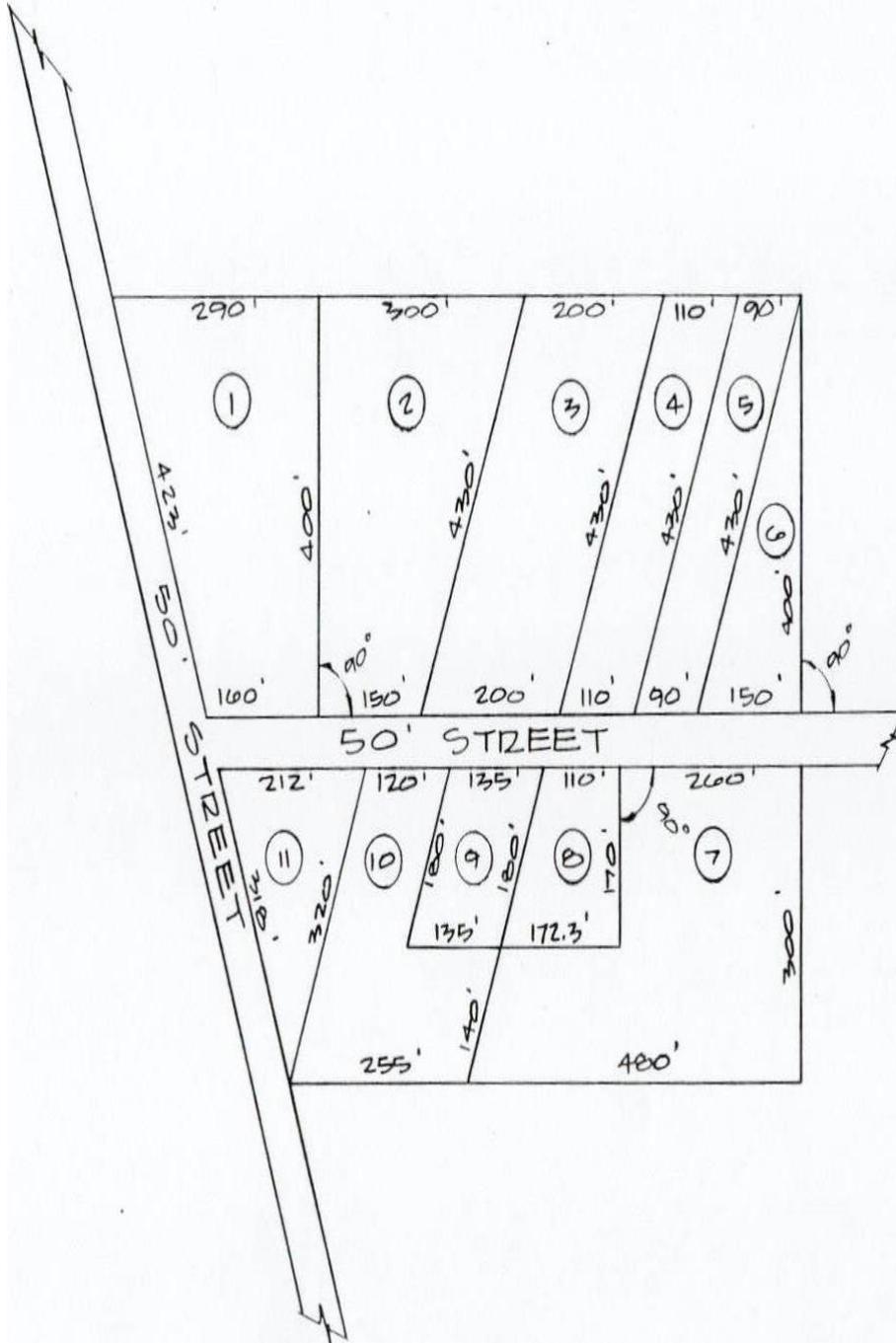


SQ.FT. _____

16. Circle



SQ.FT. _____



LIST 90. FOOTAGE OF EACH LOT

- 1 _____
- 2 _____
- 3 _____
- 4 _____
- 5 _____
- 6 _____
- 7 _____
- 8 _____
- 9 _____
- 10 _____
- 11 _____
- 12 _____
- 13 _____
- 14 _____



PRACTICAL EXERCISE ON ACREAGE CALCULATION

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 that 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 _____



SECTION 11

GLOSSARY



GLOSSARY OF TERMS AND DEFINITIONS

Abstract - 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.

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 can 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.

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.

Adverse Possession - The actual, exclusive, open, notorious, hostile, and continuous possession and occupation of real property under an evident claim of right or title.

Affidavit - A sworn statement made before a notary public or other authorized person. The one who makes the statement is called the "affiant."

Agreement - 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.



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.

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 that 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."

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 sea side 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.

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.

Boundary - A line that 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 land owners 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.

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.

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.

Chain - A land surveyor's measure -- 66 feet or 100 links.



Chain of Title - A chronological list of documents which comprise the recorded history of title of a specific piece of real estate.

Chord - A straight line connecting the tangents of a curve.

Color of Title - 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."

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 inducement, either money or other consideration, which moves a party to enter into a contract.

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.

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 that meaning.

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 that 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 that 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) Reserve curves are tangent at the point of reversal. (6) Tangent curves have a common tangent where the curves meet.

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 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 to 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 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.

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.

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.

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.

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.

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.

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 that 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.

Fee - An estate of inheritance in land.

Fee Simple - 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.

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.

Free Boundary - A free boundary is one that is not limited by a call for a monument.



Government Survey (U.S. Rectangular Land Survey) - In 1785 the U.S. Congress authorized the first land survey of the United States. It specified that 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 can 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 36 sections, each approximately one mile square and containing approximately 640 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 - The person to whom a grant is made, the one who acquires property.

Grantor - The person by whom a grant is made, the one who transfers the property.

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 - That part of a deed which follows the legal description and limits and defines the rights that 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.

Ingress - A place or right to enter onto a person's property.
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" can 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.

Latitude - A coordinate distance, linear or angular from an east-west reference line.

Link - A one-hundredth of a surveyor's chain, a linear measure of 66 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 can 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 that 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.

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.



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 that 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.

Neatline - The limit or outline of detail as portrayed on a map.

Normal - Normal to a line is 90° to the line. Normal to a curve is a radial line.

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.

Parallel Lines - Parallel lines are two straight lines that 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 that 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 that 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 - 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.

Patent - The title conveyed by the government describing land disposed of by the government is called a patent.

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.

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.

Principal Meridian - A line running through an arbitrary point chosen as a starting point for all sectionalized land within a given area.

Prolong - A line is prolonged but a curve is continued. Prolongation of a curve is the extension of the tangent to the curve.

Property - 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.

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.

Real Property - Land and generally whatever is erected, growing, or affixed to the land.

Rear - A deed reading "thence running to the rear of the said land" does not always mean that the land extends to the rear line, but may mean "towards the rear."

Recorded - 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.

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.

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.

Restrictions - Provisions in a deed which limits the use of the land.

Reversion - The estate or interest that will revert to, or be returned to, the grantor in a deed should restrictions be violated or the term of the conveyance end.

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 that 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.

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.

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.

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 that 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.

Tax Sale - An official sale of land by the state for the nonpayment of taxes assessed on them.

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.



Title - Ownership.

Title Search - The checking or reviewing of all documents affecting the ownership of a piece of property.

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).

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.

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 that contains all last will and testaments that have been probated.

Words of Exclusion - "To," "from," "by," "between," and "on" are words of exclusion unless there is something in the phrase that makes it apparent that the words were used in a different sense. "To a stone mound," "on Brown's land," and "by the river" exclude other terms.



Appendix

A

GEORGIA MILITIA DISTRICTS

GMD'S



Georgia Militia Districts

By Alex M. Hitz

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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 effected, 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 a Adjutant General was first provided for by this Act.

The amending Act of Feb. 18, 1799⁸ 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 conterminous 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.



Appendix

B

COURT CASES



25 of 67 DOCUMENTS

BALLARD et al. v. NEWTON COUNTY BOARD OF TAX ASSESSORS.

A15A0298.

COURT OF APPEALS OF GEORGIA

332 Ga. App. 521; 773 S.E.2d 780; 2015 Ga. App. LEXIS 349

June 16, 2015, Decided

PRIOR HISTORY: Taxation. Newton Superior Court.
Before Judge Wynne.

DISPOSITION: Judgment affirmed.

HEADNOTES

Georgia Advance Headnotes

(1) Real & Personal Property Law. Taxation. Assessment & Valuation. Because "fair market value of property" was not defined as the amount a buyer would pay to purchase, and willing seller would accept, for a defeasible interest in property, the appellate court concluded the tax sale did not qualify as an arm's length, bona fide sale such that the one-year freeze of *OCGA* § 48-5-2 (3) applied and thus, the trial court did not err in granting summary judgment to the Board of Tax Assessors, and in denying the buyers' cross-motion on that ground.

COUNSEL: *Eugene D. Butt*, for appellants.

W. Thomas Craig, Andrea P. Gray, for appellee.

JUDGES: [***1] BOGGS, Judge. Phipps, C. J. and Doyle, P. J., concur.

OPINION BY: BOGGS

OPINION

[*521] [**781] BOGGS, Judge.

This appeal presents an issue of first impression: whether a tax sale qualifies as an "arm's length, bona fide sale" under *OCGA* § 48-5-2. The trial court concluded that it does not so qualify. We agree with the trial court and therefore affirm.

"The interpretation of a statute is a question of law. As such, we do not defer to the trial court's ruling, and we apply the 'plain legal error' standard of review." (Citations, punctuation and footnote omitted.) *Clayton County Bd. of Tax Assessors v. City of Atlanta*, 299 Ga. App. 233, 234 (682 SE2d 328) (2009). The record reveals that during various months in 2012, W.D. Ballard and Nancy Mock purchased 22 parcels of real property in Newton County at tax sales ("the property"). In April 2013, the county tax assessors' office sent Ballard and Mock assessments of the 2013 tax value of the property as outlined in its "Appraisal Procedure Manual." The assessors did not set the 2013 value at the 2012 tax sale purchase price. Ballard and Mock appealed the property tax assessment, but the Board of Tax Assessors ("the Board") concluded that the value placed on the property represented "fair market value and uniformity."

[*522] Ballard and Mock appealed to the Newton County Board of Equalization ("the [***2] BOE"), which agreed with the valuation as determined by the tax

assessor. They then appealed to the superior court, claiming that "the one-year purchase price cap established by *OCGA* § 48-5-2 (3) should apply" to the assessed value of the property. Following the filing of the parties' cross-motions for summary judgment, the trial court granted summary judgment to the Board.

The court concluded that because the purchaser at a tax sale does not receive fee simple title to the property and does not enjoy the right of possession or the right to collect rents if the right of redemption exists, the property owner has the right to redeem the property and divest the purchaser of any rights, and the owner of the property sold at a tax sale is not a participant in the sale, there is no arm's length, bona fide sale under *OCGA* § 48-5-2 (.1). Therefore, the trial court reasoned, the tax sale does not qualify [**782] for the one-year purchase price freeze under *OCGA* § 48-5-2 (3). It is from this order that Ballard and Mock appeal.

"In interpreting statutes, our rules of statutory construction provide that the ordinary signification of words shall apply, 'except words of art or words connected with a particular trade or subject matter.' *OCGA* § 1-3-1 (b)." *Nat. City Mtg. Co. v. Tidwell*, 293 Ga. 697, 698 (1) (749 SE2d 730) (2013). *OCGA* § 48-5-2 (3) provides [***3] in part: "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." (Emphasis supplied.) This amounts to a freeze on the ad valorem tax value of property for one year. See, e.g., *Columbus Bd. of Tax Assessors v. Yeoman*, 293 Ga. 107, 108 (1) (744 SE2d 18) (2013). For purposes of the Code Section,

"[a]rm'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.

OCGA § 48-5-2 (.1).

Ballard and Mock claim that even though *OCGA* § 48-5-2 (.1) does not specifically list tax sale as an

example of an arm's length, bona fide sale, their tax sale purchase is entitled to the one-year purchase price freeze set forth in *OCGA* § 48-5-2 (3), because it was an arm's length sale at public auction between unrelated parties, a [523] willing buyer and a willing seller, each acting in their own self-interest. But "the cardinal rule in construing a legislative act, is to ascertain the legislative [***4] intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose." (Citation, punctuation and footnote omitted.) *Carringer v. Rodgers*, 276 Ga. 359, 363 (578 SE2d 841) (2003). "Moreover, in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole." (Citation, punctuation and footnote omitted.) *Maxwell v. State*, 282 Ga. 22, 23-24 (1) (644 SE2d 822) (2007). Therefore, as certain terms are not defined in *OCGA* § 48-5-2 (.1), such as "willing seller" and "transaction," and the examples listed, bank sale, distress sale, and short sale, are distinguishable from a tax sale as the former involve the sale of property by an owner, we look to the legislature's intent and the Georgia Tax Code as a whole.

OCGA § 48-5-1 provides:

The intent and purpose of the tax laws of this state are to have all property and subjects of taxation returned at the value which would be realized from the cash sale, but not the forced sale, of the property and subjects as such property and subjects are usually sold except as otherwise provided in this chapter.

And *OCGA* § 48-5-2 (3) provides that the "[f]air market value of property" from which to determine taxation "means the amount a knowledgeable [***5] buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale." Thus, the legislative intent is to place a value upon property that it would receive under a customary sale of property, not an atypical transaction. Foreclosure sales, for example, are forced sales "conducted under conditions that differ from the ordinary market for the property in question, [and] notoriously fail to bring the true market price of the property." *Ga. Ltd. Partners v. City Nat. Bank*, 323 Ga. App. 766, 767 (748 SE2d 131) (2013) (physical precedent only); *Gutherie v. Ford Equip. Leasing Co.*, 206 Ga. App. 258, 261 (1) (424 SE2d 889) (1992). Accordingly, the

legislature saw fit to remove consideration of foreclosure sales in a 2010 amendment to *OCGA § 48-5-2 (3) (B) (iv)* (criteria for tax assessor in determining fair market value of property).

In Georgia, when property is sold for unpaid taxes, the tax sale purchaser obtains a deed to the property. This deed, [*524] however, does not provide the tax sale purchaser with absolute title to the property, but rather gives the purchaser a defeasible fee interest therein with the title remaining subject to encumbrance for at least one year after purchase due to other interested parties' statutory rights of redemption.

[**783] (Citations and punctuation omitted.) *Land USA, LLC v. Georgia Power Co.*, 297 Ga. 237, 239 (1) (___ SE2d ___) (2015); see also [***6] *OCGA §§ 48-4-1* (tax sales generally); *48-4-2* (assessment); *48-4-6* (validity of deed). As previously outlined by the Supreme Court of Georgia,

after the tax sale, the delinquent taxpayer or any other party holding an interest in or lien on the property may redeem the property by paying to the tax sale purchaser the purchase price plus any taxes paid^[1] and interest. If the property is redeemed, the tax sale is essentially rescinded and a quitclaim deed is executed by the tax sale purchaser back to the owner of the property at the time of levy and sale. This right of redemption, however, may be terminated by the tax sale purchaser anytime after one year following the tax sale. After that year has run, the tax sale purchaser may terminate, foreclose, divest, and forever bar all rights to redeem the property by giving notice under *OCGA § 48-4-40 et seq.*, (the barment statutes) to all parties with redemption rights. The barment statutes apply to all persons having any right, title or interest in, or lien upon the subject property.

(Citations and punctuation omitted.) *Land USA, supra*, 297 Ga. at 239 (1); see also *OCGA §§ 48-4-40* (person entitled to redeem; time for redemption); *48-4-42* (amount payable for redemption); *48-4-43* (effect of

redemption).

1

While it is true that the [***7] title which the tax deed purchaser acquires in consequence of a tax sale is not a perfect, fee-simple title, but is a defeasible title which terminates upon redemption within the time prescribed by statute, until redeemed, the tax deed purchaser acquires an interest in the property even during the time within which it might be redeemed, *which is sufficient to render him liable for taxes accruing upon the property.*

(Citation and punctuation omitted; emphasis in original.) *Iglesia Del Dios Vivo Columna Y Apoyo De La Verdad La Luz Del Mundo v. Downing*, 321 Ga. App. 778, 781 (742 SE2d 742) (2013).

A tax sale is for the purpose of collecting unpaid taxes, see *Nat. Tax Funding v. Harpagon Co.*, 277 Ga. 41, 42 (1) (586 SE2d 235) (2003), and would therefore be a forced sale similar to a foreclosure sale, not a sale under normal conditions. And what the tax sale [*525] purchaser receives is not fee simple title, but rather a *defeasible fee interest* evidenced by a tax deed. See *Brown Investment Group v. Mayor of Savannah*, 303 Ga. App. 885, 886 (695 SE2d 331) (2010) (tax sale conveys an inchoate or defeasible title subject to the right of the owner). "Fair market value of property" is defined as the amount a willing buyer would pay to purchase the property, and a willing seller would accept for the property, which implies the passing of title as the examples of bona fide sales listed in *OCGA § 48-5-2 (.1)* demonstrate. (1) Because "fair market value of property" is not defined as the amount a buyer [***8] would pay to purchase, and willing seller would accept, for a *defeasible interest* in property, a tax sale does not qualify as an arm's length, bona fide sale such that the one-year freeze of *OCGA § 48-5-2 (3)* would apply. For this reason, the trial court did not err in granting summary judgment to the Newton County Board of Tax Assessors, and in denying Ballard and Mock's cross-motion on this ground.

While Ballard and Mock also assert as error the trial

court's ruling on the proper assessment of the fair market value, the court expressly limited its ruling to the issue of whether a tax sale is an arm's length, bona fide sale under *OCGA* § 48-5-2. The issue of the proper assessment

therefore remains pending below.

Judgment affirmed. Phipps, C. J., and Doyle, P. J., concur.

B



28 of 67 DOCUMENTS

CPF INVESTMENTS, LLLP v. FULTON COUNTY BOARD OF ASSESSORS.**A14A2268.****COURT OF APPEALS OF GEORGIA***330 Ga. App. 744; 769 S.E.2d 159; 2015 Ga. App. LEXIS 52***February 19, 2015, Decided**

PRIOR HISTORY: Taxation. Fulton Superior Court. Before Judge Baxter.

DISPOSITION: Judgment reversed and case remanded with direction.

HEADNOTES

Georgia Advance Headnotes

(1) Tax Law. State & Local Tax. Property Tax. Real Property. A trial court erred in concluding that a 2011 sale of taxable property by Freddie Mac did not qualify as an arm's length, bona fide sale for purposes of limiting the assessment value of the property in the next year under *OCGA* § 48-5-2 (3); *OCGA* § 48-5-2 (.1) expressly included transactions where the seller might suffer a financial loss (including distress sales, short sales, bank sales, or sales at public auction).

COUNSEL: *Hillis, Robison & Coffelt, Lindsey W. Hillis, Eric A. Coffelt*, for appellant.

Shalanda M. J. Miller, for appellee.

JUDGES: [***1] BRANCH, Judge. Barnes, P. J., and Boggs, J., concur.

OPINION BY: BRANCH**OPINION**

[*744] [**159] BRANCH, Judge.

This interlocutory appeal arises out of a dispute between CPF Investments, LLLP ("CPF") and the Fulton County Board of Assessors ("the Board") over the Board's valuation of certain real property owned by CPF. CPF purchased the property in 2011 from the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and CPF contends that *OCGA* § 48-5-2 (3)¹ requires the Board to value the property at its 2011 sale price for the 2012 tax year. CPF moved for summary judgment on this issue in the court below and the Board opposed that motion. The Board argued that *OCGA* § 48-5-2 (3) does not apply to sales involving government agencies because such entities are obligated to act in the best interests of their constituents, rather than in the best interests of the entities themselves. Thus, sales involving government agencies cannot meet the statutory [**160]¹ definition of an arm's length, bona fide transaction, which requires that both parties to the transaction be acting in their own best interests. The Board further asserted that Freddie Mac constitutes a government agency.

¹ This Code section provides in part that for tax appraisal purposes, "the transaction amount of the [***2] most recent arm's length, bona fide sale [of a property] in any year shall be the maximum allowable fair market value [of that property] for the next taxable year."

The trial court agreed with the Board and denied CPF's motion for summary judgment. The court then certified its order for immediate review, and we granted CPF's application for an interlocutory appeal. For reasons explained below, we find that the trial court erred as a matter of law when it found that a tax authority may presume that any sale of property that involves a government agency is not an arm's length, bona fide transaction. Additionally, the record shows that the Board failed to come forward with any evidence supporting [*745] its assertion that the 2011 sale of the property by Freddie Mac was not an arm's length, bona fide transaction. Thus, regardless of whether Freddie Mac is a government agency, the trial court erred in denying CPF's summary judgment motion.

The facts in this case are undisputed and show that the property at issue is located in a residential subdivision and that a five-bedroom house is situated on the land. On March 2, 2010, Chase Home Finance, LLC ("Chase"), purchased the property for \$271,735.² That [***3] same day, Chase sold the property to Freddie Mac for the price at which Chase had purchased it. In June 2010, Freddie Mac offered the property for sale with an asking price of \$306,900. The property remained on the market for approximately seven months, until Glenn French, the general partner of CPF, purchased it from Freddie Mac for \$207,000 in February 2011. On June 16, 2011, French executed a quitclaim deed transferring the property to CPF.

2 Chase acquired the property from an owner who had paid \$420,000 for the property in June 2002. It therefore appears that Chase purchased the home at a foreclosure sale and Freddie Mac then bought the property from Chase.

The Board appraised the property at \$370,400 for the 2012 tax year. CPF appealed that valuation to the Board of Equalization ("BOE") asking that the appraisal be lowered to the 2011 purchase price. The BOE subsequently adjusted the appraisal to \$340,000. The "Appraiser Notes" in the BOE file state that CPF "was asking for sales price of \$207,000[,] which does not reflect the market in 2011. The sale was a Fannie Mae [sic] sale, which the county [does] not recognize. The BOE agreed with the county on a value of \$340,000."

CPF appealed [***4] the BOE decision to the Fulton County Superior Court, seeking to have the appraised value of the property reduced to the 2011 sales price and

asserting a claim for attorney fees. After the case had been pending for six months, CPF moved for summary judgment on the issue of valuation, asserting that under *OCGA* § 48-5-2 (3) the valuation for the 2012 tax year could be no higher than the 2011 sale price of \$207,000. In support of its motion, CPF submitted the affidavit of French, who stated that he was not and never had been "related to or affiliated with Freddie Mac," and that the 2011 sale was an arm's length transaction, entered into in good faith and without fraud or deceit. The Board opposed the motion, arguing that sales involving government agencies were presumed not to meet the definition of a bona fide sale under *OCGA* § 48-5-2 (3) and that Freddie Mac was a government agency. To support these assertions, the Board submitted the affidavit of Douglas Kirkpatrick, the [*746] deputy chief appraiser of the residential division of the Fulton County Board of Tax Assessors. Kirkpatrick averred that "[b]ecause government agencies are not willing sellers acting out of self-interest, but acting in the interest of the public, the Tax Assessors' [***5] residential staff is trained that sales involving government agencies do not meet the definition of a bona fide sale"; that "[b]ased on its charter, purpose[,] and mission, [Freddie Mac] is acting in the interest of the United States' public, not in its own self-interest"; and that "[a]ccordingly, no sale from [Freddie Mac] is considered by the Tax Assessors as a bona fide sale." Kirkpatrick further indicated that the presumption that sales involving government entities were not bona fide sales was based on *OCGA* § 48-5-274, which provides a formula for the [**161] State Auditor to use in formulating an adjusted property tax digest for each county.³

3 The Board's reliance on *OCGA* § 48-5-274 is discussed more fully below.

Relying on Kirkpatrick's affidavit, the trial court found that because "Freddie Mac is a government agency" the 2011 sale of the property did not qualify as an arm's length, bona fide sale under *OCGA* § 48-5-2 (3). The court further found that the sale did not reflect the fair market value of the subject property. Based on these findings, the court denied CPF's motion for summary judgment. This appeal followed.

Both in the trial court and on appeal, the parties have focused on the question of whether Freddie Mac is a government agency. That question, [***6] however, is relevant only if *OCGA* § 48-5-2 (3) authorizes the Board

330 Ga. App. 744, *746; 769 S.E.2d 159, **161;
2015 Ga. App. LEXIS 52, ***6

to treat property sales involving government agencies differently from all other property sales. We therefore begin our analysis by construing the relevant statutory language found in *OCGA § 48-5-2*.

"When we consider the meaning of a statute, 'we must presume that the General Assembly meant what it said and said what it meant.' " *Deal v. Coleman*, 294 Ga. 170, 172 (1) (a) (751 SE2d 337) (2013) (citation omitted). Thus if the language of the statute is plain and unambiguous, we simply apply the statute as written. See *Opensided MRI of Atlanta v. Chandler*, 287 Ga. 406, 407 (696 SE2d 640) (2010); *Frazier v. Southern R. Co.*, 200 Ga. 590, 593 (2) (37 SE2d 774) (1946) (when construing the language of a statute, appellate courts "may not substitute by judicial interpretation language of their own for the clear, unambiguous language of the statute, so as to change the meaning").

[*747] The first of the statutory provisions at issue, *OCGA § 48-5-2 (3)*, provides:

"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 in determining the fair market value of income-producing property. *Notwithstanding any other provision of this chapter to the contrary*, the transaction amount of the most recent arm's [***7] length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year. ...

(Emphasis supplied.)

The statute contains no language exempting sales involving government agencies from the mandate found in the last sentence of this Code section. Moreover, the above-emphasized language makes clear that this mandate applies to all sales of real property, regardless of the identity of the parties, provided such a transaction constitutes an "arm's length, bona fide sale."⁴ The definition of an "arm's length, bona fide sale" is found in *OCGA § 48-5-2 (1)*, which provides:

"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.*

(Emphasis supplied.)

4 Additionally, the language of *OCGA § 48-5-2 (3)* makes clear that so long as the sale at issue was an arm's length, bona fide transaction, the Board may not assess the property at a higher value in the year following that sale, regardless of whether the Board believes [***8] the sale price reflects the actual fair market value of a property. Put another way, the Board may not engage in any determination of a property's actual fair market value for assessment purposes until the second year following that property's most recent sale resulting from an arm's length, bona fide transaction.

The Board argues that any sale involving a government agency can never meet the statutory definition of an arm's length, bona fide sale "[b]ecause government[-]sponsored enterprises, like [Freddie Mac do] not ... act[] out of self-interest, but act[] in the interest of the public." To support this presumption, the Board relies on the portion of Title 48 that sets forth the State Auditor's duties in [*748] establishing adjusted property tax digests for each county. See *OCGA § 48-5-274*. That statute instructs the State Auditor to use the "Standard on Assessment-Ratio Studies published by the International Association [**162] of Assessing Officers" when establishing for each county the "ratio of assessed value to fair market value of county property" subject to taxation. *OCGA § 48-5-274 (c)*. In his affidavit, Kirkpatrick stated that this Standard "provides that sales involving government agencies are generally invalid for the [***9] ratio studies used in mass appraisal tax assessments" and "specifically states that these 'types of sales are often found to be invalid for ratio studies and can be automatically excluded unless a larger sample size is needed and further research is conducted to determine that the sales are open market transactions.' " Citing *OCGA § 48-5-274* and Kirkpatrick's affidavit, the Board contends that sales involving government agencies are

excluded from "the ratio studies used in mass appraisals ... because they do not reflect [sales] from a willing seller acting in its own self-interest." Thus, the Board concludes that it is authorized to presume that sales involving government agencies do not constitute arm's length, bona fide sales under *OCGA* § 48-5-2 (3). We find this argument wholly unpersuasive.

First, the Board offers no support for its assertion as to the reason that real estate transactions involving government agencies are excluded from property tax ratio studies. Although the Board cites to Kirkpatrick's affidavit to support this proposition, Kirkpatrick in fact offered no opinion as to the reasons underlying this asserted rule. Rather, he simply stated that the rule existed. Moreover, the Board fails to offer [***10] any reasoned argument or legal authority to explain why we should look to *OCGA* § 48-5-274 (which deals with the duties of the State Auditor in formulating county tax digests) to interpret *OCGA* § 48-5-2 (which defines terms relevant to the ad valorem taxation of property by counties). Accordingly, we must conclude that had the legislature intended to exempt transactions involving government agencies from the mandate of *OCGA* § 48-5-2 (3), then the legislature would have expressed that intent directly.⁵ See *Six Flags [*749] Over Ga. v. Kull*, 276 Ga. 210, 211 (576 SE2d 880) (2003) ("[w]here the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden") (citation omitted).

⁵ We also find the Board's position -- that the best interests of a governmental entity are not and can never be synonymous with the best interests of the public which that entity serves -- to be not only cynical, but also contrary to our fundamental understanding of government. As our founding fathers expressed in the Declaration of Independence: "Governments are instituted among Men, deriving their just powers from the consent of the governed." See also *The Federalist* No. 62 (James Madison) ("A good Government implies two things: first, fidelity to the object of Government, which is the happiness [***11] of the People; secondly, a knowledge of the means by which that object can be best attained."); *McCulloch v. Maryland*, 17 U. S. 316, 404-405 (4 Wheat. 316, 4 LE 579) (1819) ("The government of the Union, then ... , is, emphatically, and truly, a government of the people. In form and in

substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."). Given these principles, and in the absence of any evidence to the contrary, we must assume that when a government agency acts so as to fulfill its duty to advance the public interest it simultaneously advances its own interests.

In light of the foregoing, (1) the sale at issue must be deemed an arm's length, bona fide sale unless the Board can offer some evidence that would support a finding that the transaction involved fraud or deceit; that there was some relationship or affiliation between Freddie Mac and French that predated the sale; or that Freddie Mac was, in fact, acting counter to its own best interests in order to benefit French. See *OCGA* § 48-5-311 (e) (4) (a county's "board of tax assessors shall have the burden of proving its opinions of value and the validity of its proposed assessment by a preponderance of evidence"). Moreover, as noted above, *OCGA* § 48-5-2 (.1) expressly [***12] defines an arm's length, bona fide sale to include those types of transactions where the seller might suffer a financial loss (including distress sales, short sales, bank sales, or sales at public auction). Thus, the mere fact that Freddie Mac suffered a financial loss as a result of the sale is insufficient to show that Freddie Mac was not acting in its best interests.⁶

⁶ There could be many reasons why a seller would view such a sale as being in the seller's best interest.

Here, because the Board bore the burden of proving that Freddie Mac's sale of the [**163] property to French was not an arm's length, bona fide sale, CPF was entitled to summary judgment if the record showed either an absence of evidence supporting the Board's position or affirmative proof that contradicted that position -- i.e., proof that the sale was an arm's length, bona fide transaction. See *Warner v. Hobby Lobby Stores*, 321 Ga. App. 121 (741 SE2d 270) (2013). CPF came forward with affirmative evidence, in the form of French's affidavit, that the purchase of the property constituted an arm's length, bona fide transaction. To defeat CPF's summary judgment motion, therefore, the Board was required to come forward with some evidence that disputed French's affidavit and supported the Board's [***13] case. *Id.* Instead, the Board offered only its unfounded presumption that as a government agency, Freddie Mac

could never act in its own best interest.⁷ Accordingly, CPF was entitled to judgment as a matter of law.

⁷ Again, for purposes of this appeal, we have merely assumed that Freddie Mac is a government agency; we have not decided that issue.

[*750] In light of the foregoing, the order of the trial

court denying CPF's summary judgment motion is reversed. The case is remanded for entry of judgment in favor of CPF and for consideration of CPF's claim for attorney fees.

Judgment reversed and case remanded with direction. Barnes, P. J., and Boggs, J., concur.



Appendix

C

AREA CALCULATION QUIZ



QUIZ 1

PRACTICAL EXERCISE ON ACREAGE CALCULATION

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 that 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 2

PROBLEM 1

Calculate the square footage of a tract consisting of 5.5 acres.

ANSWER _____

PROBLEM 2

Calculate the square footage of a tract that 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 that 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 _____



Sample Deeds



Book 01399:0428 Augusta - Richmond County
2013031766 06/18/2013 14:58:38.00
\$0.00 RIGHT OF WAY DEED

2013031766 Augusta - Richmond County

AFTER RECORDING, PLEASE

RETURN TO:

Augusta Law Department
520 Greene Street
Augusta, GA 30901 KSB

GEORGIA DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY DEED
801 Highway 15 South, Tennille, GA 31089-0008

GEORGIA, RICHMOND COUNTY

PROJECT NO. STP00-1105-00 (004)
P.I. NO. 245320

THIS CONVEYANCE made and executed the 21 day of May, 2013.

WITNESSETH that Ruth's Lake, Inc., the undersigned, (hereinafter referred to as 'Grantor'), is the owner of a tract of land in RICHMOND County through which CR 65/Windsor Spring Road Phase V From SR 88 To CR 1515/Willis Foreman Road, known as Project No. STP00-1105-00 (004), has been laid out by the Department of Transportation being more particularly described in a map and drawing of said road in the office of the Department of Transportation, 600 West Peachtree St., Atlanta, Georgia, to which reference is hereby made.

NOW, THEREFORE, in consideration of the benefit to said property by the construction and maintenance of said road, and in consideration of ONE DOLLAR (\$1.00), in hand paid, the receipt whereof is hereby acknowledged, Grantor does hereby grant, sell and convey to said Department of Transportation, and their successors in office so much land as to make a right of way for said road as surveyed, being more particularly described as follows:

All that tract or parcel of land lying and being in 86-5 Georgia Militia District of Richmond County, Georgia, and being more particularly described on Exhibit "A" attached hereto and made a part hereto by this reference.

Said right of way is hereby conveyed, consisting of 0.021 acres, more or less, as shown colored yellow on the plat of the property prepared by the Department of Transportation, dated July 30, 2010; revised March 23, 2012, said plat attached hereto and made a part of this deed as Exhibit "B".

For the same consideration Grantor hereby conveys and relinquishes to the Department of Transportation all rights of access between the limited access highway and approaches thereto on the above numbered highway project and Grantor's remaining real property from which said right of way is taken except at such points as designated and shown on the attached plat prepared by the Department of Transportation said right being 0 linear feet.

Parcel No. 63



Book 01399:0430 Augusta - Richmond County
2013031766 06/18/2013 14:58:38.00

EXHIBIT "A"

PROJECT NO.: STP00-1105-00 (004) Richmond County
P. I. NO.: 245320
PARCEL NO.: 63
DATE OF R/W PLANS: July 30, 2010
REVISION DATE: March 23, 2012 Page 1 of 3

All that tract or parcel of land lying and being in 86-5 Georgia Militia District of Richmond County, Georgia, being more particularly described as follows:

Beginning at a point 19.05 feet right of and opposite Station 172+93.55 on the construction centerline of Windsor Spring Road on Georgia Highway Project No. STP00-1105-00 (004) ; running thence N 8°09'06" W a distance of 30.03 feet to a point 19.04 feet right of and opposite station 173+23.57 on said construction centerline laid out for WINDSOR SPRING RD; thence N 77°59'58" E a distance of 30.53 feet to a point 49.50 feet right of and opposite station 173+25.63 on said construction centerline laid out for WINDSOR SPRING RD; thence S 8°07'44" E a distance of 30.03 feet to a point 49.50 feet right of and opposite station 172+95.60 on said construction centerline laid out for WINDSOR SPRING RD; thence S 78°00'48" W a distance of 30.52 feet back to the point of beginning. Containing 0.021 acres more or less.



CANCELLATION

Hall County, Georgia

The indebtedness referred to in that certain Deed to Secure Debt from _____ to _____, dated _____, 20_____, and of record in Deed Book _____, Page (s) _____, in the office of the Clerk of the Superior Court of Hall County, Georgia, having been paid in full and the undersigned being the present record holder and owner of such Deed by virtue of being the original Grantee or by virtue of assignments of record in the following Deed Book(s) (list all assignments),

Book Page (s)

the Clerk of such Superior Court is authorized and directed to Cancel that Deed of record as provided in Code Section 44-14-4 of the O.C.G.A. for other mortgages cancellations.

IN WITNESS WHEREOF, the undersigned has set his hand and seal this _____ day of _____, 20_____.

(seal)

