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Session of the General Assembly

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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2025 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2025. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2025.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice Forms Annotated.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Seventh Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2025 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2025 supplement pamphlets and in the bound volumes of the Code.

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TITLE 44

PROPERTY

- Chap.
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CHAPTER 1

GENERAL PROVISIONS

Sec.		Sec.	
44-1-13.	(Effective until January 1, 2026.) Removal of improperly parked cars or trespassing personal property; concurrent jurisdiction; procedure; automatic surveillance prohibited; penalty.	44-1-18.	tomatic surveillance prohibited; penalty. [Reserved] Execution search prior to conveyance of property; certificate of clearance required; requirements for requests; binding effect; timing of information release; failure to comply; retention; criminal penalties; exceptions; requirements for certificate; regulatory authority.
44-1-13.	(Effective January 1, 2026.) Removal or immobilization of trespassing cars or personal property; concurrent jurisdiction; procedure; au-		

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FIXTURES

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Fixtures

Speaker system installed in nightclub was fixture. — Building tenant, a nightclub, was not entitled to the proceeds

of an insurance policy that was plainly and unambiguously payable to the mortgage holder of the building after it was damaged by fire. In the absence of evidence that a speaker system destroyed by the fire was not a fixture, the tenant was not entitled to reimbursement for its loss. Club Libra, Inc. v. R. L. King Props., LLC, 324 Ga. App. 547, 751 S.E.2d 418, 2013 Ga. App. LEXIS 1009 (2013).

House passed with land in foreclosure action. — House’s owner who moved the house onto a lot owned by another failed to state a claim against a lender for wrongful foreclosure of the owner’s house along with the lot because, under Georgia law, real estate included all lands and the buildings thereon, O.C.G.A. § 44-1-2(a)(1), so the house passed with the land. Jurden v. HSBC Mortg. Corp., 330 Ga. App. 179, 765 S.E.2d 440, 2014 Ga. App. LEXIS 750 (2014), cert. dismissed, No. S15C0712, 2015 Ga. LEXIS 280 (Ga. App. 20, 2015).

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

JUDICIAL DECISIONS

ANALYSIS

INTENTION OF PARTIES

Intention of Parties

Doubt as to whether affixed personalty to be transferred. — Bankruptcy court could not determine on summary judgment whether bowling alley lanes and pin setters which a bank sold when the bank foreclosed on a security agreement the bank held on a bowling alley and sold the bowling alley were fixtures under O.C.G.A. § 44-1-6 because the parties

executed two documents which contained evidence of a conflicting intent, and the court ordered the parties to present evidence on that issue at trial. Although the court granted the bank relief from the stay that was imposed when a corporation declared Chapter 7 bankruptcy and allowed the bank to sell the bowling alley at a private sale, the bank’s description of the property prior to sale was sufficient to convey title only to real property that was

part of the bowling alley, and the Chapter 7 trustee was seeking an order requiring the bank to turn over proceeds it derived from selling the debtor's personal property, pursuant to 11 U.S.C. § 542.

Lubin v. Ga. Commerce Bank (In re Southern Bowling, Inc.), No. 05-86834-WLH, No. 09-06045, 2010 Bankr. LEXIS 4007 (Bankr. N.D. Ga. Oct. 8, 2010).

44-1-13. (Effective until January 1, 2026.) Removal of improperly parked cars or trespassing personal property; concurrent jurisdiction; procedure; automatic surveillance prohibited; penalty.

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

(1) "Department" means the Department of Public Safety.

(2) "Private property" means any parcel or space of private real property.

(a.1) Any person or his or her authorized agent entitled to the possession of any private property shall have the right to remove or cause to be removed from the property any vehicle or trespassing personal property thereon which is not authorized to be at the place where it is found and to store or cause to be stored such vehicle or trespassing personal property, provided that there shall have been conspicuously posted on the private property notice that any vehicle or trespassing personal property which is not authorized to be at the place where it is found may be removed at the expense of the owner of the vehicle or trespassing personal property. Such notice shall also include information as to the location where the vehicle or personal property can be recovered, the cost of said recovery, and information as to the form of payment; provided, however, that the owner of residential private property containing not more than four residential units shall not be required to comply with the posting requirements of this subsection. Only towing and storage firms issued permits or licenses by the local governing authority of the jurisdiction in which they operate or by the department, and having a secure impoundment facility, shall be permitted to remove trespassing property and trespassing personal property at the request of the owner or authorized agent of the private property.

(b)(1) The department shall have the authorization to regulate and control the towing of trespassing vehicles on private property if such towing is performed without the prior consent or authorization of the owner or operator of the vehicle, including the authority to set just and reasonable rates, fares, and charges for services related to the removal, storage, and required notification to owners of such towed vehicles. No storage fees shall be charged for the first 24 hour period which begins at the time the vehicle is removed from the property, and no such fees shall be allowed for the removal and storage of

vehicles removed by towing and storage firms found to be in violation of this Code section. The department is authorized to impose a civil penalty for any violation of this Code section in an amount not to exceed \$2,500.00.

(2) In accordance with subsection (d) of this Code section, the governing authority of a municipality may require towing and storage operators to charge lower maximum rates on traffic moving between points within such municipality than those provided by the department's maximum rate tariff and may require higher public liability insurance limits and cargo insurance limits than those required by the department. The governing authority of a municipality shall not provide for higher maximum costs of removal, relocation, or storage than is provided for by the department.

(c) In all municipalities, except a consolidated city-county government, having a population of 100,000 or more according to the United States decennial census of 1970 or any future such census a person entitled to the possession of an off-street parking area or vacant lot within an area zoned commercial by the municipality shall have the right to remove any vehicle or trespassing personal property parked thereon after the regular activity on such property is concluded for the day only if access to such property from the public way is blocked by a sturdy chain, cable, or rope stretched at least 18 inches above grade across all driveways or other ways providing access to the off-street parking area or vacant lot and there is conspicuously posted in the area a notice, the location of which must be approved by the municipality's police department, that any vehicle or trespassing personal property parked thereon which is not authorized to be in such area may be removed at the expense of the owner along with information as to where the vehicle or trespassing personal property may be recovered, the cost of said recovery, and information regarding the form of payment.

(d)(1) In addition to the regulatory jurisdiction of the department, the governing authority of each municipality having towing and storage firms operating within its territorial boundaries may require and issue a license or permit to engage in private trespass towing within its corporate municipal limits pursuant to this Code section to any firm meeting the qualifications imposed by said governing authority. The fee for the license or permit shall be set by such governing authority. The maximum reasonable costs of removal, relocation, and storage pursuant to the provisions of this Code section shall be compensatory, as such term is used in the public utility rate-making procedures, and shall be established annually by the governing authority of each municipality having towing and storage firms operating within its territorial boundaries; provided, however, that no storage fees shall be charged for the first 24 hour period which begins at the time the vehicle is removed from the property, and no such fees shall be allowed for the removal and storage of vehicles

removed by towing and storage firms found to be in violation of this Code section.

(2) Towing and storage firms operating within a municipality's corporate limits shall obtain a nonconsensual towing permit from the department and shall file its registered agent's name and address with the department. The department may assess and collect an application fee in an amount to be determined by the commissioner and such amount shall not exceed the total direct and indirect costs of administering the program or activity with which the fee is associated. Pursuant to Code Section 45-12-92.1, the fees collected shall be retained by the department and expended solely for the purpose of implementing this Code section.

(e) Any person who suffers injury or damages as a result of a violation of this Code section may bring an action in any court of competent jurisdiction for actual damages, which shall be presumed to be not less than \$100.00, together with court costs. A court shall award three times actual damages for an intentional violation of this Code section.

(f) It shall be unlawful and punishable by a fine of \$1,000.00 for any towing and storage firm, permitted or unpermitted, licensed or unlicensed, to enter into any agreement with any person in possession of private property to provide automatic or systematic surveillance of such property for purposes of removal and relocation of any such vehicle or trespassing personal property except upon call by such person in possession of such private property to such towing and storage firm for each individual case of trespass; provided, further, that it shall be unlawful and punishable by a fine of \$1,000.00 for any towing and storage firm to pay to any private property owner or one in possession of private property any fee or emolument, directly or indirectly, for the right to remove a vehicle or trespassing personal property from said private property.

History.

Ga. L. 1962, p. 146, § 1; Ga. L. 1968, p. 321, § 1; Ga. L. 1973, p. 2622, § 1; Ga. L. 1982, p. 2107, § 46; Ga. L. 1987, p. 1442, § 1; Ga. L. 1989, p. 1230, § 1; Ga. L. 1990, p. 8, § 44; Ga. L. 2003, p. 881, §§ 1, 2; Ga. L. 2005, p. 60, § 44/HB 95; Ga. L. 2005, p. 334, § 26-1/HB 501; Ga. L. 2007, p. 228, § 1/HB 316; Ga. L. 2012, p. 580, § 12/HB 865; Ga. L. 2013, p. 838, § 19/HB 323.

Delayed effective date.

Code Section 44-1-13 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.

Amendments.

The 2012 amendment, effective July

1, 2012, substituted “ ‘Department’ means the Department of Public Safety” for “ ‘Commission’ means the Public Service Commission” in paragraph (a)(1); substituted “department” for “commission” throughout this Code section; and, in paragraph (b)(2), substituted “department’s” for “commission” in the middle of the first sentence, and inserted “department” in the last sentence.

The 2013 amendment, effective July 1, 2013, added the second and third sentences in paragraph (d)(2). See Editor’s notes for applicability.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, “commission” was deleted following

“by the” in the last sentence of paragraph (b)(2).

Editor’s notes.

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly,

provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date.”

JUDICIAL DECISIONS

Common law rights did not allow vehicles to be immobilized. — Even if plaintiff’s vehicle or other vehicles were trespassing on defendants’ property, the common-law rights of distress damage feasant and of removing trespassing chattels did not allow the defendants to immo-

bilize those vehicles as the defendants had other remedies available for such a trespass, including the statutory right of removal and impoundment under O.C.G.A. § 44-1-13. *RCC Wesley Chapel Crossing, LLC v. Allen*, 313 Ga. 69, 867 S.E.2d 108, 2021 Ga. LEXIS 726 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Construction with Abandoned Motor Vehicle Act. — The Department of Public Safety is not authorized to establish maximum rates for the removal and storage of motor vehicles pursuant to the Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-11 et seq., beyond the department’s regulatory authority as set forth in O.C.G.A. § 44-1-13. 2019 Op. Att’y Gen. No. 19-1.

Limitation on authority. — O.C.G.A. § 44-1-13 does not provide any authority to the Department of Public Safety to regulate or otherwise implement rules with regard to abandoned vehicles (unless also trespassing) or any vehicles on public property or public rights of way. 2019 Op. Att’y Gen. No. 19-1.

44-1-13. (Effective January 1, 2026.) Removal or immobilization of trespassing cars or personal property; concurrent jurisdiction; procedure; automatic surveillance prohibited; penalty.

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

(1) “Department” means the Department of Public Safety.

(1.1) “Immobilization device” means any mechanical device designed or used to be attached to a wheel, tire, or other part of a parked motor vehicle so as to prohibit the motor vehicle’s usual manner of movement or operation.

(2) “Private property” means any parcel or space of private real property.

(a.1) Any person or his or her authorized agent entitled to the possession of any private property shall have the right to remove or cause to be removed from the property or immobilize or cause to be immobilized any vehicle or personal property trespassing thereon which is not authorized to be at the place where it is found and to store

or cause to be stored such trespassing vehicle or personal property, provided that there shall have been conspicuously posted on the private property notice that any trespassing vehicle or personal property which is not authorized to be at the place where it is found may be immobilized or removed at the expense of the owner of the trespassing vehicle or personal property. Such notice shall also include information as to the contact information for removal of an immobilization device, the full legal names of the company conducting the immobilization and the property owner where the immobilization occurred, the fee amount for removal of an immobilization device, location where the removed vehicle or personal property can be recovered, the cost of said recovery, and information as to the form of payment; provided, however, that the owner of residential private property containing not more than four residential units shall not be required to comply with the posting requirements of this subsection. Only towing and storage firms issued permits or licenses by the local governing authority of the jurisdiction in which they operate or by the department, and having a secure impoundment facility, shall be permitted to remove trespassing vehicles and personal property at the request of the owner or authorized agent of the private property. Only persons issued a permit by the department and operating in a jurisdiction which has authorized the immobilization of trespassing vehicles by ordinance or resolution of the governing authority shall be authorized to place an immobilization device upon a trespassing vehicle.

(b)(1) The department shall have the authorization to regulate and control the immobilization and towing of trespassing vehicles on private property if such immobilization or towing is performed without the prior consent or authorization of the owner or operator of the vehicle, including the authority to set just and reasonable rates, fares, and charges for services related to the immobilization, removal, storage, and required notification to owners of such vehicles. No storage fees shall be charged for the first 24 hour period which begins at the time the vehicle is removed from the property. No fees shall be allowed for the immobilization or removal and storage of vehicles by persons found to be in violation of this Code section.

(2) In accordance with subsection (d) of this Code section, the governing authority of a municipality may require towing and storage firms to charge lower maximum rates on traffic moving between points within such municipality than those provided by the department's maximum rate tariff and may require higher public liability insurance limits and cargo insurance limits than those required by the department. The governing authority of a municipality shall not provide for higher maximum costs of immobilization, removal, relocation, or storage than is provided for by the department.

(c) In all municipalities, except a consolidated city-county government, having a population of 100,000 or more according to the United States decennial census of 1970 or any future such census a person entitled to the possession of an off-street parking area or vacant lot within an area zoned commercial by the municipality shall have the right to remove any vehicle or trespassing personal property parked thereon after the regular activity on such property is concluded for the day only if access to such property from the public way is blocked by a sturdy chain, cable, or rope stretched at least 18 inches above grade across all driveways or other ways providing access to the off-street parking area or vacant lot and there is conspicuously posted in the area a notice, the location of which must be approved by the municipality's police department, that any vehicle or trespassing personal property parked thereon which is not authorized to be in such area may be removed at the expense of the owner along with information as to where the vehicle or trespassing personal property may be recovered, the cost of said recovery, and information regarding the form of payment.

(d)(1) In addition to the regulatory jurisdiction of the department, the governing authority of each municipality having towing and storage firms operating within its territorial boundaries may require and issue a license or permit to engage in private trespass towing within its corporate municipal limits pursuant to this Code section to any firm meeting the qualifications imposed by said governing authority. The fee for the license or permit shall be set by such governing authority. The maximum reasonable costs of removal, relocation, and storage pursuant to the provisions of this Code section shall be compensatory, as such term is used in the public utility rate-making procedures, and shall be established annually by the governing authority of each municipality having towing and storage firms operating within its territorial boundaries; provided, however, that no storage fees shall be charged for the first 24 hour period which begins at the time the vehicle is removed from the property, and no such fees shall be allowed for the removal and storage of vehicles removed by towing and storage firms found to be in violation of this Code section.

(2) Towing and storage firms operating within a municipality's corporate limits shall obtain a nonconsensual towing permit from the department and shall file its registered agent's name and address with the department. The department may assess and collect an application fee in an amount to be determined by the commissioner and such amount shall not exceed the total direct and indirect costs of administering the program or activity with which the fee is associated. Pursuant to Code Section 45-12-92.1, the fees collected shall be retained by the department and expended solely for the purpose of implementing this Code section.

(e) Any person who suffers injury or damages as a result of a violation of this Code section may bring an action in any court of competent jurisdiction for actual damages, which shall be presumed to be not less than \$100.00, together with court costs. A court shall award three times actual damages for an intentional violation of this Code section.

(f) It shall be unlawful and punishable by a fine of \$1,000.00 for any towing and storage firm, permitted or unpermitted, licensed or unlicensed, to enter into any agreement with any person in possession of private property to provide automatic or systematic surveillance of such property for purposes of removal and relocation of any trespassing vehicle or personal property except upon call by such person in possession of such private property to such towing and storage firm for each individual case of trespass; provided, further, that it shall be unlawful and punishable by a fine of \$1,000.00 for any person to pay to any private property owner or one in possession of private property any fee or emolument, directly or indirectly, for the right to immobilize or remove a trespassing vehicle or personal property from said private property.

History.

Ga. L. 1962, p. 146, § 1; Ga. L. 1968, p. 321, § 1; Ga. L. 1973, p. 2622, § 1; Ga. L. 1982, p. 2107, § 46; Ga. L. 1987, p. 1442, § 1; Ga. L. 1989, p. 1230, § 1; Ga. L. 1990, p. 8, § 44; Ga. L. 2003, p. 881, §§ 1, 2; Ga. L. 2005, p. 60, § 44/HB 95; Ga. L. 2005, p. 334, § 26-1/HB 501; Ga. L. 2007, p. 228, § 1/HB 316; Ga. L. 2012, p. 580, § 12/HB 865; Ga. L. 2013, p. 838, § 19/HB 323; Ga. L. 2025, p. 672, § 9/HB 551, effective January 1, 2026.

Delayed effective date.

Code Section 44-1-13 is set out twice in this Code. This version is effective

January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2025 amendment, effective January 1, 2026, added paragraph (a)(1.1); rewrote subsections (a.1) and (b); and, in subsection (f), substituted “trespassing vehicle or” for “such vehicle or trespassing”, “person” for “towing and storage firm”, and “immobilize or remove a trespassing vehicle or” for “remove a vehicle or trespassing”.

44-1-14. Abatement of hazard from abandoned well or hole; recovery costs; use of county funds.

JUDICIAL DECISIONS

Circumstantial evidence insufficient to show a tree-planting company’s knowledge of a well. — In a widow’s claim against a tree-planting company for the company’s failure to report an abandoned well as required by O.C.G.A. § 44-1-14, allegedly resulting in her husband’s death when he drove over

the well in a four-wheeler, summary judgment was proper because the widow’s circumstantial evidence that the company was aware of the well could not overcome the company’s direct evidence that the company did not know about the well. *Handberry v. Manning Forestry Servs., LLC*, 353 Ga. App. 150, 836 S.E.2d 545,

2019 Ga. App. LEXIS 608 (2019), cert. denied, No. S20C0605, 2020 Ga. LEXIS 548 (Ga. July 15, 2020).

44-1-18. [Reserved] Execution search prior to conveyance of property; certificate of clearance required; requirements for requests; binding effect; timing of information release; failure to comply; retention; criminal penalties; exceptions; requirements for certificate; regulatory authority.

History.

Code 1981, § 44-1-18, enacted by Ga. L. 2017, p. 723, § 12/HB 337; repealed by Ga. L. 2018, p. 1, § 6/HB 661, effective February 20, 2018.

Editor’s notes.

Ga. L. 2018, p. 1, § 6/HB 661 repealed and reserved this Code section, effective February 20, 2018.

Ga. L. 2018, p. 1112, § 54(e)/SB 365, part of an Act to revise, modernize, and correct the Code, effective May 8, 2018, not codified by the General Assembly, pro-

vides: “In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendments to subsection (a) of this Code section by Ga. L. 2018, p. 1112, § 44(1)/SB 365, were not given effect.

CHAPTER 2

RECORDATION AND REGISTRATION OF DEEDS AND OTHER INSTRUMENTS

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RECORDING OF DEEDS AND OTHER REAL PROPERTY TRANSACTIONS		44-2-20.	Recorded affidavits relating to land as notice of facts cited therein; filing and recording.
Sec. 44-2-2.	Duty of clerk to record certain transaction affecting real estate and personal property; priority of recorded instruments; electronic filings; effect of incorrect tax parcel identification number; effect of recording on rights between parties to instruments.	44-2-23.	[Reserved] When deed serves as evidence; effect of affidavit alleging forgery.
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44-2-5.	Recording execution and deed after sheriff’s sale.	44-2-27.	Recording of plat — When deemed recorded.

Sec.
44-2-28. Recording of plat or copy of plat — Incorporation by reference.

PART 2

**UNIFORM REAL PROPERTY ELECTRONIC
RECORDING**

44-2-39. Adoption of rules and regulations; standardization.
44-2-39. Adoption of rules and regulations; standardization.

Article 2

Land Registration

PART 2

PROCEEDINGS TO REGISTER

44-2-83. Conclusiveness of decree; effect of disability on conclusiveness; recourse of persons under a disability against assurance fund.
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44-2-103.

iner; preliminary report; contents; time of filing.
Examiner's powers; contents, filing, and notice of examiner's report; right to jury trial, new trial, and appeal; recommitment to examiner after trial or reversal on appeal.

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44-2-131. Declaration of title by descent upon petition; service of petition and publication of notice; transfer of registered title and issuance of new certificates; rights of surviving spouse.
44-2-136. Cancellation of mortgage, lien, equity, or lis pendens; entry of cancellation on title register and certificate; procedure upon refusal to authorize cancellation.

PART 8

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44-2-237. Recordation and notation of plat.

ARTICLE 1

RECORDING

Law reviews.

For article, "Eleventh Circuit Survey: January 1, 2013 — December 31, 2013:

Casenote: The Decline and Fall of Constructive Notice," see 65 Mercer L. Rev. 1203 (2014).

JUDICIAL DECISIONS

Constructive notice. — Chapter 7 trustee, as a bona fide purchaser for value, could not take the property at issue free of the creditor's security deed as to the debtor wife's interest in the property because the recording of the security deed

provided constructive notice to the trustee of the creditor's interest in the property. *Pettie v. RBC Mortg. Co. (In re Jackson)*, No. 15-55379-BEM, No. 18-5064-BEM, 2019 Bankr. LEXIS 2883 (Bankr. N.D. Ga. Sept. 17, 2019).

PART 1

RECORDING OF DEEDS AND OTHER REAL PROPERTY TRANSACTIONS

Law reviews.

For article, “Eleventh Circuit Survey:
January 1, 2013 — December 31, 2013:

Casenote: The Decline and Fall of Con-
structive Notice,” see 65 Mercer L. Rev.
1203 (2014).

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

Law reviews.

For article, “Eleventh Circuit Survey:
January 1, 2013 — December 31, 2013:

Casenote: The Decline and Fall of Con-
structive Notice,” see 65 Mercer L. Rev.
1203 (2014).

JUDICIAL DECISIONS

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PRIORITY OF DEEDS FROM SAME VENDOR

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UNRECORDED DEED

General Consideration

**Written instruments of title fa-
vored.** — Neighbor’s 2008 deeds were
recorded before the brothers’ 1977 deed
and the brother’s repeated and visible
activities in the riverbed did not put the
neighbor on notice of the brothers’ claim to
own the entire riverbed; all of the broth-
ers’ activities were consistent with the
brothers’ easement rights and the trial
court did not err in concluding that the
neighbor was an innocent purchaser who
bought the riverbed without notice that
the brothers claimed ownership. *Thomas
v. Henry County Water & Sewerage Auth.*,
317 Ga. App. 258, 731 S.E.2d 66, 2012 Ga.
App. LEXIS 608 (2012), cert. denied, No.
S12C2017, 2013 Ga. LEXIS 308 (Ga. Mar.
25, 2013).

**Remedy of reformation not appro-
priate.** — Remedy of trial court ordering
reformation of a deed was reversed be-
cause the evidence showed that the par-
ties intended the refinance loan to hold
first priority and nothing in the form of
the conveyance was inaccurate. *U. S.
Bank v. Carrington Mortg. Svcs., LLC*,
364 Ga. App. 179, 874 S.E.2d 372, 2022
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Priority of Deeds from Same Vendor

2. Notice

**Chapter 13 trustee was bona fide
purchaser.** — When a security deed ex-
ecuted by Chapter 13 debtors had the
correct street address for the collateral
but an incorrect legal description, the se-
cured creditor was not entitled to postcon-
firmation reformation of the deed because
the Chapter 13 trustee was a hypothetical
bona fide purchaser; there was nothing in
the chain of title that would have put the
trustee on constructive or inquiry notice of
the defect. *Midfirst Bank v. Hill* (In re
Hill), No. 08-11774, No. 09-01082, 2010
Bankr. LEXIS 3484 (Bankr. S.D. Ga. Sept.
29, 2010).

Unrecorded Deed

Effect of unrecorded deed. — Appel-
late court reversed the portion of the trial
court’s order ruling on a bank’s motion for
a declaratory judgment on its reformation
counterclaim because another non-party
held an interest in the real property in
question via an unrecorded quit claim
deed and that individual needed to be
added as a party. *Salas v. JP Morgan*

Chase Bank, N.A., 334 Ga. App. 274, 779 S.E.2d 48, 2015 Ga. App. LEXIS 618 (2015).

Issue of fact as to inquiry notice. —

Trial court erred by granting summary judgment to the plaintiff because the record showed that there was an issue of fact as to whether the defendants' possession of the property put the plaintiff on inquiry notice of the defendants' title despite the defendants' deed not being recorded. *Caraway v. Spillers*, 332 Ga. App. 588, 774 S.E.2d 162, 2015 Ga. App. LEXIS 364 (2015).

Priority of unrecorded deed under Uniform Fraudulent Transfers Act. —

Judgment voiding a transfer of property

as fraudulent under the Uniform Fraudulent Transfers Act (UFTA) (now Uniform Voidable Transactions Act), O.C.G.A. § 18-2-70 et seq., was reversed because, despite not being recorded, the 2002 security deed executed in favor of a former sister-in-law, pledging the property as collateral for a promissory note, gave the former sister-in-law, as one of the defendant's creditors, priority over the plaintiff's judgment, such that the property could not be characterized as the defendant's asset under the UFTA. *Wallin v. Wallin*, 341 Ga. App. 440, 800 S.E.2d 617, 2017 Ga. App. LEXIS 218 (2017).

44-2-2. Duty of clerk to record certain transaction affecting real estate and personal property; priority of recorded instruments; electronic filings; effect of incorrect tax parcel identification number; effect of recording on rights between parties to instruments.

(a) As used in this Code section, the term “self-filer” means any person who is a party to an instrument listed in paragraph (1) of subsection (b) of this Code section who is not:

- (1) An insurance agent or a representative of an insurance agency licensed to sell title insurance in this state;
- (2) An attorney licensed to practice law in this state or a representative of an attorney licensed to practice law in this state;
- (3) Licensed under Chapter 40 of Title 43;
- (4) An agent of a bank or credit union with federal deposit insurance or an affiliate thereof;
- (5) An agent of a licensed or exempt mortgage lender pursuant to Article 13 of Chapter 1 of Title 7;
- (6) An agent of a servicer as such term is defined in 12 C.F.R. Section 1024.2;
- (7) A public official or employee of a federal, state, or local government or a department, agency, board, commission, or authority thereof performing their official duties; or
- (8) A professional land surveyor licensed under Chapter 15 of Title 43 and in good standing with the Georgia Professional Engineers and Land Surveyors Board.

(b)(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 as provided for by law;

(D) Maps or plats relating to real estate in the county; and

(E) State tax executions and state tax execution renewals as provided for in Article 2 of Chapter 3 of Title 48.

(2) As used in this subsection, the term “liens” shall have the same meaning as described 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 index the names of parties in the manner provided by such rules and regulations adopted by the Georgia Superior Court Clerks’ Cooperative Authority pursuant to the provisions of Code Section 15-6-61 as authorized by Code Section 15-6-97.

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

(c) 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.

(d) The clerk of the superior court shall offer electronic filing for the recording of all instruments listed in paragraph (1) of subsection (b) of this Code section. On and after January 1, 2025, any instrument listed in paragraph (1) of subsection (b) of this Code section presented to a clerk of superior court for recording by a self-filer shall be submitted using electronic filing.

(e) The clerk of the superior court shall make available a public computer terminal which provides a filer with access to the Georgia Superior Court Clerks’ Cooperative Authority’s electronic filing portal.

(f) The presence of an incorrect tax parcel identification number, or the absence of a tax parcel identification number, on a recorded instrument shall not:

(1) Void or render voidable such instrument;

(2) Affect the validity, enforceability, or priority of such instrument; or

(3) Affect any notice, constructive or otherwise, provided by the recordation of such instrument.

(g) Nothing in this Code section shall be construed to affect the validity, enforceability, or priority of any deed, mortgage, judgment, or lien of any kind between the parties thereto.

History.

Ga. L. 1889, p. 106, §§ 1, 4; Civil Code 1895, §§ 2778, 2781; Civil Code 1910, §§ 3320, 3323; Code 1933, §§ 67-2501, 67-2503; Code 1981 § 44-2-2; Ga. L. 1982, p. 3, § 44; Ga. L. 2002, p. 799, § 5; Ga. L. 2006, p. 334, § 1/SB 306; Ga. L. 2016, p. 193, § 3/HB 1004; Ga. L. 2017, p. 723, § 13/HB 337; Ga. L. 2017, p. 774, § 44/HB 323; Ga. L. 2018, p. 1, § 7/HB 661; Ga. L. 2022, p. 280, § 1/HB 974; Ga. L. 2024, p. 553, § 1-1/HB 1292, effective January 1, 2025.

Amendments.

The 2016 amendment, effective January 1, 2017, deleted “, as required by paragraph (2) of subsection (b) of Code Section 15-6-67, as both the grantor and grantee” following “caption of the plat” at the end of paragraph (a)(4).

The first 2017 amendment, effective January 1, 2018, substituted “as provided for by law” for “of all kinds” in subparagraph (a)(1)(C); substituted “; and” for a period at the end of subparagraph (a)(1)(D); added subparagraph (a)(1)(E); in paragraph (a)(2), substituted “As used in” for “For the purpose of” at the beginning, inserted “the term” near the middle, and substituted “have the same meaning” for “be defined” in the middle; added the second and third sentences in paragraph (a)(3); added subparagraphs (a)(3)(A) through (a)(3)(D); and deleted “the” preceding “superior court” near the middle of subsection (b).

The second 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted “As used in this subsection, the term ‘liens’ shall have the same meaning” for “For the purpose of this subsection, ‘liens’ shall be defined” at the beginning of paragraph (a)(2).

The 2018 amendment, effective February 20, 2018, rewrote paragraph (a)(3).

The 2022 amendment, effective July 1, 2023, deleted “and” from the end of subparagraph (a)(1)(C); substituted “described” for “provided” in paragraph (a)(2); substituted “of the superior court” for “of superior court” in paragraph (a)(4) and subsection (b); redesignated former subsection (c) as present subsection (f); added subsections (c) through (e); and substituted “validity, enforceability, or priority” for “validity or force” in subsection (f).

The 2024 amendment, effective January 1, 2025, added subsection (a); redesignated former subsections (a) through (f) as present subsections (b) through (g); designated the existing provisions of subsection (d) as paragraph (d)(1); and, in paragraph (d)(1), substituted “subsection (b)” for “subsection (a)” in the first sentence and added the second sentence.

Cross references.

Recordation of plats and condominium plans, § 15-6-67.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2024, the paragraph (d)(1) designation was removed.

Editor’s notes.

Ga. L. 2016, p. 193, § 3/HB 1004, which amended this Code section, purported to amend paragraph (b)(4) but actually amended paragraph (a)(4).

Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State Tax Execution Modernization Act.’”

Law reviews.

For annual survey on real property law, see 74 Mercer L. Rev. 233 (2022).

JUDICIAL DECISIONS

ANALYSIS

APPLICABILITY

PRIORITIES

- 2. CONSTRUCTION OF SECTION AS TO DEEDS
- 3. NOTICE

Applicability

Waiver was a recordable interest. —

Bankruptcy court rejected the conclusion that a properly executed and attested waiver was not recordable under Georgia law as that conclusion elevated form over substance. The waiver stated that it was incorporated into and deemed to amend and supplement the security deed and, thus, notwithstanding its title, the waiver was in substance an amendment to the security deed and, therefore, a deed that was a recordable instrument under Georgia law. *Kelley v. USAA Fed. Sav. Bank* (In re Jones), 580 B.R. 916, 2017 Bankr. LEXIS 4052 (Bankr. M.D. Ga. 2017).

Materialman’s lien had priority over later recorded security deed. —

Subcontractor’s lien filed before a lender’s security deed was superior to the deed pursuant to O.C.G.A. § 44-2-2(b). The general contractor’s affidavit that the subcontractors had been or will be paid was insufficient to satisfy the plain language of O.C.G.A. § 44-14-361.2(a), requiring a statement that payment had been made, and did not extinguish the lien. *Ga. Primary Bank v. Atlanta Paving, Inc.*, 309 Ga. App. 851, 711 S.E.2d 409, 2011 Ga. App. LEXIS 474 (2011).

Priorities

2. Construction of Section as to Deeds

Priority of unrecorded deed in Uniform Fraudulent Transfers Act action. —

Judgment voiding a transfer of property as fraudulent under the Uniform Fraudulent Transfers Act (UFTA) (now Uniform Voidable Transactions Act), O.C.G.A. § 18-2-70 et seq., was reversed because, despite not being recorded, the 2002 security deed executed in favor of a former sister-in-law, pledging the property as collateral for a promissory

note, gave the former sister-in-law, as one of the defendant’s creditors, priority over the plaintiff’s judgment, such that the property could not be characterized as the defendant’s asset under the UFTA. *Wallin v. Wallin*, 341 Ga. App. 440, 800 S.E.2d 617, 2017 Ga. App. LEXIS 218 (2017).

Remedy of reformation not appropriate in refinance loan. —

Remedy of trial court ordering reformation of a deed was reversed because the evidence showed that the parties intended the refinance loan to hold first priority and nothing in the form of conveyance was inaccurate. *U. S. Bank v. Carrington Mortg. Svcs., LLC*, 364 Ga. App. 179, 874 S.E.2d 372, 2022 Ga. App. LEXIS 281 (2022).

3. Notice

What constitutes notice of prior deed. —

Neighbor’s 2008 deeds were recorded before the brothers’ 1977 deed and the brother’s repeated and visible activities in the riverbed did not put the neighbor on notice of the brothers’ claim to own the entire riverbed; all of the brothers’ activities were consistent with the brothers’ easement rights and the trial court did not err in concluding that the neighbor was an innocent purchaser who bought the riverbed without notice that the brothers claimed ownership. *Thomas v. Henry County Water & Sewerage Auth.*, 317 Ga. App. 258, 731 S.E.2d 66, 2012 Ga. App. LEXIS 608 (2012), cert. denied, No. S12C2017, 2013 Ga. LEXIS 308 (Ga. Mar. 25, 2013).

Constructive notice. —

Chapter 7 trustee, as a bona fide purchaser for value, could not take the property at issue free of the creditor’s security deed as to debtor wife’s interest in the property because the recording of the security deed provided constructive notice to the trustee of the creditor’s interest in the property. *Pettie v. RBC Mortg. Co.* (In re Jackson), No.

15-55379-BEM, No. 18-5064-BEM, 2019 Bankr. LEXIS 2883 (Bankr. N.D. Ga. Sept. 17, 2019).

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

JUDICIAL DECISIONS

Avoidance by bankruptcy trustee.

— Bankruptcy trustee was entitled to avoid a lien on real property under the strong arm powers because a hypothetical bona fide purchaser of the property would have prevailed over the bank's interest as of the date of the commencement of the case; the bank's cancellation of a lien was the last document in the records. Moreover, the bank failed to reinstate the security deed prior to the trustee's intervention as a bona fide purchaser. *AFB&T v. Custom Contrs. & Assocs.* (In re Custom Contrs. & Assocs.), No. 08-11806, No. 09-01002, 2009 Bankr. LEXIS 5715 (Bankr. S.D. Ga. Dec. 3, 2009).

Although the debtor executed a deed to secure debt in favor of the defendant that conveyed an interest in certain property prior to the debtor's petition date, the security deed was not recorded by the defendant until after the defendant's petition date. Under Georgia law, an unrecorded voluntary deed or conveyance was

void as against a subsequent bona fide purchaser (BFP) for value without notice of such voluntary deed or conveyance and, thus, the trustee, who was a BFP on the date the petition was filed, could avoid the transfer and preserve the transfer for the benefit of the estate. *Lubin v. Murphy* (In re Murphy), No. 15-56050-WLH, No. 16-5269, 2017 Bankr. LEXIS 3553 (Bankr. N.D. Ga. Oct. 13, 2017).

Chapter 13 trustee was bona fide purchaser. — When a security deed executed by Chapter 13 debtors had the correct street address for the collateral but an incorrect legal description, the secured creditor was not entitled to postconfirmation reformation of the deed because the Chapter 13 trustee was a hypothetical bona fide purchaser; there was nothing in the chain of title that would have put the trustee on constructive or inquiry notice of the defect. *Midfirst Bank v. Hill* (In re Hill), No. 08-11774, No. 09-01082, 2010 Bankr. LEXIS 3484 (Bankr. S.D. Ga. Sept. 29, 2010).

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

JUDICIAL DECISIONS

Impact of failure to probate a will.

— Trial court did not err in granting a bank's motion for summary judgment in the bank's quiet title action against a testator's niece and great-niece on the ground that under O.C.G.A. § 44-2-4(a), the priority of a security deed the testator's stepson gave to a mortgage company, which assigned its interest in the property to the bank, was protected from the interests the niece and great-niece held that were grounded in the testator's unrecorded will because there was nothing in the record that

would render O.C.G.A. § 44-2-4(a) inapplicable since the notice created by the possession of the niece and great-niece was only constructive notice, and there was no evidence that the company had any actual notice of the will or of the interests created thereby; the statute applies equally to give protection to those who take an interest in realty when there are other interests that exist, but are not of record, because of a failure to probate a will. *Riggins v. Deutsche Bank Nat'l Trust Co.*, 288 Ga. 850, 708 S.E.2d 266, 2011 Ga. LEXIS 250 (2011).

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.

History.

Laws 1845, Cobb’s 1851 Digest, p. 179.; Code 1863, § 2671; Code 1868, § 2667; Code 1873, § 2709; Code 1882, § 2709; Civil Code 1895, § 3625; Civil Code 1910, § 4207; Code 1933, § 29-412; Ga. L. 2011, p. 99, § 76/HB 24.

Amendments.

The 2011 amendment, effective January 1, 2013, inserted “or her” in the first sentence and deleted the second sentence, which read: “In the event of the loss or destruction of the original execution, a copy of the record shall be admitted in

evidence.” See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.

For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

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

Cross references.

Admissibility of other evidence, § 24-10-1004.
Admission of public records, § 24-10-1005.

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.

History.

Laws 1785, Cobb's 1851 Digest, p. 164.; Laws 1827, Cobb's 1851 Digest, pp. 171, 172.; Laws 1839, Cobb's 1851 Digest, p. 177.; Laws 1850, Cobb's 1851 Digest, pp. 180, 181.; Ga. L. 1849-50, p. 149, § 1; Ga. L. 1853-54, p. 26, § 1; Code 1863, § 2668; Code 1868, § 2664; Code 1873, § 2706; Code 1882, § 2706; Ga. L. 1893, p. 37, § 1; Civil Code 1895, § 3620; Civil Code 1910, § 4202; Ga. L. 1924, p. 83, § 1; Ga. L. 1931, p. 153, § 1; Code 1933, § 29-405; Ga. L. 1963, p. 188, § 39; Ga. L. 1994, p.

1943, § 1; Ga. L. 2012, p. 173, § 1-33/HB 665.

Amendments.

The 2012 amendment, effective July 1, 2012, in the first sentence of subsection (a), substituted "Except for documents electronically filed as provided for in Chapter 12 of Title 10, and in other Code sections in this part, before" for "Before" at the beginning and substituted "shall be an original instrument and shall be" for "must be" near the end.

JUDICIAL DECISIONS

Attestation of security deed. — First sentence of O.C.G.A. § 44-14-33 and the statutory recording scheme indicate that the word "duly" in the second sentence of § 44-14-33 should be understood to mean that a security deed is "duly filed, recorded, and indexed" only if the clerk responsible for recording determines, from the face of the document, that it is in the proper form for recording, meaning that it is attested or acknowledged by a proper officer and (in the case of real property) an additional witness; the General Assembly chose to enact the 1995 amendment to O.C.G.A. § 44-14-33 not as a freestanding Code provision but as an addition to a Code provision clearly referenced by O.C.G.A. § 44-14-61, and the General Assembly is presumed to have been aware of the existing state of the law when the legislature enacted the 1995 amendment so the placement of the amendment makes complete sense. *United States Bank Nat'l Ass'n v. Gordon*, 289 Ga. 12, 709 S.E.2d 258, 2011 Ga. LEXIS 271 (2011).

Deed ineligible for recordation. — To the extent that the trial court found that the purchaser had constructive notice of the bank's security deed, it erred because the security deed lacked the signature of an unofficial witness, which made it unrecordable under O.C.G.A. § 44-14-61; however, the assignment referencing the security deed provided inquiry notice, which charged the purchaser with notice of facts that would be discovered upon reasonable investigation. *WW3 Ventures v. Bank of N.Y. Mellon*, 370 Ga. App. 160, 894 S.E.2d 680, 2023 Ga. App. LEXIS 536 (2023).

Presumption of delivery established. — Trial court erred granting summary judgment to the executor because the deed contained a recital that it was signed, sealed, and delivered in the presence of the two witnesses, which raised a presumption of delivery, and the girlfriend remained in the home and kept belongings there while the decedent lived in the lake house. *Smith v. Tibbits*, 359 Ga. App. 362, 857 S.E.2d 820, 2021 Ga. App. LEXIS 200 (2021).

44-2-15. Officers authorized to attest registrable instruments.**JUDICIAL DECISIONS**

Deed ineligible for recordation. — To the extent that the trial court found that the purchaser had constructive notice of the bank's security deed, it erred because the security deed lacked the signature of an unofficial witness, which made it unrecordable under O.C.G.A. § 44-14-61; however, the assignment referencing the security deed provided inquiry notice, which charged the purchaser with notice of facts that would be discovered upon reasonable investigation. *WW3 Ventures v. Bank of N.Y. Mellon*, 370 Ga. App. 160, 894 S.E.2d 680, 2023 Ga. App. LEXIS 536 (2023).

Lack of attestation or acknowledgment as affecting notice. — Bankruptcy trustee was entitled to avoid a security deed, pursuant to 11 U.S.C. § 544, because the security deed was not duly recorded as the security deed did not appear to have two signatures and, therefore, did not appear to comply with all the statutory requirements under O.C.G.A. §§ 44-2-15 and 44-14-33. *Gordon v. Ameritrust Mortg. Co. LLC* (In re Nesbitt), No. 09-72233-WLH, No. 11-5251, 2013 Bankr. LEXIS 3979 (Bankr. N.D. Ga. Sept. 13, 2013).

Trustee was entitled to avoid a creditor's security interest under the strong arm powers because it was not validly perfected under Georgia law; a security deed did not contain the requisite signature of an unofficial witness. One affidavit failed to meet the incorporation requirement set out in the security deed, and an attorney's affidavits did not properly show that the attorney witnessed a debtor's execution of the security deed; rather, the affidavits were merely an affirmation that the attorney's explanations preceded the debtor's execution. *Gordon v. OneWest Bank FSB*, (In re Blackmon), 509 B.R. 415, 2014 Bankr. LEXIS 1518 (Bankr. N.D. Ga. 2014).

Per O.C.G.A. § 44-2-15, the senior security deed was unperfected at the time of its recordation and could not have placed a bona fide purchaser on notice of

the creditor's interest where a notary's statement confirmed that debtors signed the deed sometime before presenting it to her, and therefore, she could not have witnessed the debtors' execution of it. In re *Handrix*, No. 20-06025-LRC, 2023 Bankr. LEXIS 391 (Bankr. N.D. Ga. Feb. 13, 2023).

Improper attestation of deed. — Notary was required to place the notary seal on any notarial act, including attestation of the Bank Security Deed, and failure to do so rendered the Bank Security Deed ineligible for recordation because an officer as provided in O.C.G.A. § 44-2-15 did not attest to execution of the deed in accordance with O.C.G.A. § 44-14-61. To rule otherwise would make the requirements imposed on notary publics under O.C.G.A. § 45-17-6(a)(1) inapplicable to the common notarial act of attesting to a security deed. *Kelley v. Thomasville Nat'l Bank* (In re Taylor), No. 16-70218- JTL, No. 16-07006, 2016 Bankr. LEXIS 4202 (Bankr. M.D. Ga. Dec. 7, 2016).

Agreement properly construed as valid deed. — Trial court did not err by determining that the original Redemption Agreement could be construed as a valid deed because O.C.G.A. §§ 44-2-15 and 44-5-30 do not provide that unless so attested, a deed is void and O.C.G.A. § 44-5-33 provides that no prescribed form is essential to the validity of a deed to lands. *Bagwell v. Trammel*, 297 Ga. 873, 778 S.E.2d 173, 2015 Ga. LEXIS 671 (2015).

Presumption of delivery established. — Trial court erred granting summary judgment to the executor because the deed contained a recital that it was signed, sealed, and delivered in the presence of the two witnesses, which raised a presumption of delivery, and the girlfriend remained in the home and kept belongings there while the decedent lived in the lake house. *Smith v. Tibbits*, 359 Ga. App. 362, 857 S.E.2d 820, 2021 Ga. App. LEXIS 200 (2021).

44-2-18. Recording deed upon affidavit of subscribing witness; effect of substantial compliance.

If a deed is not attested by one of the officers named in Code Section 44-2-15, it may be recorded upon the affidavit of a subscribing witness, which affidavit shall be made before any one of the officers named in Code Section 44-2-15 and shall testify to the execution of the deed and its attestation according to law. A substantial compliance with the requirements of this Code section shall be held sufficient in the absence of all suspicion of fraud.

History.

Laws 1850, Cobb's 1851 Digest, p. 181.; Code 1863, § 2669; Code 1868, § 2665; Code 1873, § 2707; Code 1882, § 2707; Civil Code 1895, § 3623; Civil Code 1910, § 4205; Code 1933, § 29-410; Ga. L. 2023, p. 599, § 1/HB 182, effective May 4, 2023.

Amendments.

The 2023 amendment, effective May 4, 2023, substituted "If a deed is not attested by one of the officers" for "If a deed is neither attested by nor acknowledged before one of the officers" at the beginning of this Code section.

Editor's notes.

Ga. L. 2023, p. 599, § 4/HB 182, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all deeds and other instruments recorded pursuant to Code Section 44-14-61 from July 1, 2015.

Law reviews.

For article, "Eleventh Circuit Survey: January 1, 2013 — December 31, 2013: Casenote: The Decline and Fall of Constructive Notice," see 65 Mercer L. Rev. 1203 (2014).

JUDICIAL DECISIONS

Acknowledgement language remains. — Remedial statute continues to track the language of the pre-2015 recording statute and, therefore, the acknowledgment language remains. This does not mean that the remedial statute is now inapplicable to security deeds that were acknowledged but remain defective under the revised recording statute. *Scarver v. Pingora Loan Servicing, LLC* (In re Lindstrom), 608 B.R. 283, 2019 Bankr. LEXIS 2663 (Bankr. N.D. Ga. 2019), rev'd, 621 B.R. 42, 2020 U.S. Dist. LEXIS 158260 (N.D. Ga. 2020), aff'd, No. 1:19-cv-3979-MLB, 2023 U.S. Dist. LEXIS 50885 (N.D. Ga. Feb. 6, 2023).

Closing attorney's affidavit did not cure the lack of attestation on the security deed. — When the closing attorney's signature on the security deed's signature page was an acknowledgement of the borrower's signatures instead of an attestation, the language of the closing attorney's affidavit did not cure the lack of attestation on the security deed and did not satisfy the Curing Statute, O.C.G.A. §

44-2-18. *Trauner v. Caliber Home Loans, Inc.* (In re Grier), No. 19-68798-JWC, No. 20-6043-JWC, 2022 Bankr. LEXIS 2757 (Bankr. N.D. Ga. Sept. 30, 2022).

Subscribing witness. — Term "subscribing witness" describes only witnesses who attest a deed and not those who are merely involved in its acknowledgment. Here the loan companies conceded that the attorney who produced the affidavit they relied on did not attest the deed and only certified its acknowledgment. Without a subscribing witness, the remedial statute was not satisfied. *Pingora Loan Servicing, LLC v. Scarver* (In re Lindstrom), 30 F.4th 1086, 2022 U.S. App. LEXIS 9423 (11th Cir. 2022).

Although subscribing witnesses must also produce a sufficient affidavit to satisfy the remedial statute, the only way to qualify as a subscribing witness is to attest the deed itself. The closing attorney did not. So he was not a subscribing witness, and the loan companies' attempt to save the deed failed. *Pingora Loan Servicing, LLC v. Scarver* (In re

Lindstrom), 30 F.4th 1086, 2022 U.S. App. LEXIS 9423 (11th Cir. 2022).

What constitutes substantial compliance. — Affidavit signed by a notary testified to both execution and attestation of a security deed and, thus, substantially complied with the requirements of O.C.G.A. § 44-2-18 to cure any defect in attestation under O.C.G.A. §§ 44-14-33 and 44-14-61 caused by the notary's signature appearing under the term "acknowledgement." As the affidavit cured the defect, the security deed was eligible for recordation under Georgia law, and its recordation provided constructive notice to subsequent bona fide purchasers and, thus, a bankruptcy trustee could not use the trustee's strong-arm powers to avoid the security deed. *Kelley v. Wells Fargo Bank, N.A.* (In re Perry), 565 B.R. 442, 2017 Bankr. LEXIS 256 (Bankr. M.D. Ga. 2017).

Because the closing attorney was not a subscribing witness, the affidavit failed to substantially comply with the remedial statute to cure the defect in the security deed. It followed that the security deed, as recorded, did not provide constructive notice to subsequent bona fide purchasers and the trustee could therefore avoid the security deed pursuant to 11 U.S.C. § 544(a)(3) and recover the property or the property's value from the defendants pursuant to 11 U.S.C. § 550. *Scarver v. Pingora Loan Servicing, LLC* (In re Lindstrom), 608 B.R. 283, 2019 Bankr. LEXIS 2663 (Bankr. N.D. Ga. 2019), rev'd, 621 B.R. 42, 2020 U.S. Dist. LEXIS 158260 (N.D. Ga. 2020), aff'd, No. 1:19-cv-3979-MLB, 2023 U.S. Dist. LEXIS 50885 (N.D. Ga. Feb. 6, 2023).

44-2-20. Recorded affidavits relating to land as notice of facts cited therein; filing and recording.

(a) Recorded affidavits shall be notice of the facts therein recited, whether taken at the time of a conveyance of land or not, where such affidavits show:

- (1) The relationship of parties or other persons to conveyances of land;
- (2) The relationship of any parties to any conveyance with other parties whose names are shown in the chain of title to lands;
- (3) The age or ages of any person or persons connected with the chain of title;
- (4) Whether the land embraced in any conveyance or any part of such land or right therein has been in the actual possession of any party or parties connected with the chain of title;
- (5) The payment of debts of an unadministered estate;
- (6) The fact or date of death of any person connected with such title;
- (7) Where such affidavits relate to the identity of parties whose names may be shown differently in chains of title;
- (8) Where such affidavits show the ownership or adverse possession of lands or that other persons have not owned such lands nor been in possession of same; or

(9) Where such affidavits state any other fact or circumstance affecting title to land or any right, title, interest in, or lien or encumbrance upon land.

Any such affidavits may be made by any person, whether connected with the chain of title or not.

(b) Reserved.

(c) Affidavits referred to in subsection (a) of this Code section shall be filed by the clerk of the superior court of the county where the land is located and shall contain a caption referring to the current owner and to a deed or other recorded instrument in the chain of title of the affected land. The clerk of the superior court shall record such affidavits, shall enter on the deed or other recorded instrument so referred to the book and page number on which such affidavit may be recorded, and shall index same in the name of the purported owner as shown by such caption in both grantor and grantee indexes in deed records as conveyances of lands are recorded and indexed; and the clerk shall receive the same compensation therefor as for recording deeds to lands.

History.

Ga. L. 1955, p. 614, §§ 1-3; Ga. L. 1982, p. 3, § 44; Ga. L. 2011, p. 99, § 77/HB 24.

Amendments.

The 2011 amendment, effective January 1, 2013, substituted “Reserved” for the former provisions of subsection (b), which read: “(b) In any litigation over any of the lands referred to and described in any of the affidavits referred to in subsection (a) of this Code section in any court in this state or in any proceedings in any such court involving the title to such lands wherein the facts recited in such affidavits may be material, the affidavits or certified copies of the record thereof shall be admissible in evidence and there shall be a rebuttable presumption that the statements in said affidavits are true. The affidavits or certified copies thereof shall only be admissible as evidence in the event the parties making the affidavits

are deceased; they are nonresidents of the state; their residences are unknown to the parties offering the affidavits; or they are too old, infirm, or sick to attend court.”; and, in subsection (c), substituted “subsection (a)” for “subsections (a) and (b)” in the first sentence and substituted “the clerk” for “he” near the end of the last sentence. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.

For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

JUDICIAL DECISIONS

Recorded affidavits not conveyances. — O.C.G.A. §§ 14-5-46 and 14-5-47 were not applicable to a national church’s action to quiet title in property held by a local church because there was no deed of conveyance to the trustees of the local church; two recorded title

affidavits executed by lifetime attendees of the local church, one 79 years old and the other 80, asserted there had never been a question concerning the church’s right of ownership of the property, but recorded affidavits relating to land were not conveyances or a legal proceeding by

which one could attack the title to realty or cure a defect in the title, O.C.G.A. § 44-2-20. *Kemp v. Neal*, 288 Ga. 324, 704 S.E.2d 175, 2010 Ga. LEXIS 936 (2010).

Affidavit not part of property's chain of title. — With respect to the issue of whether a Chapter 7 trustee was a bona fide purchaser under 11 U.S.C. § 544 of the debtor husband's interest, the fact that a corrective deed was cross-indexed with a special warranty deed did not pull the corrective deed into the property's chain of title. A bank's analogy to recordable affidavits under Georgia law was inapposite because, setting aside that the statute applied specifically to affidavits containing particular information, nothing in that statute stated that cross-indexing a recordable affidavit made the affidavit part of a property's chain of title. *Bank of Am., N.A. v. Adams (In re Adams)*, 583 B.R. 541, 2018 Bankr. LEXIS 1003 (Bankr. N.D. Ga. 2018).

Affidavits describing relationship of parties and other facts affecting title to property. — Because the allegations in the affidavits of title simply described either the relationship of the parties or other objective facts or circumstances affecting title to the property and nearly all of those allegations were asserted or confirmed by the property owner either in the property owner's answer to the bank's complaint, the property owner's counterclaim, or the property owner's brief on appeal, the trial court did not abuse the court's discretion in effectively granting the motion to quash the subpoena for the bank's counsel and in refusing to allow the property owner to question the bank's counsel. *Cronan v. JP Morgan Chase Bank, N.A.*, 336 Ga. App. 201, 784 S.E.2d 57, 2016 Ga. App. LEXIS 147 (2016), overruled in part, *SRM Group, Inc. v. Travelers Prop. Cas. Co. of Am.*, 308 Ga. 404, 841 S.E.2d 729, 2020 Ga. LEXIS 235 (2020).

44-2-21. Recording instrument executed out of state; attestation and acknowledgment; validity of attestation by officer who appears to have no jurisdiction to attest the instrument.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Fraudulent deed was facially regular and operated to release security interest. — A 2003 warranty deed that operated to release a prior lender's security interest in the property was not a forgery but was signed by someone fraudulently assuming the authority of an officer of the prior lender and was regular on the deed's face. Therefore, a subse-

quent lender that foreclosed on the property and purchased the property at the foreclosure sale was a bona fide purchaser for value entitled to take the property free of the prior lender's security interest. *Deutsche Bank Nat'l Trust Co. v. JP Morgan Chase Bank, N.A.*, 307 Ga. App. 307, 704 S.E.2d 823, 2010 Ga. App. LEXIS 1082 (2010), cert. denied, No. S11C0595, 2011 Ga. LEXIS 359 (Ga. Apr. 26, 2011).

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

JUDICIAL DECISIONS

Deed referencing a plat with certain description established bound-

ary. — In a boundary dispute, pursuant to O.C.G.A. § 44-2-22, a landowner

established a prima facie case upon showing good record title for a period of 40 years: the landowner's 1956 deed referenced a survey plat that described the boundary with certain metes and

bounds and measurements, while the neighbors' 1936 deed provided insufficient means to determine the boundary. *Mathews v. Cloud*, 294 Ga. 415, 754 S.E.2d 70, 2014 Ga. LEXIS 59 (2014).

44-2-23. [Reserved] When deed serves as evidence; effect of affidavit alleging forgery.

History.

Laws 1812, Cobb's 1851 Digest, p. 167; Laws 1827, Cobb's 1851 Digest, p. 172; Laws 1841, Cobb's 1851 Digest, p. 178; Ga. L. 1855-56, p. 143, § 1; Code 1863, § 2674; Code 1868, § 2670; Code 1873, § 2712; Code 1882, § 2712; Civil Code 1895, § 3628; Civil Code 1910, § 4210; Code 1933, § 29-415; repealed by Ga. L. 2011, p. 99, § 78/HB 24, effective January 1, 2013.

Editor's notes.

Ga. L. 2011, p. 99, § 78/HB 24 repealed and reserved this Code section, effective January 1, 2013. For comparable present provisions, see § 24-8-803.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

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

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

History.

Ga. L. 1929, p. 321, § 1; Code 1933, § 29-420; Ga. L. 1950, p. 413, § 1; Ga. L. 2016, p. 193, § 4/HB 1004.

Amendments.

The 2016 amendment, effective January 1, 2017, substituted the present provisions of this Code section for the former provisions, which read: "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."

44-2-26. Recording of plat or copy of plat — When and where authorized; duty of clerk.

The owner of real property or of any interest therein or any holder of a lien thereon may file a plat of the property in the office of the clerk of superior court of the county in which the property or any part thereof is located. It shall be the duty of the clerk to record and index any plat that conforms with Code Section 15-6-67.

History.

Ga. L. 1937, p. 746, § 1; Ga. L. 2012, p. 173, § 1-34/HB 665; Ga. L. 2016, p. 193, § 5/HB 1004.

Amendments.

The 2012 amendment, effective July 1, 2012, substituted “digital” for “photostatic” twice in this Code section, and added “that conforms with Code Section 15-6-67” at the end of the last sentence.

The 2016 amendment, effective Janu-

ary 1, 2017, in the first sentence, substituted “may file a plat of the property in the office of the clerk of superior court” for “may have a plat of the property or a blueprint, tracing, digital copy, or other copy of a plat of the property recorded and indexed in the office of the clerk of the superior court”, and deleted “or any blueprint, tracing, digital copy, or other copy of the plat” following “any plat” in the second sentence.

44-2-27. Recording of plat — When deemed recorded.

When any plat is filed by the clerk of superior court, such filing shall be deemed a recording of the plat.

History.

Ga. L. 1937, p. 746, § 2; Ga. L. 2016, p. 193, § 6/HB 1004.

Amendments.

The 2016 amendment, effective January 1, 2017, substituted the present provisions of this Code section for the former

provisions, which read: “When any plat or any blueprint, tracing, photostatic copy, or other copy of the plat is securely pasted or fastened in the book provided by the clerk for that purpose, such pasting or fastening shall be deemed a recording of the plat.”

44-2-28. Recording of plat or copy of plat — Incorporation by reference.

When any deed, mortgage, or other instrument conveying an interest in or creating a lien on real property refers to the boundaries, metes, courses, or distances of the real estate delineated or shown on any plat of the property or on any blueprint, tracing, photostatic or digital copy, or other copy of the plat which has been recorded as authorized in Code Section 44-2-26 and when the deed, mortgage, or other instrument states the office, book, and page of recordation of the plat or of the blueprint, tracing, photostatic or digital copy, or other copy of the plat, the reference shall be equivalent to setting forth in the deed, mortgage, or other instrument the boundaries, metes, courses, or distances of the real estate as may be delineated or shown on the plat or on the blueprint, tracing, photostatic or digital copy, or other copy thereof.

History.

Ga. L. 1937, p. 746, § 3; Ga. L. 1982, p. 3, § 44; Ga. L. 2016, p. 193, § 7/HB 1004.

Amendments.

The 2016 amendment, effective January 1, 2017, inserted “or digital” throughout this Code section.

PART 2

UNIFORM REAL PROPERTY ELECTRONIC RECORDING

44-2-39. Adoption of rules and regulations; standardization.

(a) The authority shall adopt rules and regulations and any standardized forms necessary to implement this part.

(b) To promote uniform standards and practices and compatibility of technology used within offices of clerks of superior court in this state and recording offices in other states that have enacted or may enact provisions substantially similar to those contained within this part, the authority shall consider when adopting, amending, and repealing its rules and regulations and any standardized forms:

(1) Standards and practices of other jurisdictions;

(2) The most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;

(3) The views of interested persons and governmental officials and entities;

(4) The needs of counties of varying size, population, and resources; and

(5) Standards that ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

History.

Code 1981, § 44-2-39, enacted by Ga. L. 2009, p. 695, § 1/HB 127; Ga. L. 2024, p.

553, § 1-2/HB 1292, effective January 1, 2025.

44-2-39. Adoption of rules and regulations; standardization.

(a) The authority shall adopt rules and regulations and any standardized forms necessary to implement this part.

(b)(1) The rules and regulations adopted by the authority pursuant to this Code section shall include any rules and regulations necessary to ensure that any individual wanting to submit electronic documents for recording, regardless of whether such individual is acting on his or her own behalf or on behalf of another person and prior to such individual submitting to a clerk of the superior court any electronic documents for recording, provide through the authority's electronic filing portal information sufficient to identify such individual. Such information may include, without limitation, a copy of the individual's driver's license, passport, military identification card, or identification card authorized under Code Sections 40-5-100 through 40-5-104.

(2) Any information required to be provided by an individual pursuant to the rules and regulations adopted by the authority pursuant to paragraph (1) of this subsection shall be retained by the authority, shall not be subject to Article 4 of Chapter 18 of Title 50, and shall be treated as confidential and released only:

(A) To peace officers in the course of investigating potential crimes;

(B) In response to a subpoena, discovery request, or court order;

(C) To an individual who holds a recorded interest in real property that was the subject of an electronic document that was submitted for recording by the individual who provided such information; or

(D) To an individual who is named as a party in an electronic document that was submitted for recording by the individual who provided such information.

(c) To promote uniform standards and practices and compatibility of technology used within offices of clerks of superior court in this state and recording offices in other states that have enacted or may enact provisions substantially similar to those contained within this part, the authority shall consider when adopting, amending, and repealing its rules and regulations and any standardized forms:

(1) Standards and practices of other jurisdictions;

(2) The most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;

(3) The views of interested persons and governmental officials and entities;

(4) The needs of counties of varying size, population, and resources; and

(5) Standards that ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

History.

Code 1981, § 44-2-39, enacted by Ga. L. 2009, p. 695, § 1/HB 127; Ga. L. 2024, p. 553, § 1-2/HB 1292, effective January 1, 2025; Ga. L. 2025, p. 1029, § 44(1)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modern-

ize, and correct the Code, substituted “identification card” for “personal identification card” near the end of the second sentence of paragraph (b)(1).

ARTICLE 2

LAND REGISTRATION

PART 1

IN GENERAL

44-2-40. Short title.

Law reviews.

For article, “Tracing Georgia’s English Common Law Equity Jurisprudential

Roots: Quia Timet,” see 14 The Journal of Southern Legal History 135 (2006).

44-2-43. Fraud, forgery, and theft in connection with registration of title to land; penalty.

JUDICIAL DECISIONS

No private right of action. — Because no state court would find that a borrower’s complaint stated a claim against a non-diverse foreclosure administrator, whether under O.C.G.A. § 44-2-43 (because the statute did not provide a private right of action) or common law, the administrator was

properly dismissed and its citizenship properly disregarded under the doctrine of fraudulent joinder for purposes of diversity jurisdiction and removal. *Restivo v. Bank of Am. Corp.*, 618 Fed. Appx. 537, 2015 U.S. App. LEXIS 11728 (11th Cir. 2015).

PART 2

PROCEEDINGS TO REGISTER

44-2-83. Conclusiveness of decree; effect of disability on conclusiveness; recourse of persons under a disability against assurance fund.

Every decree rendered as provided in this article shall bind the land and bar all persons claiming title thereto or interest therein, shall quiet the title thereto, and shall be forever binding and conclusive upon and against all persons, including this state, whether mentioned by name in the order of publication or included under the general description “whom it may concern.” It shall not be an exception to the conclusiveness of the decree that the person is a minor, is incompetent by reason of mental illness or intellectual disability, or is under any other disability; but said person may have an action against the assurance fund provided for in Part 6 of this article.

History.

Ga. L. 1917, p. 108, § 27; Code 1933, § 60-223; Ga. L. 2015, p. 385, § 4-8/HB 252.

Amendments.

The 2015 amendment, effective July 1, 2015, in the last sentence, substituted “intellectual disability” for “retardation” and inserted “other”.

Editor’s notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, not

codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’”

44-2-84. Review by Court of Appeals.

All judgments and decrees of the superior court or the judge thereof which are rendered under this article shall be subject to review by the Court of Appeals.

History.

Ga. L. 1917, p. 108, § 82; Code 1933, § 60-224; Ga. L. 2016, p. 883, § 3-9/HB 927.

Amendments.

The 2016 amendment, effective January 1, 2017, at the end of this Code section, substituted “Court of Appeals” for “Supreme Court”. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: “This Act shall be known

and may be cited as the ‘Appellate Jurisdiction Reform Act of 2016.’”

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides, in part, that: “Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date.”

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 205 (2016).

PART 3

EXAMINERS

44-2-101. Referral of case to examiner; preliminary report; contents; time of filing.

Upon the filing of a petition as provided in this article, the clerk shall at once notify the judge who shall refer the action to one of the general examiners or to a special examiner. It shall then become the duty of the examiner to make up a preliminary report containing an abstract of the title to the land from public records and all other evidence of a trustworthy nature that can reasonably be obtained by the examiner, which abstract shall contain:

- (1) Extracts from the records and other matters referred to therein which are complete enough to enable the court to decide the questions involved;
- (2) A statement of the facts relating to the possession of the lands; and
- (3) The names and addresses, so far as the examiner is able to ascertain, of all persons interested in the land as well as all adjoining

owners showing their several apparent or possible interests and indicating upon whom and in what manner process should be served or notices given in accordance with this article.

The preliminary report of the examiner shall be filed in the office of the clerk of the superior court on or before the return day of the court as stated in the process unless the time for filing the report is extended by the court.

History.

Ga. L. 1917, p. 108, § 16; Code 1933, § 60-302; Ga. L. 1982, p. 3, § 44; Ga. L. 2011, p. 99, § 79/HB 24.

Amendments.

The 2011 amendment, effective January 1, 2013, substituted “the examiner” for “him” near the end of the introductory paragraph and deleted the former last sentence of this Code section, which read: “The report shall be prima-facie evidence of the contents thereof.” See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.

For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

44-2-103. Examiner’s powers; contents, filing, and notice of examiner’s report; right to jury trial, new trial, and appeal; recommitment to examiner after trial or reversal on appeal.

(a) At the time and place set for the hearing, the examiner shall, in like manner as other auditors, proceed with similar powers as to the compelling of the attendance of witnesses, the production of books and papers, and adjournment and recessing to hear all lawful evidence submitted. In addition he may make such independent examination of the title as he may deem necessary.

(b) Within 15 days after the hearing has been concluded unless for good cause the time is extended by the judge, the examiner shall file with the clerk a report of his conclusions of law and of fact setting forth the state of the title; any liens or encumbrances thereon, by whom held, and the amounts due thereon; the abstract of title to the land; any other information affecting the validity of the title; and a brief or a stenographic report of the evidence taken by him. He shall mail notice of the filing of his report to each of the parties who have appeared in the case. Any of the parties to the proceeding may file exceptions to the conclusions of law or of fact or to the general findings of the examiner within 20 days after such report is filed. The clerk shall thereupon notify the judge that the record is ready for his determination.

(c) If the petitioner or any contestant of the petitioner’s right shall demand a trial by jury upon any issue of fact arising upon exceptions to

the examiner's report, the court shall cause the same to be referred to a jury either at the term of court which may then be in session or at the next term of the court or at any succeeding term of the court to which the case may be continued for good and lawful reasons. It shall be the duty of the judge to expedite the hearing of the case and not to continue it unless for good cause shown or upon the consent of all parties at interest. The issue or issues of fact shall be tried before the jury, in the event jury trial is requested, upon the evidence reported by the examiner except in cases where, under law, evidence other than that reported by an auditor may be submitted to the jury on exceptions to an auditor's report. Furthermore, in cases where the examiner has reported to the court findings of fact based on his personal examination, either party may introduce additional testimony as to such facts, provided that the party will make it appear under oath that he has not been fully heard and given full opportunity to present testimony on the same matter before the examiner. The verdict of the jury upon the questions of fact shall operate to the same extent as in the case of exceptions to an auditor's report in an ordinary civil action.

(d) In all matters not otherwise provided for, the procedure upon the examiner's report and the exceptions thereto shall be in accordance with procedure prevailing as to the auditor's reports and exceptions thereto.

(e) The right to grant a new trial upon any issue submitted to a jury and the right of appeal shall be as provided for in Code Sections 5-6-37 through 5-6-44, 5-6-48, and 5-6-49.

(f) The judge may refer or recommit the record to the examiner in like manner as auditor's reports may be recommitted or he or she may on his or her own motion recommit it to the same or any other examiner for further information and report. When an exception or exceptions to the examiner's report have been sustained by the court or by verdict on the trial of an issue of fact or when the appellate court reverses the judgment of the trial court, it shall not be necessary for the trial court to recommit the case to an examiner, but the judge shall proceed to enter a decree in accordance with the law and the facts as thus established and appearing from the record; provided, however, that if the judge, in his or her discretion, is of the opinion that it is in the interests of truth and justice that a recommitment to an examiner should be made, the judge may, upon the motion of any party or on his or her own motion, order a recommitment of the whole case or any part thereof or for the taking of additional testimony upon any matter which the court deems necessary to the rendition of a true and correct decree.

History.

Ga. L. 1917, p. 108, § 20; Code 1933, § 60-304; Ga. L. 1943, p. 326, § 1; Ga. L. 1992, p. 6, § 44; Ga. L. 2016, p. 883, § 3-10/HB 927.

Amendments.

The 2016 amendment, effective January 1, 2017, in subsection (e), deleted "to the Supreme Court" following "right of appeal"; and, in subsection (f), in the first

sentence, substituted “he or she may on his or her” for “he may on his”, and, in the second sentence, substituted “When” for “Where”, substituted “when the appellate court” for “where the Supreme Court”, substituted “the judge may” for “he may” and inserted “or her” following “his”. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Appellate Jurisdiction Reform Act of 2016.’”

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides, in part, that: “Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date.”

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 205 (2016).

PART 4

REGISTERS AND REGISTRATION

44-2-131. Declaration of title by descent upon petition; service of petition and publication of notice; transfer of registered title and issuance of new certificates; rights of surviving spouse.

(a) Where the owner of registered land dies intestate and there is no administration upon the estate within 12 months from the date of his death or in the event administration shall terminate without the land being disposed of, the heirs at law of the intestate or any one or more of the persons who claim to be heirs at law of the intestate may petition the superior court of the county to have their title by descent declared as to the registered land.

(b) The petition:

(1) Shall set forth the names of all persons who are alleged to be the heirs at law and, if all are not joined, process or notice shall be served upon all those not joined;

(2) Shall be verified by the affidavit of one of the petitioners;

(3) Shall set forth in detail the name and last known address of the decedent;

(4) Shall include a statement whether he was married, single, or a widower and, if married more than once, the names of all of his wives;

(5) Shall include the names of all children and descendants of children, if any, showing in detail whether the parents of such children are living or dead;

(6) Shall show in detail how and whether the persons who are alleged to be the heirs at law are in fact the heirs at law of such decedent under the rules of inheritance;

(7) Shall give the date of the death of the decedent;

(8) Shall set forth that the decedent died leaving no will; and

(9) Shall state that in the judgment of the applicant there is no need for administration upon the estate.

(c) Upon the petition being filed, the judge shall grant an order setting the petition down to be heard at the courthouse in the county where the land is located, on some day not less than 30 days from the date of the petition, and calling on all persons to show cause before the court on that day why the persons named as heirs at law in the petition should not be so declared to be by the judgment and decree of the court. A copy of the petition and the order of the court thereon shall be published in the newspaper in which the sheriff's sales of the county are advertised in like manner as sheriff's sales are advertised.

(d) On the day named for the hearing, unless the matter is continued by order or orders of the judge to some future time, the court shall proceed to hear and determine the question together with any objections which may be filed and to adjudge and decree that the alleged decedent is dead, that there is no administration on his estate, that he left no will, and who are his heirs at law; provided, however, that if it appears that either the alleged decedent is not dead, or that there is administration upon the estate, or that an application for administration is pending, or that the decedent left a will, the petition shall be dismissed.

(e) Upon granting an order of heirship, the court shall order a transfer of the registered title from the decedent to the heirs at law; and, upon production of the owner's certificate of the decedent and the judge's order for a transfer, the clerk shall register the transfer, cancel the certificate registered in the name of the decedent, cancel the owner's certificate, and issue a new owner's certificate in the name of the persons declared to be the heirs at law.

(f) In the petition if the alleged heirs at law are of full age and under no disabilities and the same so appears to the court and if it further appears that they have voluntarily partitioned the land in kind among themselves, the court may, in connection with the order of transfer, direct that the certificate standing in the name of the decedent be canceled and that new certificates be registered and issued to each of the heirs for the particular parcel of land coming to each under the voluntary partition set forth in the petition.

(g) If the decedent has left a widow, she shall be a party to the proceedings. The court shall specifically provide what interest or estate

she shall take under the decree of heirship; and, except where in the decree the land is partitioned into separate tracts, the court shall, in the decree of heirship and in the order of transfer, specifically set forth, except where the widow is the sole heir, what undivided interest each heir shall take.

(h) If the decedent is a female, the procedure shall be similar except insofar as the difference between the rights of the husband and wife upon the death of the spouse shall make changes necessary.

(i) Where the wife claims to be entitled to take possession of the estate without administration under former Code Section 53-4-2 as such existed on December 31, 1997, if applicable, or Code Sections 53-1-7 and 53-2-1, the procedure shall be substantially in the same manner.

History.

Ga. L. 1917, p. 108, § 45; Code 1933, § 60-409; Ga. L. 1998, p. 128, § 44; Ga. L. 2011, p. 752, § 44/HB 142; Ga. L. 2019, p. 1056, § 44/SB 52.

Amendments.

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “former Code Section 53-4-2 as such existed on December 31, 1997, if applicable, or

Code Sections 53-1-7 and 53-2-1,” for “Code Section 53-4-2 of the ‘Pre-1998 Probate Code,’ if applicable, or Code Sections 53-1-7 and 53-2-1 of the ‘Revised Probate Code of 1998,’” in subsection (i).

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, inserted “that” following “provided, however,” in subsection (d).

44-2-136. Cancellation of mortgage, lien, equity, or lis pendens; entry of cancellation on title register and certificate; procedure upon refusal to authorize cancellation.

(a) Voluntary cancellations may be made of any mortgage, certificate of indebtedness, or any lien, equity, encumbrance, lis pendens, or other similar matter relating to registered land or any interest therein and may be entered by the clerk upon the title register and the owner’s certificate. The entry, notation, or registry of such cancellation may be made upon the written authority of the person for whose benefit the original registration, notation, or entry was made or upon the written authority of his personal representative or his lawful assignee, in a form substantially in compliance with that prescribed in this article, and attested by any officer authorized to attest deeds; alternatively, it may be made upon order of the judge. In case of a creditor’s certificate the same shall also be surrendered and canceled. Notations of delinquent taxes or assessments may be canceled upon the production of a certificate of the proper tax officer showing that such taxes or assessments have been paid.

(b) If the holder of the mortgage, certificate of indebtedness, or any lien, equity, encumbrance, lis pendens, or other similar matter relating

to the registered land or any interest therein refuses to give the requisite authority for the cancellation thereof if and when the debt has been paid or no longer exists or when it is no longer legal and equitable that the registered title should be encumbered by the same, any person adversely affected may petition the court for an involuntary cancellation of the same. In such case, the judge shall cause a rule nisi to be served upon such holder requiring him or her to show cause on a day set, which day shall be not less than 30 days from the date the rule was served, why the mortgage, certificate of indebtedness, lien, or other encumbrance on the registered title should not be canceled. The petition and rule nisi shall be served personally on such holder at least 15 days before the date set for the hearing if such service be practical; but, when it is made to appear to the court that personal service cannot be practically effected, the judge may pass an order providing how the service shall be made. In case the holder is not a resident of this state or is unknown, service by publication shall be made upon the order of the judge in the manner prescribed in Code Section 9-11-4. In case of minors and persons of unsound mind, guardians ad litem shall be appointed. If any issue of fact as to the right of the petition to have the cancellation made appears, such issue shall, upon demand of either party, be tried by jury, with right of the judge to grant a new trial. If it appears that the registered title should be freed from the encumbrance, the court shall decree accordingly and order the cancellation noted upon the certificate of title. The judge shall have power by attachment for contempt, if necessary, to compel the holder of the mortgage certificate of indebtedness or other instrument to surrender it for cancellation.

History.

Ga. L. 1917, p. 108, § 62; Code 1933, § 60-418; Ga. L. 1943, p. 326, § 1; Ga. L. 2016, p. 883, § 3-11/HB 927.

Amendments.

The 2016 amendment, effective January 1, 2017, in subsection (b), inserted “or her” in the second sentence, substituted “but, when” for “but, where” in the third sentence, and deleted the former last sentence, which read: “The Supreme Court shall have jurisdiction for the correction of errors in the trial court.”. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2016, p. 883, § 1-1/HB 927, not

codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Appellate Jurisdiction Reform Act of 2016.’”

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides, in part, that: “Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date.”

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 205 (2016).

PART 8

FORMS

44-2-237. Recordation and notation of plat.

Whenever a plat of the premises which is too large or too intricate for easy transcription on the register of decrees of title or on the certificate of title is a part of the description of the lands or is used to aid description, it shall not be necessary for the clerk to copy such plat on the register of decrees of title or on the certificate of title. In lieu of copying such plat, the clerk shall record it and shall note a reference to the book and page where recorded.

History.
Ga. L. 1917, p. 108, § 102; Code 1933, § 60-618; Ga. L. 1981, p. 1396, § 3; Ga. L. 1992, p. 6, § 44; Ga. L. 2016, p. 193, § 8/HB 1004.

Amendments.
The 2016 amendment, effective January 1, 2017, in the second sentence, deleted “in one of the public record books in his office” following “the clerk shall record

it”, and deleted “its existence together with” following “and shall note”; and deleted the former third sentence, which read: “If the holder of the owner’s certificate desires a copy of the plat to be attached as a part of his owner’s certificate, the clerk shall make a certified copy and attach it upon payment of the fee provided for in paragraph (2) of subsection (f) of Code Section 15-6-77.”

CHAPTER 3

REGULATION OF SPECIALIZED LAND TRANSACTIONS

Article 1		Sec.	
Georgia Land Sales Act			
Sec.			for common expenses; how assessments made.
44-3-7.	Willful violation of article; effect on statutory or common-law right to punish violations; effect of article on Attorney General.	44-3-83.	Recording of plats and plans; contents; completion of structural improvements; certification by registered architect or engineer; exception.
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44-3-74.	Recording condominium instruments, plats, plans, and encumbrances.	44-3-94.	Damage or destruction of units; restoration; vote not to restore; allocation of insurance deductible.
44-3-76.	Compliance with condominium instruments, rules, and regulations; means of enforcement.	44-3-101.	Control of association by declarant; surrender of control to unit owners; liability for
44-3-80.	Allocation of and liability		

Sec.		Sec.	
	books and records; cancellation of leases and contracts.		of instrument and with rules and regulations; penalties for noncompliance.
44-3-106.	Powers and responsibilities of association; tort actions.	44-3-226.	Amendment of instrument; presumption of validity in court action.
44-3-107.	Insurance coverage.		Frequency of meetings; notice.
Article 5		44-3-230.	Powers and duties of association; legal actions against agent or employee of association.
Time-Share Projects and Programs		44-3-231.	Right of and procedure for certain property owners to take control of association when declarant fails to meet certain obligations.
	PART 7		
	MISCELLANEOUS		
44-3-206.	Foreclosure by owners' association; procedure; effect of sale.	44-3-232.1.	
44-3-207.	Time-share estates; trustee foreclosures; requirements.		
Article 6			
Property Owners' Associations			
44-3-223.	Compliance with provisions		

ARTICLE 1

GEORGIA LAND SALES ACT

44-3-7. Willful violation of article; effect on statutory or common-law right to punish violations; effect of article on Attorney General.

(a) Except as provided in subsection (b) of this Code section, any person who shall willfully violate any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than \$1,000.00 or imprisonment not to exceed 12 months, or both.

(b) Any person who shall willfully violate paragraph (2) of subsection (a) of Code Section 44-3-5 or subsection (d) of Code Section 44-3-5 shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not less than one and not more than five years, or both.

(c) Nothing in this article shall limit any statutory or common-law right of the state to punish any person for violation of any provision of any law.

(d) Nothing in this article shall be deemed to prohibit the Attorney General from exercising any powers under Part 2 of Article 15 of Chapter 1 of Title 10 against any person.

History. § 44-3-27; Code 1981, § 44-3-10, enacted Ga. L. 1972, p. 638, § 18; Code 1981, by Ga. L. 1982, p. 1431, § 1; Ga. L. 1983,

p. 3, § 33; Ga. L. 1990, p. 606, § 1; Code 1981, § 44-3-7, as redesignated by Ga. L. 1995, p. 993, § 1; Ga. L. 2015, p. 1088, § 33/SB 148.

Amendments.

The 2015 amendment, effective July 1, 2015, substituted “Attorney General”

for “administrator appointed under Part 2 of Article 15 of Chapter 1 of Title 10” in the middle of subsection (d).

ARTICLE 3 CONDOMINIUMS

Law reviews.

For comment, “Making a Business of ‘Residential Use’: The Short-Term Rental Dilemma in Common-Interest Communities,” see 68 Emory L.J. 801 (2019).

For note, “The Georgia Condominium Act’s Authorization of Private Takings: Revisiting *Kelo* and ‘Bitter with the Sweet,’” see 55 Ga. L. Rev. 395 (2020).

RESEARCH REFERENCES

ALR.

Unsold Shares in Real Estate Coopera-

tive Corporations or Condominiums, 77 A.L.R.7th 7.

44-3-70. Short title.

JUDICIAL DECISIONS

Condominium association had no duty to remove snow and ice. — Trial court properly granted a condominium association summary judgment in a premises liability action because interpreting the condominium association documents established that the association did not

have a duty to remove snow and ice from the common walkway where the resident fell. *Scrocca v. Ashwood Condominium Ass’n*, 326 Ga. App. 226, 756 S.E.2d 308, 2014 Ga. App. LEXIS 150 (2014), cert. denied, No. S14C1001, 2014 Ga. LEXIS 513 (Ga. June 16, 2014).

44-3-71. Definitions.

Law reviews.

For annual survey on wills, trusts,

guardianships, and fiduciary administration, see 64 Mercer L. Rev. 325 (2012).

44-3-74. Recording condominium instruments, plats, plans, and encumbrances.

(a) The declaration and any amendments thereto shall be entitled to recordation if executed in the manner required for recording deeds to real property. All condominium instruments and any amendments and certifications thereto shall set forth the name of the condominium; the name of the county or counties in which the condominium is located; and, except for the declaration itself, the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration upon its recordation. All condominium instruments and all amendments and certifications thereto

shall be recorded in every county where any portion of the condominium is located. The recordation shall not require the approval of any county or municipal authority or official except as to the manner of execution prescribed by this Code section.

(b) The clerk of superior court shall continue to maintain any legacy condominium plat books, condominium site plan books, condominium plot plan books, or condominium floor plan books that currently exist either in their current form or in electronic format.

(c) All deeds, mortgages, liens, leases, and encumbrances of any kind affecting any condominium unit or duplicate originals thereof or copies thereof certified by the clerk of superior court in whose office the same are first recorded shall be recorded in all counties in which any part of the submitted property is located.

History.

Ga. L. 1975, p. 609, § 11; Ga. L. 2016, p. 193, § 9/HB 1004; Ga. L. 2017, p. 774, § 44/HB 323.

Amendments.

The 2016 amendment, effective January 1, 2017, substituted the present provisions of subsection (b) for the former provisions, which read: “In addition to the records and indexes required to be maintained by the clerk of the superior court, such clerk shall maintain one or more separate plat books, entitled ‘Condominium Plat Book,’ in which shall be recorded all plats required to be filed pursuant to this article. In addition to such plats, there shall also be entitled to be recorded in such plat books other plats, including site plans and plot plans, prepared by a registered land surveyor and affecting any condominium; but the same shall not constitute the recording of a plat pursuant to Code Section 44-3-83 unless they comply with all requirements thereof. The record of the declaration and of any amendment thereto shall contain a reference to the plat book and page num-

ber of the plat or plats recorded in connection therewith.”; deleted former subsection (c), which read: “The plans required to be recorded pursuant to Code Section 44-3-83 shall be kept by the clerk of the superior court in a separate file for each condominium and shall be indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated ‘Condominium Plans,’ with the name of the condominium, and each containing a reference to the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration upon its recordation. The record of the declaration and of any amendment thereto shall contain a reference to the file number of the plans recorded in connection therewith.”; redesignated former subsection (d) as present subsection (c); and, in present subsection (c), deleted “the” following “clerk of” in the middle.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised language in subsection (b).

44-3-76. Compliance with condominium instruments, rules, and regulations; means of enforcement.

Every unit owner and all those entitled to occupy a unit shall comply with all lawful provisions of the condominium instruments. In addition, any unit owner and all those entitled to occupy a unit shall comply with any reasonable rules or regulations adopted by the association pursuant to the condominium instruments which have been provided to the

unit owners and with the lawful provisions of bylaws of the association. Any lack of such compliance shall be grounds for an action to recover sums due, for damages, for injunctive relief, or for any other remedy available at law or in equity, maintainable by the association or, in any proper case, by one or more aggrieved unit owners, on their own behalf or as a class action. After providing notice in accordance with the terms of the instrument, or, if the instrument is silent, ten days' written notice, the association may pursue injunctive relief without the need or requirement to first pursue or utilize any other remedies, regardless of whether other remedies may be available or might otherwise be adequate, provided that such notice shall not be required in the event of a violation of the instrument or the reasonable rules or regulations adopted by the association that presents a clear and imminent danger to life, person, or property, or for which injunctive relief would become moot if not granted before a notice period as prescribed above would expire. If and to the extent provided in the condominium instruments, the association shall be empowered to impose and assess fines, and suspend temporarily voting rights and the right of use of certain of the common elements in order to enforce such compliance; provided, however, that no such suspension shall deny any unit owner or occupants access to the unit owned or occupied nor cause any hazardous or unsanitary condition to exist. If the voting right of a unit owner has been suspended, then to the extent provided in the condominium instruments, that unit owner's vote shall not count for purposes of establishing a quorum or taking any action which requires a vote of the owners under this article or the condominium instruments. Notwithstanding any other provision of this Code section, to the extent provided in the condominium instruments, water, gas, electricity, heat, and air conditioning services being provided to a unit or unit owner by the association may be terminated for failure to pay assessments and other amounts due pursuant to subsection (a) of Code Section 44-3-109, subject to the suspension standards and notice requirements imposed on the institutional providers providing such services to the condominium development, only after a final judgment or final judgments in excess of a total of \$750.00 are obtained in favor of the association from a court of competent jurisdiction. The utility services shall not be required to be restored until the judgment or judgments and any reasonable utility provider charges or other reasonable costs incurred in suspending and restoring such services are paid in full. All common expenses for termination and restoration of any services pursuant to this Code section shall be an assessment and a lien against the unit.

History.

Ga. L. 1975, p. 609, § 13; Ga. L. 1982, p. 3, § 44; Ga. L. 1990, p. 227, § 2; Ga. L. 1994, p. 1943, § 2; Ga. L. 2004, p. 560, § 1; Ga. L. 2024, p. 76, § 1/HB 220, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted “damages, for injunc-

tive” for “damages or injunctive” in the third sentence and added the fourth sentence.

44-3-80. Allocation of and liability for common expenses; how assessments made.

(a) Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time the expenses were made or incurred; however, if any limited common element was assigned at that time to more than one unit, the common expenses shall be specifically assessed against each condominium unit equally so that the total of the special assessments equals the total of the expenses.

(b) To the extent that the condominium instruments expressly so provide:

(1) Any other common expenses benefiting less than all of the units shall be specially assessed equitably among all of the condominium units so benefited;

(2) Any other common expenses occasioned by the conduct of less than all of those entitled to occupy all of the units or by the licensees or invitees of any such unit or units shall be specially assessed against the condominium unit or units, the conduct of any occupant, licensee, or invitee of which occasioned any such common expenses;

(3) Any other common expenses significantly disproportionately benefiting all of the units shall be assessed equitably among all of the condominium units; and

(4) Other than for limited common elements expressly designated as such in the condominium instruments and assigned to fewer than all units, nothing contained in paragraph (1) or (3) of this subsection shall permit an association to specially or disproportionately allocate common expenses for periodic maintenance, repair, and replacement of any portion of the common elements or the units which the association has the obligation to maintain, repair, or replace.

(c) The amount of all common expenses not specially assessed pursuant to subsection (a) or (b) of this Code section, less the amount of all undistributed and unreserved common profits, shall be assessed against the condominium units in accordance with the allocation of liability for common expenses set forth in the declaration. The allocation may be by percentage, fraction, formula, or any other method

which indicates the relative liabilities for common expenses. If an equal liability for common expenses is allocated to each unit, the declaration may merely so state. The entire liability for common expenses shall be allocated among the units depicted on plats or plans that comply with subsections (a) and (b) of Code Section 44-3-83 and shall be subject to reallocation as provided in this article. Except to the extent otherwise expressly provided or permitted by this article, the allocations of the liability shall not be altered; provided, however, that no reallocation shall affect any assessment or installation thereof becoming due and payable prior to reallocation. The assessments shall be made by the association annually or more often if the condominium instruments so provide and shall be payable in the manner determined by the association. Notwithstanding any unequal allocation of liabilities for common expenses pursuant to this subsection, this provision shall not preclude the association from levying charges equally among units for services or items provided to owners upon request, or which provide proportionate or uniform benefit to the units, including, but not limited to, uniform charges for pool keys or other common element entry devices.

(d)(1) The declarant shall pay for all common expenses until the first common expense assessment is due from any unit owner. Thereafter, no unit owner other than the association shall be exempted from any liability for any assessment under this Code section or under any condominium instrument for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his or her unit or any part of the common elements.

(2) Notwithstanding paragraph (1) of this subsection, if authorized by the declaration, a declarant who is offering units for sale may elect to be excused from payment of assessments assessed pursuant to subsection (c) of this Code section against those unsold and unoccupied units for a stated period of time after the original declaration is recorded, not to exceed 24 months after the date the original declaration is recorded; provided, however, that as to assessments assessed pursuant to subsection (c) of this Code section, the declarant must pay common expenses incurred during such period which exceed the amounts assessed against other unit owners in the same condominium. During any period in which the declarant is excused from payment of assessments assessed pursuant to subsection (c) of this Code section:

(A) No capital contributions, start-up funds, initiation fees, or contributions to capital reserve accounts which are receivable from unit purchasers or unit owners and payable to the association at closing may be used for payment of common expenses;

(B) No portion of the payment of assessments collected from owners intended to be utilized for reserves for deferred mainte-

nance, reserves for depreciation, or other reserves, as shown on the operating budget for the condominium, may be used for payment of common expenses; and

(C) No prepayments of assessments made by owners shall be used for the payment of common expenses prior to the time the assessments would otherwise be due.

(3) If during the period that the declarant is excused from payment of assessments as provided in paragraph (2) of this subsection common expenses are incurred resulting from a casualty which is not covered by proceeds from insurance maintained by the association, such common expenses shall be assessed against all unit owners owning units on the date of such casualty, and their respective successors and assigns, including the declarant with respect to units owned by the declarant. In the event of such an assessment, all units shall be assessed in accordance with the allocation of the liability for common expenses set forth in the declaration as provided in subsection (c) of this Code section.

(4) During any such time as the declarant has the right to control the association pursuant to Code Section 44-3-101, any capital contributions, start-up funds, initiation fees, or contributions to capital reserve accounts which are receivable from unit purchasers or unit owners and payable to the association at closing and any portion of the payment of assessments collected from owners intended to be utilized for reserves for deferred maintenance, reserves for depreciation, or other reserves, as shown on the operating budget for the condominium, shall be deposited into one or more separate reserve accounts and shall not be used to pay for any common expenses, without the agreement of the unit owners of units to which two-thirds of the votes in the association pertain, exclusive of any vote or votes appurtenant to any unit or units then owned by the declarant. No waiver of the right of any unit owner to grant or withhold consent to such agreement shall be valid.

(e) Unless otherwise provided in the condominium instruments and except as provided in subsection (f) of this Code section, the grantee in a conveyance of a condominium unit shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that, if the grantor or grantee shall request a statement from the association as provided in Code Section 44-3-109, such grantee and his successors, successors-in-title, and assigns shall not be liable for nor shall the condominium unit conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

(f) In the event that the holder of a first priority mortgage or a secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the unit, or any other person acquires title to any condominium unit as a result of foreclosure of any such mortgage, such holder or other person and successors, successors-in-title, and assigns shall not be liable for nor shall the condominium unit be subject to a lien for any assessment under this Code section or under any condominium instrument chargeable to the condominium unit on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be deemed to be common expenses collectable from all of the unit owners, including such holder or other person and successors, successors-in-title, and assigns.

(g) A condominium instrument recorded on or after July 1, 2015, shall not authorize the board of directors to impose:

(1) Except as provided in subsections (a) and (b) of this Code section and subsections (a) and (b) of Code Section 44-3-109, a special assessment fee per unit in excess of one-sixth of the annual common expense assessment for the unit levied pursuant to subsection (c) of this Code section per fiscal year without the approval of a majority of the unit owners; or

(2) A monthly maintenance fee increase in excess of the percentage equal to the annual rate of inflation as measured by the Consumer Price Index for All Urban Consumers for the immediately preceding 12 month period may be disapproved by unit owners holding a majority of the association vote.

History.

Ga. L. 1975, p. 609, § 17; Ga. L. 1990, p. 227, § 3; Ga. L. 1994, p. 1943, §§ 3, 4; Ga. L. 2004, p. 560, § 3; Ga. L. 2007, p. 611, § 2/HB 383; Ga. L. 2015, p. 889, § 1/HB 245.

Amendments.

The 2015 amendment, effective July 1, 2015, substituted “July 1, 2015” for

“July 1, 1990” in subsection (g); and substituted “one sixth of the annual common expense assessment for the unit levied pursuant to subsection (c) of this Code section” for “an average of \$200.00” in the middle of paragraph (g)(1).

JUDICIAL DECISIONS

Liability of unit owner for assessment. — Condominium association’s property manager’s affidavit, in which the manager testified that the manager was familiar with the billing processes of the association and the association’s records and that the manager’s affidavit was on personal knowledge, was sufficient to sup-

port summary judgment for the association in the association’s action against an owner for assessments and fees. Because the declaration provided for attorney’s fees, an award of attorney’s fees was mandated under O.C.G.A. § 44-3-109(b)(3), although the association did not ask for the fees. *Ellington v. Gallery Condo. Ass’n*,

313 Ga. App. 424, 721 S.E.2d 631, 2011 Ga. App. LEXIS 1117 (2011).

Tax deed purchaser obligated to pay condominium association assessments. — Trial court erred in denying the condominium association's motion for summary judgment finding that the association was not entitled to collect unpaid condominium association assessments from the tax deed purchaser that had accrued during the pendency of the litigation because, under O.C.G.A. § 44-3-80, the purchaser was obligated to pay condominium association assessments that accrued after the tax sale, even during the period before it could foreclose on the right of redemption, and even if it was involved in an ongoing dispute with the association. *Northlake Manor Condo. Ass'n v. Harvest Assets, LLC*, 345 Ga. App. 575, 812 S.E.2d 658, 2018 Ga. App. LEXIS 221 (2018).

Common expenses. — Plaintiff condominium association could not assess against defendant owner's unit, as common expenses under O.C.G.A. § 44-3-80(b)(2), legal fees and interest in connection with enforcing restraining orders against a former occupant since the occupant had moved before those expenses were incurred. *One Buckhead Loop Condo. Ass'n v. Pew*, 484 Fed. Appx. 331, 2012 U.S. App. LEXIS 13688 (11th Cir. 2012).

Assessment of litigation fees and

costs. — Trial court did not err in dismissing the condominium association's counterclaim seeking to collect on an assessment of litigation fees and costs against two former association members who had unsuccessfully sued the association as the former members' lawsuit did not result solely from the former members' conduct without reference also to the conduct of the association because the former members' claims were based on the conduct of the association with respect to its response to and management of various mold and moisture issues. *City Heights Condo. Ass'n v. Bombara*, 337 Ga. App. 679, 788 S.E.2d 563, 2016 Ga. App. LEXIS 392 (2016).

Trial court did not err in dismissing the condominium association's counterclaim seeking to collect on an assessment of litigation fees and costs against two former association members who had unsuccessfully sued the association because the association had already obtained a judgment for the money to which the association was entitled to as a result of having to defend against a claim the trial court determined lacked substantial justification; and the former members' remaining claims, while not ultimately successful, were sufficiently justified that the trial court did not penalize the former members for bringing the claims. *City Heights Condo. Ass'n v. Bombara*, 337 Ga. App. 679, 788 S.E.2d 563, 2016 Ga. App. LEXIS 392 (2016).

44-3-83. Recording of plats and plans; contents; completion of structural improvements; certification by registered architect or engineer; exception.

(a) Prior to the first conveyance of a condominium unit, there shall be recorded one or more plats of survey showing the location and dimensions of the submitted property; the location and dimensions of all structural improvements located on any portion of the submitted property; the intended location and dimensions of all contemplated structural improvements committed to be provided by the declaration on any portion of the submitted property; and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted property or otherwise submitted to this article as part of the common elements. With respect to all such structural improvements, the plats shall indicate which, if any, have not been begun by use of the phrase "NOT YET BEGUN." No structural improvement which contains or

constitutes all or part of any unit or units and which is located on any portion of the submitted property shall be commenced on any portion of the submitted property after the recording of the plats. The declarant shall complete all structural improvements depicted on the plats, subject only to such limitations, if any, as may be expressly stated in the declaration with respect to those labeled "NOT YET BEGUN" on the plats, provided that, within six months after written notice from the association, the declarant shall be obligated to complete within a reasonable time every structural improvement actually commenced on the submitted property, notwithstanding any provision of the declaration, unless the declarant removes within a reasonable time all portions of any such structural improvement and restores the surface of the land affected thereby to substantially the same condition as that which existed prior to commencement of any such structural improvement; and provided, further, that nothing contained in this sentence shall exempt the declarant from any contractual liability to complete any such structural improvement. If the submitted property consists of noncontiguous parcels, the plats shall indicate the approximate distances between such parcels unless such information is disclosed in the declaration. If, with respect to any portion or portions, but less than all, of the submitted property, the unit owners are to own only a leasehold or estate for years, the plats shall show the location and dimensions of any such portion or portions and shall label each such portion by use of the phrase "LEASED LAND." To the extent feasible, the plats shall show all easements to which the submitted property or any portion thereof is subject. The plats shall also show all encroachments by or on any operation of the submitted property. In the case of any units which have vertical boundaries lying wholly or partially outside of structures for which plans pursuant to subsection (b) of this Code section are recorded, the plats shall show the location and dimensions of the vertical boundaries to the extent that they are not shown on the plans; and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified as to its accuracy and compliance with this subsection by a registered land surveyor. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or required by law to be shown for land title surveys.

(b) There shall be recorded prior to the first conveyance of a condominium unit:

(1) Plans which have been prepared, signed, and sealed by a registered architect or registered engineer of every structure which contains or constitutes all or part of any unit or units located on or within any portion of the submitted property, which plans shall show:

(A) The location and dimensions of the exterior walls and roof of such structures;

(B) The walls, partitions, floors, and ceilings as constitute the horizontal boundaries, if any, and the vertical boundaries of each unit, including convertible space, to the extent that such boundaries lie within or coincide with the boundaries of such structures; and

(C) The identifying numbers of all units or portions thereof depicted on the plans; and

(2) A certification by such architect or engineer to the effect that he has visited the site and viewed the property and that, to the best of his knowledge, information, and belief:

(A) The exterior walls and roof of each structure are in place as shown on the plans; and

(B) Such walls, partitions, floors, and ceilings, to the extent shown on said plans, as constitute the horizontal boundaries, if any, and the vertical boundaries of each unit, including convertible space, have been sufficiently constructed so as to establish clearly the physical boundaries of such unit.

In addition, each convertible space depicted in the plans shall be labeled as such by use of the phrase "CONVERTIBLE SPACE." Unless the condominium instruments expressly provide otherwise, it shall be presumed that, in the case of any unit not wholly contained within or constituting one or more of the structures, the horizontal boundaries extend, in the case of each unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of the structures. This subsection shall apply to any condominium created on or after July 1, 1980, or to the expansion of any such condominium.

(b.1) There shall be recorded prior to the first conveyance of a condominium unit plans of every structure which contains or constitutes all or part of any unit or units located on or within any portion of the submitted property and a certification by a registered architect or registered engineer to the effect that he has visited the site and viewed the property and that, to the best of his knowledge, information, and belief:

(1) The foundation, structural members, exterior walls, and roof of each such structure are complete and in place as shown on the plans;

(2) The walls, partitions, floors, and ceilings, to the extent shown on the plans, as constituting or coinciding with the vertical and horizontal boundaries of each unit, including convertible space,

within each such structure, are sufficiently complete and in place to establish clearly the physical boundaries of such unit and that such physical boundaries are as shown on the plans; and

(3) Each such structure, to the extent of its stage of completion at that time, is constructed substantially in accordance with such plans.

The plans shall show the location and dimensions of the horizontal boundaries, if any, and the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units, or portions thereof, thus depicted shall bear their identifying numbers. In addition, each convertible space depicted in the plans shall be labeled as such by use of the phrase "CONVERTIBLE SPACE." Unless the condominium instruments expressly provide otherwise, it shall be presumed that, in the case of any unit not wholly contained within or constituting one or more of the structures, the horizontal boundaries extend, in the case of each unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of the structures. This subsection shall apply to any condominium created prior to July 1, 1980, or to the expansion of any such condominium.

(c) Prior to the first conveyance of a condominium unit located on any portion of any additional property being or having been added to an expandable condominium, there shall be recorded new plats of survey conforming to the requirements of subsection (a) of this Code section and, with regard to any structures on the property being or having been added, plans conforming to the requirements of subsection (b) of this Code section or certifications, conforming to the certification requirements of subsection (b) of this Code section, of plans previously recorded pursuant to Code Section 44-3-84.

(d) When converting all or any portion of any convertible space into one or more units or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the horizontal boundaries, if any, and the vertical boundaries of each unit formed out of such space. The plans shall be certified by a registered architect or registered engineer in accordance with the certification requirements of subsection (b) of this Code section.

(e) When any portion of the submitted property is withdrawn, there shall be recorded a plat or plats showing the portion of the submitted property withdrawn and the remaining submitted property, which plat

or plats shall be certified as provided in subsection (a) of this Code section.

(f) Except for a unit that is an individual residential dwelling intended for single-family occupancy, nothing in this Code section shall require plans for a unit when the boundaries of the unit are not designated by walls, floors, ceilings, or other physical structures, provided that the boundaries of the unit are depicted on a plat of survey prepared in accordance with subsection (a) of this Code section.

(g) Nothing in this Code section shall require a separate plat of survey for a subcondominium.

History.

Ga. L. 1975, p. 609, § 20; Ga. L. 1980, p. 1406, § 3; Ga. L. 1982, p. 3, § 44; Ga. L. 1983, p. 3, § 33; Ga. L. 1984, p. 22, § 44; Ga. L. 2021, p. 411, § 1/HB 470.

Amendments.

The 2021 amendment, effective July 1, 2021, added subsections (f) and (g).

44-3-86. Leasehold condominiums; lessor’s rights and powers; owner’s rights and powers; liens; performance of covenants.

RESEARCH REFERENCES

ALR.

Short-Term Rental Property Under Restrictive Covenants, 81 A.L.R.7th 6.

44-3-89. Expansion of condominium; amendment to declaration; expansion of condominium after declarant’s right to expand has expired.

(a) No condominium shall be expanded except in accordance with the provisions of the declaration and this article.

(b) Any expansion shall be deemed to have occurred at the time of the recordation of plats or plans pursuant to subsection (c) of Code Section 44-3-83 and an amendment to the declaration effecting the expansion duly executed by the declarant, all other owners or lessees of the additional property being added to the condominium, and all mortgages of the additional property being added to the condominium. The amendment shall contain a legal description by metes and bounds of the additional property being added to the condominium and shall reallocate undivided interests in the common elements, votes in the association, and liabilities for future common expenses all in accordance with the provisions of the declaration.

(c) Notwithstanding any other provision of this article, a condominium may be expanded by the association at any time after the

declarant's right to expand the condominium has expired, provided that the unit owners of units to which two-thirds of the votes in the association appertain, or such higher amount as may be required by the declaration, exclusive of any vote or votes appurtenant to any unit or units then owned by the declarant, consent to an amendment to the governing documents expanding the condominium under the same terms and conditions as set forth in an explicit reservation of an option or options to expand the condominium contained in the condominium instruments as required by subsection (b) of Code Section 44-3-77; and provided, further, that such explicit reservation existed within the first seven years of the recording of the governing documents. The amendment shall contain a legal description by metes and bounds of the additional property being added to the condominium and shall reallocate undivided interests in the common elements, votes in the association, and liabilities for future common expenses all in accordance with the provisions of the declaration. The amendment shall be executed by all owners or lessees of the additional property being added to the condominium and all mortgagees of the additional property being added to the condominium. Additionally, the agreement of the required majority of unit owners to the amendment shall be evidenced by their execution of the amendment. In the alternative, the sworn statement of the president, any vice president, or the secretary of the association attached to or incorporated in an amendment executed by the association, which sworn statement states unequivocally that agreement of the required majority was otherwise lawfully obtained and that any notices required under this article were properly given, shall be sufficient to evidence the required agreement.

History.

Ga. L. 1975, p. 609, § 25; Ga. L. 2017, p. 352, § 2/SB 46.

sions as subsections (a) and (b); and added subsection (c).

Amendments.

The 2017 amendment, effective July 1, 2017, designated the existing provi-

44-3-94. Damage or destruction of units; restoration; vote not to restore; allocation of insurance deductible.

Unless otherwise provided in the condominium instruments, in the event of damage to or destruction of any unit by a casualty covered under insurance required to be maintained by the association pursuant to Code Section 44-3-107, the association shall cause the unit to be restored. Unless otherwise provided in the condominium instruments, any funds required for such restoration in excess of the insurance proceeds attributable thereto shall be paid by the unit owner of the unit; provided, however, that, in the event that the unit owner of the unit together with the unit owners of other units to which two-thirds of the votes in the association pertain agree not to restore the unit, the

unit shall not be restored and the entire undivided interest in the common elements pertaining to that unit shall then pertain to the remaining units, to be allocated to them in proportion to their undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a part of the common elements. Votes in the association and liability for future common expenses shall thereupon pertain to the remaining units, being allocated to them in proportion to their relative voting strength in the association and liability for common expenses, respectively. To the extent provided for in the condominium instruments, the association may allocate equitably the payment of a reasonable insurance deductible between the association and the unit owners affected by a casualty against which the association is required to insure; provided, however, that the amount of deductible which can be allocated to any one unit owner shall not exceed \$5,000.00 per casualty loss covered under any insurance required to be maintained by the association under this article. The existence of a reasonable deductible in any required insurance policy shall not be deemed a failure to maintain insurance as required by this Code section.

History.

Ga. L. 1975, p. 609, § 7; Ga. L. 1983, p. 3, § 33; Ga. L. 1990, p. 227, § 8; Ga. L. 2004, p. 560, § 4; Ga. L. 2013, p. 890, § 1/HB 458.

Amendments.

The 2013 amendment, effective July 1, 2013, substituted “\$5,000.00” for “\$2,500.00” near the end of the next-to-last sentence of this Code section.

44-3-98. Termination of condominium; creation of tenancy in common; distribution of assets; transfer of mortgages and liens.

Law reviews.

For note, “The Georgia Condominium Act’s Authorization of Private Takings:

Revisiting *Kelo* and ‘Bitter with the Sweet,’” see 55 Ga. L. Rev. 395 (2020).

44-3-101. Control of association by declarant; surrender of control to unit owners; liability for books and records; cancellation of leases and contracts.

(a) If provided for in the condominium instruments and subject to any limitations contained in the condominium instruments, the association’s articles of incorporation, the association’s bylaws, or this article with respect thereto, the declarant shall be authorized to appoint and remove any member or members of the board of directors and any officer or officers of the association. The declarant’s authority to appoint and remove members of the board of directors and officers of the association shall in no event extend beyond and shall in all cases expire immediately upon the occurrence of any of the following:

- (1) The expiration of any time limit specified for such purpose in

the condominium instruments, which time limit may not be enlarged or extended after the conveyance by the declarant of a condominium unit without the express consent of all unit owners;

(2) Unless the declarant at that time has an unexpired option to add additional property, the date as of which units to which four-fifths of the undivided interests in the common elements pertain shall have been conveyed by the declarant to unit owners other than a person or persons constituting the declarant;

(3) The expiration of seven years after the recording of the declaration in the case of an expandable condominium or the expiration of three years after the recording of the declaration in the case of any other type of condominium; or

(4) The surrender by the declarant of the authority to appoint and remove members of the board of directors and officers of the association by an express amendment to the declaration which is executed and recorded by the declarant.

No formal or written proxy or power of attorney need be required of the unit owners to vest such authority to appoint and remove members of the board of directors and officers of the association in the declarant, the acceptance of a conveyance of a condominium unit being wholly sufficient for such purpose.

(b) Upon the expiration of the period of the declarant's right to control the association pursuant to subsection (a) of this Code section, the right to control shall automatically pass to the unit owners, including the declarant if the declarant then owns one or more condominium units. The declarant shall be jointly responsible and liable with the members of the board of directors and the officers of the association to the unit owners for ensuring that the books, records, and accounts of the association are in proper order, that the association is in good standing under the laws of this state, and that the affairs of the association have been conducted in a prudent and businesslike manner, all as of the date upon which the declarant's right to control the association expires. The declarant shall not be insulated against liability to the unit owners because any act, omission, or matter complained of during such period of control may have been done, omitted, or permitted by or on behalf of the association as a corporate entity. Nothing contained in this Code section shall make any successor to the declarant responsible or subject to liability by operation of law or through the purchase of the declarant's interest in the property or any part thereof at foreclosure for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of the declarant.

(c)(1) Notwithstanding and prior to the usual expiration of the period of the declarant's right to control the association pursuant to subsec-

tion (a) of this Code section and notwithstanding any provision to the contrary in any condominium instruments, the association's articles of incorporation, or the association's bylaws, the right to control also may pass to the unit owners as provided in this subsection if the declarant fails to do any of the following:

(A) Incorporate or maintain an annual registration pursuant to subsection (a) of Code Section 44-3-100;

(B) Cause the board of directors to be duly appointed and the officers to be elected pursuant to subsection (b) of Code Section 44-3-100;

(C) Maintain and make available to owners, upon written request, a list of the names and business or home addresses of the association's current directors and officers;

(D) Call meetings of the members of the association in accordance with the provisions of the association's bylaws at least annually pursuant to Code Section 44-3-102;

(E) Prepare an annual operating budget, establish the annual assessment, and distribute such budget and notice of assessment to the owners in accordance with the condominium instruments no later than 30 days after the beginning of the association's fiscal year; or

(F) Pay property taxes on common property of the condominium for two or more years.

(2) In the event that the declarant fails to meet one or more of the obligations of this subsection, then any owner, acting individually or jointly with other owners, may send the declarant written notice of the failure to comply with such requirements and provide the declarant a 30 day opportunity to cure the failure; and such notice shall be sent by certified mail or statutory overnight delivery to the declarant's principal office. If the declarant fails to cure any or all deficiencies identified in the notice within 30 days of such notice, then any owner, acting individually or jointly with other owners, shall have standing individually, and not solely through a derivative action, to institute an action in the superior court of the county in which any portion of the condominium is located in order to obtain a declaratory judgment to grant the owner or owners control of the association by ordering an election and setting the terms thereof, or issuing any other orders appropriate to transfer control of the association. The superior court shall have authority to hold a hearing and issue a summary ruling on said action at any time designated by the court not earlier than 20 days after the service thereof, unless the parties consent in writing to an earlier trial. No discovery shall be

had unless ordered by the court for good cause. In addition, the superior court shall be authorized to issue a summary ruling on the conveyance of any intended common areas or other property in the common interest community to the association or other appropriate entity. If the owner or owners prevail in such action, then the superior court shall award to the owner or owners all reasonable attorney's fees and costs incurred for the prosecution of such action. This subsection shall not be the basis for any liability against any party or agent of any party outside of the exclusive remedies provided herein.

(d) In addition to any right of termination set forth therein, any management contract, any lease of recreational area or facilities, or any other contract or lease executed by or on behalf of the association during the period of the declarant's right to control the association pursuant to subsection (a) of this Code section shall be subject to cancellation and termination at any time during the 12 months following the expiration of such control period by the affirmative vote of the unit owners of units to which a majority of the votes in the association pertain, unless the unit owners by a like majority shall have theretofore, following the expiration of such control period, expressly ratified and approved the same.

History.

Ga. L. 1975, p. 609, § 33; Ga. L. 1990, p. 227, § 9; Ga. L. 2012, p. 1031, § 1/SB 136; Ga. L. 2017, p. 352, § 3/SB 46.

Amendments.

The 2012 amendment, effective July 1, 2012, added subsection (c) and redesignated former subsection (c) as present subsection (d).

The 2017 amendment, effective July 1, 2017, substituted the present provisions of subsection (c) for the former provisions, which read: "Notwithstanding and prior to the usual expiration of the period of the declarant's right to control the association pursuant to subsection (a) of this Code section, the right to control also may pass to the unit owners as provided in this subsection if the declarant fails to do any of the following: (1) incorporate the association pursuant to subsection (a) of Code Section 44-3-100; (2) cause the board of directors to be duly appointed and the officers to be elected pursuant to subsection (b) of Code section 44-3-100; (3) maintain and make available to owners, upon written request, a list of the names and business or home addresses of the association's current directors and officers; (4) call meetings of the members of

the association in accordance with the provisions of the association's bylaws at least annually pursuant to Code Section 44-3-102; or (5) prepare an annual operating budget and establish the annual assessment and distribute the budget and notice of assessment to the owners in accordance with the condominium instruments no later than 30 days after the beginning of the association's fiscal year. In the event that the declarant fails to meet one or more of the obligations of this subsection, then any owner, acting individually or jointly with other owners, may send the declarant written notice of the failure to comply with such requirements and provide the declarant a 30 day opportunity to cure the failure; and such notice shall be sent by certified mail or statutory overnight delivery to the declarant's principal office. If the declarant fails to cure any or all deficiencies identified in the notice within 30 days of such notice, then any owner, acting individually or jointly with other owners, may file a petition in the superior court of the county in which any portion of the condominium is located in order to obtain an order to grant the owners control of the association. The superior court shall have authority to hold a

hearing and issue a summary ruling on said petition at any time designated by the court not earlier than 20 days after the service thereof, unless the parties consent in writing to an earlier trial. If the owners prevail in such action, then the superior court shall

award to the owners all reasonable attorney's fees and costs incurred by the owners for the prosecution of such action."

Law reviews.

For annual survey on construction law, see 66 Mercer L. Rev. 27 (2014).

JUDICIAL DECISIONS

Conditional termination not permitted. — Nothing in O.C.G.A. § 44-3-101(c) permits any "conditional termination," one which may ripen eventually, upon which termination would be effective as of some prior date; although the time limitation in O.C.G.A. § 44-3-101(c) is not a statute of limitation, it serves an analogous function in that it establishes a limited period beyond which an association loses its right thereunder to terminate contracts. *Capitol Infrastructure, LLC v. Plaza Midtown Residential Condo. Ass'n*, 306 Ga. App. 794, 702 S.E.2d 910, 2010 Ga. App. LEXIS 1058 (2010), cert. denied, No. S11C0500, 2011 Ga. LEXIS 331 (Ga. Apr. 18, 2011).

Termination of telecommunications contract. — Superior court's judgment declaring that an agreement between a condominium association and a telecommunications company was subject

to termination by the association pursuant to O.C.G.A. § 44-3-101 was vacated because the 12-month period of O.C.G.A. § 44-3-101(c) expired without the association having terminated any telecommunications contract, rendering the issue in its declaratory judgment action moot, and the declaratory judgment upon a moot issue was not authorized under the Declaratory Judgment Act, O.C.G.A. § 9-4-1 et seq.; by the time the superior court issued the declaratory judgment, the statutory period of O.C.G.A. § 44-3-101(c) had expired, and any right the association had to cancel and terminate contracts under that statute expired. *Capitol Infrastructure, LLC v. Plaza Midtown Residential Condo. Ass'n*, 306 Ga. App. 794, 702 S.E.2d 910, 2010 Ga. App. LEXIS 1058 (2010), cert. denied, No. S11C0500, 2011 Ga. LEXIS 331 (Ga. Apr. 18, 2011).

44-3-103. Quorums at meetings of association or board.

JUDICIAL DECISIONS

Proxies not counted in determining quorum. — Trial court properly held that proxies were not counted in determining whether a quorum was present for a meeting of condominium owners because: (1) the word "member" in a bylaw referred to an individual and not to a proxy authorizing one person to act for another; (2) O.C.G.A. § 44-3-103 affirmed the common law rule requiring the presence of a

person entitled to cast a vote to establish a quorum, unless condominium instruments or bylaws provided otherwise; and (3) the condominium association's bylaws did not provide otherwise. *Demere Landing Condo. Owners Ass'n v. Matthews*, 315 Ga. App. 464, 726 S.E.2d 416, 2012 Ga. App. LEXIS 176 (2012).

44-3-106. Powers and responsibilities of association; tort actions.

(a) Except to the extent prohibited by the condominium instruments and subject to any restrictions and limitations specified therein, the association shall have the power to:

(1) Employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the association;

(2) Make or cause to be made additional improvements on and as a part of the common elements;

(3) Grant or withhold approval of any action by one or more unit owners or other persons entitled to occupancy of any unit if such action would change the exterior appearance of any unit or of any other portion of the condominium or elect or provide for the appointment of an architectural control committee to grant or withhold such approval; and

(4) Enforce all lawful provisions of the condominium instruments in accordance with and pursuant to all powers granted by this article, by Chapter 2 or 3 of Title 14 as may be applicable, and as provided for in the instruments, including, but not limited to, by an action to recover sums due; for damages; for injunctive relief, without regard to whether other remedies may exist or be adequate, provided that the provisions of Code Section 44-3-76 and the instrument are complied with; or for any other remedy available at law or in equity to the association.

(b) Except to the extent prohibited by the condominium instruments and subject to any restrictions and limitations specified therein, the association shall have the irrevocable power, as attorney in fact on behalf of all unit owners and their successors in title, to grant easements, leases, and licenses through or over the common elements, to accept easements, leases, and licenses benefiting the condominium or any portion thereof, and to acquire or lease property in the name of the association as nominee for all unit owners. Property so acquired by the association as nominee for the unit owners, upon the recordation of the deed thereto or other instrument granting the same, shall automatically and without more, and for all purposes, including, without limitation, taxation, be a part of the common elements. The association shall also have the power to acquire, lease, and own in its own name property of any nature, real, personal, or mixed, tangible or intangible; to borrow money; and to pledge, mortgage, or hypothecate all or any portion of the property of the association for any lawful purpose within the association's inherent or expressly granted powers. Any third party dealing with the association shall be entitled to rely in good faith upon a certified resolution of the board of directors of the association authorizing any such act or transaction as conclusive evidence of the authority and power of the association so to act and of full compliance

with all restraints, conditions, and limitations, if any, upon the exercise of such authority and power. The provisions of Code Section 44-2-2 notwithstanding, any such actions taken by the association as attorney in fact on behalf of all unit owners and their successors in title shall be effective record notice to third parties if recorded in the name of the association as that name is reflected in the recorded declaration or any recorded amendments thereto. Such recorded document shall not require a listing of the names of the unit owners or their successors in title or assigns.

(c) The association shall have the power to amend the condominium instruments, the articles of incorporation, and the bylaws of the association or any of them in such respects as may be required to conform to mandatory provisions of this article or of any other applicable law without a vote of the unit owners.

(d) In addition to any other duties and responsibilities as this article or the condominium instruments may impose, the association shall keep:

(1) Detailed minutes of all meetings of the members of the association and of the board of directors;

(2) Detailed and accurate financial records, including itemized records of all receipts and expenditures; and

(3) Any books and records as may be required by law or be necessary to reflect accurately the affairs and activities of the association.

(e) This Code section shall not be construed to prohibit the grant or imposition of other powers and responsibilities to or upon the association by the condominium instruments.

(f) Except to the extent otherwise expressly required by this article, by Chapter 2 or 3 of Title 14, by the condominium instruments, by the articles of incorporation, or by the bylaws of the association, the powers inherent in or expressly granted to the association may be exercised by the board of directors, acting through the officers, without any further consent or action on the part of the unit owners.

(g) A tort action alleging or founded upon negligence or willful misconduct by any agent or employee of the association or in connection with the condition of any portion of the condominium which the association has the responsibility to maintain shall be brought against the association. No unit owner shall be precluded from bringing such an action by virtue of his ownership of an undivided interest in the common elements or by virtue of his membership in the association. A judgment against the association arising from a tort action shall be a lien against the property of the association.

(h) The association shall have the capacity, power, and standing to institute, intervene in, prosecute, represent in, or defend, in its own name, litigation, administrative or other proceedings of any kind concerning claims or other matters relating to any portions of the units or common elements which the association has the responsibility to administer, repair, or maintain; and such capacity, power, and standing shall not be waived, abridged, modified, or removed by any provision of any contract or document, including the condominium instruments, that were recorded, entered into, or established prior to the expiration of the period of the declarant's right to control the association as set forth in subsection (a) of Code Section 44-3-101.

(i) This Code section shall not alter, modify, or remove the association's obligation to comply with Part 2A of Article 1 of Chapter 2 of Title 8.

History.

Ga. L. 1975, p. 609, § 38; Ga. L. 1990, p. 227, § 11; Ga. L. 1994, p. 1943, § 9; Ga. L. 2014, p. 212, § 1/HB 820; Ga. L. 2024, p. 76, § 2/HB 220, effective July 1, 2024; Ga. L. 2025, p. 1029, § 44(2)/SB 153, effective July 1, 2025.

Amendments.

The 2014 amendment, effective July 1, 2014, added the language beginning with “; and such capacity” and ending with “Code Section 44-3-101” at the end of subsection (h) and added subsection (i).

The 2024 amendment, effective July 1, 2024, deleted “and” from the end of paragraph (a)(2), substituted “; and” for a period at the end of paragraph (a)(3), and added paragraph (a)(4).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(4).

Law reviews.

For annual survey on construction law, see 66 Mercer L. Rev. 27 (2014).

44-3-107. Insurance coverage.

(a) The association shall obtain:

(1) A property insurance policy or policies affording fire and extended coverage insurance for and in an amount consonant with the full insurable replacement cost, less deductibles, of all buildings and structures within the condominium. Regardless of the boundaries of the condominium units, the insurance required by this paragraph shall include, without limitation, all portions of each building which are common elements including limited common elements, all foundations, roofs, roof structures, and exterior walls, including windows and doors and the framing therefor, and all convertible space within the building. Such insurance shall cover the following items with respect to each condominium unit regardless of who is responsible for maintaining them under the condominium instruments:

(A) The HVAC system serving the condominium unit;

(B) All Sheetrock and plaster board comprising the walls and ceilings of the condominium unit; and

(C) The following items within the condominium unit of the type and quality initially installed, or replacements thereof of like kind and quality in accordance with the original plans and specifications, or as they existed at the time the condominium unit was initially conveyed if the original plans and specifications are not available: floors and subfloors; wall, ceiling, and floor coverings; plumbing and electrical lines and fixtures; built-in cabinetry and fixtures; and appliances used for refrigeration, cooking, dishwashing, and laundry.

Unless otherwise provided in the declaration, with respect to unfinished shell units conveyed by the declarant, the items in subparagraph (C) of this paragraph shall be insured by the condominium unit owner and the coverage required by this paragraph shall repair or reconstruct only those portions of the shell unit constructed by the declarant. With respect to any condominium units which have not been conveyed by the declarant at the time of an insured loss, the coverage required by this paragraph shall repair or reconstruct such units as they exist at the time of such loss. The association may exclude from coverage required by this paragraph improvements made by the condominium unit owners and structures covered by builder's risk insurance, such coverage to be in an amount consonant with the full replacement value thereof, but only during such period of time as the builder's risk insurance remains in full force and effect and only on the condition that the association is named as an additional named insured;

(2) A commercial general liability insurance policy or policies affording coverage for bodily injury and property damage in an amount not less than \$1 million for a single occurrence and \$2 million aggregate. The policy or policies shall cover the association, the board of directors and the officers of the association, all agents and employees of the association, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium for occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the common elements or other portion of the condominium which the association has the responsibility to maintain; and

(3) Any additional types and amounts of insurance coverage as may be specified in the condominium instruments.

(b) The association may obtain additional types and amounts of insurance as may be authorized by the board of directors.

(c) In the event of a potential or submitted claim related to water damage or water peril on any insurance policy obtained by:

(1) An association, and upon written request by a unit owner to the association, the association or its designated agent shall, within five

business days from the receipt of such request, provide to such owner a copy of the association's certificate of insurance for all such insurance obtained by the association that may apply to such potential claim or submitted claim. Such request shall state an address to which such information shall be directed and shall specify whether such information shall be available for pickup, mailed, or sent by electronic communication along with the specific address for mailing or electronic communication. When such claim related to water damage or water peril has been submitted, and upon written request by a unit owner to the association, the association or its designated agent shall, within five business days from the receipt of such request, provide the name, address, and telephone number of the insurance adjuster, if one has been identified to the association; or

(2) A unit owner, and upon written request by an association or its designated agent to a unit owner, the unit owner shall, within five business days from the receipt of such request, provide to the association or its designated agent a copy of the unit owner's certificate of insurance for all such insurance obtained by the unit owner that may apply to the potential claim or actual claim. Such request shall state an address to which such information is to be directed and shall specify whether such information shall be available for pickup, mailed, or sent by electronic communication along with the specific address for mailing or electronic communication. When such claim related to water damage or water peril has been submitted, and upon written request by the association to a unit owner, the unit owner or its designated agent shall, within five business days from the receipt of such request, provide the name, address, and telephone number of the insurance adjuster, if one has been identified to the unit owner.

Nothing contained in this subsection shall require an association to obtain insurance related to water damage or water perils.

History.

Ga. L. 1975, p. 609, § 39; Ga. L. 1990, p. 227, § 12; Ga. L. 2008, p. 1030, § 1/HB 1121; Ga. L. 2020, p. 370, § 1/HB 1070.

Amendments.

The 2020 amendment, effective January 1, 2021, added subsection (c).

JUDICIAL DECISIONS

“Extended coverage” did not include water perils. — In a condominium owner's action against the condominium association for breach of contract after two separate water leaks in the owner's condominium unit, the trial court erred by holding that the Georgia Condominium Act, O.C.G.A. § 44-3-70, did not require the association to maintain coverage for

water leak damage; rather, it was required to have “fire and extended coverage insurance”. “Extended coverage” included windstorm, hail, aircraft, riot, vehicles, explosion, and smoke, not water. *Villa Sonoma Perimeter Summit Condo. Ass'n v. Mainor*, 356 Ga. App. 794, 849 S.E.2d 226, 2020 Ga. App. LEXIS 534 (2020).

Coverage for water leaks not required. — In a condominium owner's action against the condominium association for breach of contract and attorney fees, the trial court erred in granting the owner's motion for summary judgment and holding that the Georgia Condominium Act, O.C.G.A. § 44-3-70 et seq., required that the association maintain

coverage for damage caused by water leaks because the requirement that the association maintain fire and extended coverage insurance did not require coverage for water leaks. *Villa Sonoma Perimeter Summit Condo. Ass'n v. Mainor*, 356 Ga. App. 794, 849 S.E.2d 226, 2020 Ga. App. LEXIS 534 (2020).

44-3-109. Lien for assessments; personal obligation of unit owner; notice and foreclosure; lapse; right to statement of assessments; effect of failure to furnish statement.

Law reviews.

For annual survey on wills, trusts,

guardianships, and fiduciary administration, see 64 Mercer L. Rev. 325 (2012).

JUDICIAL DECISIONS

Foreclosure proceedings. — Plaintiff condominium association could not assess against the defendant owner's unit, as common expenses under O.C.G.A. § 44-3-80(b)(2), legal fees and interest in connection with enforcing restraining orders against a former occupant since the occupant had moved before those expenses were incurred; those assessments were not lawfully assessed under O.C.G.A. § 44-3-109(a) and thus could not form the basis for a lien, and since the notice of foreclosure included those amounts, the notice did not comply with § 44-3-109(c). *One Buckhead Loop Condo. Ass'n v. Pew*, 484 Fed. Appx. 331, 2012 U.S. App. LEXIS 13688 (11th Cir. 2012).

Trial court properly allowed a condominium association to foreclose a lien against a debtor's condominium unit and awarded the association damages because O.C.G.A. § 44-3-109 and the condominium documents created a lien in the association's favor and the debtor's bankruptcy discharge had no impact on the association's right to enforce the association's lien since discharges in bankruptcy did not affect liability in rem. *Casas-Rodriguez v. Cosmopolitan on Lindbergh Condo. Ass'n*, 325 Ga. App. 253, 749 S.E.2d 371, 2013 Ga. App. LEXIS 796 (2013).

Condominium unit owner's claim for constructive eviction was not barred by

the owner's failure to plead the eviction in an earlier action by the condominium association for assessments and foreclosure of its lien on the owner's units because the constructive eviction claim did not mature until after the conclusion of the association's suit and was therefore a permissive, not compulsory counterclaim. *Elekima v. Abbey Rd. Condo. Ass'n*, 331 Ga. App. 357, 771 S.E.2d 63, 2015 Ga. App. LEXIS 148 (2015).

Impact of bankruptcy on lien enforcement. — Bankruptcy discharge has no impact on a condominium association's right to enforce the association's lien as a bankruptcy discharge extinguishes only one mode of enforcing a claim, namely, an action against the debtor in personam, while leaving intact another, namely, an action against the debtor in rem. *Casas-Rodriguez v. Cosmopolitan on Lindbergh Condo. Ass'n*, 325 Ga. App. 253, 749 S.E.2d 371, 2013 Ga. App. LEXIS 796 (2013).

Attorney fees. — Condominium association's property manager's affidavit, in which the manager testified that the manager was familiar with the billing processes of the association and the association's records and that the manager's affidavit was on personal knowledge, was sufficient to support summary judgment for the association in the association's action against an owner for assessments

and fees. Because the declaration provided for attorney's fees, an award of attorney's fees was mandated under O.C.G.A. § 44-3-109(b)(3), although the

association did not ask for the fees. *Ellington v. Gallery Condo. Ass'n*, 313 Ga. App. 424, 721 S.E.2d 631, 2011 Ga. App. LEXIS 1117 (2011).

RESEARCH REFERENCES

ALR.

State Statute Granting Right of Nonju-

dicial Foreclosure to Condominium or Homeowner Association, 66 A.L.R.7th 4.

44-3-111. Sales of residential condominium units for residential occupancy; information required to be furnished by seller; buyer's right to void contract; limitations period; attorney's fees; penalty for willful violation.

Law reviews.

For note, "The Georgia Condominium Act's Authorization of Private Takings:

Revisiting *Kelo* and 'Bitter with the Sweet,'" see 55 Ga. L. Rev. 395 (2020).

RESEARCH REFERENCES

ALR.

Disclosure requirements under state condominium, homeowner association, or

planned real estate statute, 44 A.L.R.7th Art. 6.

44-3-113. Applicability of this article; effect on existing condominiums.

Law reviews.

For note, "The Georgia Condominium Act's Authorization of Private Takings:

Revisiting *Kelo* and 'Bitter with the Sweet,'" see 55 Ga. L. Rev. 395 (2020).

44-3-115. Construction of this article; substantial compliance; procedure for curing defects in recorded instruments.

JUDICIAL DECISIONS

Use of statute to cure defects and breach of contract. — Chapter 11 debtor was not entitled to summary judgment on the debtor's objection to a claim. The issue of the unresolved materiality of purported defects in condominium documents was critical to the determination of

whether O.C.G.A. § 44-3-115 could be used to cure the defects and to the underlying breach of contract and warranty claims. In *re Foster*, No. 11-30021, 2013 Bankr. LEXIS 246 (Bankr. S.D. Ga. Jan. 16, 2013).

ARTICLE 5
TIME-SHARE PROJECTS AND PROGRAMS

PART 7
MISCELLANEOUS

44-3-206. Foreclosure by owners' association; procedure; effect of sale.

(a) An owners' association may foreclose its lien upon a time-share estate in accordance with subsection (c) of Code Section 44-3-109 or with Code Section 44-3-207 or may foreclose its lien under a power of sale that such owners' association shall have under this Code section in order to sell a time-share estate for the purpose of paying any or all unpaid assessments and other charges owed by the owner of such time-share estate.

(b)(1) In order for an owners' association to foreclose its lien upon a time-share estate under a power of sale, a notice of sale shall be:

(A) Accomplished in writing sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the property address of the owner most recently provided to the owners' association no later than 30 days prior to the date of the proposed sale and shall be deemed given on the official postmark day or the day on which it is received for delivery by a commercial delivery firm;

(B) Provided in writing to any lien holder, sent by registered or certified mail or statutory overnight delivery, return receipt requested; and

(C) Provided by advertising the time, place, and terms of said sale in a newspaper in which sheriff's advertisements are published in the county where the development is located, once a week during the four calendar weeks immediately preceding the calendar week of the date of such sale.

(2) Any sale pursuant to this subsection shall occur on a legal sale day within the legal hours of sale at the legal place of sale in the county where the development is located.

(c) A sale undertaken as authorized by this Code section shall divest the owner of all right, title, interest, and equity that such owner has in or to the time-share estate and shall vest fee simple title to the time-share estate in the purchaser or purchasers at said sale. The proceeds of said sale shall be applied first in accordance with the lien priorities set forth in paragraphs (1) through (4) of subsection (a) of

Code Section 44-3-109, after which any remaining proceeds shall be applied to the payment in full of such unpaid assessments and other charges and next to the payment of all expenses actually incurred by the owners' association in connection with said proceedings, including attorneys' fees, and any remaining proceeds shall be paid to the owner. The owners' association may bid at said sale and purchase the time-share estate.

(d) For the purpose of carrying out and effectuating the power of sale authorized by this Code section, the owners' association shall be constituted the true and lawful attorney-in-fact of such owner to sell such time-share estate, as provided in this Code section, and convey the same to the purchaser or purchasers at said sale in as full and ample a manner as such owner could do in person. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise.

History.

Code 1981, § 44-3-206, enacted by Ga. L. 2022, p. 291, § 1/HB 1088; Ga. L. 2022, p. 407, § 1/SB 493; Ga. L. 2023, p. 599, § 2/HB 182, effective July 1, 2023.

Effective date.

This Code section became effective May 2, 2022.

Amendments.

The 2023 amendment, effective July

1, 2023, inserted "or with Code Section 44-3-207" in the middle of subsection (a).

Editor's notes.

Ga. L. 2022, p. 291, § 1/HB 1088 and Ga. L. 2022, p. 407, § 1/SB 493 both enacted identical versions of this Code section, effective May 2, 2022.

44-3-207. Time-share estates; trustee foreclosures; requirements.

(a)(1)(A) In order to sell a time-share estate for the purpose of paying any or all unpaid assessments and other charges owed by the owner of such time-share estate, an owners' association, or its managing agent on behalf of the owner's association, may foreclose its lien for all assessments and other charges assessed by the owners' association upon a time-share estate pursuant to the time-share instrument or subsections (a) and (b) of Code Section 44-3-109, in accordance with:

(i) The judicial foreclosure procedure of subsection (c) of Code Section 44-3-109 or 44-3-232, as applicable;

(ii) The trustee foreclosure procedure under this Code section;
or

(iii) The nonjudicial foreclosure procedure under Code Section 44-3-206.

(B) If the time-share instrument contains any provision specifically prohibiting the use of the trustee foreclosure procedure, or if

the owners' association otherwise determines that the time-share instrument should be amended to specifically provide for the use of the trustee foreclosure procedure, an amendment to the time-share instrument permitting the use of the trustee foreclosure procedure set forth in this Code section must be adopted and recorded prior to the use of the trustee foreclosure procedure. Prior to the owners' association's first use of the trustee foreclosure procedure, it shall notify all owners of time-share estates in the time-share program that, after the date of the notification, the owners' association has the right to elect to use the trustee foreclosure procedure with respect to any foreclosure of assessment liens as established in this Code section. The owners' association, or its managing agent on behalf of the owners' association, shall be deemed to have complied with this notice requirement if the owners of time-share estates in the time-share program are informed by mail sent to each owner's property address that was most recently provided to the owners' association, in the notice of an annual or special meeting of the owners, by posting on the website of the applicable time-share program, or by any other communication used by the owners' association.

(2) A mortgagee may foreclose its mortgage upon a time-share estate in accordance with Part 2 of Article 7 of Chapter 14 of this title or may foreclose its mortgage pursuant to the trustee foreclosure procedure under this Code section in order to sell a time-share estate for the purpose of satisfying any obligation of the owner of such time-share estate created by such mortgage; provided, however, that the mortgage, or an amendment to a mortgage executed by the owner of the time-share estate, permits the trustee foreclosure procedure.

(b)(1) For the purpose of carrying out and effectuating a trustee foreclosure authorized by this Code section, the owners' association or mortgagee, as applicable, shall appoint a trustee or substitute trustee by recording a notice of appointment of trustee or notice of substitution of trustee in the official records of the county in which the time-share estate is located. The owners' association or mortgagee may appoint multiple trustees in a single appointment, and any appointed trustee may be used by the owners' association, its managing agent, or the mortgagee, as applicable, regarding the trustee foreclosure of any assessment lien or mortgage under any time-share project for which the trustee is appointed. The recorded notice of appointment of trustee or notice of substitution of trustee shall contain the name and address of the trustee or substitute trustee, the name and address of the owners' association or mortgagee, and the name and address of the time-share project.

(2) For purposes of this Code section, an attorney who is a member in good standing of the State Bar of Georgia and who has been

practicing law for at least five years, or that attorney's law firm, or a title insurer, underwriter, or agent authorized to transact business in this state is permitted to serve as a trustee or substitute trustee. A trustee shall use good faith, skill, care, and diligence in discharging all of the trustee duties under this Code section and shall deal honestly and fairly with all parties. A trustee who intentionally violates the provisions of this Code section concerning the trustee foreclosure procedure shall be guilty of a felony and shall be punished by a fine of not more than \$5,000.00 or imprisonment for not less than one year nor more than three years, or both.

(c)(1) Before initiating the trustee foreclosure procedure against any time-share estate, a claim of lien or mortgage against the time-share estate shall have been recorded in the county in which the time-share estate is located.

(2) In any trustee foreclosure proceeding, the trustee shall first deliver to the owner of the time-share estate a written notice of default sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the owner's property address that was most recently provided to the owners' association or mortgagee and no later than 30 days prior to the initiation of the trustee foreclosure procedure. The notice of default shall be deemed delivered on the official postmark day or the day on which it is received for delivery by a commercial delivery firm. The notice of default shall state:

(A) The intent of the owners' association or mortgagee to commence foreclosing on the assessment lien or mortgage, after the end of the 30 day period, using the trustee foreclosure procedure set forth in this Code section;

(B) The address and telephone number of the trustee and owners' association, its managing agent, or the mortgagee, as applicable;

(C) The legal description of the time-share estate;

(D) The nature of the default;

(E) The outstanding amounts secured by the assessment lien or mortgage and a per diem amount to account for further accrual of such amounts;

(F) The method by which the owner of the time-share estate may cure the default; and

(G) The right of the owner of the time-share estate to object to the use of the trustee foreclosure procedure and require the owners' association or mortgagee to proceed thereafter only with a judicial

foreclosure action as to that specified default by delivering a written objection to the trustee within 20 days after the delivery date of the notice.

(3) At any time before the trustee foreclosure sale of the encumbered time-share estate is consummated pursuant to subsection (e) of this Code section, the owner of the time-share estate may cure the default and redeem the time-share estate by paying the amounts secured by the assessment lien or mortgage in cash or certified funds to the trustee. No right of redemption shall exist after the consummation of the sale.

(d)(1) In order for a trustee to sell an encumbered time-share estate foreclosed under this Code section:

(A) The trustee must have provided the written notice of default as required under paragraph (2) of subsection (c) of this Code section, and a period of at least 30 calendar days must have elapsed after such notice of default is deemed delivered;

(B) The trustee must not have received from the owner of the time-share estate a written objection to the use of the trustee foreclosure procedure prior to the end of the 20 day period provided for in the notice of default and the time-share estate was not redeemed under paragraph (3) of subsection (c) of this Code section;

(C) The trustee must have delivered a notice of sale meeting the requirements of paragraph (4) of this subsection to the owner of the time-share estate, by registered or certified mail or statutory overnight delivery, return receipt requested, to the property address of the owner of the time-share estate most recently provided to the owners' association or mortgagee no later than 30 days prior to the date of the proposed sale and the notice of sale shall be deemed delivered on the official postmark day or the day on which it is received for delivery by a commercial delivery firm;

(D) The trustee must have delivered a copy of the notice of sale to any junior lien holder of record by registered or certified mail or statutory overnight delivery, return receipt requested, no later than 30 days prior to the date of the proposed sale. The notice of sale shall be deemed delivered on the official postmark day or the day on which it is received for delivery by a commercial delivery firm;

(E) The trustee must have recorded a copy of the notice of sale in the official records of the county in which the time-share estate is located not less than 30 days prior to the date of the proposed sale; and

(F) The trustee must have published a notice in the legal organ for the county in which the time-share estate is located, or if there

is no newspaper designated as such, then in the nearest newspaper having the largest general circulation in such county, once a week during the four calendar weeks immediately preceding the calendar week of the date of such sale. The last of such notices shall be published at least seven calendar days prior to the date of the sale.

(2) If a notice of lis pendens has not previously been recorded, the recording of the notice of sale shall have the same force and effect as the filing of a lis pendens in a judicial proceeding.

(3) Any trustee foreclosure sale pursuant to this subsection shall be conducted by the trustee, or by an agent of the trustee under the supervision of the trustee, and shall occur on a legal sale day within the legal hours of sale at the place of sale designated in the notice of sale, which must be accessible to the public in the county where the time-share estate is located. The trustee foreclosure sale may also occur online at a specific website on the internet or in any other manner used for a judicial foreclosure sale procedure in the county in which the time-share estate is located.

(4) The notice of sale required by paragraph (1) of this subsection shall be in writing and shall state:

(A) The name of the owner of the time-share estate;

(B) The legal description of the time-share estate;

(C) The name and address of the trustee;

(D) A description of the default that is the basis for the foreclosure;

(E) The recording information for the assessment lien or mortgage;

(F) The amounts secured by the assessment lien or mortgage and a per diem amount to account for further accrual of the amounts secured by the assessment lien or mortgage; and

(G) The date, location, and starting time of the trustee foreclosure sale, which shall be between the hours of 9:00 A.M. and 4:00 P.M., eastern standard time.

(e)(1) At the trustee foreclosure sale, the trustee shall issue to the highest bidder, who has paid the price bid in cash or certified funds, as purchaser or purchasers, a certificate of sale stating that a foreclosure conforming to the requirements of this Code section has occurred, including the time, location, and date of the sale; a legal description of the time-share estate that was sold; the amounts secured by the assessment lien or mortgage; the amount of the highest bid; and the name of the purchaser. Within three days of the

trustee foreclosure sale, a copy of the certificate of sale shall be sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the owner of the time-share estate at the owner's property address that was most recently provided to the owners' association or mortgagee. Upon the issuance of a certificate of sale, all of the rights of redemption of the owner of the time-share estate that have been foreclosed under this Code section shall terminate.

(2) Within ten calendar days after a sale, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee foreclosure deed to the time-share estate, the trustee shall issue a trustee foreclosure deed to the purchaser and deliver the trustee foreclosure deed to the clerk of the superior court for recording in the official records of the county in which the time-share estate is located. The trustee foreclosure deed shall include the name and address of the trustee, the name and address of the purchaser or purchasers, the name and address of the former owner of the time-share estate, and a legal description of the time-share estate. The trustee foreclosure deed shall contain no warranties of title from the trustee. A certificate of compliance confirming that the notice and publication requirements of this Code section were met, that the default was not cured, that the trustee did not timely receive any written objection to the trustee foreclosure procedure from the owner of the time-share estate, and that the time-share estate was not timely redeemed shall be executed by the trustee and attached as an exhibit to the trustee foreclosure deed.

(3) A sale and delivery of the trustee foreclosure undertaken as authorized by this Code section shall divest the owner of the time-share estate of all right, title, interest, and equity that such owner has in or to the time-share estate and shall vest fee simple title to the time-share estate in the purchaser or purchasers at the trustee foreclosure sale. The issuance and recording of the trustee foreclosure deed is presumed valid and may be relied upon by third parties without actual knowledge of irregularities in the trustee foreclosure proceedings.

(4) The proceeds of the trustee foreclosure sale shall be applied first in accordance with the lien priorities set forth in paragraphs (1) through (4) of subsection (a) of Code Section 44-3-109, after which any remaining proceeds shall be applied to the payment in full of such unpaid assessments and other charges or mortgage obligations, as applicable, and next to the payment of all expenses actually incurred by the owners' association in connection with the trustee foreclosure proceedings, including attorneys' fees. Any remaining proceeds shall be paid to the prior owner of the time-share estate. The owners' association or mortgagee, as applicable, may bid at the sale and

purchase the time-share estate and receive a credit up to the amount of unpaid assessments and other charges or mortgage obligations, as applicable, and all expenses actually incurred by the owners' association or mortgagee, as applicable, in connection with the trustee foreclosure proceedings, including attorney's fees.

(5) A trustee foreclosure sale releases the prior owner of the time-share estate of liability for any and all amounts secured by the assessment lien or mortgage, as applicable. The owners' association or mortgagee, as applicable, has no right to any deficiency judgment against the prior owner of the time-share estate after the completion of the trustee foreclosure sale of the time-share estate under this Code section.

History.

Code 1981, § 44-3-207, enacted by Ga. L. 2023, p. 599, § 3/HB 182, effective July 1, 2023.

Effective date.

This Code section became effective July 1, 2023.

ARTICLE 6

PROPERTY OWNERS' ASSOCIATIONS

44-3-220. Short title.

JUDICIAL DECISIONS

Use of easement for access to lake.

— Trial court properly found that an easement did not authorize general access to a lake for all members of the homeowners' association but a remand was required as genuine issues existed as to what was reasonably necessary for the enjoyment of the easement and whether a walkway and bridge caused interference and damage to the easement holders. *Crabapple Lake Parc Cmty. Ass'n v. Circeo*, 325 Ga. App. 101, 751 S.E.2d 866, 2013 Ga. App. LEXIS 975 (2013), cert. denied, No. S14C0496, 2014 Ga. LEXIS 419 (Ga. May 19, 2014).

Authority of association to enter into agreement for recreational facilities. — In a suit challenging a homeowners association's declaration amendment allowing the association to enter into an agreement with a nearby private swim and tennis club, the trial court erred by not granting the association's summary judgment because even without the amendment, the association was autho-

rized, for the common benefit of all homeowners, to accept an easement granting the homeowners access to recreational facilities, and to assess the homeowners their pro rata share of the ongoing cost of the easement. *Amberfield Homeowners Ass'n v. Young*, 346 Ga. App. 29, 813 S.E.2d 618, 2018 Ga. App. LEXIS 329 (2018).

Declaration amendment restricting leasing property in HOA. — Trial court's grant of summary judgment to the homeowners' association was proper because two-thirds of homeowners voted to restrict leasing in their neighborhood; thus, an amendment to the declaration challenged by the plaintiff complied with O.C.G.A. § 44-3-226(a) and the plaintiff did not have an unfettered right to lease the plaintiffs' property thereafter. *Pasha v. Battle Creek Homeowners Ass'n*, 350 Ga. App. 433, 829 S.E.2d 618, 2019 Ga. App. LEXIS 316 (2019).

44-3-221. Definitions.

JUDICIAL DECISIONS

Authority of association to enter into agreement for recreational facilities. — In a suit challenging a homeowners association’s declaration amendment allowing the association to enter into an agreement with a nearby private swim and tennis club, the trial court erred by not granting the association’s summary judgment because even without the amendment, the association was autho-

rized, for the common benefit of all homeowners, to accept an easement granting the homeowners access to recreational facilities, and to assess the homeowners their pro rata share of the ongoing cost of the easement. *Amberfield Homeowners Ass’n v. Young*, 346 Ga. App. 29, 813 S.E.2d 618, 2018 Ga. App. LEXIS 329 (2018).

44-3-222. Creation of property owners’ development; affirmative election to be governed by article.

JUDICIAL DECISIONS

Authority of association to enter into agreement for recreational facilities. — In a suit challenging a homeowners association’s declaration amendment allowing the association to enter into an agreement with a nearby private swim and tennis club, the trial court erred by not granting the association’s summary judgment because even without the amendment, the association was authorized, for the common benefit of all homeowners, to accept an easement granting the homeowners access to recreational facilities, and to assess the homeowners their pro rata share of the ongoing cost of the easement. *Amberfield Homeowners Ass’n v. Young*, 346 Ga. App. 29, 813 S.E.2d 618, 2018 Ga. App. LEXIS 329 (2018).

declaration provided that the two-thirds vote to amend the declaration created a mandatory association, all statutory requirements were met, and the homeowners’ impliedly consented to membership by paying assessments and being on notice of the association’s existence, so the homeowners were bound by the amendments. *Vaughn v. Windfield Homeowners Assn., Inc.*, 375 Ga. App. 18, 913 S.E.2d 74, 2025 Ga. App. LEXIS 68 (2025).

Homeowners bound by amendments. — In a dispute over covenants preventing use of a home as a short-term rental, the grant of summary judgment to the homeowners association was upheld because the plain language of the 1987

Declaration amendment restricting leasing property in HOA. — Trial court’s grant of summary judgment to the homeowners’ association was proper because two-thirds of homeowners voted to restrict leasing in their neighborhood; thus, an amendment to the declaration challenged by the plaintiff complied with O.C.G.A. § 44-3-226(a) and the plaintiff did not have an unfettered right to lease the plaintiff’s property thereafter. *Pasha v. Battle Creek Homeowners Ass’n*, 350 Ga. App. 433, 829 S.E.2d 618, 2019 Ga. App. LEXIS 316 (2019).

44-3-223. Compliance with provisions of instrument and with rules and regulations; penalties for noncompliance.

Every lot owner and all those entitled to occupy a lot shall comply with all lawful provisions of the property owners’ association instrument. In addition, any lot owner and all those entitled to occupy a lot shall comply with any reasonable rules or regulations adopted by the

association pursuant to the instrument which have been provided to the lot owners and with the lawful provisions of the bylaws of the association. Any lack of such compliance shall be grounds for an action to recover sums due, for damages, for injunctive relief, or for any other remedy available at law or in equity, maintainable by the association or, in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. After providing notice in accordance with the terms of the instrument, or, if the instrument is silent, ten days' written notice, the association may pursue injunctive relief without the need or requirement to first pursue or utilize any other remedies, regardless of whether other remedies may be available or might otherwise be adequate, provided that such notice shall not be required in the event of a violation of the instrument or the reasonable rules or regulations adopted by the association that presents a clear and imminent danger to life, person, or property, or for which injunctive relief would become moot if not granted before a notice period as prescribed above would expire. If and to the extent provided in the instrument, the association shall be empowered to impose and assess fines, which shall not impact voting rights, to suspend temporarily voting rights for failure to pay regular and special assessments, and to suspend the right of use of certain common areas and services paid for as a common expense in order to enforce such compliance; provided, however, that no such suspension shall deny any lot owner or occupants access to the lot owned or occupied or the right to vote in board elections based on failure to pay outstanding fines.

History.

Code 1981, § 44-3-223, enacted by Ga. L. 1994, p. 1879, § 1; Ga. L. 2024, p. 76, § 3/HB 220, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted “damages, for injunctive” for “damages or injunctive” in the third sentence, added the fourth sentence,

and, in the last sentence, substituted “fines, which shall not impact voting rights,” for “fines and” and “rights for failure to pay regular and special assessments, and to suspend the” for “rights and the”, deleted “of the” following “certain”, and added “or the right to vote in board elections based on failure to pay outstanding fines” at the end.

JUDICIAL DECISIONS

Power to collect dues and assessments. — Homeowners association's practice of imposing a \$100-per-week fine for the homeowner's failure to obtain pre-approval of the homeowner's flower bed was not supported by the terms of the

declaration not in compliance with O.C.G.A. § 43-3-223. *Abdullah v. Winslow at Eagle's Landing Homeowners Ass'n*, 349 Ga. App. 615, 823 S.E.2d 872, 2019 Ga. App. LEXIS 205 (2019).

44-3-226. Amendment of instrument; presumption of validity in court action.

(a)(1) Except to the extent expressly permitted or required by other provisions of this article, the instrument shall be amended only by

the agreement of lot owners of lots to which two-thirds of the votes in the association pertain or such larger majority as the instrument may specify; provided, however, that, during any such time as there shall exist an unexpired option to add any additional property to the property owners' association or during any such time as the declarant has the right to control the association under the instrument, the agreement shall be that of the declarant and the lot owners of lots to which two-thirds of the votes in the association pertain, exclusive of any vote or votes appurtenant to any lot or lots then owned by the declarant, or a larger majority as the instrument may specify.

(2) Notwithstanding any other provisions of this subsection:

(A) During such time as the declarant shall own at least one lot primarily for the purpose of sale of such lot, no amendment shall be made to the instrument without the written agreement of the declarant if such amendment would impose a greater restriction on the use or development by the declarant of the lot or lots owned by the declarant; and

(B) No amendment shall be made to the instrument so as to prohibit or restrict a nonowner occupied lot from continuing to be leased or rented for an initial term of six months or longer pursuant to the preamended instrument; provided, however, that upon the conveyance for value of such lot, such lot shall be made to conform to the instrument as amended. For purposes of this subparagraph, the term "conveyance for value" means any transfer of the lot for consideration in the amount of \$100.00 or more or any transfer of an interest in the entity that owns the lot for consideration in the amount of \$100.00 or more.

(b) No amendment of an instrument shall require approval of lot owners to which more than 80 percent of the association vote pertains and the mortgagees holding 80 percent of the voting interest of mortgaged lots; any property owners' association which exists prior to July 1, 1994, and amends its documents to avail itself of the provisions of this article shall be deemed to have amended the association instrument to conform to this limitation. This subsection shall not be deemed to eliminate or modify any right of the declarant provided for in the instrument to approve amendments to the instrument so long as the declarant owns any lot primarily for the purpose of sale and, furthermore, this Code section shall not be construed as modifying or altering the rights of a mortgagee set forth elsewhere in this article.

(c) Except to the extent expressly permitted or required by other provisions of this article, or agreed upon or permitted by the instrument concerning submission of additional property to this article by the

declarant or the association, or agreed upon by all lot owners and the mortgagees of all lots, no amendment to the instrument shall change the boundaries of any lot, the number of votes in the association pertaining thereto, or the liability for common expenses pertaining thereto.

(d) Agreement of the required majority of lot owners to any amendment of the instrument shall be evidenced by their execution of the amendment. In the alternative, provided that the declarant does not then have the right to control the association pursuant to the instrument, the sworn statement of the president, of any vice president, or of the secretary of the association attached to or incorporated in an amendment executed by the association, which sworn statement states unequivocally that agreement of the required majority was otherwise lawfully obtained and that all notices required by this article were properly given, shall be sufficient to evidence the required agreement. Any such amendment of the instrument shall become effective only when recorded or at such later date as may be specified in the amendment itself.

(e) Notwithstanding anything to the contrary in this article or in the instrument, the approval of any proposed amendment by a mortgagee shall be deemed implied and consented to if the mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the mortgagee receives notice of the proposed amendment sent by certified mail or statutory overnight delivery, return receipt requested.

(f) In any court suit or action where the validity of the adoption of an amendment to an instrument is at issue, the adoption of the amendment shall be presumed valid if the suit is commenced more than one year after the recording of the amendment on the public record. In such cases, the burden of proof shall be upon the party challenging the validity of the adoption of the amendment.

History.

Code 1981, § 44-3-226, enacted by Ga. L. 1994, p. 1879, § 1; Ga. L. 1995, p. 10, § 44; Ga. L. 2000, p. 1589, § 3; Ga. L. 2020, p. 690, § 1/SB 442.

Amendments.

The 2020 amendment, effective January 1, 2021, designated the existing pro-

visions of subsection (a) as paragraph (a)(1) and subparagraph (a)(2)(A); substituted a colon for “; during” at the end of paragraph (a)(2); in subparagraph (a)(2)(A) added “During” at the beginning and substituted “and” for the period at the end; and added subparagraph (a)(2)(B).

JUDICIAL DECISIONS

Declaration amendment restricting leasing property. — Trial court’s grant of summary judgment to the homeowners’ association was proper because two-thirds

of homeowners voted to restrict leasing in their neighborhood; thus, an amendment to the declaration challenged by the plaintiff complied with O.C.G.A. § 44-3-226(a)

and the plaintiff did not have an unfettered right to lease the plaintiff's property thereafter. *Pasha v. Battle Creek Homeowners Ass'n*, 350 Ga. App. 433, 829 S.E.2d 618, 2019 Ga. App. LEXIS 316 (2019).

44-3-227. Incorporation as prerequisite to submission to article; requirements as to corporate documents; board of directors.

JUDICIAL DECISIONS

Failure to incorporate prior to filing restrictive covenants. — In a homeowner's suit against an HOA, challenging the enforceability of restrictive covenants because the HOA was not incorporated when the covenants were recorded as required by O.C.G.A. § 44-3-227(a), additional findings were needed regarding whether the HOA was in substantial compliance with the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 et seq., specifically O.C.G.A. § 44-3-233. *Howell v. Lochwolde Homeowners Ass'n*, 355 Ga. App. 678, 845 S.E.2d 410, 2020 Ga. App. LEXIS 366 (2020).

Homeowners bound by amend-

ments. — In a dispute over covenants preventing use of a home as a short-term rental, the grant of summary judgment to the homeowners association was upheld because the plain language of the 1987 declaration provided that the two-thirds vote to amend the declaration created a mandatory association, all statutory requirements were met, and the homeowners' impliedly consented to membership by paying assessments and being on notice of the association's existence, so the homeowners were bound by the amendments. *Vaughn v. Windfield Homeowners Assn., Inc.*, 375 Ga. App. 18, 913 S.E.2d 74, 2025 Ga. App. LEXIS 68 (2025).

44-3-230. Frequency of meetings; notice.

(a) Meetings of the members of the association shall be held in accordance with the provisions of the association's bylaws and in any event shall be called not less frequently than annually. Notice shall be given to each lot owner at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting and shall state the time, place, and, for any special meeting, purpose of such meeting. Such notice shall be delivered personally or sent by United States mail, postage prepaid, statutory overnight delivery, or issued electronically in accordance with Chapter 12 of Title 10, the "Uniform Electronic Transactions Act," to all lot owners of record at such address or addresses as designated by such lot owners or, if no other address has been so designated, at the address of their respective lots. At the annual meeting, comprehensive reports of the affairs, finances, and budget projections of the association shall be made to the lot owners.

(b) In the event an association fails to hold an annual meeting on or before the last day of the association's fiscal year, such meeting may be called by the holders of at least 5 percent of the voting power of the association, or such other amount as the articles of incorporation or bylaws shall specify, provided that such articles or bylaws shall not

require more than 25 percent as a minimum of the voting power, and provided, further, that such call shall be signed by the holders, dated, and delivered to any corporate officer of the association and shall include one or more demands and shall be transmitted in writing or by electronic transmission for the meeting describing the purpose or purposes for which it is to be held.

History.

Code 1981, § 44-3-230, enacted by Ga. L. 1994, p. 1879, § 1; Ga. L. 1995, p. 10, § 44; Ga. L. 2004, p. 560, § 13; Ga. L. 2009, p. 698, § 2/HB 126; Ga. L. 2024, p. 76, § 4/HB 220, effective July 1, 2024; Ga. L. 2025, p. 1029, § 44(3)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective July 1, 2024, designated the existing provi-

sions of this Code section as subsection (a) and added subsection (b).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted “may be called” for “may called” near the beginning of subsection (b).

44-3-231. Powers and duties of association; legal actions against agent or employee of association.

(a) Except to the extent prohibited by the instrument and subject to any restrictions and limitations specified therein, the association shall have the power to:

(1) Employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the association;

(2) Make or cause to be made additional improvements on and as a part of the common area;

(3) Grant or withhold approval of any action by one or more lot owners or other persons entitled to occupancy of any lot if such action would change the exterior appearance of any lot, or any structure thereon, or of any other portion of the development or elect or provide for the appointment of an architectural control committee to grant or withhold such approval; and

(4) Enforce all lawful provisions of the property owners’ association instrument in accordance with and pursuant to all powers granted by this article, by Chapter 2 or 3 of Title 14 as may be applicable, and as provided for in the instrument, including, but not limited to, by an action to recover sums due; for damages; for injunctive relief, without regard to whether other remedies may exist or be adequate, provided that the provisions of Code Section 44-3-223 and the instrument are complied with; or for any other remedy available at law or in equity to the association.

(b) Except to the extent prohibited by the instrument and subject to

any restrictions and limitations specified therein, the association shall have the power to grant easements, leases, and licenses through or over the common area, to accept easements, leases, and licenses benefiting the development or any portion thereof, and to acquire or lease property in the name of the association. Property so acquired by the association upon the recordation of the deed thereto or other instrument granting the same and designating property as common area shall, for all purposes including without limitation taxation, be a part of the common area. The association shall also have the power to acquire, lease, and own in its own name property of any nature, real, personal, or mixed, tangible or intangible; to borrow money; and to pledge, mortgage, or hypothecate all or any portion of the property of the association for any lawful purpose within the association's inherent or expressly granted powers. Any third party dealing with the association shall be entitled to rely in good faith upon a certified resolution of the board of directors of the association authorizing any such act or transaction as conclusive evidence of the authority and power of the association so to act and of full compliance with all restraints, conditions, and limitations, if any, upon the exercise of such authority and power.

(c) The association shall have the power to amend the instrument, the articles of incorporation, and the bylaws of the association in such respects as may be required to conform to mandatory provisions of this article or of any other applicable law without a vote of the lot owners.

(d) In addition to any other duties and responsibilities as this article or the instrument may impose, the association shall keep:

(1) Detailed minutes of all meetings of the members of the association and of the board of directors;

(2) Detailed and accurate financial records, including itemized records of all receipts and expenditures; and

(3) Any books and records as may be required by law or be necessary to reflect accurately the affairs and activities of the association.

(e) This Code section shall not be construed to prohibit the grant or imposition of other powers and responsibilities to or upon the association by the instrument.

(f) Except to the extent otherwise expressly required by this article, by Chapter 2 or 3 of Title 14, by the instrument, by the articles of incorporation, or by the bylaws of the association, the powers inherent in or expressly granted to the association may be exercised by the board of directors, acting through the officers, without any further consent or action on the part of the lot owners.

(g) A tort action alleging or founded upon negligence or willful misconduct by any agent or employee of the association or in connection

with the conditions of any portion of the instrument which the association has the responsibility to maintain shall be brought against the association. No lot owner shall be precluded from bringing such an action by virtue of his membership in the association. A judgment against the association arising from a tort action shall be a lien against the assets of the association.

(h) The association shall have the capacity, power, and standing to institute, intervene, prosecute, represent, or defend in its own name litigation or administrative or other proceedings of any kind concerning claims or other matters relating to any portion of the lots or common area which the association has the responsibility to administer, repair, or maintain.

History.

Code 1981, § 44-3-231, enacted by Ga. L. 1994, p. 1879, § 1; Ga. L. 2024, p. 76, § 5/HB 220, effective July 1, 2024; Ga. L. 2025, p. 1029, § 44(4)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted “and” from the end of

paragraph (a)(2), substituted “; and” for a period at the end of paragraph (a)(3), and added paragraph (a)(4).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(4).

JUDICIAL DECISIONS

Property association had standing to intervene. — Property owners’ association (“POA”) was a “party in interest” under 11 U.S.C. § 1109 and had standing to intervene in a contested matter that was brought by an LLC that purchased property from a developer’s (“debtor’s”) Chapter 11 bankruptcy estate, to determine ownership of common areas in a subdivision the debtor developed, because a ruling in favor of a trustee who was appointed under the debtor’s bankruptcy plan that title to the common areas did not pass to the POA could have affected the POA’s right to exist; even in the absence of injury to the POA itself, the POA had organizational standing to intervene on behalf of the POA’s members. *Sea Island Acquisition, LLC v. Barnett* (In re Sea Island Co.), No. 10-21034, 2014

Bankr. LEXIS 3237 (Bankr. S.D. Ga. July 30, 2014).

Authority of association to enter into agreement for recreational facilities. — In a suit challenging a homeowners association’s declaration amendment allowing it to enter into an agreement with a nearby private swim and tennis club, the trial court erred by not granting the association’s summary judgment because even without the amendment, the association was authorized, for the common benefit of all homeowners, to accept an easement granting the homeowners access to recreational facilities, and to assess them their pro rata share of the ongoing cost of the easement. *Amberfield Homeowners Ass’n v. Young*, 346 Ga. App. 29, 813 S.E.2d 618, 2018 Ga. App. LEXIS 329 (2018).

RESEARCH REFERENCES

ALR.

Right of Intervention in Bankruptcy Ad-

versary Proceedings Under 11 U.S.C.A. § 1109(b), 81 A.L.R. Fed. 3d 2.

44-3-232. Assessments against lot owners as constituting lien in favor of association; additional charges against lot owners; procedure for foreclosing lien; obligation to provide statement of amounts due.

JUDICIAL DECISIONS

Injunctive relief properly denied.

— Trial court properly determined a homeowners association (association) was not entitled to injunctive relief because the Declaration allowed the association to abate or remove a violation and to assess all costs, including reasonable attorney's fees actually incurred in exercising such self-help against the violating lot owner and the fact that the contractual language was permissive was irrelevant to the determination of whether it constituted an adequate remedy at law. *Deerlake Homeowners Association, Inc. v. Brown*, 361 Ga. App. 860, 864 S.E.2d 202, 2021 Ga. App. LEXIS 523 (2021).

Due process met. — Trial court properly granted a homeowners association summary judgment in a foreclosure action for failure to pay property assessments as although it appeared that the notice of the statutory lien was only sent to the prop-

erty's address, it was undisputed that the defendant timely responded to the action, and appeared at the hearing on the motion for summary judgment; thus, the fundamental due process requirements of notice and hearing were satisfied. *Adewumi v. Amelia Grove/Ashland Park Homeowners Ass'n*, 337 Ga. App. 275, 787 S.E.2d 761, 2016 Ga. App. LEXIS 311 (2016).

Failure to show late fees were liquidated damages. — Trial court erred in granting summary judgment to the property owners association as to late fee damages because the association failed to show that the late fees provision in the declaration constituted liquidated damages rather than an impermissible penalty. *Northside Bank v. Mountainbrook of Bartow County Homeowners Ass'n*, 338 Ga. App. 126, 789 S.E.2d 378, 2016 Ga. App. LEXIS 449 (2016).

44-3-232.1. Right of and procedure for certain property owners to take control of association when declarant fails to meet certain obligations.

(a) Notwithstanding and prior to the usual expiration of the period of the declarant's right to control the association pursuant to any property owners' association instruments, the association's articles of incorporation, or the association's bylaws, the right to control may pass to the property owners as provided in this Code section if the declarant fails to do any of the following:

(1) Incorporate or maintain an annual registration pursuant to subsection (a) of Code Section 44-3-227;

(2) Cause the board of directors to be duly appointed and the officers to be elected pursuant to subsection (b) of Code Section 44-3-227;

(3) Maintain and make available to owners, upon written request, a list of the names and business or home addresses of the association's current directors and officers;

(4) Call meetings of the members of the association in accordance

with the provisions of the association's bylaws at least annually pursuant to Code Section 44-3-230;

(5) Prepare an annual operating budget, establish the annual assessment, and distribute such budget and notice of assessment to the owners in accordance with the condominium instruments no later than 30 days after the beginning of the association's fiscal year; or

(6) Pay property taxes on common property of the association for two or more years.

(b) In the event that the declarant fails to meet one or more of the obligations of this Code section, then any owner, acting individually or jointly with other owners, may send the declarant written notice of the failure to comply with such requirements and provide the declarant a 30 day opportunity to cure the failure; and such notice shall be sent by certified mail or statutory overnight delivery to the declarant's principal office. If the declarant fails to cure any or all deficiencies identified in the notice within 30 days of such notice, then any owner, acting individually or jointly with other owners, shall have standing individually, and not solely through a derivative action, to institute an action in the superior court of the county in which any portion of the property owner's association is located in order to obtain a declaratory judgment to grant the owner or owners control of the association by ordering an election and setting the terms thereof, or issuing any other orders appropriate to transfer control of the association. The superior court shall have authority to hold a hearing and issue a summary ruling on said action at any time designated by the court not earlier than 20 days after the service thereof, unless the parties consent in writing to an earlier trial. No discovery shall be had unless ordered by the court for good cause. In addition, the superior court shall be authorized to issue a summary ruling on the conveyance of any intended common areas or other property in the common interest community to the association or other appropriate entity. If the owner or owners prevail in such action, then the superior court shall award to the owner or owners all reasonable attorney's fees and costs incurred for the prosecution of such action. This Code section shall not be the basis for any liability against any party or agent of any party outside of the exclusive remedies provided herein.

History.

Code 1981, § 44-3-232.1, enacted by Ga. L. 2017, p. 352, § 4/SB 46.

Effective date.

This Code section became effective July 1, 2017.

JUDICIAL DECISIONS

Suit was not action for control. — In a homeowner's suit against an HOA, challenging the enforceability of restrictive

covenants because the HOA was not incorporated when the covenants were recorded as required by O.C.G.A.

§ 44-3-227(a), additional findings were needed regarding whether the HOA was in substantial compliance with the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 et seq., specifically O.C.G.A. § 44-3-233. O.C.G.A.

§ 44-3-232.1 did not apply because the homeowners had not commenced an action to gain control over the HOA. *Howell v. Lochwolde Homeowners Ass'n*, 355 Ga. App. 678, 845 S.E.2d 410, 2020 Ga. App. LEXIS 366 (2020).

44-3-233. Liberal construction of article; substantial compliance; curing of defects by amendment.

JUDICIAL DECISIONS

Substantial compliance determination required. — In a homeowner's suit against an HOA, challenging the enforceability of restrictive covenants because the HOA was not incorporated when the covenants were recorded as required by O.C.G.A. § 44-3-227(a), additional findings were needed regarding whether the HOA was in substantial compliance with the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 et seq., specifically O.C.G.A. § 44-3-233. *Howell v. Lochwolde Homeowners Ass'n*, 355 Ga. App. 678, 845 S.E.2d 410, 2020 Ga. App. LEXIS 366 (2020).

Homeowners bound by amend-

ments. — In a dispute over covenants preventing use of a home as a short-term rental, the grant of summary judgment to the homeowners association was upheld because the plain language of the 1987 declaration provided that the two-thirds vote to amend the declaration created a mandatory association, all statutory requirements were met, and the homeowners' impliedly consented to membership by paying assessments and being on notice of the association's existence, so the homeowners were bound by the amendments. *Vaughn v. Windfield Homeowners Assn., Inc.*, 375 Ga. App. 18, 913 S.E.2d 74, 2025 Ga. App. LEXIS 68 (2025).

44-3-234. Application of article.

Homeowners bound by amendments. — In a dispute over covenants preventing use of a home as a short-term rental, the grant of summary judgment to the homeowners association was upheld because the plain language of the 1987 declaration provided that the two-thirds vote to amend the declaration created a mandatory association, all statutory re-

quirements were met, and the homeowners' impliedly consented to membership by paying assessments and being on notice of the association's existence, so they were bound by the amendments. *Vaughn v. Windfield Homeowners Assn., Inc.*, 375 Ga. App. 18, 913 S.E.2d 74, 2025 Ga. App. LEXIS 68 (2025).

44-3-235. Applicability of article.

JUDICIAL DECISIONS

Declaration amendment restricting leasing property in HOA. — Trial court's grant of summary judgment to the homeowners' association was proper because two-thirds of homeowners voted to restrict leasing in their neighborhood; thus, an amendment to the declaration challenged by the plaintiff complied with O.C.G.A. § 44-3-226(a) and the plaintiff

did not have an unfettered right to lease the plaintiff's property thereafter. *Pasha v. Battle Creek Homeowners Ass'n*, 350 Ga. App. 433, 829 S.E.2d 618, 2019 Ga. App. LEXIS 316 (2019).

Homeowners bound by amendments. — In a dispute over covenants preventing use of a home as a short-term rental, the grant of summary judgment to

the homeowners association was upheld because the plain language of the 1987 declaration provided that the two-thirds vote to amend the declaration created a mandatory association, all statutory requirements were met, and the homeowners’ impliedly consented to membership by

paying assessments and being on notice of the association’s existence, so the homeowners were bound by the amendments. *Vaughn v. Windfield Homeowners Assn., Inc.*, 375 Ga. App. 18, 913 S.E.2d 74, 2025 Ga. App. LEXIS 68 (2025).

CHAPTER 4

DETERMINATION OF BOUNDARIES

Article 1		Sec.	
Processioning			
Sec.			
44-4-1 through 44-4-10. [Reserved].			
Article 2			
State Plane Coordinate System			
44-4-20.	Designation of Georgia state plane coordinate system; East and West Zones.	44-4-25.	of point prohibited unless connected by survey to monumented horizontal control station.
44-4-21.	Names of East and West Zones.	44-4-26.	Use of terms limited.
44-4-22.	Alternative plane coordinates for expressing location of a point for Georgia State Plane Coordinate System.	44-4-27.	Use of terms “Grid North, Georgia East Zone” and “Grid North, Georgia West Zone.”
44-4-23.	Description of land extending from one zone to another.	44-4-28.	Conversion of distances between meters and feet.
44-4-24.	Recordation of coordinates	44-4-29.	Use of system not mandatory.
		44-4-30.	Validity of use of coordinate system.
		44-4-31.	Use of term “Georgia State Plane Coordinate System”; use of other geodetic references.
			[Repealed] Use of Georgia Coordinate System prohibited after January 1, 1990.

ARTICLE 1
PROCESSIONING

44-4-1 through 44-4-10. [Reserved].

History. Laws 1798, Cobb’s 1851 Digest, p. 716; Laws 1799, Cobb’s 1851 Digest, p. 717-718; Laws 1818, Cobb’s 1851 Digest, p. 719; Laws 1850, Cobb’s 1851 Digest, p. 719; Ga. L. 1853-54, p. 76, § 1; Orig. Code 1863, §§ 2352-2361; Code 1868, §§ 2349-2358; Code 1873, §§ 2384-2393; Code 1882, §§ 2384-2393; Civil Code 1895, §§ 3243-3252; Ga. L. 1901, p. 39, § 1; Ga. L. 1905, p. 83, § 1; Civil Code 1910, §§ 3817-3826; Ga. L. 1912, p. 70, § 1; Ga. L. 1929, p. 167, § 1; Code 1933, §§ 85-1601 through 85-1610; Ga. L. 1953, Jan.-Feb. Sess., p. 202, §§ 1, 2; Ga. L. 1956, p. 326, § 1; Ga. L. 1982, p. 3, § 44; Ga. L.

2011, p. 99, §§ 80, 81/HB 24; repealed by Ga. L. 2014, p. 695, § 4/HB 790, effective July 1, 2014. repealed and reserved this article, effective July 1, 2014.

Editor’s notes.

Ga. L. 2014, p. 695, § 4/HB 790

ARTICLE 2

STATE PLANE COORDINATE SYSTEM

44-4-20. Designation of Georgia state plane coordinate system; East and West Zones.

(a) The Georgia portion of the State Plane Coordinate System as defined by the National Geodetic Survey, based on the National Spatial Reference System, for defining and stating the geographic positions or locations of points on the surface of the earth within this state shall be known and designated as the “Georgia State Plane Coordinate System.”

(b) For the purpose of the use of this system, the state is divided into an “East Zone” and a “West Zone”:

(1) The area now included in the following counties shall constitute the East Zone: Appling, Atkinson, Bacon, Baldwin, Brantley, Bryan, Bulloch, Burke, Camden, Candler, Charlton, Chatham, Clinch, Coffee, Columbia, Dodge, Echols, Effingham, Elbert, Emanuel, Evans, Franklin, Glascock, Glynn, Greene, Hancock, Hart, Jeff Davis, Jefferson, Jenkins, Johnson, Laurens, Liberty, Lincoln, Long, McDuffie, McIntosh, Madison, Montgomery, Oglethorpe, Pierce, Richmond, Screven, Stephens, Taliaferro, Tattnall, Telfair, Toombs, Treutlen, Ware, Warren, Washington, Wayne, Wheeler, Wilkes, and Wilkinson; and

(2) The area now included in the following counties shall constitute the West Zone: Baker, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Butts, Calhoun, Carroll, Catoosa, Chattahoochee, Chattooga, Cherokee, Clark, Clay, Clayton, Cobb, Colquitt, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dooly, Dougherty, Douglas, Early, Fannin, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Grady, Gwinnett, Habersham, Hall, Haralson, Harris, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jones, Lamar, Lanier, Lee, Lowndes, Lumpkin, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Morgan, Murray, Muscogee, Newton, Oconee, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Rockdale, Schley, Seminole, Spalding, Stewart, Sumter, Talbot, Taylor, Terrell, Thomas, Tift, Towns, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Webster, White, Whitfield, Wilcox, and Worth.

History.

Ga. L. 1945, p. 218, § 1; Ga. L. 1985, p. 650, § 1; Ga. L. 2022, p. 674, § 1/SB 581.

Amendments.

The 2022 amendment, effective July 1, 2022, rewrote subsection (a); and sub-

stituted “this system” for “these systems” in the beginning of subsection (b).

44-4-21. Names of East and West Zones.

(a) As established for use in the East Zone, the Georgia State Plane Coordinate System shall be named; and, in any land description in which it is used, shall be designated as the “Georgia State Plane Coordinate System East Zone.”

(b) As established for use in the West Zone, the Georgia State Plane Coordinate System shall be named; and, in any land description in which it is used, shall be designated as the “Georgia State Plane Coordinate System West Zone.”

History.

Ga. L. 1945, p. 218, § 2; Code 1981, § 44-4-21, enacted by Ga. L. 1985, p. 650, § 1; Ga. L. 2022, p. 674, § 1/SB 581.

Amendments.

The 2022 amendment, effective July 1, 2022, rewrote this Code section.

44-4-22. Alternative plane coordinates for expressing location of a point for Georgia State Plane Coordinate System.

The plane coordinate values for a point on the earth’s surface, used to express the geographic position or location of such point in the appropriate zone of the Georgia State Plane Coordinate System, shall consist of two distances expressed in either meters and decimals of a meter or, following conversion as provided in Code Section 44-4-27, in feet and decimals of a foot when using the Georgia State Plane Coordinate System. One of these distances, to be known as the East or x-coordinate shall give the distance east of the Y axis; the other, to be known as the North or y-coordinate shall give the distance north of the X axis. The Y axis of any zone shall be parallel with the central meridian of the zone. The X axis of any zone shall be perpendicular to the central meridian of that zone.

History.

Ga. L. 1945, p. 218, § 3; Ga. L. 1985, p. 650, § 1; Ga. L. 1990, p. 168, § 1; Ga. L. 2022, p. 674, § 1/SB 581.

Amendments.

The 2022 amendment, effective July 1, 2022, rewrote this Code section.

44-4-23. Description of land extending from one zone to another.

When any tract of land to be defined by a single description extends from one into the other of the coordinate zones established in Code

Section 44-4-21, the positions of all points on its boundaries may be referred to either of the two zones, the zone which is used being specifically named in the description.

History. Ga. L. 1945, p. 218, § 4; Code 1981, § 44-4-23, enacted by Ga. L. 1985, p. 650, § 1; Ga. L. 2022, p. 674, § 1/SB 581. established in Code Section 44-4-21” for “the above coordinate zones”.

Amendments.
The 2022 amendment, effective July 1, 2022, substituted “the coordinate zones

44-4-24. Recordation of coordinates of point prohibited unless connected by survey to monumented horizontal control station.

No coordinates based on either Georgia State Plane Coordinate System purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless such point has been connected by survey to a monumented horizontal control station that is identified and has been established in conformity with the standards of accuracy and specifications as shall be specified by rules and regulations established by the State Board of Registration for Professional Engineers and Land Surveyors.

History. Code 1981, § 44-4-25, enacted by Ga. L. 1985, p. 650, § 1; Ga. L. 1986, p. 10, § 44; Code 1981, § 44-4-24, Ga. L. 2022, p. 674, § 1/SB 581. **Editor’s notes.** Ga. L. 2022, p. 674, § 1/SB 581, effective July 1, 2022, repealed former Code Section 44-4-24, pertaining to zones being precisely defined, and enacted the present Code section. The former Code section was based on Ga. L. 1945, p. 218, § 5; Code 1981, § 44-4-24, enacted by Ga. L. 1985, p. 650, § 1.

Amendments.
The 2022 amendment, effective July 1, 2022, redesignated former Code Section 44-4-25 as present Code Section 44-4-24, and rewrote this Code section.

44-4-25. Use of terms limited.

The use of the term “Georgia State Plane Coordinate System East Zone,” “Georgia State Plane Coordinate System West Zone,” on any map, report of survey, or other document shall be limited to coordinates based on the Georgia State Plane Coordinate Systems as defined in this article.

History. Ga. L. 1945, p. 218, § 6; Code 1981, § 44-4-26, enacted by Ga. L. 1985, p. 650, § 1; Code 1981, § 44-4-25, Ga. L. 2022, p. 674, § 1/SB 581. **Amendments.**
The 2022 amendment, effective July 1, 2022, redesignated former Code Section 44-4-26 as present Code Section 44-4-25, and rewrote this Code section.

44-4-26. Use of terms “Grid North, Georgia East Zone” and “Grid North, Georgia West Zone.”

The term “Grid North, Georgia East Zone” refers to the fixed north direction in the East Zone, being Geodetic North for the central meridian of that zone. The term “Grid North, Georgia West Zone” refers to the fixed north direction in the West Zone, being Geodetic North for the central meridian of that zone. The applicable Grid North term and the basis of orientation shall appear on maps of survey that are purported oriented to a Georgia State Plane Coordinate System zone.

History.

Code 1981, § 44-4-27, enacted by Ga. L. 1985, p. 650, § 1; Code 1981, § 44-4-26, Ga. L. 2022, p. 674, § 1/SB 581.

Amendments.

The 2022 amendment, effective July 1, 2022, redesignated former Code Section 44-4-27 as present Code Section 44-4-26, and substituted “of that zone” for “eighty-two degrees ten minutes west of Greenwich” in the first sentence and for “eighty-

four degrees ten minutes west of Greenwich” in the second sentence, and inserted “State Plane” in the third sentence.

Code Commission notes.

Ga. L. 2022, p. 674, § 1/SB 581, which amended this Code section, purported to redesignate Code Section 44-4-27 as Code Section 44-27-26 but actually redesignated this Code section as Code Section 44-4-26.

44-4-27. Conversion of distances between meters and feet.

Any conversion of distances between the meter and the foot shall be based upon the length of the meter (exactly) equals 3.280839895 feet.

History.

Code 1981, § 44-4-28, enacted by Ga. L. 1985, p. 650, § 1; Code 1981, § 44-4-27, Ga. L. 2022, p. 674, § 1/SB 581.

Amendments.

The 2022 amendment, effective July 1, 2022, redesignated former Code Section

44-4-28 as present Code Section 44-4-27, and substituted “the foot shall” for “the American Survey foot will” and “3.280839895 feet” for “39.37 inches or 3.2808333333 1/3 feet” at the end.

44-4-28. Use of system not mandatory.

Nothing contained in this article shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Georgia State Plane Coordinate System. Nothing in this article shall be so construed as to require any person, firm, or corporation to use this system of coordinates to obtain or secure a legal description of land or real estate.

History.

Ga. L. 1945, p. 218, § 7; Code 1981, § 44-4-29, enacted by Ga. L. 1985, p. 650, § 1; Code 1981, § 44-4-28, Ga. L. 2022, p. 674, § 1/SB 581.

Amendments.

The 2022 amendment, effective July 1, 2022, redesignated former Code Section 44-4-29 as present Code Section 44-4-28, and substituted “Georgia State Plane Co-

ordinate System” for “Georgia Coordinate System or the Georgia Coordinate System of 1985” at the end of the first sentence

and “this system” for “these systems” in the second sentence.

44-4-29. Validity of use of coordinate system.

- (a) Any legal description prepared under the provisions of the Georgia Coordinate System provided by an Act approved March 6, 1945 (Ga. L. 1945, p. 218), and continued as a part of this Code until July 1, 1985, shall not be invalid based on the use of such coordinate system.
- (b) Any continual use of legal descriptions prepared under the terms of the Georgia Coordinate System provided by an Act approved March 6, 1945 (Ga. L. 1945, p. 218), and continued as a part of this Code until July 1, 1985, which have been recorded or filed in official records within this state, shall not be invalid based on the use of such coordinate system.
- (c) Any continual use of legal descriptions prepared under the terms of the Georgia Coordinate System provided by an Act approved on March 28, 1985 (Ga. L. 1985, p. 650), and continued as a part of this Code until July 1, 2022, which have been recorded or filed in the official records within this state, shall not be invalid based on the use of such coordinate system.

History.
Code 1981, § 44-4-30, enacted by Ga. L. 1985, p. 650, § 1; Code 1981, § 44-4-29, Ga. L. 2022, p. 674, § 1/SB 581.

Amendments.
The 2022 amendment, effective July 1, 2022, redesignated former Code Section

44-4-30 as present Code Section 44-4-29, and added “based on the use of such coordinate system” at the end of subsections (a) and (b), substituted “this state” for “the State of Georgia” in subsection (b), and added subsection (c).

44-4-30. Use of term “Georgia State Plane Coordinate System”; use of other geodetic references.

- (a) The use of the term “Georgia State Plane Coordinate System” on any map, report of survey, legal description, or other document shall be limited to coordinates based on the Georgia State Plane Coordinate System as defined by this article.
- (b) The provisions of this article shall not be construed to prohibit the appropriate use of other geodetic reference networks.

History.
Code 1981, § 44-4-30, enacted by Ga. L. 2022, p. 674, § 1/SB 581.

Effective date.
This Code section became effective July 1, 2022.

Editor’s notes.
Ga. L. 2022, p. 674, § 1/SB 581, effective July 1, 2022, redesignated former Code Section 44-4-30 as present Code Section 44-4-29.

44-4-31. [Repealed] Use of Georgia Coordinate System prohibited after January 1, 1990.

History.

Code 1981, § 44-4-31, enacted by Ga. L.

1985, p. 650, § 1; repealed by Ga. L. 2022, p. 674, § 1/SB 581, effective July 1, 2022.

CHAPTER 5

ACQUISITION AND LOSS OF PROPERTY

Article 2		Sec.	
Conveyances			land between property owner and third party.
Sec.		44-5-60.	Effect of zoning laws; covenants and scenic easements for use of public; renewal of certain covenants; costs.
44-5-30.	Requisites of deed to lands; inquiry into consideration.		
44-5-37.	Applicability of Code Sections 53-4-70 and 53-4-71 to elections under or against deed.		
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Article 3		Article 6	
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		44-5-150.	Search and notification for information identifying donor status.
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44-5-59.	Covenant running with the		

ARTICLE 1
GRANTS FROM STATE

44-5-13. Grants by implication; presumptions favor grants.

JUDICIAL DECISIONS

1834 grant held sufficient. — The 1834 grant, when read together with the annexed plat depicting the “balloon-shaped” peninsula as 500 acres of “marshland,” contained a sufficient description to convey title of the peninsula to appellee. The grant provided a key to the confines of the land purporting to be conveyed, and the plat’s description of the land controls

over the grant’s more general description. The irregularity in the acreage between the grant and the current measurement of the peninsula did not render the grant insufficient to convey title. *NoFree, LLC v. State of Georgia*, 373 Ga. App. 753, 909 S.E.2d 852, 2024 Ga. App. LEXIS 478 (Nov. 18, 2024).

ARTICLE 2
CONVEYANCES

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.

History.

Laws 1785, Cobb’s 1851 Digest, p. 164.; Code 1863, § 2649; Code 1868, § 2648; Code 1873, § 2690; Code 1882, § 2690; Civil Code 1895, § 3599; Civil Code 1910, § 4179; Code 1933, § 29-101; Ga. L. 2012, p. 173, § 1-35/HB 665; Ga. L. 2015, p. 937, § 1/HB 322.

Amendments.

The 2012 amendment, effective July 1, 2012, substituted “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,” for “A deed to lands must be” in the first sentence; and, in the second sentence, substituted “shall” for “must” and inserted “or her”.

The 2015 amendment, effective July 1, 2015, substituted “attested by an officer as provided in Code Section 44-2-15, and attested by one other witness” for “and attested by at least two witnesses” at the end of the first sentence.

JUDICIAL DECISIONS

ANALYSIS

- GENERAL CONSIDERATION
- SIGNING
- ATTESTATION
- DELIVERY

- 2. ACCEPTANCE
- 4. WHEN MADE
- 5. PRESUMPTIONS

General Consideration

Fraudulent deed was facially regular and operated to release security interest. — A 2003 warranty deed that operated to release a prior lender’s security interest in the property was not a forgery but was signed by someone fraudulently assuming the authority of an officer of the prior lender and was regular on the deed’s face. Therefore, a subsequent lender that foreclosed on the property and purchased the property at the

foreclosure sale was a bona fide purchaser for value entitled to take the property free of the prior lender’s security interest. *Deutsche Bank Nat’l Trust Co. v. JP Morgan Chase Bank, N.A.*, 307 Ga. App. 307, 704 S.E.2d 823, 2010 Ga. App. LEXIS 1082 (2010), cert. denied, No. S11C0595, 2011 Ga. LEXIS 359 (Ga. Apr. 26, 2011).

Bankruptcy impact on improperly recorded deed. — Chapter 7 discharge was not barred by 11 U.S.C. § 727(a)(2). The quitclaim deed by which the debtor transferred the debtor’s interest in the

marital residence to the debtor's spouse was valid under O.C.G.A. § 44-5-30 despite having been recorded in the wrong county, and the transfer did not occur within a year of the bankruptcy filing. *Marvin Hewatt Enters. v. Kyu Sup Mun* (In re Kyu Sup Mun), 458 B.R. 628, 2011 Bankr. LEXIS 3682 (Bankr. N.D. Ga. 2011).

Signing

Inquiry notice established following signature on waiver. — Even though recorded, an unsigned security deed did not provide constructive notice to a bona fide purchaser under O.C.G.A. §§ 44-5-30 and 44-14-33 as in effect in 2014 when the security deed was recorded. However, the security deed referenced and incorporated a waiver, which was properly executed and attested, and the waiver referenced and incorporated the security deed and, thus, the security deed and waiver were effective under Georgia law to provide inquiry notice to a subsequent purchaser and, accordingly, the trustee could not avoid the defendant's interest because the trustee did not qualify as a bona fide purchaser of real property. *Kelley v. USAA Fed. Sav. Bank* (In re Jones), 580 B.R. 916, 2017 Bankr. LEXIS 4052 (Bankr. M.D. Ga. 2017).

No contract formed when no signature. — With respect to objections to debtor's motion to sell property free and clear of liens and other interests, one objector's claimed easement interest failed because no contract was ever formed, it was not signed by both makers of document, and it was not attested by a second witness as required by Georgia law, and another objector who relied on a sales contract encountered the same problem of failing to comply with formalities, including two witnesses. *In re Flyboy Aviation Props., LLC*, 501 B.R. 828, 2013 Bankr. LEXIS 4533 (Bankr. N.D. Ga. 2013).

Attestation

Unattested deed valid as between parties. — Although a deed transferring the Chapter 7 debtor's interest in an office building to the debtor's spouse lacked a

witness and was thus defective under Georgia law, the transfer remained valid as between the debtor and the spouse. Thus, the debtor's failure to schedule an interest in the office building was not a false oath for purposes of denying the debtor's discharge. *In re Knight*, 574 B.R. 800, 2017 Bankr. LEXIS 2382 (Bankr. N.D. Ga. 2017).

Loan modification agreement does not require attestation. — There was no merit to a Chapter 13 debtor's claim that the debtor was allowed under 11 U.S.C. § 506 to treat \$31,900 in deferred principal that was addressed in a loan modification agreement the debtor signed as unsecured debt because the agreement created a junior lien on the debtor's residence that was unsecured; the debtor's logic was flawed by several mistaken assumptions about Georgia law, including the debtor's belief that the loan modification agreement had to be attested or acknowledged pursuant to O.C.G.A. § 44-5-30, and because a security deed the debtor signed secured both deferred and non-deferred principal of a bank's secured claim, the entire balance was protected from modification by 11 U.S.C. § 1322. *Mendez v. Wells Fargo Home Mortg.* (In re Mendez), No. 15-41560-MGD, 2016 Bankr. LEXIS 532 (Bankr. N.D. Ga. Jan. 6, 2016).

Agreement properly construed as valid deed. — Trial court did not err by determining that the original Redemption Agreement could be construed as a valid deed because O.C.G.A. §§ 44-2-15 and 44-5-30 do not provide that unless so attested, a deed is void and O.C.G.A. § 44-5-33 provides that no prescribed form is essential to the validity of a deed to lands. *Bagwell v. Trammel*, 297 Ga. 873, 778 S.E.2d 173, 2015 Ga. LEXIS 671 (2015).

Delivery

2. Acceptance

Sufficient acceptance and control of deed by debtor. — Bankruptcy debtor fraudulently transferred an interest of the debtor in a parent's residence since the parent delivered the deed of the property to the debtor by recording the deed and

Delivery (Cont'd)
2. Acceptance (Cont'd)

notifying the debtor and the debtor accepted the deed by asserting control over the property by transferring the debtor's interest to a sibling. *Howell v. Trawick* (In re Norton), No. 11-14191-WHD, No. 13-1006, 2014 Bankr. LEXIS 3494 (Bankr. N.D. Ga. Aug. 15, 2014).

4. When Made

Leaving the deed in the trunk of a car that was left to the grantee. — Father's unrecorded 2004 deed of a family home place to one of his sons was ineffective because it was not delivered to the son as required by O.C.G.A. § 44-5-30, but was placed in the trunk of the father's

car until the father's death in 2009, when he left the car to his son. *Johnson v. Johnson*, 327 Ga. App. 604, 760 S.E.2d 618, 2014 Ga. App. LEXIS 388 (2014).

5. Presumptions

Presumption of delivery established. — Trial court erred granting summary judgment to the executor because the deed contained a recital that it was signed, sealed, and delivered in the presence of the two witnesses, which raised a presumption of delivery, and the girlfriend remained in the home and kept belongings there while the decedent lived in the lake house. *Smith v. Tibbits*, 359 Ga. App. 362, 857 S.E.2d 820, 2021 Ga. App. LEXIS 200 (2021).

44-5-33. Form of deed.

JUDICIAL DECISIONS

ANALYSIS

SIGNATURE
ATTESTATION

Signature

Inquiry notice established following inquiry signature on waiver. — Even though recorded, an unsigned security deed did not provide constructive notice to a bona fide purchaser under O.C.G.A. §§ 44-5-30 and 44-14-33 as in effect in 2014 when the security deed was recorded. However, the security deed referenced and incorporated a waiver, which was properly executed and attested, and the waiver referenced and incorporated the security deed and, thus, the security deed and waiver were effective under Georgia law to provide inquiry notice to a subsequent purchaser and, accordingly, the trustee could not avoid the defendant's interest because the

trustee did not qualify as a bona fide purchaser of real property. *Kelley v. USAA Fed. Sav. Bank* (In re Jones), 580 B.R. 916, 2017 Bankr. LEXIS 4052 (Bankr. M.D. Ga. 2017).

Attestation

Agreement properly construed as valid deed. — Trial court did not err by determining that the original Redemption Agreement could be construed as a valid deed because O.C.G.A. §§ 44-2-15 and 44-5-30 do not provide that unless so attested, a deed is void and O.C.G.A. § 44-5-33 provides that no prescribed form is essential to the validity of a deed to lands. *Bagwell v. Trammel*, 297 Ga. 873, 778 S.E.2d 173, 2015 Ga. LEXIS 671 (2015).

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

JUDICIAL DECISIONS

Parties' Intention

Evidence sufficient for title. — When the plaintiffs contended that the issuance of a notice of interim trail use or abandonment authorizing the conversion of a railroad line for use as a public recreational trail under the National Trail Systems Act exceeded the scope of an easement and, thus, was a Fifth Amendment taking, the court applied Georgia law and determined that, with respect to one parcel, the railroad acquired title in fee simple, not just an easement limited to rail use, because the railroad satisfied the elements of adverse possession when the railroad constructed and used a rail line adjacent to the parcel. Further, the railroad possessed the property for more than 20 years and, thus, acquired title to the property as opposed to a mere easement to use the property. *Hardy v. United States*, No. 14-388L, 127 Fed. Cl. 1, 2016 U.S. Claims LEXIS 423 (Fed. Cl. May 4, 2016), vacated in part, *aff'd*, 965 F.3d 1338, 2020 U.S. App. LEXIS 21915 (Fed. Cir. 2020).

In a class action in which the plaintiffs contended that the plaintiffs owned disputed parcels in fee simple and that issuance of a notice of interim trail use or abandonment authorizing conversion of a railroad line for use as a public recreational trail under the National Trail Systems Act exceeded the scope of their easements and, thus, was a Fifth Amendment taking, the court, applying Georgia law, determined that the grantors intended to convey easements, not fee simple interests, because the deeds provided that a strip of land would be designated as a right-of-way for railroad or for any other use, the consideration described in the deeds was nominal, and the phrase “for any other use” referred only to uses related to railroad purposes. *Hardy v. United States*, No. 14-388L, 127 Fed. Cl. 1, 2016 U.S. Claims LEXIS 423 (Fed. Cl. May 4, 2016), vacated in part, *aff'd*, 965 F.3d 1338, 2020 U.S. App. LEXIS 21915 (Fed. Cir. 2020).

RESEARCH REFERENCES

ALR.

May easement or right of way be appur-

tenant where servient tenement is not adjacent to dominant, 15 A.L.R.7th 1.

44-5-37. Applicability of Code Sections 53-4-70 and 53-4-71 to elections under or against deed.

The principles of Code Sections 53-4-70 and 53-4-71 relating to elections shall also apply to deeds.

History.

Orig. Code 1863, § 3096; Code 1868, § 3108; Code 1873, § 3165; Code 1882, § 3165; Civil Code 1895, § 4016; Civil Code 1910, § 4613; Code 1933, § 37-505; Ga. L. 2025, p. 806, § 23/HB 327, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted “Code Sections 53-4-70 and 53-4-71” for “Code Sections 53-2-112 through 53-2-114”.

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

JUDICIAL DECISIONS

Compliance with restrictive covenants required. — Buyer of subdivision property was bound by covenants restricting the use and development of certain defined common areas because the lender from whom the buyer purchased the property took a deed under power of sale that recited that the property was subject to

the covenants. Under O.C.G.A. § 44-5-39, the lender agreed to be bound by the covenants. *Interchange Drive, LLC v. Nusloch*, 311 Ga. App. 552, 716 S.E.2d 603, 2011 Ga. App. LEXIS 786 (2011), cert. denied, No. S12C0132, 2012 Ga. LEXIS 109 (Ga. Jan. 23, 2012).

RESEARCH REFERENCES

ALR.

Restrictive covenants as to height of structures or buildings, 74 A.L.R.7th 2.

44-5-40. Conveyance of future interests or estates.

JUDICIAL DECISIONS

Vested remainder found. — Trial court erred in the court’s construction of a deed because the deed was clear as written and, as such, the heir received a one-third undivided interest in the property, and the executor individually and the

estate each received a one-third undivided interest as the vested remaindermen who each received an interest in the property under O.C.G.A. § 44-6-66. *Wilkes v. Fraser*, 324 Ga. App. 642, 751 S.E.2d 455, 2013 Ga. App. LEXIS 899 (2013).

44-5-41. Voidance and ratification of conveyance to or by a minor.

A deed, security deed, bill of sale to secure debt, or any other conveyance of property or interest in property to or by a minor is voidable unless such minor has become emancipated by operation of law or pursuant to Article 10 of Chapter 11 of Title 15. If a minor has conveyed property or an interest in property, the minor may void the conveyance upon arrival at the age of 18; and, if the minor makes another conveyance at that time, it will void the first conveyance without reentry or repossession. If property or an interest in property has been conveyed to a minor and, after arrival at the age of 18, the minor retains the possession or benefit of the property or interest in property, the minor shall have thereby ratified or affirmed the conveyance.

History.

Orig. Code 1863, § 2653; Code 1868, § 2652; Code 1873, § 2694; Code 1882,

§ 2694; Civil Code 1895, § 3604; Civil Code 1910, § 4184; Code 1933, § 29-106; Ga. L. 1966, p. 291, § 2; Ga. L. 1969, p.

640, § 2; Ga. L. 1972, p. 193, § 3; Ga. L. 2006, p. 141, § 7/HB 847; Ga. L. 2013, p. 294, § 4-49/HB 242.

Amendments.

The 2013 amendment, effective January 1, 2014, substituted “Article 10” for “Article 6” near the end of the first sentence. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and

juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

44-5-45. [Reserved] When ancient deed admissible without proof of execution.

History.

Orig. Code 1863, § 2659; Code 1868, § 2658; Code 1873, § 2700; Code 1882, § 2700; Civil Code 1895, § 3610; Civil Code 1910, § 4190; Code 1933, § 29-112; repealed by Ga. L. 2011, p. 99, § 82/HB 24, effective January 1, 2013.

Editor’s notes.

Ga. L. 2011, p. 99, § 82/HB 24 repealed

and reserved this Code section, effective January 1, 2013. For comparable present provisions, see § 24-8-803.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

ARTICLE 3

COVENANTS AND WARRANTIES

RESEARCH REFERENCES

ALR.

Restrictive Covenants as to Height of Structures or Buildings, 74 A.L.R.7th 2.

Restrictive covenants as to height of structures or buildings, 74 A.L.R.7th 2.

44-5-59. Covenant running with the land between property owner and third party.

Except as provided in Code Section 44-5-60 and excluding covenants recorded on property solely by the property’s owner, which shall run with the title to the land, a covenant runs with the land when, for consideration and as reflected in a duly recorded instrument found in the applicable chain of title, a property owner and a third party agree to such covenant, the property is adequately described in such covenant, and such covenant does not run for more than 20 years.

History.

Code 1981, § 44-5-59, enacted by Ga. L. 2013, p. 776, § 1/HB 175.

Effective date.

This Code section became effective July 1, 2013. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2013, p. 776, § 2/HB 175, not

codified by the General Assembly, provides that this Code section shall apply to covenants recorded on or after July 1, 2013.

Law reviews.

For annual survey on real property, see 65 Mercer L. Rev. 233 (2013).

44-5-60. Effect of zoning laws; covenants and scenic easements for use of public; renewal of certain covenants; costs.

(a) The purchaser of lands obtains with the title, whether conveyed to him at public or private sale, all the rights which any former owner of the land under whom he claims may have had by virtue of any covenants of warranty of title, of quiet enjoyment, or of freedom from encumbrances contained in the conveyance from any former grantor unless the transmission of such covenants with the land is expressly prohibited in the covenant itself.

(b) Notwithstanding subsection (a) of this Code section, covenants restricting lands to certain uses shall not run for more than 20 years in municipalities which have adopted zoning laws nor in those areas in counties for which zoning laws have been adopted; provided, however, that, whenever a zoning ordinance, upon its initial enactment by a county or municipality, expressly acknowledges the continuing application of a covenant restricting lands to certain uses within that jurisdiction, any such covenant, if created prior to zoning laws being adopted by that county or municipality, shall continue to be effective in such jurisdiction until the expiration of such covenant in accordance with its terms.

(c) The limitation provided in subsection (b) of this Code section shall not apply with respect to any covenant or scenic easement in favor of or for the benefit of the United States or any department, bureau, or agency thereof; this state or any political subdivision thereof; or any corporation, trust, or other organization holding land for the use of the public, but only with respect to such covenants and scenic easements running in favor of or for the benefit of the land so held for the use of the public. Such covenants and scenic easements shall run in perpetuity.

(d)(1) Notwithstanding the limitation provided in subsection (b) of this Code section, covenants restricting lands to certain uses affecting planned subdivisions containing no fewer than 15 individual plots shall automatically be renewed beyond the period provided for in subsection (b) of this Code section unless terminated as provided in this subsection. Each such renewal shall be for an additional 20 year period, and there shall be no limit on the number of times such covenants shall be renewed.

(2) To terminate a covenant as provided in paragraph (1) of this subsection, at least 51 percent of the persons owning plots affected by such covenant shall execute a document containing a legal description of the entire area affected by the covenant, a list of the names of all record owners of plots affected by the covenant, and a description of the covenant to be terminated, which may be incorporated by reference to another recorded document. By signing such document, each such person shall verify that he or she is a record owner of property affected by the covenant. Such document shall be recorded in the office of the clerk of the superior court of the county where the land is located no sooner than but within two years prior to the expiration of the initial 20 year period or any subsequent 20 year period. The clerk of the superior court shall index the document under the name of each record owner appearing in the document.

(3) No covenant that prohibits the use or ownership of property within the subdivision may discriminate based on race, creed, color, age, sex, or national origin.

(4) Notwithstanding any other provision of this Code section or of any covenants with respect to the land, no change in the covenants which imposes a greater restriction on the use or development of the land will be enforced unless agreed to in writing by the owner of the affected property at the time such change is made.

(5)(A) Notwithstanding and prior to the usual expiration of the period of covenants restricting land to certain uses affecting planned subdivisions containing no fewer than 15 individual plots as provided for by this subsection, the right to control any entity formed for the purpose of enforcing such covenants may pass to the subdivision plot owners as provided in this paragraph if such entity fails to do any of the following:

(i) Incorporate or maintain an annual registration pursuant to the terms of the covenants;

(ii) Cause the board of directors to be duly appointed and the officers to be elected pursuant to the terms of the covenants;

(iii) Maintain and make available to owners, upon written request, a list of the names and business or home addresses of the entity's current directors and officers;

(iv) Call meetings of the members of the entity in accordance with the provisions of the covenants;

(v) Prepare an annual operating budget, establish the annual assessment, and distribute such budget and notice of assessment to plot owners in accordance with the provisions of the covenants no later than 30 days after the beginning of the entity's fiscal year; or

(vi) Pay property taxes on common property in the planned subdivision for two or more years.

(B) In the event that an entity formed for the purpose of enforcing covenants restricting land to certain uses fails to meet one or more of the obligations of this paragraph, then any plot owner, acting individually or jointly with other plot owners, may send such entity written notice of the failure to comply with such requirements and provide the entity a 30 day opportunity to cure the failure; and such notice shall be sent by certified mail or statutory overnight delivery to the entity's principal office. If the entity fails to cure any or all deficiencies identified in the notice within 30 days of such notice, then any plot owner, acting individually or jointly with other plot owners, shall have standing individually, and not solely through a derivative action, to institute an action in the superior court of the county in which any portion of the entity is located in order to obtain declaratory judgment to grant the plot owner or owners control of the entity by ordering an election and setting the terms thereof, or issuing any other orders appropriate to transfer control of the entity. The superior court shall have authority to hold a hearing and issue a summary ruling on said action at any time designated by the court not earlier than 20 days after the service thereof, unless the parties consent in writing to an earlier trial. No discovery shall be had unless ordered by the court for good cause. In addition, the superior court shall be authorized to issue a summary ruling on the conveyance of any intended common areas or other property in the common interest community to the association or other appropriate entity. If the plot owner or owners prevail in such action, then the superior court shall award to the plot owner or owners all reasonable attorney's fees and costs incurred for the prosecution of such action. This paragraph shall not be the basis for any liability against any party or agent of any party outside of the exclusive remedies provided herein.

(6) In every planned subdivision containing no fewer than 15 individual plots, every person owning plots affected by such covenant owner and all those entitled to occupy such property shall comply with all lawful provisions of said covenants and the instrument containing such covenants. Any lack of such compliance shall be grounds for an action to recover sums due; for damages; for injunctive relief; or for any other remedy available at law or in equity, maintainable by a homeowners' association or other common interest community association which has been created pursuant to those covenants. Such association, if any, may pursue injunctive relief without the need or requirement to first pursue or utilize any other remedies, regardless of whether other remedies may be available or

might otherwise be adequate. To the extent provided in the instrument, such association shall be empowered to impose and assess fines and temporarily suspend voting rights and the right of use of certain common areas and services paid for as a common expense in order to enforce such compliance; provided, however, that no such suspension shall deny any property owner or occupants access to the property owned or occupied. Nothing in this paragraph shall be construed to render any covenants in a subdivision containing fewer than 15 individual plots unenforceable, nor shall anything in this subsection be construed to limit or expand rights of property owners or common interest community associations which may otherwise exist under Georgia law or the instruments governing such community associations, except as expressly stated in this paragraph.

(e) To the extent provided in the covenants, the obligation for the payment of assessments and fees arising from covenants shall include the costs of collection, including reasonable attorney's fees actually incurred.

History.

Orig. Code 1863, § 2661; Code 1868, § 2660; Code 1873, § 2702; Code 1882, § 2702; Civil Code 1895, § 3612; Civil Code 1910, § 4192; Code 1933, § 29-301; Ga. L. 1935, p. 112, § 1; Ga. L. 1962, p. 540, § 1; Ga. L. 1971, p. 814, § 1; Ga. L. 1990, p. 384, § 1; Ga. L. 1991, p. 334, § 1; Ga. L. 1993, p. 782, § 1; Ga. L. 2008, p. 1135, § 2A/HB 422; Ga. L. 2012, p. 692, § 2/HB 728; Ga. L. 2017, p. 352, § 5/SB 46; Ga. L. 2024, p. 76, § 6/HB 220, effective July 1, 2024; Ga. L. 2025, p. 1029, § 44(5)/SB 153, effective July 1, 2025.

Amendments.

The 2012 amendment, effective July 1, 2012, added the proviso at the end of subsection (b).

The 2017 amendment, effective July 1, 2017, added paragraph (d)(5).

The 2024 amendment, effective July 1, 2024, added paragraph (d)(6).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b) and revised language in the last sentence of paragraph (d)(6).

Cross references.

Georgia Property Owners' Association Act, §§ 44-3-220 and 44-3-234.

Editor's notes.

Ga. L. 2012, p. 692, § 1/HB 728, not

codified by the General Assembly, provides that: "The General Assembly finds that current law, Code Section 44-5-60, relating to covenants running with the land, is vague and is in fact silent as to the treatment of covenants which were created prior to a county or municipality adopting zoning laws. The General Assembly finds that during its 1935 session it provided for covenants running with the land terminating at a point certain when municipalities had adopted zoning laws and that in its 1962 session it further provided for covenants running with the land terminating at a point certain in those areas of counties for which zoning laws had been adopted. However, the General Assembly finds that at no point has this body pronounced how covenants running with the land which were created prior to the existence of zoning laws should be treated, and therefore it is the intent of the General Assembly to clarify and correct the current vagaries in the law."

Law reviews.

For annual survey on real property, see 65 Mercer L. Rev. 233 (2013).

For survey article on real property law, see 67 Mercer L. Rev. 193 (2015).

For annual survey on real property, see 71 Mercer L. Rev. 241 (2019).

JUDICIAL DECISIONS

ANALYSIS

COVENANTS RUNNING WITH LAND

1. CREATION
3. ENLARGEMENT
4. PROCEDURE
5. ILLUSTRATIVE CASES

Covenants Running with Land

1. Creation

Covenants could be automatically renewed. — Purchaser of a 10-acre lot in a subdivision was bound by restrictive covenants governing the cutting of trees and dividing of lots in the subdivision because the covenants had never been abolished and provided for their automatic renewal; O.C.G.A. § 44-5-60 did not prohibit renewal and render the covenants unenforceable. *Gilbert v. Canterbury Farms, LLC*, 346 Ga. App. 804, 815 S.E.2d 303, 2018 Ga. App. LEXIS 392 (2018), cert. denied, No. S18C1606, 2019 Ga. LEXIS 209 (Ga. Apr. 1, 2019).

3. Enlargement

Homeowners not bound by change to association covenants. — In a HOA's action against homeowners for violation of a garage storage covenant, in which it was determined that the owners were not bound by the covenant under O.C.G.A. § 44-5-60(d)(4) or O.C.G.A. § 44-2-226(a), and the HOA dismissed the HOA's remaining claim, the owners were the prevailing party entitled to attorney fees under the declaration; however, the trial court did not err in denying attorney fees under O.C.G.A. § 9-15-14(b). *Marino v. Clary Lakes Homeowners Ass'n*, 331 Ga. App. 204, 770 S.E.2d 289, 2015 Ga. App. LEXIS 124 (2015).

4. Procedure

Expiration of covenants. — In an agreement by a private water company to provide water to the homes built in a subdivision, because the agreement constituted a restrictive covenant limiting each lot owner's options for obtaining wa-

ter necessary for the use and enjoyment of his or her property, the terms of the agreement ceased to be enforceable in 2011 as the agreement expired after 20 years when the homeowners failed to renew the covenant as required by a former provision of this statute. *Double Branches Ass'n v. Jones*, 331 Ga. App. 159, 770 S.E.2d 252, 2015 Ga. App. LEXIS 112 (2015).

5. Illustrative Cases

Expiration of 20 year period by operation of law. — Provisions in an easement agreement constituted restrictive covenants because the provisions barred the owner from using any portion of the owners' approximately two-acre property, except for part on which the owners' current building was located, for anything other than a driveway, thoroughfare, or parking lot; those provisions had therefore expired by operation of law, 20 years after creation. *Davista Holdings, LLC v. Capital Plaza, Inc.*, 321 Ga. App. 131, 741 S.E.2d 266, 2013 Ga. App. LEXIS 331 (2013).

Homeowners bound by amendments. — In a dispute over covenants preventing use of a home as a short-term rental, the grant of summary judgment to the homeowners association was upheld because the plain language of the 1987 declaration provided that the two-thirds vote to amend the declaration created a mandatory association, all statutory requirements were met, and the homeowners' impliedly consented to membership by paying assessments and being on notice of the association's existence, so the homeowners were bound by the amendments. *Vaughn v. Windfield Homeowners Assn., Inc.*, 375 Ga. App. 18, 913 S.E.2d 74, 2025 Ga. App. LEXIS 68 (2025).

RESEARCH REFERENCES

ALR.
Restrictive covenants as to height of structures or buildings, 74 A.L.R.7th 2.

44-5-62. General warranty — Scope.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
QUIET POSSESSION

General Consideration

No breach of warranty of title. —
Although the third amended complaint asserted a new claim against the former landowner for breach of warranty of title, because the claim failed to state the nature of the former landowner’s breach, the record was void of any evidence of the existence of a paramount title to the plaintiffs’ land, or an eviction or equivalent disturbance as a result of a paramount title, and the plaintiffs had lived continuously in their home since 2008, any claim for breach of warranty of title had to fail. Lafontaine v. Alexander, 343 Ga. App. 672, 808 S.E.2d 50, 2017 Ga. App. LEXIS 552 (2017), overruled in part, Driskell v. Dougherty County, 363 Ga. App. 481, 871 S.E.2d 283, 2022 Ga. App. LEXIS 164 (2022).

Quiet Possession

Loss of possession must be shown. —
Covenant of quiet enjoyment applies only to claims arising from a landlord’s title and does not encompass a non-title constructive eviction defense. Thus, Jaraysi v. Sebastian, 318 Ga. App. 469 (2012), Myung Sung Presbyterian Church Inc. v. North American Assn. of Slavic Churches & Ministries Inc., 291 Ga. App. 808 (2008), and similar cases are disapproved to the extent they can be interpreted to hold otherwise. George v. Hercules Real Estate Services, Inc., 339 Ga. App. 843, 795 S.E.2d 81, 2016 Ga. App. LEXIS 667 (2016), cert. denied, No. S17C0939, 2017 Ga. LEXIS 561 (Ga. June 30, 2017).

ARTICLE 4

GIFTS GENERALLY

Law reviews.
For article, “The Renewed Significance

of Title in Dividing Marital Assets,” see 16 (No. 6) Ga. St. B.J. 24 (2011).

PART 1

INTER VIVOS GIFTS

Law reviews.
For article, “The Renewed Significance

of Title in Dividing Marital Assets,” see 16 (No. 6) Ga. St. B.J. 24 (2011).

44-5-80. Criteria for making valid inter vivos gift.

Law reviews.

For article, “The Renewed Significance of Title in Dividing Marital Assets,” see 16 (No. 6) Ga. St. B.J. 24 (2011).

For annual survey on wills, trusts, guardianships, and fiduciary administration, see 64 Mercer L. Rev. 325 (2012).

JUDICIAL DECISIONS

ANALYSIS

DELIVERY

Delivery

Deposit in safe deposit box insufficient delivery. — Although a niece was a joint tenant with a decedent on the lease of a safe deposit box, there was no evidence that an inter vivos gift of the contents of the box was made to the niece under O.C.G.A. § 44-5-80 since the decedent retained access to the box, and the contents were subject to being reclaimed by the decedent at any time prior to the decedent’s death. Furthermore, there was no evidence that full control or power over the property vested in the niece before the decedent’s death or that the decedent renounced dominion and transferred the property to the niece. Longstreet v. Decker, 312 Ga. App. 1, 717 S.E.2d 513, 2011 Ga. App. LEXIS 875 (2011).

Presumption of delivery estab-

lished. — Trial court erred granting summary judgment to the executor because the deed contained a recital that it was signed, sealed, and delivered in the presence of the two witnesses, which raised a presumption of delivery, and the girlfriend remained in the home and kept belongings there while the decedent lived in the lake house. Smith v. Tibbits, 359 Ga. App. 362, 857 S.E.2d 820, 2021 Ga. App. LEXIS 200 (2021).
Grant of summary judgment to estate executor was reversed because there was evidence that decedent took actions indicating that decedent renounced dominion over funds and transferred that dominion to decedent’s spouse, permitting the jury to find that there was constructive delivery of a gift. Walsh v. Bowen, 367 Ga. App. 208, 885 S.E.2d 241, 2023 Ga. App. LEXIS 130 (2023).

44-5-82. Delivery; constructive delivery.

JUDICIAL DECISIONS

Burden of proof. — Grant of summary judgment to estate executor was reversed because there was evidence that decedent took actions indicating that decedent renounced dominion over funds and transferred that dominion to decedent’s spouse, permitting the jury to find that there was constructive delivery of a gift. Walsh v. Bowen, 367 Ga. App. 208, 885 S.E.2d 241, 2023 Ga. App. LEXIS 130 (2023).

Presumption of delivery estab-

lished. — Trial court erred granting summary judgment to the executor because the deed contained a recital that it was signed, sealed, and delivered in the presence of the two witnesses, which raised a presumption of delivery, and the girlfriend remained in the home and kept belongings there while the decedent lived in the lake house. Smith v. Tibbits, 359 Ga. App. 362, 857 S.E.2d 820, 2021 Ga. App. LEXIS 200 (2021).

44-5-87. Implied trust on failure of specific purpose for which gift made.

JUDICIAL DECISIONS

Purpose of gift not clear. — Trial court erred in granting partial summary judgment to the aunt and imposing a constructive trust on property purchased by the niece and the nieces's husband with money obtained from the aunt because the appellate court could not say as a matter of law that the specific purpose of the gift was sufficiently expressed or secretly understood to impose a trust. *Shadder v. Holland*, 350 Ga. App. 191, 828 S.E.2d 418, 2019 Ga. App. LEXIS 271 (2019).

No failure to use for designated purpose. — “Best interest of creditors” test under 11 U.S.C. § 1325(a)(4) was not

met by the proposed plan of Chapter 13 debtors because the plan did not account for the recoverable value of the debtor's transfer of the debtor's interest in property given to the debtor by the debtor's mother. An implied trust under O.C.G.A. § 44-5-87 did not exist when the specific purpose of the mother's gift was to transfer the property to her sons outside of probate while continuing to reside in the house, and that purpose was accomplished. *Meredith v. Weigl* (In re Weigl), No. 10-60341, 2011 Bankr. LEXIS 2246 (Bankr. S.D. Ga. Jan. 18, 2011).

44-5-88. Gifts void against creditors and bona fide purchasers.

JUDICIAL DECISIONS

Transfer of debtor's residence before bankruptcy. — Transfer of a debtor's residence by deed to debtor's child before the debtor filed for bankruptcy was not a gift because the transfer had the hallmarks of a fraudulent transfer as the property was conveyed in exchange for a sum of money that was less than reasonable equivalent value and was applied to

pay off the debtor's mortgage so that at most the transfer was voidable rather than void. Accordingly, a bank's judgment lien did not attach to the property or to settlement funds regarding the transfer. *Scarver v. Shinhan Bank Am., Inc.* (In re Byung Chik Min), No. 21-53636-BEM, 2023 Bankr. LEXIS 2572 (Bankr. N.D. Ga. Oct. 18, 2023).

ARTICLE 5

THE GEORGIA TRANSFERS TO MINORS ACT

RESEARCH REFERENCES

ALR.

Uniform Transfers to Minors Act, 64 A.L.R. 7th 1.

ARTICLE 6

REVISED UNIFORM ANATOMICAL GIFTS

RESEARCH REFERENCES

ALR.

Uniform Anatomical Gift Act, 75 A.L.R.7th 8.

44-5-150. Search and notification for information identifying donor status.

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, firefighter, paramedic, emergency medical technician, or other first responder finding the individual, in accordance with subsection (c) of Code Section 17-6-11; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual’s arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a) of this Code section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this Code section but may be subject to administrative sanctions.

History.

Code 1981, § 44-5-150, enacted by Ga. L. 2008, p. 503, § 1/SB 405; Ga. L. 2024, p. 560, § 8/HB 926, effective May 2, 2024.

Amendments.

The 2024 amendment, effective May 2, 2024, substituted “subsection (c)” for “subsection (b.1)” in paragraph (a)(1).

Editor’s notes.

Ga. L. 2024, p. 560, § 1/HB 926, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Second Chance Workforce Act.’”

ARTICLE 7

PRESCRIPTION

RESEARCH REFERENCES

ALR.

Neighborhood accommodation as defense against adverse possession or prescriptive easement, 56 A.L.R.7th 8.

What Usage of Trees, Other than Logging, Constitutes Sufficient Evidence to Support Adverse Possession Claims, 59 A.L.R.7th Art. 2.

44-5-160. Nature of title by prescription.**JUDICIAL DECISIONS****Evidence showed that defendant was in actual adverse possession of land involved, etc.**

In a dispute over the boundaries of a parcel of developed real property, grant of summary judgment to the defendant was upheld because no disputed issues of material fact remained and the defendant's predecessor-in-interest acquired prescriptive title to the disputed part of the property by adverse possession. *BC EAV, LLC v. Havlik*, 365 Ga. App. 57, 877 S.E.2d 374, 2022 Ga. App. LEXIS 379 (2022).

Adverse possession not proven. —

Landowners were not entitled to relief on the landowners' claim of a prescriptive easement by adverse possession as the evidence showed, at best, a trespass, which can never ripen into prescriptive

title. *Columbia County v. Satcher*, 369 Ga. App. 608, 894 S.E.2d 181, 2023 Ga. App. LEXIS 501 (2023), vacated in part, 319 Ga. 633, 905 S.E.2d 583, 2024 Ga. LEXIS 177 (2024), vacated in part, 373 Ga. App. 19, 907 S.E.2d 341, 2024 Ga. App. LEXIS 382 (2024).

Exclusivity not shown. — In a quiet title action, there was evidence to support the jury's finding that the claimant did not satisfy the elements of adverse possession under O.C.G.A. § 44-5-160 et seq., since the evidence showed that the claimant did not hold the property exclusively as the owner had given permission to others to hunt on the land. *Keever v. Dellinger*, 291 Ga. 860, 734 S.E.2d 874, 2012 Ga. LEXIS 855 (2012).

44-5-161. Adverse possession; effect of permissive possession.**Law reviews.**

For article with annual survey on real property, see 73 *Mercer L. Rev.* 217 (2021).

JUDICIAL DECISIONS**ANALYSIS**

GENERAL CONSIDERATION

REQUIREMENTS

PUBLIC, CONTINUOUS, EXCLUSIVE, UNINTERRUPTED, AND PEACEABLE

CLAIM OF RIGHT

PERMISSIVE POSSESSION

General Consideration

Judicial review. — Trial court did not err in rejecting a property owners' claim of title to a street by adverse possession; because the owners did not provide a transcript of the special master's evidentiary hearing, it was presumed that the evidence supported the relevant findings of the special master adopted by the trial court. *Goodson v. Ford*, 290 Ga. 662, 725 S.E.2d 229, 2012 Ga. LEXIS 254 (2012).

Requirements

Notice required. — Facts as set out by

the trial court and as recited by the brothers were insufficient as a matter of law to establish that the brothers were in such notorious possession that the brothers acquired title to the riverbed by prescriptive easement or adverse possession; all of the brothers' actions were consistent with the brothers' 1976 easement, and therefore did not give notice that the brothers claimed the entire riverbed to the exclusion of others. *Thomas v. Henry County Water & Sewerage Auth.*, 317 Ga. App. 258, 731 S.E.2d 66, 2012 Ga. App. LEXIS 608 (2012), cert. denied, No. S12C2017, 2013 Ga. LEXIS 308 (Ga. Mar. 25, 2013).

Requirements (Cont'd)

Trial court did not err in granting summary judgment in favor of the appellees granting the appellees prescriptive title by adverse possession to the disputed property because the terraces and construction debris remained in the same place continuously for the statutory 20-year prescriptive period; the building of the terraces changed the nature and appearance of the property and gave notice to all that the appellees were exercising possession over the property in question; the construction of the terraces demonstrated the appellees' exercise of exclusive dominion over the property and an appropriation of the property for the appellees' own use and benefit; and the construction of the terraces established a claim of right to the property. *Kelley v. Randolph*, 295 Ga. 721, 763 S.E.2d 858, 2014 Ga. LEXIS 730 (2014).

Evidence sufficient for title. — When the plaintiffs contended that the issuance of a notice of interim trail use or abandonment authorizing the conversion of a railroad line for use as a public recreational trail under the National Trail Systems Act exceeded the scope of an easement and, thus, was a Fifth Amendment taking, the court applied Georgia law and determined that, with respect to one parcel, the railroad acquired title in fee simple, not just an easement limited to rail use, because the railroad satisfied the elements of adverse possession when the railroad constructed and used a rail line adjacent to the parcel. Further, the railroad possessed the property for more than 20 years and, thus, acquired title to the property as opposed to a mere easement to use the property. *Hardy v. United States*, No. 14-388L, 127 Fed. Cl. 1, 2016 U.S. Claims LEXIS 423 (Fed. Cl. May 4, 2016), vacated in part, *aff'd*, 965 F.3d 1338, 2020 U.S. App. LEXIS 21915 (Fed. Cir. 2020).

In a dispute over the boundaries of a parcel of developed real property, grant of summary judgment to the defendant was upheld because no disputed issues of material fact remained and the defendant's predecessor-in-interest acquired prescriptive title to the disputed part of the property by adverse possession. *BC EAV, LLC*

v. Havlik, 365 Ga. App. 57, 877 S.E.2d 374, 2022 Ga. App. LEXIS 379 (2022).

Requirements not satisfied. Trial court did not err in denying a landowner's claim that the landowner held prescriptive title to certain property by possession for a period of more than 20 years under O.C.G.A. § 44-5-163 because neither the landowner nor the landowner's spouse cultivated the property or erected any structure or fence upon the property pursuant to O.C.G.A. § 44-5-165, and the clearing of vegetation did not require a finding that possession had been established; photographs submitted in support of the landowner's claim that a pre-existing fence situated at one end of the property, together with the vegetation lines caused by the clearing and periodic mowing of the property, constituted an enclosure of the property so as to evidence possession and could allow the special master to conclude that the asserted enclosure was not so notorious as to attract the attention of every adverse claimant and so exclusive as to prevent actual occupation by another. *Bailey v. Moten*, 289 Ga. 897, 717 S.E.2d 205, 2011 Ga. LEXIS 812 (2011).

Trial court erred in finding that a neighbor was the rightful owner of certain property because there was no evidence to support the conclusion that the neighbor owned the disputed property either by deed or by adverse possession; the legal description of the property contained in the neighbor's deed did not include the disputed property, and since the evidence showed that, at most, the neighbor made a claim to the disputed property for only eighteen years before being challenged by the landowners, the neighbor's claim to have gained prescriptive title to the property through adverse possession under O.C.G.A. §§ 44-5-161 and 44-5-165 failed as a matter of law. *Washington v. Brown*, 290 Ga. 477, 722 S.E.2d 65, 2012 Ga. LEXIS 135 (2012).

Trial court did not err in granting a bank and purchasers summary judgment in a son's action to quiet title to a parcel of land because the son did not gain title to the house on the property through adverse possession; the son had not adversely possessed the property for the

requisite 20 years pursuant to O.C.G.A. § 44-5-161 et seq. Furthermore, the son could not claim adverse possession under color of title, which reduced the required period of possession to seven years, because the son's deed did not provide written evidence of title. *Haffner v. Davis*, 290 Ga. 753, 725 S.E.2d 286, 2012 Ga. LEXIS 331 (2012).

Under the federal preemption doctrine, time period for adverse possession prescription could not run against railway land under the Surface Transportation Board's jurisdiction and, thus, the allegations contained within the complaint affirmatively showed that plaintiff could not maintain a valid claim to the property under O.C.G.A. §§ 44-5-161 and 44-5-163 because she could not show valid adverse possession of the property for the requisite amount of time. *McCloud-Pue v. Atlanta Beltline Inc.*, 364 Ga. App. 789, 874 S.E.2d 482, 2022 Ga. App. LEXIS 299 (2022).

In adverse possession case, issue of material fact existed regarding defendants' adverse possession claim as to the property encroached on by the HVAC unit and chicken wire fence, therefore, the court rejected defendants' adverse possession claim as to the entire disputed area as other encroachments did not satisfy the 20-year requirement. *Mongeon v. Posey*, 367 Ga. App. 189, 885 S.E.2d 219, 2023 Ga. App. LEXIS 128 (2023).

Public, Continuous, Exclusive, Uninterrupted, and Peaceable

Installation of sprinkler system. — Property owners could not establish that the alleged installation of a sprinkler system on the disputed property by a prior owner of the owners' property somehow bolstered the owners' claim of adverse possession because there was no evidence as to how long any previous owner allegedly maintained adverse possession of the disputed property, and the installation of a sprinkler system, by itself, would not establish adverse possession under the circumstances presented in the case. *Campbell v. Landings Ass'n*, 289 Ga. 617, 713 S.E.2d 860, 2011 Ga. LEXIS 564 (2011).

Reconstruction of dam and pond. — In a boundary dispute, the evidence was

sufficient for the jury to find that a landowner was entitled to judgment pursuant to prescriptive title under O.C.G.A. § 44-5-161(a) because a dam creating the disputed pond broke in 1994, and the landowner reconstructed the dam at the landowner's sole cost; the neighbors raised no objection to this act of actual possession and ownership. *Mathews v. Cloud*, 294 Ga. 415, 754 S.E.2d 70, 2014 Ga. LEXIS 59 (2014).

Evidence supporting claim of adverse possession. — Trial court properly granted summary judgment to a neighbor in its declaratory judgment suit as the neighbor had established its right to use the airspace through acquisition by adverse possession under O.C.G.A. § 44-5-161(a). For a period of more than 20 years, the neighbor's possession of the airspace occupied by its ventilation system had been public, continuous, exclusive, uninterrupted, peaceable, and under a claim of right, and contrary to the owner's contention, it was the owner's burden, not the neighbor's, to rebut the presumption of adverse possession with evidence of permissive use, which the owner had not done. *Cong. St. Props., LLC v. Garibaldi's, Inc.*, 314 Ga. App. 143, 723 S.E.2d 463, 2012 Ga. App. LEXIS 147 (2012), cert. denied, No. S12C1050, 2012 Ga. LEXIS 806 (Ga. Oct. 15, 2012).

Evidence insufficient to support claim of adverse title. — Trial court did not err in finding that property owners' claim for prescriptive title failed as a matter of law because the owners did not show that the owners use of the property had been continuous, exclusive, uninterrupted, and peaceable for the past twenty years; the owners purchased the owners' lot within the past sixteen years, and a homeowners association had consistently impeded all of the owners' attempts to do the owners' own personal construction projects on the disputed property. *Campbell v. Landings Ass'n*, 289 Ga. 617, 713 S.E.2d 860, 2011 Ga. LEXIS 564 (2011).

Evidence supported the trial court's conclusion that landowners did not own the disputed property because the landowners' occasional maintenance and use of the disputed property did not amount to

**Public, Continuous, Exclusive,
Uninterrupted, and
Peaceable (Cont'd)**

the type of exclusive possession for twenty years that would support a claim for prescriptive title under O.C.G.A. §§ 44-5-161 and 44-5-165. *Washington v. Brown*, 290 Ga. 477, 722 S.E.2d 65, 2012 Ga. LEXIS 135 (2012).

Successor in interest to the owner of property successfully redeemed the property from the purchaser of a tax deed by tendering an adequate amount, O.C.G.A. § 48-4-40(2), although it was refused by the purchaser; the court rejected the purchaser's claim that the purchaser had acquired title by prescription under O.C.G.A. § 48-4-48 because the prescriptive period was not met and the purchaser's possession of the unfenced, uninhabited property was not sufficiently adverse. *Nix v. 230 Kirkwood Homes, LLC*, 300 Ga. 91, 793 S.E.2d 402, 2016 Ga. LEXIS 727 (2016).

Trial court correctly concluded that the appellant could not establish that possession of the sewer line on appellees' land was public because the evidence was insufficient to show that the appellant's possession of an underground sewer line on the appellees' property was so conspicuous that it was generally known and talked of by the public or the people in the neighborhood or had such elements of notoriety that the appellee's could be presumed to have notice of it and of its extent. *Talboy v. Dukes*, 369 Ga. App. 350, 893 S.E.2d 506, 2023 Ga. App. LEXIS 456 (2023).

Claim of Right

Honesty and good faith required.

Defendants' motion for summary judgment was improperly granted on the plaintiffs' adverse possession claim as a question of fact remained about the location of the actual boundary line and whether the plaintiffs entered the disputed area in bad faith when the plaintiffs parked a large trailer in that area and then continued using that area for the next three-and-a-half decades because, although the plaintiffs' signing of the 1974 deed might be some evidence of a lack of a good faith claim of right to possession of

the disputed area, it was not dispositive, as knowing what the deed said about the boundaries of the defendants' lot did not automatically demonstrate knowledge of precisely where those boundaries lay in relation to the disputed area. *McBee v. Aspire at West Midtown Apts., L.P.*, 302 Ga. 662, 807 S.E.2d 455, 2017 Ga. LEXIS 941 (2017).

Easement rights extinguished. —

Trial court did not err in granting summary judgment in favor of the appellees on the appellants' abatement claim in which the appellants sought the removal of the terraces and construction debris from the alleyway because, even assuming the appellants previously held title to one-half of the alleyway, ownership of that portion of the alleyway now lay with the appellees based on the appellees' acquisition of the disputed property by prescriptive title and any rights the appellants had to the property, including any asserted easement rights, were extinguished. *Kelley v. Randolph*, 295 Ga. 721, 763 S.E.2d 858, 2014 Ga. LEXIS 730 (2014).

Permissive Possession

Permissive possession cannot be foundation of prescription, etc.

Trial court's finding of "permissive use" of property held by a local church, even when that use spanned 70 years, could not be the foundation of a prescription until an adverse claim and actual notice to the other party under O.C.G.A. § 44-5-161(b) because there was no evidence presented that an adverse claim was made and actual notice was given; therefore, the local church did not hold prescriptive title in trust for a national church, but the local church obtained the property by gift years ago and took possession and built the church building. *Kemp v. Neal*, 288 Ga. 324, 704 S.E.2d 175, 2010 Ga. LEXIS 936 (2010).

Burden of proof. — O.C.G.A. § 44-5-161(b) does not place the burden on the party claiming adverse possession to prove that its use of the airspace was not permissive as part of its *prima facie* case; rather, in accordance with the plain language of the statute and applicable Georgia law, the party claiming adverse

possession satisfies its burden once it establishes by a preponderance of the evidence each of the elements explicitly set forth within § 44-5-161(a). Once it does so, the burden then shifts to the opposing party to rebut the presumption of adverse possession with evidence of permissive use. *Cong. St. Props., LLC v. Garibaldi's, Inc.*, 314 Ga. App. 143, 723 S.E.2d 463, 2012 Ga. App. LEXIS 147 (2012), cert. denied, No. S12C1050, 2012 Ga. LEXIS 806 (Ga. Oct. 15, 2012).

Possession was permissive, etc.
Trial court properly granted summary

judgment to a railroad as to the property owner's adverse possession claim as no evidence showed that the fence served to exclude the railroad from its right-of-way and its track supervisor testified that while it was aware of the fence, it did not consider the fence an encroachment on its right-of-way because the fence did not interfere with the railroad's access to the railroad's property. *Fox v. Norfolk S. Corp.*, 342 Ga. App. 38, 802 S.E.2d 319, 2017 Ga. App. LEXIS 310 (2017), cert. denied, No. S17C1931, 2017 Ga. LEXIS 987 (Ga. Dec. 11, 2017).

44-5-162. Effect of fraud on prescription.

JUDICIAL DECISIONS

Requirements satisfied. — In a dispute over boundaries of a parcel of developed real property, grant of summary judgment to the defendant was upheld because no disputed issues of material fact remained and the defendant's prede-

cessor-in-interest acquired prescriptive title to the disputed part of the property by adverse possession. *BC EAV, LLC v. Havlik*, 365 Ga. App. 57, 877 S.E.2d 374, 2022 Ga. App. LEXIS 379 (2022).

44-5-163. When adverse possession for 20 years confers title.

Law reviews.

For article with annual survey on real property, see 73 *Mercer L. Rev.* 217 (2021).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
REQUIREMENTS
BURDEN OF PROOF

General Consideration

Judicial review. — Trial court did not err in rejecting a property owners' claim of title to a street by adverse possession; because the owners did not provide a transcript of the special master's evidentiary hearing, it was presumed that the evidence supported the relevant findings of the special master adopted by the trial court. *Goodson v. Ford*, 290 Ga. 662, 725 S.E.2d 229, 2012 Ga. LEXIS 254 (2012).

Requirements

An easement may be acquired by prescription, etc.

Trial court did not err in granting summary judgment in favor of the appellees on the appellants' abatement claim in which the appellants sought the removal of the terraces and construction debris from the alleyway because, even assuming the appellants previously held title to one-half of the alleyway, ownership of that

Requirements (Cont'd)

portion of the alleyway now lay with the appellees based on the appellees acquisition of the disputed property by prescriptive title and any rights the appellants had to the property, including any asserted easement rights, were extinguished. *Kelley v. Randolph*, 295 Ga. 721, 763 S.E.2d 858, 2014 Ga. LEXIS 730 (2014).

Possession relied upon must meet requirements of O.C.G.A. § 44-5-161.

— Trial court properly granted summary judgment to a neighbor in its declaratory judgment suit as the neighbor had established its right to use the airspace through acquisition by adverse possession under O.C.G.A. § 44-5-161(a). For a period of more than 20 years, the neighbor's possession of the airspace occupied by its ventilation system had been public, continuous, exclusive, uninterrupted, peaceable, and under a claim of right, and contrary to the owner's contention, it was the owner's burden, not the neighbor's, to rebut the presumption of adverse possession with evidence of permissive use, which the owner had not done. *Cong. St. Props., LLC v. Garibaldi's, Inc.*, 314 Ga. App. 143, 723 S.E.2d 463, 2012 Ga. App. LEXIS 147 (2012), cert. denied, No. S12C1050, 2012 Ga. LEXIS 806 (Ga. Oct. 15, 2012).

Trial court did not err in granting summary judgment in favor of the appellees granting the appellees prescriptive title by adverse possession to the disputed property because the terraces and construction debris had remained in the same place continuously for the statutory 20-year prescriptive period; the building of the terraces changed the nature and appearance of the property and gave notice to all that the appellees were exercising possession over the property in question; the construction of the terraces demonstrated the appellees' exercise of exclusive dominion over the property and an appropriation of the property for the appellees own use and benefit; and the construction of the terraces established a claim of right to the property. *Kelley v. Randolph*, 295 Ga. 721, 763 S.E.2d 858, 2014 Ga. LEXIS 730 (2014).

Evidence sufficient for title. —

When the plaintiffs contended that the issuance of a notice of interim trail use or abandonment authorizing the conversion of a railroad line for use as a public recreational trail under the National Trail Systems Act exceeded the scope of an easement and, thus, was a Fifth Amendment taking, the court applied Georgia law and determined that, with respect to one parcel, the railroad acquired title in fee simple, not just an easement limited to rail use, because the railroad satisfied the elements of adverse possession when the railroad constructed and used a rail line adjacent to the parcel. Further, the railroad possessed the property for more than 20 years and, thus, acquired title to the property as opposed to a mere easement to use the property. *Hardy v. United States*, No. 14-388L, 127 Fed. Cl. 1, 2016 U.S. Claims LEXIS 423 (Fed. Cl. May 4, 2016), vacated in part, aff'd, 965 F.3d 1338, 2020 U.S. App. LEXIS 21915 (Fed. Cir. 2020).

Evidence insufficient for title.

Trial court did not err in denying a landowner's claim that the landowner held prescriptive title to certain property by possession for a period of more than 20 years under O.C.G.A. § 44-5-163 because neither the landowner nor the landowner's spouse cultivated the property or erected any structure or fence upon the land pursuant to O.C.G.A. § 44-5-165, and the clearing of vegetation did not require a finding that possession had been established; photographs submitted in support of the landowner's claim that a pre-existing fence situated at one end of the property, together with the vegetation lines caused by the clearing and periodic mowing of the property, constituted an enclosure of the property so as to evidence possession could allow the special master to conclude that the asserted enclosure was not so notorious as to attract the attention of every adverse claimant and so exclusive as to prevent actual occupation by another. *Bailey v. Moten*, 289 Ga. 897, 717 S.E.2d 205, 2011 Ga. LEXIS 812 (2011).

Trial court did not err in granting a bank and purchasers summary judgment in a son's action to quiet title to a parcel of land because the son did not gain title to

the house on the property through adverse possession; the son had not adversely possessed the property for the requisite 20 years pursuant to O.C.G.A. § 44-5-161 et seq. Furthermore, the son could not claim adverse possession under color of title, which reduced the required period of possession to seven years because the son's deed did not provide written evidence of title. *Haffner v. Davis*, 290 Ga. 753, 725 S.E.2d 286, 2012 Ga. LEXIS 331 (2012).

Under the federal preemption doctrine, time period for adverse possession prescription could not run against railway land under the Surface Transportation Board's jurisdiction and, thus, the allegations contained within the complaint affirmatively showed that plaintiff could not maintain a valid claim to the property under O.C.G.A. §§ 44-5-161 and 44-5-163 because she could not show valid adverse possession of the property for the requisite amount of time. *McCloud-Pue v. Atlanta Beltline Inc.*, 364 Ga. App. 789, 874 S.E.2d 482, 2022 Ga. App. LEXIS 299 (2022).

In adverse possession case, issue of material fact existed regarding defendants' adverse possession claim as to the property encroached on by the HVAC unit and chicken wire fence, therefore, the court rejected defendants' adverse possession claim as to the entire disputed area as other encroachments did not satisfy the

20-year requirement. *Mongeon v. Posey*, 367 Ga. App. 189, 885 S.E.2d 219, 2023 Ga. App. LEXIS 128 (2023).

Possession was permissive. — Trial court properly granted summary judgment to a railroad as to the property owner's adverse possession claim as no evidence showed that the fence served to exclude the railroad from its right-of-way and its track supervisor testified that while it was aware of the fence, it did not consider the fence an encroachment on its right-of-way because the fence did not interfere with the railroad's access to the railroad's property. *Fox v. Norfolk S. Corp.*, 342 Ga. App. 38, 802 S.E.2d 319, 2017 Ga. App. LEXIS 310 (2017), cert. denied, No. S17C1931, 2017 Ga. LEXIS 987 (Ga. Dec. 11, 2017).

Burden of Proof

Landowners failed to carry burden of proof. — Landowners were not entitled to relief on their claim of a prescriptive easement by adverse possession as the evidence showed, at best, a trespass, which can never ripen into prescriptive title. *Columbia County v. Satcher*, 369 Ga. App. 608, 894 S.E.2d 181, 2023 Ga. App. LEXIS 501 (2023), vacated in part, 319 Ga. 633, 905 S.E.2d 583, 2024 Ga. LEXIS 177 (2024), vacated in part, 373 Ga. App. 19, 907 S.E.2d 341, 2024 Ga. App. LEXIS 382 (2024).

44-5-164. When adverse possession for seven years confers title.

JUDICIAL DECISIONS

ANALYSIS

ADVERSE POSSESSION

1. REQUIREMENTS
2. ACTS CREATING PRESCRIPTIVE TITLE

COLOR OF TITLE

4. INSUFFICIENT INSTRUMENTS

Adverse Possession

1. Requirements

Compliance with possession requirements necessary. — In adverse possession case, issue of material fact existed regarding defendants' adverse possession claim as to the property en-

croached on by the HVAC unit and chicken wire fence, therefore, the court rejected defendants' adverse possession claim as to the entire disputed area as other encroachments did not satisfy the 20-year requirement. *Mongeon v. Posey*, 367 Ga. App. 189, 885 S.E.2d 219, 2023 Ga. App. LEXIS 128 (2023).

2. Acts Creating Prescriptive Title

Requirements satisfied for prescriptive title. — In a dispute over the boundaries of a parcel of developed real property, grant of summary judgment to the defendant was upheld because no disputed issues of material fact remained and the defendant’s predecessor-in-interest acquired prescriptive title to the disputed part of the property by adverse possession. *BC EAV, LLC v. Havlik*, 365 Ga. App. 57, 877 S.E.2d 374, 2022 Ga. App. LEXIS 379 (2022).

Adverse possession, payment of taxes, negotiation for purchase, and recording.

Appellee established adverse possession because even assuming that appellee’s maintenance of the property and payment of property taxes on the property were not sufficient to establish actual possession, appellee’s possession of a recorded deed satisfied the notoriety element of adverse possession, and appellant even recognized appellee’s ownership when the appellant engaged appellee in negotiations to purchase the property; the possession under the 1997 claim of title, which was recorded in 2003, lasted significantly more than

seven years. *Brownphil, LLC. v. Cudjoe*, 371 Ga. App. 126, 899 S.E.2d 761, 2024 Ga. App. LEXIS 124 (2024), vacated, No. S24G0864, 2025 Ga. LEXIS 101 (Ga. May 13, 2025).

Reconstruction of dam and pond. — Ample evidence was presented of a landowner family’s actual or constructive possession of the entirety of the property described in their deed, including their entry on the land to construct a dam and pond visible to their neighbors, well in excess of the seven-year time period required to establish prescriptive title by adverse possession pursuant to O.C.G.A. § 44-5-164. *Mathews v. Cloud*, 294 Ga. 415, 754 S.E.2d 70, 2014 Ga. LEXIS 59 (2014).

Color of Title

4. Insufficient Instruments

No color of title absent sufficient identification of property. — O.C.G.A. § 44-5-164 did not apply because a deed did not describe the subject property, and thus could not serve as color of title to the property. *Bailey v. Moten*, 289 Ga. 897, 717 S.E.2d 205, 2011 Ga. LEXIS 812 (2011).

44-5-165. How actual possession of lands evidenced.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
ACTUAL POSSESSION

1. IN GENERAL

General Consideration

Scope of prescription by mere possession. — Facts as set out by the trial court and as recited by the brothers were insufficient as a matter of law to establish that the brothers were in such notorious possession that the brothers acquired title to the riverbed by prescriptive easement or adverse possession; all of the brothers’

actions were consistent with their 1976 easement, and therefore did not give notice that claimed the entire riverbed to the exclusion of others. *Thomas v. Henry County Water & Sewerage Auth.*, 317 Ga. App. 258, 731 S.E.2d 66, 2012 Ga. App. LEXIS 608 (2012), cert. denied, No. S12C2017, 2013 Ga. LEXIS 308 (Ga. Mar. 25, 2013).

Actual Possession

1. In General

Installation of sprinkler system. —

Property owners could not establish that the alleged installation of a sprinkler system on the disputed property by a prior owner of the owners' property somehow bolstered the owners' claim of adverse possession because there was no evidence as to how long any previous owner allegedly maintained adverse possession of the disputed property, and the installation of a sprinkler system, by itself, would not establish adverse possession under the circumstances presented in the case. *Campbell v. Landings Ass'n*, 289 Ga. 617, 713 S.E.2d 860, 2011 Ga. LEXIS 564 (2011).

Occasional mowing and clearing of vegetation insufficient. — Trial court did not err in denying a landowner's claim that the landowner held prescriptive title to certain property by possession for a period of more than 20 years under O.C.G.A. § 44-5-163 because neither the landowner nor the landowner's spouse cultivated the property or erected any structure or fence upon the property pursuant to O.C.G.A. § 44-5-165, and the clearing of vegetation did not require a finding that possession had been established; photographs submitted in support of the landowner's claim that a pre-existing fence situated at one end of the property, together with the vegetation lines caused by the clearing and periodic mowing of the property, constituted an enclosure of the property so as to evidence possession and could allow the special master to conclude that the asserted enclosure was not so notorious as to attract the attention of every adverse claimant and so exclusive as to prevent actual occupation by another. *Bailey v. Moten*, 289 Ga. 897, 717 S.E.2d 205, 2011 Ga. LEXIS 812 (2011).

Occasional maintenance and use did not amount to exclusive possession. — Evidence supported the trial court's conclusion that the landowners did not own the disputed property because the landowners' occasional maintenance and use of the disputed property did not amount to the type of exclusive possession

for twenty years that would support a claim for prescriptive title under O.C.G.A. §§ 44-5-161 and 44-5-165. *Washington v. Brown*, 290 Ga. 477, 722 S.E.2d 65, 2012 Ga. LEXIS 135 (2012).

Successor in interest to the owner of property successfully redeemed the property from the purchaser of a tax deed by tendering an adequate amount, O.C.G.A. § 48-4-40(2), although it was refused by the purchaser; the court rejected the purchaser's claim that the purchaser had acquired title by prescription under O.C.G.A. § 48-4-48 because the prescriptive period was not met and the purchaser's possession of the unfenced, uninhabited property was not sufficiently adverse. *Nix v. 230 Kirkwood Homes, LLC*, 300 Ga. 91, 793 S.E.2d 402, 2016 Ga. LEXIS 727 (2016).

Building of pond and dam sufficient. — In a boundary dispute, the evidence was sufficient for the jury to find that a landowner was entitled to judgment pursuant to prescriptive title under O.C.G.A. § 44-5-161(a) because a dam creating the disputed pond broke in 1994, and the landowner reconstructed the dam at the landowner's sole cost; the neighbors raised no objection to this act of actual possession and ownership. These acts extended to the property line set forth in the landowner's deed even though some of the disputed land was not enclosed or cultivated. *Mathews v. Cloud*, 294 Ga. 415, 754 S.E.2d 70, 2014 Ga. LEXIS 59 (2014).

Claim of prescriptive title to property failed. — Trial court erred in finding that a neighbor was the rightful owner of certain property because there was no evidence to support the conclusion that the neighbor owned the disputed property either by deed or by adverse possession; the legal description of the property contained in the neighbor's deed did not include the disputed property, and since the evidence showed that, at most, the neighbor made a claim to the disputed property for only eighteen years before being challenged by the landowners, the neighbor's claim to have gained prescriptive title to the property through adverse possession under O.C.G.A. §§ 44-5-161 and 44-5-165 failed as a matter of law. *Washington v.*

Actual Possession (Cont'd)
1. In General (Cont'd)

Brown, 290 Ga. 477, 722 S.E.2d 65, 2012 Ga. LEXIS 135 (2012).

44-5-166. Constructive possession of lands; effect of constructive possession of same land by adjacent owners.

JUDICIAL DECISIONS

ANALYSIS

ADJACENT OWNERS

Adjacent Owners

Party having clear title prevailed over party with vague deed. — In a boundary dispute, constructive possession of the entirety of the tract described in a landowner's title was not defeated by O.C.G.A. § 44-5-166(b) because the deed by which the adjoining owner's heirs

claimed title to the disputed land was vague and set forth no measured boundaries with respect to the property line; thus, the evidence did not establish they also constructively possessed the disputed land by virtue of their title. Mathews v. Cloud, 294 Ga. 415, 754 S.E.2d 70, 2014 Ga. LEXIS 59 (2014).

44-5-167. Extent of constructive possession under deed; judicial notice.

JUDICIAL DECISIONS

Color of title will not extend beyond description contained in grant, etc.

In a dispute over the ownership of, and right of access to, part of an approximately 20-foot-wide alleyway, the evidence was sufficient for the trial court to find that petitioner did not obtain color of title to the disputed part of the alleyway, as it was not encompassed in the metes and bounds description of the property petitioner had acquired. Foley Commons Prop. Owners Ass'n v. Kramarich, 366 Ga. App. 236, 880 S.E.2d 611, 2022 Ga. App. LEXIS 523 (2022).

Assertion of dominion over pond extended to uncultivated contiguous

land. — In a boundary dispute, the evidence was sufficient for the jury to find that a landowner was entitled to judgment pursuant to prescriptive title under O.C.G.A. § 44-5-161(a) because a dam creating the disputed pond broke in 1994, and the landowner reconstructed the dam at the landowner's sole cost; the neighbors raised no objection to this act of actual possession and ownership. These acts extended to the property line set forth in the landowner's deed even though some of the disputed land was not enclosed or cultivated. Mathews v. Cloud, 294 Ga. 415, 754 S.E.2d 70, 2014 Ga. LEXIS 59 (2014).

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

JUDICIAL DECISIONS

Mineral owner must show work or payment of ad valorem taxes. — Because the owner actually paid ad valorem

taxes on all the mineral rights reserved on the property owned by a ranch, under the clear language of the Mineral Lapse Stat-

ute, O.C.G.A. § 44-5-168, the ranch could not prevail on the ranch's adverse possession claim and the owner was entitled to summary judgment.

Cartersville Ranch, LLC v. Dellinger, 295 Ga. 195, 758 S.E.2d 781, 2014 Ga. LEXIS 396 (2014).

44-5-169. Possession of land as notice; presumption from possession of husband and wife.

JUDICIAL DECISIONS

ANALYSIS

GENUINE ISSUE OF FACT

6. ILLUSTRATIVE CASES

Genuine Issue of Fact

Inquiry notice based on possession.

— Trial court erred by granting summary judgment to the plaintiff because the record showed that there was an issue of fact as to whether the defendants' possession of the property put the plaintiff on inquiry notice of the defendants' title despite the defendants' deed not being recorded. *Caraway v. Spillers*, 332 Ga. App. 588, 774 S.E.2d 162, 2015 Ga. App. LEXIS 364 (2015).

6. Illustrative Cases

Failure to probate a will meant notice lacking. — Trial court did not err in granting a bank's motion for summary judgment in the bank's quiet title action against a testator's niece and great-niece on the ground that under O.C.G.A. § 44-2-4(a), the priority of a security deed

the testator's stepson gave to a mortgage company, which assigned its interest in the property to the bank, was protected from the interests the niece and great-niece held that were grounded in the testator's unrecorded will because there was nothing in the record that would render O.C.G.A. § 44-2-4(a) inapplicable since the notice created by the possession of the niece and great-niece was only constructive notice, and there was no evidence that the company had any actual notice of the will or of the interests created thereby; the statute applies equally to give protection to those who take an interest in realty when there are other interests that exist, but are not of record, because of a failure to probate a will. *Riggins v. Deutsche Bank Nat'l Trust Co.*, 288 Ga. 850, 708 S.E.2d 266, 2011 Ga. LEXIS 250 (2011).

44-5-170. Effect of disabilities on commencement of prescription.

Prescription shall not run against the rights of a minor during his or her minority, a person incompetent by reason of mental illness or intellectual disability so long as the mental illness or intellectual disability lasts, or a person imprisoned during his or her imprisonment. After any such disability is removed, prescription shall run against the person holding a claim to realty or personalty.

History.

Laws 1767, Cobb’s 1851 Digest, p. 559.; Ga. L. 1855-56, p. 233, § 19; Code 1863, § 2645; Code 1868, § 2644; Code 1873, § 2686; Code 1882, § 2686; Civil Code 1895, § 3593; Civil Code 1910, § 4173; Code 1933, § 85-411; Ga. L. 2015, p. 385, § 4-9/HB 252.

Amendments.

The 2015 amendment, effective July 1, 2015, in the first sentence, inserted “or

her” twice, substituted “intellectual disability so” for “retardation as”, and substituted “intellectual disability” for “retardation”.

Editor’s notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’”

ARTICLE 10

DEDICATION

44-5-230. Dedication of lands to public use.

JUDICIAL DECISIONS

ANALYSIS

REQUIREMENTS FOR DEDICATION

- 1. IN GENERAL
- 3. ACCEPTANCE

Requirements for Dedication

1. In General

County’s responsibility for services on easement owned in city. — County that held an easement over a drainage system located on commercial property that was initially located in the county but was later annexed by the city had the responsibility to repair and maintain the drainage system even after the property was annexed by the city. Although the Service Delivery Agreement provided that the city would perform stormwater services within the city’s boundary, the city performed repairs at the right of way, not on private property. *City of Norcross v. Gwinnett County*, 355 Ga. App. 662, 843 S.E.2d 31, 2020 Ga. App. LEXIS 367 (2020), cert. denied, 310 Ga. 851, 854 S.E.2d 682, 2021 Ga. LEXIS 31 (2021).

3. Acceptance

Deed recitals concerning a cemetery. — Trial court did not err in finding an implied dedication of a cemetery for public use because, given the deeds among family members which excepted the cemetery, the neighboring residents and family members were estopped to deny by the deed recitals that there had been no dedication of the cemetery, and the cemetery had been in existence for more than 40 years before the family acquired the property which surrounded the cemetery. Thus, having been dedicated, any authority over the cemetery which the neighboring residents and family members might have had as owners was lost. *Brannon v. Perryman Cemetery, Ltd.*, 308 Ga. App. 832, 709 S.E.2d 33, 2011 Ga. App. LEXIS 294 (2011).

ARTICLE 1
IN GENERAL

44-6-1. [Reserved] Rule against perpetuities; exception for certain trusts for employees.

RESEARCH REFERENCES

ALR. rule against perpetuities or restraints on alienation, 99 A.L.R.6th 591.
Lease renewal provision as violating

ARTICLE 2
FEE SIMPLE ESTATES

44-6-21. Words necessary to create absolute estate; preference for construing as conveyance; maker’s intention controls; parol evidence.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
RULES OF CONSTRUCTION

General Consideration

Deed conveyed life estate and then an estate in remainder. — Trial court erred in declaring that a deed conveyed a joint tenancy to a decedent and widow because the trial court construed the deed in a manner contrary to the deed’s terms, ignoring the provision granting the decedent’s widow a tenancy in common for their joint lives; instead, the deed should have been construed to convey first a life estate and then an estate in remainder so as to give effect to all of the deed’s provisions. *Greene v. Greene*, 311 Ga. App. 132, 714 S.E.2d 650, 2011 Ga. App. LEXIS 641 (2011).

Rules of Construction

Effect. — Court would not construe an agreement and a deed together as creating a fee simple subject to a condition subsequent because a month-long gap be-

tween the execution of the agreement and the deed was too great of a gap in time to deem the documents as being executed contemporaneously. Nor would the court reform the documents to do so as the creditor failed to demonstrate a mistake of present or past fact relievable in equity, either by rescission or reformation. *Kelley v. McCormack (In re Mitchell)*, 548 B.R. 862, 2016 Bankr. LEXIS 901 (Bankr. M.D. Ga. 2016).

Parol evidence not admissible to show intent that security interest be perpetual. — Use of the words “forever, in fee simple” in a security deed were not an “affirmative statement” within the meaning of O.C.G.A. § 44-14-80(a)(2) such that title to the property did not revert to the grantor for 20 years, rather than seven years, because those words related to the estate granted rather than the duration of the security interest. Parol

evidence was not admissible and § 44-14-80 controlled over O.C.G.A. § 44-6-21. Vineville Capital Group, LLC v.

McCook, 329 Ga. App. 790, 766 S.E.2d 156, 2014 Ga. App. LEXIS 781 (2014).

ARTICLE 3

ESTATES GRANTED UPON CONDITIONS

44-6-41. Conditions precedent and subsequent distinguished; preferred construction and remedy.

JUDICIAL DECISIONS

ANALYSIS

CONDITIONS PRECEDENT

Conditions Precedent

Stipulation providing for payment before entry to cut timber. — Under Georgia law, conditions precedent were disfavored and a contractual provision was interpreted as a condition precedent only if it is clear that the parties intended it to operate that way; because the pro-

gram agreements did not indicate that the parties intended the monthly billing requirement to be a condition precedent to the company's reimbursement obligation, the court would not treat it as one. *Williams Serv. Group v. Nat'l Union Fire Ins. Co.*, 495 Fed. Appx. 1, 2012 U.S. App. LEXIS 22004 (11th Cir. 2012).

44-6-43. Certain conditions void.

JUDICIAL DECISIONS

ANALYSIS

CONDITIONS NOT VOID

Conditions Not Void

Declaration amendment restricting leasing property. — Trial court's grant of summary judgment to the homeowners' association was proper because two-thirds of homeowners voted to restrict leasing in their neighborhood; thus, an amendment to the declaration challenged by the plain-

tiff complied with O.C.G.A. § 44-3-226(a) and the plaintiff did not have an unfettered right to lease the plaintiff's property thereafter. *Pasha v. Battle Creek Homeowners Ass'n*, 350 Ga. App. 433, 829 S.E.2d 618, 2019 Ga. App. LEXIS 316 (2019).

ARTICLE 4
REMAINDERS AND REVERSIONS

44-6-60. Nature of estates in remainder and in reversion; rights of reversioner.

JUDICIAL DECISIONS

ANALYSIS

ESTATES IN REMAINDER

Estates in Remainder

Deed conveyed life estate and an estate in remainder. — Trial court erred in declaring that a deed conveyed a joint tenancy to a decedent and widow because the trial court construed the deed in a manner contrary to the deed’s terms, ignoring the provision granting the decedent’s widow a tenancy in common for their joint lives; instead, the deed should have been construed to convey first a life estate and then an estate in remainder, so as to give effect to all of the deed’s provisions. *Greene v. Greene*, 311 Ga. App. 132, 714 S.E.2d 650, 2011 Ga. App. LEXIS 641 (2011).

Deed conveyed to a widow a fee simple estate in the property upon a decedent’s death because the deed conveyed to the decedent and widow a life estate in the property as tenants in common, which terminated upon the death of either of them, and the language of the deed conveyed a fee simple estate in remainder to the surviving grantee; therefore, upon the decedent’s death, the life estate of the decedent and widow in the property ended and fee simple title to the property vested in the widow. *Greene v. Greene*, 311 Ga. App. 132, 714 S.E.2d 650, 2011 Ga. App. LEXIS 641 (2011).

44-6-61. Vested and contingent remainders distinguished.

JUDICIAL DECISIONS

ANALYSIS

VESTED REMAINDERS

2. ILLUSTRATIVE CASES

Vested Remainders

2. Illustrative Cases

Vested remainder found. — Trial court erred in the court’s construction of a deed because the deed was clear as written and, as such, the heir received a one-third undivided interest in the prop-

erty, and the executor individually and the estate each received a one-third undivided interest as the vested remaindermen who each received an interest in the property under O.C.G.A. § 44-6-66. *Wilkes v. Fraser*, 324 Ga. App. 642, 751 S.E.2d 455, 2013 Ga. App. LEXIS 899 (2013).

44-6-65. Creation of remainder for persons not in being; vested remainder subject to open.

JUDICIAL DECISIONS

Vested remainder found. — Trial court erred in the court's construction of a deed because the deed was clear as written and, as such, the heir received a one-third undivided interest in the property, and the executor individually and the

estate each received a one-third undivided interest as the vested remaindermen who each received an interest in the property under O.C.G.A. § 44-6-66. *Wilkes v. Fraser*, 324 Ga. App. 642, 751 S.E.2d 455, 2013 Ga. App. LEXIS 899 (2013).

44-6-66. Preference for vested remainders; construction of words of survivorship in wills.

JUDICIAL DECISIONS

ANALYSIS

ILLUSTRATIVE CASES

Illustrative Cases

Vested remainder found. — Trial court properly determined that a younger brother was entitled to all of the proceeds of a trust because the other siblings had previously unequivocally waived any interest in the trust assets and the younger brother was the sole surviving child who had not waived any interest in the trust. *White v. Call*, 292 Ga. 565, 738 S.E.2d 617, 2013 Ga. LEXIS 154 (2013).

Trial court erred in the court's construction of a deed because the deed was clear as written and, as such, the heir received a one-third undivided interest in the property, and the executor individually and the estate each received a one-third undivided interest as the vested remaindermen who each received an interest in the property under O.C.G.A. § 44-6-66. *Wilkes v. Fraser*, 324 Ga. App. 642, 751 S.E.2d 455, 2013 Ga. App. LEXIS 899 (2013).

ARTICLE 5

LIFE ESTATES

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

JUDICIAL DECISIONS

Deed conveyed life estate and an estate in remainder. — Deed conveyed to a widow a fee simple estate in the property upon a decedent's death because the deed conveyed to the decedent and widow a life estate in the property as tenants in common, which terminated upon the death of either of them, and the language of the deed conveyed a fee simple estate in remainder to the surviving grantee; therefore, upon the decedent's death, the life estate of the decedent

and widow in the property ended and fee simple title to the property vested in the widow. *Greene v. Greene*, 311 Ga. App. 132, 714 S.E.2d 650, 2011 Ga. App. LEXIS 641 (2011).

Trial court erred in declaring that a deed conveyed a joint tenancy to a decedent and widow because the trial court construed the deed in a manner contrary to the deed's terms, ignoring the provision granting the decedent's widow a tenancy in common for their joint lives; instead,

the deed should have been construed to convey first a life estate and then an estate in remainder so as to give effect to

all of the deed’s provisions. *Greene v. Greene*, 311 Ga. App. 132, 714 S.E.2d 650, 2011 Ga. App. LEXIS 641 (2011).

44-6-81. Length of life estate.

JUDICIAL DECISIONS

Deed conveyed life estate and an estate in remainder. — Deed conveyed to a widow a fee simple estate in the property upon a decedent’s death because the deed conveyed to the decedent and widow a life estate in the property as tenants in common, which terminated upon the death of either of them, and the language of the deed conveyed a fee

simple estate in remainder to the surviving grantee; therefore, upon the decedent’s death, the life estate of the decedent and widow in the property ended and fee simple title to the property vested in the widow. *Greene v. Greene*, 311 Ga. App. 132, 714 S.E.2d 650, 2011 Ga. App. LEXIS 641 (2011).

ARTICLE 6
ESTATES FOR YEARS

44-6-100. “Estate for years” defined; estate for years in lands passes as realty.

JUDICIAL DECISIONS

ANALYSIS

ILLUSTRATIVE CASES

Illustrative Cases

Carrying weapons on property leased by city. — If the city, a public entity, was the holder of a present estate under the lease, the leased premises was not private property within the meaning of O.C.G.A. § 16-11-127(c), thus, the garden would have no right to exclude the carrying of firearms on the leased

premises because the garden was not in legal control of private property through a lease; however, since the lease was not in the record on appeal the garden was not entitled to summary judgment. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 834 S.E.2d 27, 2019 Ga. LEXIS 639 (2019).

44-6-102. “Lease” defined; extent of interest; when mining interest passes.

JUDICIAL DECISIONS

Carrying weapons on property leased by city. — If the city, a public entity, was the holder of a present estate under the lease, the leased premises were not private property within the meaning of O.C.G.A. § 16-11-127(c), thus, the garden would have no right to exclude the

carrying of firearms on the leased premises because the garden was not in legal control of private property through a lease; however, since the lease was not in the record on appeal the garden was not entitled to summary judgment. *GeorgiaCarry.Org, Inc. v. Atlanta*

Botanical Garden, Inc., 306 Ga. 829, 834 S.E.2d 27, 2019 Ga. LEXIS 639 (2019).

44-6-103. Tenant's rights and duties; grounds of forfeiture.

JUDICIAL DECISIONS

Carrying weapons on property leased by city. — If the city, a public entity, was the holder of a present estate under the lease, the leased premises were not private property within the meaning of O.C.G.A. § 16-11-127(c), thus, the garden would have no right to exclude the carrying of firearms on the leased

premises because the garden was not in legal control of private property through a lease; however, since the lease was not in the record on appeal the garden was not entitled to summary judgment. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 834 S.E.2d 27, 2019 Ga. LEXIS 639 (2019).

ARTICLE 7

TENANCY IN COMMON

PART 1

IN GENERAL

44-6-120. "Tenancy in common" defined; presumption of equality of shares; effect of inequality of shares on right of possession.

JUDICIAL DECISIONS

Tenant in common free to convey interest in property. — Mortgage company's security interest in certain property extended at least to a one-half undivided interest in the property because an ex-husband acquired the property as tenants in common under a warranty deed transferring the property to him and his ex-wife as grantees; therefore, the secu-

rity deed under which the ex-wife purported to convey legal title to the entire property to the company, at a minimum, effectively vested the company with a security interest in the one-half undivided interest in the property the ex-wife indisputably held and was free to convey. *Brock v. Yale Mortg. Corp.*, 287 Ga. 849, 700 S.E.2d 583, 2010 Ga. LEXIS 647 (2010).

44-6-122. Accounting between cotenants for unequal share of rents or profits; priority of claim over certain liens.

JUDICIAL DECISIONS

Claim for excess loan and tax payments made. — In an estate's claim for partition of property, a co-tenant's counterclaim for contribution and set-off for sums the co-tenant had paid in loan and tax payments was not barred by the four-year statute of limitations, O.C.G.A. § 9-3-25, because under O.C.G.A.

§§ 44-6-122 and 44-6-141, the statute did not begin to run until the estate filed its complaint. *Khimani v. Ruppenthal*, 344 Ga. App. 658, 811 S.E.2d 448, 2018 Ga. App. LEXIS 107 (2018), cert. denied, No. S18C0916, 2018 Ga. LEXIS 571 (Ga. Aug. 20, 2018).

44-6-123. Adverse possession against cotenant; action to recover possession.

JUDICIAL DECISIONS

ANALYSIS

WHAT CONSTITUTES OUSTER

What Constitutes Ouster

Evidence sufficient to support ouster. — Evidence was sufficient to enable the jury to conclude that a property owner met the burden of showing ouster because the owner and an uncle did more than simply make improvements and pay property taxes; the owner and uncle took

unequivocal steps, including renting a part of the premises to different people and cutting and selling timber, which were inconsistent with, and exclusive of, the rights of the cotenants not in possession, and those acts were open and public. *DeFoor v. DeFoor*, 290 Ga. 540, 722 S.E.2d 697, 2012 Ga. LEXIS 88 (2012).

PART 2

PARTITION

Subpart 1

Equitable Partition

44-6-140. When equitable partition authorized.

Law reviews.

For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

JUDICIAL DECISIONS

ANALYSIS

DISTINCTION BETWEEN EQUITY AND LAW
CIRCUMSTANCES SUPPORTING PARTITION

2. SPECIFIC

ILLUSTRATIVE CASES

Distinction Between Equity and Law

Statutory partition more appropriate. — Trial court erred by ordering the equitable partition sale of 3.503 acres of real property because the co-owner failed to show that the remedy at law of a statutory partition, pursuant to O.C.G.A.

§ 44-6-160 et seq., was insufficient or that peculiar circumstances rendered the equitable proceeding more suitable and just; and, in a statutory partition, a court may order the sale of property that cannot be fairly divided by metes and bounds. *Pack v. Mahan*, 294 Ga. 496, 755 S.E.2d 126, 2014 Ga. LEXIS 112 (2014).

Circumstances Supporting Partition

805 S.E.2d 817, 2017 Ga. LEXIS 814 (2017).

2. Specific

Partition unavailable for unmarried parties' property. — When the appellant sought a petition for equitable partition of the unmarried parties' property in which the parties were joint tenants with the right of survivorship, the trial judge properly found that statutory partition was available only to tenants in common, and was not available to the appellant; and that equitable partition was also unavailable because the appellant could seek a partition of the subject property only after the joint tenancy was severed as the parties were not married parties who were seeking the equitable division of marital property in a divorce proceeding. *Vargo v. Adams*, 302 Ga. 637,

Illustrative Cases

Distribution of sales proceeds upheld in real estate transaction. — In a dispute over real property and specific performance of a Redemption Agreement, the trial court did not abuse the court's discretion in making an equitable award because O.C.G.A. §§ 44-6-140 and 44-6-141 granted the court the authority to adjust the accounts and claims of the parties as required by the circumstances and, more specifically, authorized the trial court to consider all of the circumstances, including any circumstances that occurred after the making of the contract. *Bagwell v. Trammel*, 297 Ga. 873, 778 S.E.2d 173, 2015 Ga. LEXIS 671 (2015).

RESEARCH REFERENCES**ALR.**

Homestead right of cotenant as affecting partition, 83 A.L.R.6th 605.

44-6-141. Molding of decree; discretion of court.**JUDICIAL DECISIONS**

Equitable partition found authorized. — In a dispute over real property and specific performance of a Redemption Agreement, the trial court did not abuse the court's discretion in making an equitable award because O.C.G.A. §§ 44-6-140 and 44-6-141 granted it the authority to adjust the accounts and claims of the parties as required by the circumstances and, more specifically, authorized the trial court to consider all of the circumstances, including any circumstances that occurred after the making of the contract. *Bagwell v. Trammel*, 297 Ga. 873, 778 S.E.2d 173, 2015 Ga. LEXIS 671 (2015).

Limitations period. — In an estate's claim for partition of property, a co-tenant's counterclaim for contribution and set-off for sums the co-tenant paid in loan and tax payments was not barred by the four-year statute of limitations, O.C.G.A. § 9-3-25, because under O.C.G.A. §§ 44-6-122 and 44-6-141, the statute did not begin to run until the estate filed its complaint. *Khimani v. Ruppenthal*, 344 Ga. App. 658, 811 S.E.2d 448, 2018 Ga. App. LEXIS 107 (2018), cert. denied, No. S18C0916, 2018 Ga. LEXIS 571 (Ga. Aug. 20, 2018).

Subpart 2
Statutory Partition

44-6-160. Grounds for partition; jurisdiction; contents of petition.

Law reviews.

For article, “A Primer on Heirs Property and Georgia’s New Uniform Partition of

Heirs Property Act: Protecting Owners of Heirs Property,” see 19 G. St. B.J. 16 (Oct. 2013).

JUDICIAL DECISIONS

ANALYSIS

DISTINCTION BETWEEN LAW AND EQUITY
PROCEDURE
ILLUSTRATIVE CASES

Distinction Between Law and Equity

Statutory partition more appropriate. — Trial court erred by ordering the equitable partition sale of 3.503 acres of real property because the co-owner failed to show that the remedy at law of a statutory partition, pursuant to O.C.G.A. § 44-6-160 et seq., was insufficient or that peculiar circumstances rendered the equitable proceeding more suitable and just; and, in a statutory partition, a court may order the sale of property that cannot be fairly divided by metes and bounds. *Pack v. Mahan*, 294 Ga. 496, 755 S.E.2d 126, 2014 Ga. LEXIS 112 (2014).

Procedure

Sale can be ordered in a statutory partition for property that cannot be divided fairly by metes and bounds. — In a statutory partition, a court may order the sale of property that cannot be fairly divided by metes and bounds. *Pack v. Mahan*, 294 Ga. 496, 755 S.E.2d 126, 2014 Ga. LEXIS 112 (2014).

Motion to set aside filed more than three years after entry of partition judgment. — Trial court did not err when the court denied a mother’s motion to set aside a judgment of partition because the motion to set aside was filed more than three years after the entry of the judgment of partition, and that judgment was

made by a court with jurisdiction; the trial court had subject-matter jurisdiction to enter the partitioning judgment since the land sought to be partitioned was partially located in the county of the trial court, and that court had personal jurisdiction of the mother since, under the partitioning statutes, the notice of intent to seek partitioning was the only process necessary to bring a defendant into court to meet the application for partitioning. *Cabrel v. Lum*, 289 Ga. 233, 710 S.E.2d 810, 2011 Ga. LEXIS 437 (2011).

Illustrative Cases

Equitable partition found authorized. — Superior court erred in granting the defendant’s motion to dismiss the plaintiff’s petition for an equitable partition of real property and an accounting because the property was not held by the parties as joint tenants with the right of survivorship at the time of the petition as the plaintiff’s 2007 quitclaim deed to another individual was a transfer in the plaintiff’s lifetime of all of the plaintiff’s interest in the property, although the plaintiff quickly received the property back again from the other individual, because, when the other individual received a grant of the plaintiff’s interest in the property by virtue of the quitclaim deed, it was the other individual’s property to do with as the other individual wished. *Reed v. McConathy*, 299 Ga. 471, 788 S.E.2d 769, 2016 Ga. LEXIS 471 (2016).

Partition not available for property held as joint tenants with right of survivorship. — When the appellant sought a petition for equitable partition of the unmarried parties' property in which the parties were joint tenants with the right of survivorship, the trial judge properly found that statutory partition was available only to tenants in common, and was not available to the appellant; and

that equitable partition was also unavailable because the appellant could seek a partition of the subject property only after the joint tenancy was severed as the parties were not married parties who were seeking the equitable division of marital property in a divorce proceeding. *Vargo v. Adams*, 302 Ga. 637, 805 S.E.2d 817, 2017 Ga. LEXIS 814 (2017).

RESEARCH REFERENCES

ALR.

Homestead right of cotenant as affect-
ing partition, 83 A.L.R.6th 605.

May easement or right of way be appur-
tenant where servient tenement is not
adjacent to dominant, 15 A.L.R.7th 1.

44-6-161. Who may apply for partition.

If the party desiring the writ of partition is of full age and free from disability, he or she may make the application either in person or by his or her agent or attorney in fact or at law. An application may be made for the benefit of a minor, a mentally ill or intellectually disabled person, or the beneficiary of a trust by the guardian of such minor, the guardian of such mentally ill or intellectually disabled person, or the trustee of such beneficiary, as the case may be.

History.

Orig. Code 1863, § 3897; Code 1868, § 3921; Code 1873, § 3997; Code 1882, § 3997; Civil Code 1895, § 4787; Civil Code 1910, § 5359; Code 1933, § 85-1505; Ga. L. 2015, p. 385, § 4-10/HB 252.

Amendments.

The 2015 amendment, effective July 1, 2015, in the first sentence, inserted “or

she” and inserted “or her”; and substituted “intellectually disabled” for “retarded” twice in the second sentence.

Editor's notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’”

44-6-162. Notice of intention to apply for writ of partition.

The party applying for the writ of partition shall give the other parties concerned at least 20 days' notice of his or her intention to make the application. If any of the other parties is a minor, a mentally ill or intellectually disabled person, or a beneficiary of a trust, the 20 days' notice shall be served on the guardian of such minor, the guardian of such mentally ill or intellectually disabled person, or the trustee of such beneficiary. If any of the parties reside outside of this state, the court may order service by publication as in its judgment is right in each case.

History.

Laws 1767, Cobb's 1851 Digest, p. 582.; Code 1863, § 3898; Code 1868, § 3922; Code 1873, § 3998; Code 1882, § 3998;

Civil Code 1895, § 4788; Civil Code 1910, § 5360; Code 1933, § 85-1506; Ga. L. 1991, p. 94, § 44; Ga. L. 2015, p. 385, § 4-11/HB 252.

Amendments.

The 2015 amendment, effective July 1, 2015, inserted “or her” in the first sentence and substituted “intellectually disabled” for “retarded” twice in the second sentence.

Editor’s notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’”

44-6-166.1. Partition when physical division of property is inequitable.

Law reviews.

For note, “The Georgia Condominium Act’s Authorization of Private Takings:

Revisiting *Kelo* and ‘Bitter with the Sweet,’” see 55 Ga. L. Rev. 395 (2020).

JUDICIAL DECISIONS

Sale can be ordered in a statutory partition for property that cannot be divided fairly by metes and bounds. — In a statutory partition, a court may order the sale of property that cannot be fairly divided by metes and bounds. *Pack v. Mahan*, 294 Ga. 496, 755 S.E.2d 126, 2014 Ga. LEXIS 112 (2014).
Statutory partition more appropriate. — Trial court erred by ordering the equitable partition sale of 3.503 acres of

real property because the co-owner failed to show that the remedy at law of a statutory partition, pursuant to O.C.G.A. § 44-6-160 et seq., was insufficient or that peculiar circumstances rendered the equitable proceeding more suitable and just; and, in a statutory partition, a court may order the sale of property that cannot be fairly divided by metes and bounds. *Pack v. Mahan*, 294 Ga. 496, 755 S.E.2d 126, 2014 Ga. LEXIS 112 (2014).

44-6-167. When sale of lands ordered; procedure; place of sale; notice.

JUDICIAL DECISIONS

Statutory partition more appropriate. — Trial court erred by ordering the equitable partition sale of 3.503 acres of real property because the co-owner failed to show that the remedy at law of a statutory partition, pursuant to O.C.G.A. § 44-6-160 et seq., was insufficient or that peculiar circumstances rendered the equitable proceeding more suitable and just; and, in a statutory partition, a court may order the sale of property that cannot be fairly divided by metes and bounds. *Pack v. Mahan*, 294 Ga. 496, 755 S.E.2d 126, 2014 Ga. LEXIS 112 (2014).

Sale is subject to confirmation by the court, etc.
Because all parties received proper notice of the partition action and, in fact, agreed to the entry of a final consent judgment of partition which gave rise to the trial court’s authority to order the public sale, the trial court properly confirmed the sale of the property and directed the parties and parties in interest to execute the deeds. *Jacobs v. Young*, 291 Ga. 778, 732 S.E.2d 69, 2012 Ga. LEXIS 742 (2012).

44-6-169. Title to property sold; execution of deed of conveyance by commissioners.

Law reviews.

For note, “The Georgia Condominium Act’s Authorization of Private Takings:

Revisiting *Kelo* and ‘Bitter with the Sweet,’” see 55 Ga. L. Rev. 395 (2020).

44-6-170. Treatment of extraordinary cases; denial of sale or partition.

Law reviews.

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Statutory partition more appropriate. — Trial court erred by ordering the equitable partition sale of 3.503 acres of real property because the co-owner failed to show that the remedy at law of a statutory partition, pursuant to O.C.G.A. § 44-6-160 et seq., was insufficient or that

peculiar circumstances rendered the equitable proceeding more suitable and just; and, in a statutory partition, a court may order the sale of property that cannot be fairly divided by metes and bounds. *Pack v. Mahan*, 294 Ga. 496, 755 S.E.2d 126, 2014 Ga. LEXIS 112 (2014).

44-6-171. Setting aside judgment by parties under disability, absent, or not notified; time limitations; conclusiveness of judgment; effect of proceedings on bona fide purchaser.

When proceedings have been instituted and judgment of the partition has been rendered according to the regulations prescribed in this part and if any one of the parties in interest is a minor or a mentally ill or intellectually disabled person who has no guardian, or is absent from the state during such proceeding, or has not been notified thereof, such minor or mentally ill or intellectually disabled person may, within 12 months after coming of age, after restoration of mind, or after having a guardian appointed, as the case may be, and such absent or unnotified party may, at any time within 12 months after rendition of the judgment, move the court to set aside the judgment on any of the grounds upon which a party notified and free from disabilities might have resisted the judgment upon the hearing as authorized by Code Section 44-6-165. The issue shall be tried and the subsequent proceedings shall be the same as is provided for in cases of objections filed to the return of the partitioners before judgment. If such motion to set aside the judgment is not made within the time specified in this Code section, such judgment shall be as binding and conclusive upon such minor, mentally ill or intellectually disabled person, or absent or unnotified party as if he or she had been notified, present, or free from disability. In no event shall such subsequent proceedings affect the title of a bona fide purchaser under a sale ordered by the court.

History.

Laws 1767, Cobb’s 1851 Digest, p. 582.; Code 1863, § 3907; Code 1868, § 3931; Code 1873, § 4007; Code 1882, § 4007; Civil Code 1895, § 4797; Civil Code 1910, § 5369; Code 1933, § 85-1515; Ga. L. 2015, p. 385, § 4-12/HB 252.

Amendments.

The 2015 amendment, effective July 1, 2015, substituted “intellectually dis-

abled” for “retarded” three times in this Code section and inserted “or she” in the next to the last sentence.

Editor’s notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’”

Subpart 3

Uniform Partition of Heirs Property

Effective date.

This subpart became effective January 1, 2013.

Editor’s notes.

Ga. L. 2012, p. 97, § 1/HB 744, not

codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Uniform Partition of Heirs Property Act.’”

44-6-180. Definitions.

As used in this subpart, the term:

- (1) “Ascendant” means an individual who precedes another individual in lineage in a direct line of ascent from the other individual.
- (2) “Broker” means any individual or entity issued a broker’s real estate license by the Georgia Real Estate Commission pursuant to Chapter 40 of Title 43. Such term shall include the broker’s affiliated licensees.
- (3) “Collateral” means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual’s ascendant or descendant.
- (4) “Descendant” means an individual who follows another individual in lineage in a direct line of descent from the other individual.
- (5) “Heirs property” means real property held in tenancy in common which satisfies all of the following requirements on the date of the filing of a partition action:
 - (A) There is no agreement in a record binding all the cotenants which governs the partition of the property;
 - (B) One or more of the cotenants acquired title from a relative, whether living or deceased; and
 - (C) Any of the following applies:
 - (i) Twenty percent or more of the interests are held by cotenants who are relatives;

(ii) Twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) Twenty percent or more of the cotenants are relatives.

(6) “Partition by sale” means a court ordered sale of the entire heirs property, whether by public sale, sealed bids, or open-market sale conducted under Code Section 44-6-187.

(7) “Partition in kind” means the division of heirs property into physically distinct and separately titled parcels.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) “Relative” means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this subpart.

History.

Code 1981, § 44-6-180, enacted by Ga. L. 2012, p. 97, § 2/HB 744.

Law reviews.

For article, “A Primer on Heirs Property

and Georgia’s New Uniform Partition of Heirs Property Act: Protecting Owners of Heirs Property,” see 19 G. St. B.J. 16 (Oct. 2013).

JUDICIAL DECISIONS

Mandatory procedure must be followed. — Denial of the appellant’s motion for a new trial was reversed because in light of the mandatory language in the Uniform Partition of Heirs Property Act (UPHPA), specifically O.C.G.A. § 44-6-181(b), the trial court erred in not making an initial determination, prior to ordering the parties to mediation,

whether the property was heirs property and, if so, it was required to partition the property pursuant to the UPHPA unless all of the cotenants, not just all of the non-defaulting cotenants, otherwise agreed. *Faison v. Faison*, 344 Ga. App. 600, 811 S.E.2d 431, 2018 Ga. App. LEXIS 78 (2018).

44-6-181. Application; determination of heirs property.

(a) This subpart shall apply to partition actions filed on or after January 1, 2013.

(b) In an action to partition real property under Subpart 1 or 2 of this part, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned pursuant to this subpart unless all of the cotenants otherwise agree in a record.

History.

Code 1981, § 44-6-181, enacted by Ga.

L. 2012, p. 97, § 2/HB 744; Ga. L. 2013, p. 141, § 44/HB 79.

Amendments.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modern-

ize, and correct the Code, revised capitalization in the first sentence of subsection (b).

JUDICIAL DECISIONS

Mandatory procedure must be followed. — Denial of the appellant’s motion for a new trial was reversed because in light of the mandatory language in the Uniform Partition of Heirs Property Act (UPHPA), specifically O.C.G.A. § 44-6-181(b), the trial court erred in not making an initial determination, prior to ordering the parties to mediation,

whether the property was heirs property and, if so, it was required to partition the property pursuant to the UPHPA unless all of the cotenants, not just all of the non-defaulting cotenants, otherwise agreed. *Faison v. Faison*, 344 Ga. App. 600, 811 S.E.2d 431, 2018 Ga. App. LEXIS 78 (2018).

44-6-182. Posting notice sign on property.

If an order for service by publication of the summons for a writ of partition is granted and the court determines that the property may be heirs property, the plaintiff, not later than ten days after the court’s determination that the property may be heirs property, shall post a sign in the right of way adjacent to the property which is the subject of the writ of partition, and the plaintiff shall maintain such sign while the action is pending. The sign shall state that a writ of partition has commenced, the name and address of the court in which the action is pending, and the common designation by which the property is known. The court may require the plaintiff to publish the name of the plaintiff and names of the known defendants on the sign.

History.

Code 1981, § 44-6-182, enacted by Ga. L. 2012, p. 97, § 2/HB 744.

44-6-183. Qualifications of partitioners.

If the court appoints partitioners as described in Code Section 44-6-163, each partitioner shall be a discreet person, disinterested, impartial, and not a party to or a participant in the writ of partition.

History.

Code 1981, § 44-6-183, enacted by Ga. L. 2012, p. 97, § 2/HB 744.

44-6-184. Appraisal of heirs property; other method to determine value; notice of value; required hearing.

(a) Except as otherwise provided in subsections (b) and (c) of this Code section, if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine

the fair market value of the property by ordering an appraisal pursuant to subsection (d) of this Code section.

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. Upon completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d) of this Code section, not later than ten days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

(1) The appraised fair market value of the property;

(2) That the appraisal is available at the clerk's office; and

(3) That a party may file with the court an objection to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d) of this Code section, the court shall conduct a hearing to determine the fair market value of the property not sooner than 30 days after a copy of the notice of the appraisal is sent to each party under subsection (e) of this Code section, whether or not an objection to the appraisal is filed under paragraph (3) of subsection (e) of this Code section. In addition to the court ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f) of this Code section, but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

History.

Code 1981, § 44-6-184, enacted by Ga. L. 2012, p. 97, § 2/HB 744.

Law reviews.

For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

JUDICIAL DECISIONS

Mandatory procedure must be followed. — Denial of the appellant's motion

for a new trial was reversed because in light of the mandatory language in the

Uniform Partition of Heirs Property Act (UPHPA), specifically, O.C.G.A. § 44-6-181(b), the trial court erred in not making an initial determination, prior to ordering the parties to mediation, whether the property was heirs property and, if so, it was required to partition the

property pursuant to the UPHPA unless all of the cotenants, not just all of the non-defaulting cotenants, otherwise agreed. *Faison v. Faison*, 344 Ga. App. 600, 811 S.E.2d 431, 2018 Ga. App. LEXIS 78 (2018).

44-6-185. Partition by sale; purchase by party; buyouts; sale to others; notice and hearing.

(a) If any cotenant requests partition by sale, after the court determines the fair market value of the heirs property under Code Section 44-6-184 or accepts the evaluation of the property agreed to by all cotenants, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than 45 days after the notice is sent under subsection (a) of this Code section, any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale shall be the value of the entire parcel determined pursuant to Code Section 44-6-184 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b) of this Code section:

(1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact;

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant; or

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under subsections (a) and (b) of Code Section 44-6-186.

(e) If the court sends notice to the parties under paragraph (1) or (2) of subsection (d) of this Code section, the court shall set a date, not sooner than 60 days after the date the notice was sent, by which

electing cotenants shall pay their apportioned price into the court. After this date:

(1) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them;

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under subsections (a) and (b) of Code Section 44-6-186 as if the interests of the cotenants that requested partition by sale were not purchased; or

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than 20 days after the court gives notice pursuant to paragraph (3) of subsection (e) of this Code section, any cotenant that paid their apportioned price of the interest may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20 day period:

(1) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them;

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under subsections (a) and (b) of Code Section 44-6-186 as if the interests of the cotenants that requested partition by sale were not purchased; or

(3) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

(g) Not later than 45 days after the court sends notice to the parties pursuant to subsection (a) of this Code section, any cotenant entitled to buy an interest under this Code section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the writ or application for partition but that did not appear in the action.

(h) If the court receives a timely request under subsection (g) of this Code section, the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) through (f) of this Code section have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) The purchase price for the interest of a nonappearing cotenant shall be based on the court’s determination of the fair market value of the heirs property under Code Section 44-6-184 or the evaluation of the property agreed to by all cotenants.

History.
Code 1981, § 44-6-185, enacted by Ga. L. 2012, p. 97, § 2/HB 744; Ga. L. 2019, p. 1056, § 44/SB 52.

ize, and correct the Code, substituted “paragraph (1) or (2)” for “paragraphs (1) or (2)” in the beginning of subsection (e).

Amendments.
The 2019 amendment, effective May 12, 2019, part of an Act to revise, modern-

44-6-186. Partitions in kind.

(a)(1) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Code Section 44-6-185, or if after conclusion of the buyout under Code Section 44-6-185, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Code Section 44-6-187, finds that partition in kind will result in manifest prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(2)(A) In determining under paragraph (1) of this subsection whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

- (i) Whether the heirs property practicably can be divided among the cotenants;
- (ii) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court ordered sale likely would occur;

(iii) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(iv) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(v) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(vi) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(vii) Any other relevant factor.

(B) The court shall not consider any one factor listed in subparagraph (A) of this paragraph to be dispositive without weighing the totality of all relevant factors and circumstances.

(b) If the court does not order partition in kind under subsection (a) of this Code section, the court shall order partition by sale pursuant to Code Section 44-6-187 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to subsection (a) of this Code section, the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to Code Section 44-6-185, a part of the property representing the combined interests of these cotenants as determined by the court, and this portion of the property shall remain undivided.

History.

Code 1981, § 44-6-186, enacted by Ga. L. 2012, p. 97, § 2/HB 744.

Code Commission notes.

Pursuant to Code Section 28-9-5, in

2012, a second division (a)(2)(A)(iv), as enacted, was redesignated as division (a)(2)(A)(vi).

JUDICIAL DECISIONS

Consideration of whether partition is appropriate required. — In an action concerning two properties the plaintiff and the plaintiff's siblings inherited from their parents, the trial court erred in dismissing the action without considering

whether partition was appropriate after plaintiff requested a partition in kind because such a determination was required. *Matabane v. Whatley*, 364 Ga. App. 56, 873 S.E.2d 730, 2022 Ga. App. LEXIS 258 (2022).

44-6-187. Open market sales; brokers and commissions; sealed bids or public sale.

(a) If the court orders an open-market sale of heirs property, the sale shall be an open-market sale unless the court finds that a sale by sealed bids or a public sale would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than ten days after the entry of the order, agree on a broker to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties cannot agree on a broker, the court shall appoint a disinterested broker to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the fair market value determined by the court under Code Section 44-6-184 or the valuation of the property agreed upon by the cotenants and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) of this Code section obtains within a reasonable time an offer to purchase the property for at least the fair market value determined by the court under Code Section 44-6-184 or the valuation of the property agreed upon by the cotenants:

(1) The broker shall comply with the reporting requirements in Code Section 44-6-188; and

(2) The sale may be completed in accordance with state law other than this subpart.

(d) If the broker appointed under subsection (b) of this Code section cannot obtain within a reasonable time an offer to purchase the property for at least the fair market value determined by the court under Code Section 44-6-184 or the valuation of the property agreed upon by the cotenants, the court, after hearing, shall:

(1) Approve the highest outstanding offer, if any;

(2) Redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) Order that the property be sold by sealed bids or at a public sale.

(e) If the court orders a sale by sealed bids or a public sale, the court shall set terms and conditions of the sale. If the court orders a public sale, the public sale shall be conducted as a public sale in accordance with Code section 44-6-167.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser shall be entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

History.

Code 1981, § 44-6-187, enacted by Ga.
L. 2012, p. 97, § 2/HB 744.

44-6-188. Obligation of brokers to court; reporting requirements.

(a) A broker appointed under subsection (b) of Code Section 44-6-187 to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under Code Section 44-6-184 or 44-6-187.

(b) The report required by subsection (a) of this Code section shall contain the following information:

- (1) A description of the property to be sold to each buyer;
- (2) The name of each buyer;
- (3) The proposed purchase price;
- (4) The terms and conditions of the proposed sale, including the terms of any owner financing;
- (5) The amounts to be paid to lienholders;
- (6) A statement of contractual or other arrangements or conditions of the broker's commission; and
- (7) Other material facts relevant to the sale.

History.

Code 1981, § 44-6-188, enacted by Ga.
L. 2012, p. 97, § 2/HB 744.

44-6-189. Uniformity among states.

In applying and construing this subpart, consideration shall be given to the need to promote uniformity of the law with respect to its subject

matter among states that enact the “Uniform Partition of Heirs Property Act.”

History.

Code 1981, § 44-6-189, enacted by Ga. L. 2012, p. 97, § 2/HB 744.

44-6-189.1. Construction with federal Electronic Signatures in Global and National Commerce Act.

This subpart modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History.

Code 1981, § 44-6-189.1, enacted by Ga. L. 2012, p. 97, § 2/HB 744.

ARTICLE 8

JOINT TENANCY WITH SURVIVORSHIP

44-6-190. Creating joint tenancy with survivorship; severance; effect of Code section on other laws.

(a)(1) Deeds and other instruments of title, including any instrument in which one person conveys to himself or herself and one or more other persons, any instrument in which two or more persons convey to themselves or to themselves and another or others, and wills, taking effect after January 1, 1977, may create a joint interest with survivorship in two or more persons.

(2) Any instrument of title in favor of two or more persons shall be construed to create interests in common without survivorship between or among the owners unless the instrument expressly refers to the takers as “joint tenants,” “joint tenants and not as tenants in common,” or “joint tenants with survivorship” or as taking “jointly with survivorship.”

(3) Any instrument of title using one of the forms of expression referred to in paragraph (2) of this subsection or language essentially the same as one of these forms of expression shall create a joint tenancy estate or interest that may be severed as to the interest of any owner by the recording of an instrument which results in his or her lifetime transfer of all or a part of his or her interest; provided, however, that, if all persons owning joint tenant interests in a

property join in the same recorded lifetime transfer, no severance shall occur.

(4) Unless the joint tenancy with the right of survivorship is otherwise disposed of in a final order of divorce or annulment, if either party to an instrument of title creating a joint tenancy with the right of survivorship files an affidavit in the real property records maintained by the clerk of superior court of the county in which the real property is located averring that the parties have been lawfully divorced or their marriage has been annulled that the party intends to terminate the joint tenancy, identifies the book and page of recordation of the deed creating the joint tenancy and attaches a copy of the final order of divorce or annulment and a legal description of the property, the party's interests shall be converted into tenants in common.

(b) Neither this Code section nor Code Section 44-6-120 shall:

(1) Be construed to repeal, modify, or limit in any way:

(A) Code Section 14-5-8; or

(B) Article 8 of Chapter 1 of Title 7 or any other law relative to multiple-party accounts in financial institutions; or

(2) Apply to any document, transaction, or right to which Code Section 14-5-8 applies or to multiple-party deposit accounts in any financial institution.

History.

Laws 1828, Cobb's 1851 Digest, p. 545.; Ga. L. 1853-54, p. 70, § 1; Code 1863, § 2281; Code 1868, § 2274; Code 1873, § 2300; Code 1882, § 2300; Civil Code 1895, § 3142; Civil Code 1910, § 3722; Code 1933, § 85-1002; Ga. L. 1976, p. 1388, § 10; Ga. L. 1976, p. 1438, § 2; Ga. L. 1980, p. 753, § 2; Ga. L. 1984, p. 1335,

§ 2; Ga. L. 1985, p. 149, § 44; Ga. L. 2015, p. 827, § 1/HB 99.

Amendments.

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

Law reviews.

For annual survey on real property, see 64 Mercer L. Rev. 255 (2012).

JUDICIAL DECISIONS

Quitclaim deed qualifies as lifetime transfer to sever joint tenancy. — Superior court erred in granting the defendant's motion to dismiss the plaintiff's petition for an equitable partition of real property and an accounting because the property was not held by the parties as joint tenants with the right of survivorship at the time of the petition as the plaintiff's 2007 quitclaim deed to another individual was a transfer in the plaintiff's lifetime of all of the plaintiff's interest in

the property, although the plaintiff quickly received the property back again from the other individual, because, when the other individual received a grant of the plaintiff's interest in the property by virtue of the quitclaim deed, it was the other individual's property to do with as the other individual wished. *Reed v. McConathy*, 299 Ga. 471, 788 S.E.2d 769, 2016 Ga. LEXIS 471 (2016).

Severance of joint tenancy to allow partition of property. — When the ap-

pellant sought a petition for equitable partition of the unmarried parties' property in which the parties were joint tenants with the right of survivorship, the trial judge properly found that statutory partition was available only to tenants in common, and was not available to the appellant; and that equitable partition was also unavailable because the appellant could seek a partition of the subject property only after the joint tenancy was severed as the parties were not married parties who were seeking the equitable division of marital property in a divorce proceeding. *Vargo v. Adams*, 302 Ga. 637, 805 S.E.2d 817, 2017 Ga. LEXIS 814 (2017).

Will did not create joint tenancy with right of survivorship. — Because the will did not contain the requisite language for creating a joint tenancy with right of survivorship, the trial court properly construed it as creating a tenancy in

common. It was undisputed that the will did not include the language “joint tenants,” “joint tenants and not as tenants in common,” “joint tenants with survivorship,” or refer to the decedent and appellant as taking jointly with survivorship. *Davis v. Estate of McClain*, 370 Ga. App. 114, 895 S.E.2d 508, 2023 Ga. App. LEXIS 546 (2023).

Statute inapplicable when deed not conveying interest to two or more persons. — Deed conveyed a life estate to a widow and a decedent as tenants in common in compliance with O.C.G.A. § 44-6-190, but the deed conveyed the estate in remainder to only one person, either the widow or the decedent, whoever survived the other, and because the deed did not convey that interest in the property to two or more persons, § 44-6-190 did not apply. *Greene v. Greene*, 311 Ga. App. 132, 714 S.E.2d 650, 2011 Ga. App. LEXIS 641 (2011).

ARTICLE 9

UNIFORM STATUTORY RULE AGAINST PERPETUITIES

44-6-200. Short title.

RESEARCH REFERENCES

ALR.

LR. Lease renewal provision as violating rule against perpetuities or restraints on alienation, 99 A.L.R.6th 591.

44-6-201. Validity of nonvested property interest or power of appointment.

(a) A nonvested property interest is invalid unless:

(1) When the interest is created, it is certain either to vest or to terminate within the lifetime of an individual then alive or within 21 years after the death of that individual; or

(2) The interest either vests or terminates within 360 years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) When the power is created, the condition precedent is certain either to be satisfied or to become impossible to satisfy within the lifetime of an individual then alive or within 21 years after the death of that individual; or

(2) The condition precedent either is satisfied or becomes impossible to satisfy within 360 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate within the lifetime of an individual then alive or within 21 years after the death of that individual; or

(2) The power is irrevocably exercised or otherwise terminates within 360 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under paragraph (1) of subsection (a), paragraph (1) of subsection (b), or paragraph (1) of subsection (c) of this Code section, the possibility that a child will be born to an individual after the individual's death is disregarded.

History.

Code 1981, § 44-6-201, enacted by Ga. L. 1990, p. 1837, § 2; Ga. L. 2018, p. 262, § 1/HB 121.

Amendments.

The 2018 amendment, effective July 1, 2018, substituted “360 years” for “90

years” in paragraphs (a)(2), (b)(2), and (c)(2).

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 219 (2018).

44-6-203. Reform of disposition by court to approximate transferor's plan of distribution.

Upon the petition of a trustee, trust director, or other person whose interests would be affected, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the number of years allowed by paragraph (2) of subsection (a), (b), or (c) of Code Section 44-6-201 if:

(1) A nonvested property interest or a power of appointment becomes invalid under Code Section 44-6-201;

(2) A class gift is not but might still become invalid under Code Section 44-6-201 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by paragraph (1) of subsection (a) of Code Section 44-6-201 can vest, but not within 360 years after its creation.

History.

Code 1981, § 44-6-203, enacted by Ga. L. 1990, p. 1837, § 2; Ga. L. 2018, p. 262, § 2/HB 121; Ga. L. 2025, p. 806, § 24/HB 327, effective July 1, 2025.

Amendments.

The 2018 amendment, effective July 1, 2018, substituted “number of years allowed by paragraph (2) of subsection (a), (b), or (c)” for “90 years allowed by para-

graph (2) of subsection (a), paragraph (2) of subsection (b), or paragraph (2) of subsection (c)” in the middle of the introductory paragraph; and substituted “360 years” for “90 years” in paragraph (3).

The 2025 amendment, effective July 1, 2025, substituted “a trustee, trust direc-

tor, or other person whose interests would be affected” for “an interested person” in the introductory paragraph.

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 219 (2018).

44-6-204. Exceptions to applicability of article.

Code Section 44-6-201 shall not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(A) A premarital or postmarital agreement;

(B) A separation or divorce settlement;

(C) A spouse’s election;

(D) A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(E) A contract to make or not to revoke a will or trust, including, but not necessarily limited to, a contract made pursuant to Code Section 53-4-30;

(F) A contract to exercise or not to exercise a power of appointment;

(G) A transfer in satisfaction of a duty of support; or

(H) A reciprocal transfer;

(2) A fiduciary’s power relating to the administration or management of assets, including:

(A) The power of a fiduciary to sell, lease, or mortgage property;

(B) The power of a fiduciary to determine principal and income; and

(C) A power of direction, as such term is defined in Code Section 53-12-500;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute or of a trust director to direct the distribution of principal before termination of a

trust to a beneficiary having an indefeasibly vested interest in the income and principal; provided, however, that nothing contained in paragraphs (2) and (3) of this Code section and this paragraph shall be construed to permit the fiduciary to continue the administration or management of assets once the nonvested property interest becomes invalid as described in subsection (a) of Code Section 44-6-201;

(5) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

History.

Code 1981, § 44-6-204, enacted by Ga. L. 1990, p. 1837, § 2; Ga. L. 2025, p. 806, § 25/HB 327, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, added “, including, but not necessarily limited to, a contract made pursuant to Code Section 53-4-30” at the end of subparagraph (1)(E); added the subparagraph (2)(A) and (2)(B) designations; sub-

stituted “The power” for “the power” in subparagraph (2)(A); substituted “The power of a fiduciary to determine principal and income; and” for “and the power of a fiduciary to determine principal and income;” in subparagraph (2)(B); added subparagraph (2)(C); and, in paragraph (4), inserted “or of a trust director to direct the distribution of” and substituted “; provided, however, that nothing” for “. Nothing”.

44-6-205. Applicability of article; court reform of nonvested dispositions created before article became effective.

(a) Except as extended by subsection (b) of this Code section, this article applies to a nonvested property interest or a power of appointment that is created on or after July 1, 2018. For purposes of this Code section only, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) With respect to a nonvested property interest or a power of appointment that was created before July 1, 2018, and that violates this state’s rule against perpetuities as that rule existed before July 1, 2018, a court, upon the petition of a trustee, trust director, or other person whose interests would be affected, may:

- (1) Subject to Code Section 23-1-4, exercise its equitable power;
- (2) Approve a nonjudicial settlement agreement or make any related determination under subsection (c) of Code Section 53-12-9;
- (3) Approve a petition to modify or terminate an irrevocable trust under Code Section 53-12-61; or
- (4) Declare that the exercise of the power to invade the principal of the original trust under subsection (b) of Code Section 53-12-62 is appropriate and effective

so that the nonvested property interest is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created to reform the disposition in the manner that most closely approximates the transferor’s manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History.

Code 1981, § 44-6-205, enacted by Ga. L. 1990, p. 1837, § 2; Ga. L. 2018, p. 262, § 3/HB 121; Ga. L. 2025, p. 806, § 26/HB 327, effective July 1, 2025.

Amendments.

The 2018 amendment, effective July 1, 2018, substituted “July 1, 2018” for

“May 1, 1990” in the first sentence of subsection (a) and twice in subsection (b).

The 2025 amendment, effective July 1, 2025, rewrote subsection (b).

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 219 (2018).

44-6-207. Definitions.

As used in this article, the term:

- (1) “Court” means a court of competent jurisdiction as determined in accordance with Code Section 53-12-6.
- (2) “Power of appointment” shall have the same meaning as set forth in Code Section 53-12-500.
- (3) “Power of direction” shall have the same meaning as set forth in Code Section 53-12-500.
- (4) “Trust” means an express trust, as such term is defined in Code Section 53-12-2.

History.

Code 1981, § 44-6-207, enacted by Ga. L. 2025, p. 806, § 27/HB 327, effective July 1, 2025.

Effective date.

This Code section became effective July 1, 2025.

CHAPTER 7

LANDLORD AND TENANT

Article 1 In General

Sec.	
44-7-13.	Landlord's duties as to repairs and improvements.
44-7-14.1.	Landlord's duties as to utilities.
44-7-23.	Termination of residential lease after issuance of civil or criminal family violence order or civil or criminal stalking order; notice; occupancy, waiver or modification prohibited.
44-7-24.	Establishment of a prima-facie case of retaliation by tenant against landlord; elements; exception; remedies; rebuttable defense.
44-7-25.	Use of brokers by nonresident landlords.

Article 2 Security Deposits

44-7-30.1.	Limitation on security deposit.
44-7-33.	Lists of existing defects and of damages during tenancy; inspection of premises by landlord upon termination of lease and vacation or surrender of premises; right of tenant to inspect and dissent; action to recover security deposit.
44-7-34.	Return of security deposit; grounds for retention of part; delivery of statement and sum due to tenant; unclaimed deposit; court determination of disposition of deposit.

Sec.	
44-7-35.	Remedies for landlord's non-compliance with article.

Article 3

Dispossessory Proceedings

44-7-49.	Definitions.
44-7-50.	Demand for possession; procedure upon a tenant's refusal; notice to vacate or pay.
44-7-51.	Issuance of summons; service; time for answer; defenses and counterclaims.
44-7-55.	Judgment; writ of possession; landlord's liability for wrongful conduct; distribution of funds paid into court; personal property.
44-7-56.	Appeal; procedure; possession and payment of rent pending appeal.
44-7-59.	Removal of transportable housing from lands subject to writ of possession.

Article 6

Abandoned Mobile Home

44-7-110.	Short title.
44-7-111.	Legislative findings and intent.
44-7-112.	Definitions.
44-7-113.	Government agent to assess abandoned mobile home; lien on intact mobile home; derelict mobile homes; notice; governmental immunity.
44-7-114.	Hearing on findings of derelict mobile homes.
44-7-115.	Foreclosure of liens on abandoned or intact mobile homes.

Sec. 44-7-116.	Public sales; procedure; penalty for noncompliance.	Sec. 44-7-118.	Documentation for purchaser.
44-7-117.	Clerk's role in management of proceeds.	44-7-119.	Appointment of local government agent not required.

Law reviews.

For article, "Not so Fast! Enforcing Accelerated Rent Clauses in Commercial Lease Agreements," see 25 Ga. St. B.J. 19 (Dec. 2019).

For annual survey on real property, see 71 Mercer L. Rev. 241 (2019).

RESEARCH REFERENCES

ALR.

Litigation challenging arbitration

agreement or award in landlord-tenant disputes, 76 A.L.R.7th 6.

ARTICLE 1
IN GENERAL

RESEARCH REFERENCES

ALR.

Partial constructive eviction, 74 A.L.R.7th 5.

44-7-1. Creation of landlord and tenant relationship; rights of tenant; construction of lease for less than five years.

Law reviews.

For comment on Efficiency Lodge, Inc. v.

Neason, 316 Ga. 551, 889 S.E.2d 789 (2023), see 75 Mercer L. Rev. 1057 (2024).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
EXISTENCE OF RELATIONSHIP
CREATION OF RELATIONSHIP

General Consideration

Tenant has no right to challenge a zoning decision. — Because the usufruct granted in a tenant's lease did not convey an interest in real property, the tenant had no cognizable interest in a county zoning decision that the tenant could assert adversely to the actual property owner's interest and, therefore, lacked standing to challenge the zoning decision; nor was the tenant entitled to

enforce restrictive covenants. The Stuttering Foundation, Inc. v. Glynn County, 301 Ga. 492, 801 S.E.2d 793, 2017 Ga. LEXIS 526 (2017).

Carrying weapons on property leased by city. — If the city, a public entity, was the holder of a present estate under the lease, the leased premises were not private property within the meaning of O.C.G.A. § 16-11-127(c), thus, the garden would have no right to exclude the

carrying of firearms on the leased premises because the garden was not in legal control of private property through a lease; however, since the lease was not in the record on appeal the garden was not entitled to summary judgment. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 834 S.E.2d 27, 2019 Ga. LEXIS 639 (2019).

Existence of Relationship

Tenancy at will for trust beneficiary. — Jury issues remained as to whether a trust beneficiary, who had been allowed to stay at the trust's ranch periodically without having to pay rent and without a formal lease agreement, was a tenant at will of the trust and whether, as a result, the trustees were liable for not following the dispossessory procedures of O.C.G.A. § 44-7-1(a) in removing the beneficiary and the beneficiary's property. *Kahn v. Britt*, 330 Ga. App. 377, 765 S.E.2d 446, 2014 Ga. App. LEXIS 834 (2014).

Creation of Relationship

Legal relationship must be established first. — In a dispute between three extended stay room renters and a motel wherein the motel sought to immediately evict them for falling behind in rent, the Georgia Supreme Court re-

manded the case to the trial court for the trial court to determine the parties' relationship, whether innkeeper and guest or landlord and tenant, under the proper legal framework. *Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 889 S.E.2d 789, 2023 Ga. LEXIS 134 (2023).

Grant of possession and enjoyment.

— Georgia Supreme Court held that a landlord-tenant relationship is created when a property owner grants to another the right simply to possess and enjoy the use of the owner's property, either for a fixed time or at the will of the grantor; that grant can be made expressly in a written agreement, but it may also be implied from the tenant's possession of the property with the landlord's consent. *Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 889 S.E.2d 789, 2023 Ga. LEXIS 134 (2023).

Oral agreement and no rent sufficient to create relationship. — In a trust beneficiary's action for wrongful eviction from trust property against the trustee, the trial court erred in finding there was no landlord-tenant relationship between the trust and the beneficiary as no rent was paid and there was no lease because all that was required was an oral agreement for use of the premises. *Kahn v. Britt*, 330 Ga. App. 377, 765 S.E.2d 446 (2014).

RESEARCH REFERENCES

ALR.

Partial Constructive Eviction, 74 A.L.R.7th 5.

Partial constructive eviction, 74 A.L.R.7th 5.

44-7-2. Parol contract creating landlord and tenant relationship; certain provisions prohibited; effect of provision for attorney's fees.

Law reviews.

For note, "Don't Let the Bed Bugs Bill: Landlord Liability for Bed Bug Infestations," see 34 Ga. St. U.L. Rev. 479 (2018).

For comment on *Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 889 S.E.2d 789 (2023), see 75 Mercer L. Rev. 1057 (2024).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Legal relationship must be established first. — In a dispute between three extended-stay room renters and a motel wherein the motel sought to immediately evict them for falling behind in rent, the Georgia Supreme Court remanded the case to the trial court for the trial court to determine the parties’ relationship, whether innkeeper and guest or landlord and tenant, under the proper legal framework. *Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 889 S.E.2d 789, 2023 Ga. LEXIS 134 (2023).

Authority of agent. — When a new partner of a lessee signed an option to renew a lease, a guarantor’s emailed explanation regarding the partner’s authority did not satisfy the statute of frauds because the email was not a writing in equal dignity to that of the original lease; however, there was a genuine issue of material fact as to the partner’s apparent agency. *Sage Atlanta Props., Ltd. v. Hawxhurst*, 349 Ga. App. 758, 824 S.E.2d 387, 2019 Ga. App. LEXIS 129 (2019).

Landlord’s failure to maintain. — Genuine issues of fact remained regarding the landlord’s failure to maintain a leased home; the court rejected the landlord’s contention that the lease was commercial rather than residential because the tenant had an option to purchase and intended the lease as an investment because there was no dispute that the tenant was using the leased home as the tenant’s residence. *Tela Invs., LLC v. Razavi*, 351 Ga. App. 518, 831 S.E.2d 175,

2019 Ga. App. LEXIS 424 (2019), cert. denied, No. S19C1631, 2020 Ga. LEXIS 150 (Ga. Feb. 28, 2020).

Attorney fees provision not mutual and not enforceable. — Under O.C.G.A. § 44-7-2(c), a provision for attorney fees in a residential lease was unenforceable because it was not mutual; the fact that the tenant had an option to purchase and intended the house as an investment did not render the lease a commercial lease. *Tela Invs., LLC v. Razavi*, 351 Ga. App. 518, 831 S.E.2d 175, 2019 Ga. App. LEXIS 424 (2019), cert. denied, No. S19C1631, 2020 Ga. LEXIS 150 (Ga. Feb. 28, 2020).

Dispossessory process should have been used for long-term extended stay guests. — Because the residents used their rooms at the extended-stay motel as their permanent dwelling places with the motel’s consent, the motel’s attempt to use the rental agreement to waive its duty to go through the formal dispossessory process violated O.C.G.A. § 44-7-2. The residents had lived there from nearly a year to five years, one resident received mail to the room and listed it as the resident’s address on a driver’s license, another resident’s children attended school using the motel’s address and a school bus picked them up on the street in front of the motel, and the residents did not receive housekeeping or linen service. *Efficiency Lodge, Inc. v. Neason*, 363 Ga. App. 19, 870 S.E.2d 549, 2022 Ga. App. LEXIS 119 (2022), vacated, 316 Ga. 551, 889 S.E.2d 789, 2023 Ga. LEXIS 134 (2023).

44-7-3. Disclosure of ownership and agents; effect of failure to comply.

JUDICIAL DECISIONS

Existence of corporate entity not established. — Trial court erred granting judgment against church because whether single signature on lease was

even sufficient to bind church representative individually as well as church for lease payments, trial court found existence of church as corporate entity was

not established at trial and such finding was logically inconsistent with later holding that church was liable for judgment.

Motley v. Valentine, 365 Ga. App. 857, 880 S.E.2d 347, 2022 Ga. App. LEXIS 515 (2022).

44-7-6. Tenancy at will — Creation when no time period specified.

JUDICIAL DECISIONS

Creation of tenancy at will. — Creditor won relief from the automatic stay per 11 U.S.C. § 362 to pursue any rights that the creditor had under Georgia law such as those provided in O.C.G.A. §§ 44-7-6 and 44-7-7 under which the creditor was entitled to terminate a tenancy at will with sixty days' notice. If, as the debtor

argued, the creditor's acceptance of "rent" created a tenancy at will under state law, the existence of a state law right to terminate that tenancy constituted "cause" for relief from stay. In re Nittolo, No. 11-14070-WHD, 2012 Bankr. LEXIS 2410 (Bankr. N.D. Ga. Mar. 16, 2012).

44-7-7. Tenancy at will — Notice required for termination.

JUDICIAL DECISIONS

Applicability to tenant at sufferance. — Tenant became a tenant at sufferance by continuing to maintain the tenant's billboards on the property without the city's consent after the city purchased the property and the amended lease was terminated and, thus, the tenant was not entitled to 60-days notice of termination. Outfront Media, LLC v. City of Sandy Springs, 356 Ga. App. 405, 847 S.E.2d 597, 2020 Ga. App. LEXIS 454 (2020).

Effect of automatic stay. — Debtor failed to prove by a preponderance of the evidence that the debtor's current Chapter 13 case was filed in good faith as to the debtor's landlord when the debtor's attempt to assume the lease and the debtor's past dealings with the landlord indicated that the petition was filed for the sole purpose of hindering the landlord's ability to dispossess the debtor. Assuming without deciding that the debtor could attempt to assume the debtor's lease, once assumed the debtor would obtain no more

rights in the lease than the debtor held on the petition date and, as the debtor's interest in property as of that date was, at best, a tenancy at will, then despite the bankruptcy filing, the landlord would still have the right to terminate the debtor's tenancy under Georgia law by providing 60 days' notice. In re Bowman, 555 B.R. 918, 2016 Bankr. LEXIS 3247 (Bankr. S.D. Ga. 2016).

Acceptance of rent from tenant holding over. — Creditor won relief from the automatic stay per 11 U.S.C. § 362 to pursue any rights that the creditor had under Georgia law such as those provided in O.C.G.A. §§ 44-7-6 and 44-7-7 under which the creditor was entitled to terminate a tenancy at will with sixty days' notice. If, as the debtor argued, the creditor's acceptance of "rent" created a tenancy at will under state law, the existence of a state law right to terminate that tenancy constituted "cause" for relief from stay. In re Nittolo, No. 11-14070-WHD, 2012 Bankr. LEXIS 2410 (Bankr. N.D. Ga. Mar. 16, 2012).

44-7-12. Removal of trade fixtures during term; when abandoned.

JUDICIAL DECISIONS

Tenant must be in possession. — Trial court erred by granting the landlord summary judgment on the tenant’s claims for conversion and reasonable hire as well as any associated claims for punitive damages and attorneys’ fees because a genuine issue of material fact existed as to whether the landlord, in exchange for money from the tenant, agreed to extend the tenant’s time of possession and thereby the tenant’s right to the trade fixtures. *Heany v. Bennett Street Properties, L.P.*, 336 Ga. App. 290, 785 S.E.2d 1, 2016 Ga. App. LEXIS 121 (2016), cert. denied, No. S16C1253, 2016 Ga. LEXIS 519 (Ga. Sept. 6, 2016).

Interest of security holder in fixtures not subject to summary judgment. — Trial court erred by granting the

landlord summary judgment on the security interest holder’s claims for conversion and reasonable hire as for some reasonable period of time, the holder’s security interest in the items took priority over whatever interest the landlord might have received under O.C.G.A. § 44-7-12 when the landlord took possession of the premises and what a reasonable time constituted was not subject to summary judgment. *Heany v. Bennett Street Properties, L.P.*, 336 Ga. App. 290, 785 S.E.2d 1, 2016 Ga. App. LEXIS 121 (2016), cert. denied, No. S16C1253, 2016 Ga. LEXIS 519 (Ga. Sept. 6, 2016).

44-7-13. Landlord’s duties as to repairs and improvements.

(a) The landlord shall keep the premises in repair and shall be liable for all substantial improvements placed upon the premises by such landlord’s consent.

(b) Any contract, lease, license, or similar agreement, oral or written, for the use or rental of real property as a dwelling place is deemed to include a provision that the premises is fit for human habitation.

History.

Orig. Code 1863, § 2266; Code 1868, § 2258; Code 1873, § 2284; Code 1882, § 2284; Civil Code 1895, § 3123; Civil Code 1910, § 3699; Code 1933, § 61-111; Ga. L. 2024, p. 91, § 2/HB 404, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, designated the existing provisions of this Code section as subsection (a); in subsection (a), substituted “shall” for “must”, “repair and” for “repair. He”, and “such landlord’s” for “his”; and added subsection (b). See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2024, p. 91, § 1/HB 404, not

codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Safe at Home Act.’”

Ga. L. 2024, p. 91, § 6/HB 404, not codified by the General Assembly, makes this Code section applicable to residential lease agreements that are entered into or renewed on or after July 1, 2024.

Law reviews.

For note, “Don’t Let the Bed Bugs Bill: Landlord Liability for Bed Bug Infestations,” see 34 Ga. St. U.L. Rev. 479 (2018).

For article on the 2024 amendment of this Code section, see 41 Ga. St. U.L. Rev. 51 (2024).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
DUTIES OF LANDLORD

General Consideration

Default judgment proper on negligence per se claim when pleading incomplete. — Trial court did not err by entering default judgment on plaintiffs' negligence per se claim based on violations of O.C.G.A. § 44-7-13 because defendant admitted by failing to respond that it was the owner of the townhome complex and the complaint alleged that plaintiffs were residents of the complex and were returning to their apartment when the incident occurred. *Contour Sierra, LLC v. Williams*, 370 Ga. App. 74, 894 S.E.2d 127, 2023 Ga. App. LEXIS 494 (2023).

Duties of Landlord

Failure to ameliorate mold and roach problems. — Trial court erred in granting the landlord and property management company (defendants) summary judgment because the tenants presented evidence, including the failure to ameliorate the mold and roach problems, which was sufficient to create a jury question on the issue of whether the defendants violated the negligence per se statute of O.C.G.A. § 44-7-13. *Ellis v. Hartford Run Apartments, LLC*, 335 Ga. App. 118, 779 S.E.2d 103, 2015 Ga. App. LEXIS 633 (2015), cert. denied, No. S16C0607, 2016 Ga. LEXIS 289 (Ga. Apr. 4, 2016).

Knowledge of fire ant colonies. — When a baby was injured in an apartment after being bitten by fire ants, a grant of summary judgment to the landlord was reversed because issues of material fact existed since there was evidence that there were two fire ant mounds located outside the apartment, the landlord had superior knowledge of the hazard, and preventative treatment may have deterred ants from colonizing. *Owens v. Larry Franklin Properties, Inc.*, 363 Ga.

App. 362, 870 S.E.2d 218, 2022 Ga. App. LEXIS 102 (2022).

Suitability of rental property. —

Grant of summary judgment to an apartment management company on its counterclaim for unpaid rent was affirmed as its alleged failure to provide security or to properly repair the tenant's lock did not constitute acts of a grave and permanent character committed with the intention of depriving the tenant of the use of their apartment without unreasonable interruption nor did they render the apartment uninhabitable. *George v. Hercules Real Estate Services, Inc.*, 339 Ga. App. 843, 795 S.E.2d 81, 2016 Ga. App. LEXIS 667 (2016), cert. denied, No. S17C0939, 2017 Ga. LEXIS 561 (Ga. June 30, 2017).

Questions of fact as to whether duty to repair was met. — Trial court erred in granting the landlord and property management company (defendants) summary judgment because the tenants presented evidence that the tenants repeatedly notified the defendants about the problems with the apartment, but in spite of that notice, the defendants never made the apartment fit for habitation, which raised questions of fact for the jury to decide. *Ellis v. Hartford Run Apartments, LLC*, 335 Ga. App. 118, 779 S.E.2d 103, 2015 Ga. App. LEXIS 633 (2015), cert. denied, No. S16C0607, 2016 Ga. LEXIS 289 (Ga. Apr. 4, 2016).

Genuine issues of fact remained regarding the landlord's failure to maintain a leased home; the court rejected the landlord's contention that the lease was commercial rather than residential because the tenant had an option to purchase and intended the lease as an investment because there was no dispute that the tenant was using the leased home as the tenant's residence. *Tela Invs., LLC v. Razavi*, 351 Ga. App. 518, 831 S.E.2d 175, 2019 Ga. App. LEXIS 424 (2019), cert. denied, No. S19C1631, 2020 Ga. LEXIS 150 (Ga. Feb. 28, 2020).

44-7-14. Tort liability of landlord.

Law reviews.

For note, “Don’t Let the Bed Bugs Bill: Landlord Liability for Bed Bug Infestations,” see 34 Ga. St. U.L. Rev. 479 (2018).

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

DUTIES OF LANDLORD

- 1. IN GENERAL
- 2. KNOWLEDGE OR NOTICE
- 3. INSPECTION
- 4. MISCELLANEOUS CONSIDERATION

General Consideration

Construction of section. — O.C.G.A. § 44-7-14 has been interpreted narrowly. O.C.G.A. § 44-7-14 does not include a duty of maintenance, and any alteration or expansion of an out-of-possession landlord’s statutory liability must emanate from the legislature and not from the courts of Georgia. *Cham v. ECI Mgmt. Corp.*, 311 Ga. 170, 856 S.E.2d 267, 2021 Ga. LEXIS 85 (2021).

Liability of out-of-possession owner limited. — Trial court erred in denying the lessor’s motion for summary judgment on the premises liability claim brought by a tree trimmer and spouse after the tenants asked for help to get a chainsaw unstuck from a tree because regardless of any actions taken by the tenants, the lessor was not liable for faulty construction or a failure to repair. *Barclay v. Stephenson*, 337 Ga. App. 365, 787 S.E.2d 322, 2016 Ga. App. LEXIS 336 (2016).

No liability for out-of-possession owner. — Trial court erred in denying the landlord’s motion for summary judgment because the landlord was an out-of-possession landlord at the time the visitor fell through a broken board on a deck and, thus, the landlord was not liable for the visitor’s injuries because the landlord did not construct the deck, had no knowledge of the deck’s defective condition, and had no duty to inspect or repair it. *Bennett v. McPhatter*, 359 Ga. App. 804, 860 S.E.2d 105, 2021 Ga. App. LEXIS 285 (2021).

Trial court erred by denying defendant’s summary judgment in the premises liability action, filed after the decedent was shot while visiting friends in student housing at the university, because defendant, a not-for-profit limited liability corporation created to facilitate financial transactions for the university, was an out-of-possession landlord, as the rental agreement in which defendant leased the property back to the university’s board of regents, expressly granted to the board the right to the properties. *Savannah State University Foundation, Inc. v. Lewis*, 370 Ga. App. 180, 895 S.E.2d 525, 2023 Ga. App. LEXIS 551 (2023).

Contractual stipulations.

Trial court did not err by dismissing the tenant’s personal injury action against the landlords based on a time-limitation provision in the lease agreement because the claims arose under O.C.G.A. § 44-7-14, the duty of care that applied to the tenant’s injuries arose from the tenant’s landlord-tenant relationship with the landlords, and the lease applied to the same relationship and the same duties from which arose the tenant’s claims. *Sneed v. Place at Midway, LLC*, 372 Ga. App. 456, 904 S.E.2d 522, 2024 Ga. App. LEXIS 311 (2024).

Owner had relinquished control.

Trial court did not err in granting landlord summary judgment in a patron’s action to recover damages for injuries the patron sustained in a restaurant owner’s parking lot on the ground that the land-

lord had fully parted with possession of the leased property and could not be held liable for the patron's injuries pursuant to O.C.G.A. § 44-7-14 because the evidence the patron offered was insufficient to create an issue of fact as to whether the landlord was an out-of-possession landlord; the owner had exclusive control of the parking lot where the patron's injury occurred, and there was no evidence that the landlord contractually undertook to remain in possession of any common areas on the property, let alone over the parking lot where the patron's injury occurred. *Lake v. APH Enters., LLC*, 306 Ga. App. 317, 702 S.E.2d 654, 2010 Ga. App. LEXIS 933 (2010).

Default judgment proper when parties do not plead properly. — Trial court did not err by entering default judgment on plaintiffs' negligence per se claim based on violations of O.C.G.A. § 44-7-14 because defendant admitted that by failing to respond that it was the owner of the townhome complex and the complaint alleged that the plaintiffs were residents of the complex and were returning to their apartment when the incident occurred. *Contour Sierra, LLC v. Williams*, 370 Ga. App. 74, 894 S.E.2d 127, 2023 Ga. App. LEXIS 494 (2023).

Duties of Landlord

1. In General

Duty and liability for repair. — Although O.C.G.A. § 44-7-14 provided that an out-of-possession landlord was responsible for damages arising from the failure to keep the premises in repair, the plaintiff's equal or superior knowledge of the defect defeated premises liability based on the statute. *Cottingham v. Sapp*, 344 Ga. App. 651, 811 S.E.2d 442, 2018 Ga. App. LEXIS 111 (2018), overruled in part, *Pollard v. Great Dane, LLC*, 371 Ga. App. 872, 903 S.E.2d 338, 2024 Ga. App. LEXIS 236 (2024).

Genuine issues of fact remained regarding the landlord's failure to maintain a leased home; the court rejected the landlord's contention that the lease was commercial rather than residential because the tenant had an option to purchase and intended the lease as an investment be-

cause there was no dispute that the tenant was using the leased home as the tenant's residence. *Tela Invs., LLC v. Razavi*, 351 Ga. App. 518, 831 S.E.2d 175, 2019 Ga. App. LEXIS 424 (2019), cert. denied, No. S19C1631, 2020 Ga. LEXIS 150 (Ga. Feb. 28, 2020).

Landlord's knowledge of hazard in back yard. — In the invitee's premises liability action against the landlord, a factual issue existed as to the landlord's knowledge of the backyard hazard because the invitee offered proof that the landlord did not act responsibly in taking care of the outside of the house; the landlord admittedly did not inspect the yard for hazards or perform work in the back yard; the tenant testified that the landlord was very poor at maintaining the back yard; and the invitee's testimony regarding the size of the hole and the overgrowth covering the hole would permit a reasonable jury to infer both that the hole had been in existence for a substantial period of time and that the hole was large enough to have been observable during routine mowing and maintenance. *Watson v. Dana*, 356 Ga. App. 645, 848 S.E.2d 654, 2020 Ga. App. LEXIS 499 (2020).

Whether landlord retained control over yard. — In the invitee's premises liability action against the landlord, the tenant's testimony raised a question of fact as to whether the landlord retained control over the backyard and thus owed a duty of ordinary care to keep the yard reasonably safe for the invitee. *Watson v. Dana*, 356 Ga. App. 645, 848 S.E.2d 654, 2020 Ga. App. LEXIS 499 (2020).

Factual issues as to landlord's superior knowledge of fire ant colonies. —

After a baby was injured in an apartment after being bitten by fire ants, grant of summary judgment to the landlord was reversed because issues of material fact existed since there was evidence that there were two fire ant mounds located outside the apartment, the landlord had superior knowledge of the hazard, and preventative treatment may have deterred ants from colonizing. *Owens v. Larry Franklin Properties, Inc.*, 363 Ga. App. 362, 870 S.E.2d 218, 2022 Ga. App. LEXIS 102 (2022).

Out-of-possession landlord not liable for personal injuries to invitee. —

Duties of Landlord (Cont'd)**1. In General** (Cont'd)

In a suit arising from the plaintiff being injured at a nightclub, the trial court properly granted the property management company summary judgment because it was an out-of-possession landlord not subject to premises liability under O.C.G.A. § 51-3-1, and its liability was limited under O.C.G.A. § 44-7-14, which did not encompass plaintiff's personal injury claims. *Williams v. Kasulka Props., LP*, 370 Ga. App. 653, 898 S.E.2d 843, 2024 Ga. App. LEXIS 69 (2024).

Liability of landlord to third persons. — Landlord's liability to a third person who is injured on property which was relinquished by rental or under a lease is determined by O.C.G.A. § 44-7-14. *Younger v. Dunagan*, 318 Ga. App. 554, 733 S.E.2d 81, 2012 Ga. App. LEXIS 839 (2012).

Student union landlord not liable for shooting death of student. — In a tragic case involving the shooting death of a university student by an unknown assailant, although the student union landlord was obligated to service and maintain the property and retained a right to enter the property for such purposes, those obligations and rights did not evince the requisite dominion and control of the premises to impose liability under O.C.G.A. § 51-3-1. *Starks v. USG Real Estate Found. III*, 361 Ga. App. 406, 864 S.E.2d 621, 2021 Ga. App. LEXIS 494 (2021).

2. Knowledge or Notice

Defective construction by predecessor. — Trial court erred by denying a landlord summary judgment because the evidence showed that the ramp was not built by the landlord or the tenant but by a prior lessee who did not obtain the landlord's approval before construction; thus, since the ramp was not constructed by or under the supervision or direction of the landlord, liability was precluded under O.C.G.A. § 44-7-14. *Cowart v. Schevitz*, 335 Ga. App. 715, 782 S.E.2d 816, 2016 Ga. App. LEXIS 66 (2016), cert. denied, No. S16C0984, 2016 Ga. LEXIS 542 (Ga. Sept. 6, 2016).

In a tenant's claim for injuries against the tenant's landlord after a staircase collapsed, the trial court erred in disregarding the tenant's expert's opinion that a pre-purchase structural inspection would have led the landlord to discover the defects; although the expert was not a home inspector, the expert was a licensed residential and commercial contractor. However, the trial court properly concluded that failure to warn is not a ground upon which an out-of-possession landlord can be held liable under O.C.G.A. § 44-7-14 and, therefore, summary judgment was proper. *Pajaro v. S. Ga. Bank*, 339 Ga. App. 334, 793 S.E.2d 209, 2016 Ga. App. LEXIS 622 (2016).

Landlord had no actual or constructive knowledge of defect.

Condominium unit owner was not liable for a neighbor's claims of negligence and nuisance, when the owner's hot water heater ruptured and flooded the neighbor's unit, because the owner did not know that the water heater was defective and, as an out-of-possession landlord who rented the condominium unit to another party that occupied the unit, the owner had no duty to maintain the hot water heater under O.C.G.A. § 44-7-14. *Karle v. Belle*, 310 Ga. App. 115, 712 S.E.2d 96, 2011 Ga. App. LEXIS 506 (2011).

Trial court erred by denying a building owner's motion for summary judgment under O.C.G.A. § 44-7-14 in an employee's action to recover damages for injuries the employee sustained when the door to a handicap bathroom stall the employee used at work fell off of the door's hinges because there were no facts demonstrating that the owner should have discovered and repaired the hinge on the bathroom stall door before the employee's injury; the owner received no complaints about bathroom stall hinges before the employee's injury and discovered no problems with other bathroom stall hinges afterward. *Watts & Colwell Builders, Inc. v. Martin*, 313 Ga. App. 1, 720 S.E.2d 329, 2011 Ga. App. LEXIS 1067 (2011), cert. denied, No. S12C0597, 2012 Ga. LEXIS 384 (Ga. Apr. 24, 2012).

Under O.C.G.A. § 44-7-14, an absentee landlord was not liable for a failure to

repair a latent defect unless the landlord had knowledge of the defect and the consequent necessity for repairs. Because the landlords testified that the landlords were unaware of any abnormality regarding the height of the top stair in their home or that the landlord violated any building code, the landlord disproved the knowledge element of the tenant's claims and were entitled to summary judgment. *Martin v. Hansen*, 326 Ga. App. 91, 755 S.E.2d 892, 2014 Ga. App. LEXIS 125 (2014).

Out-of-possession landlord was not liable to the tenant's guests for injuries suffered when the house's back deck collapsed because pursuant to O.C.G.A. § 44-7-14, the landlord was liable only for a third party's damages that resulted either from faulty construction of the premises or from the landlord's failure to repair the premises. The landlord had no notice of the defect, and was not liable for faulty construction because the landlord had hired a contractor to build the deck. *Aldredge v. Byrd*, 341 Ga. App. 300, 799 S.E.2d 263, 2017 Ga. App. LEXIS 163 (2017).

Where a deck attached to a rental home collapsed during a party, the out-of-possession landlord was not liable as it did not have actual knowledge about the damaged beam because all of the witnesses agreed that the beam was not visible before the deck fell; when inspecting the deck before the property was leased, neither the owner nor construction foreman saw any structural problems; the individual who made repairs to the deck testified that the deck appeared stable, and that the individual did not see the beam as it was concealed behind the deck framing; and the tenant never reported any issues with the deck. *WCE Holdings B, LLC v. Lewis*, 363 Ga. App. 29, 870 S.E.2d 522, 2022 Ga. App. LEXIS 123 (2022).

Evidence offered by the injured party was insufficient to create an issue of fact as to whether the landlord was an out-of-possession landlord with liability, as there was no evidence the landlord knew of the hazardous condition. *High West, LLC v. Reese*, 372 Ga. App. 66, 903 S.E.2d 756, 2024 Ga. App. LEXIS 252 (2024).

3. Inspection

Duty created by inspection. —

Proper application of the landlord's duty to inspect premises does not, under any theory, result in making the landlord liable for a latent defect in the premises simply because the defect existed at the time of the lease. *Cowart v. Schevitz*, 335 Ga. App. 715, 782 S.E.2d 816, 2016 Ga. App. LEXIS 66 (2016), cert. denied, No. S16C0984, 2016 Ga. LEXIS 542 (Ga. Sept. 6, 2016).

4. Miscellaneous Consideration

Liability of landlord for dog bite.

Trial court properly awarded a landlord summary judgment in a postal worker's personal injury suit alleging injuries from a dog owned by a tenant because the landlord was entitled to the protection of O.C.G.A. § 44-7-14 since it was the tenant's dog and the landlord had no right of possession to the premises under the lease; thus, the landlord had no liability to third persons for the negligence of the tenant. *Younger v. Dunagan*, 318 Ga. App. 554, 733 S.E.2d 81, 2012 Ga. App. LEXIS 839 (2012).

Landlord had no knowledge or notice of tenants' dogs vicious propensities. — In an action by a woman seriously injured in a pit bull attack, the landlord of the dogs' owners was entitled to summary judgment despite the landlord's failure to fix a broken gate latch, O.C.G.A. § 44-7-14, because there was no evidence that the landlord was aware of the dogs' vicious propensities. The Court of Appeals erred in applying O.C.G.A. § 51-2-7 to the landlord and to presume such awareness because the statute applied only to owners and keepers of dangerous animals. *Tyner v. Matta-Troncoso*, 305 Ga. 480, 826 S.E.2d 100, 2019 Ga. LEXIS 158 (2019).

Landlord's duty to tenant of child shot in apartment. — In a premises liability action wherein a minor was fatally shot inside an apartment by a gun found in the tenant-mother's closet, because the injury occurred inside an apartment leased to a tenant, the landlord's liability derived from O.C.G.A. § 44-7-14, not O.C.G.A. § 51-3-1, and since the

Duties of Landlord (Cont'd)
4. Miscellaneous
Consideration (Cont'd)

landlord had fully parted with possession, the landlord was not liable for injuries caused by the tenant's negligence inside the apartment. *Jordan v. H. J. Russell & Co.*, 371 Ga. App. 8, 899 S.E.2d 514, 2024 Ga. App. LEXIS 107 (2024).

What amounts to eviction. — Grant of summary judgment to an apartment management company on its counterclaim for unpaid rent was affirmed as its alleged failure to provide security or to properly repair the tenant's lock did not constitute acts of a grave and permanent character committed with the intention of depriving the tenant of the use of their apartment without unreasonable interruption nor did they render the apartment uninhabit-

able. *George v. Hercules Real Estate Services, Inc.*, 339 Ga. App. 843, 795 S.E.2d 81, 2016 Ga. App. LEXIS 667 (2016), cert. denied, No. S17C0939, 2017 Ga. LEXIS 561 (Ga. June 30, 2017).

Assault of club patron in parking lot. — Owners of property, in the owners' capacity as a landlord, when a club patron was assaulted in the parking lot by an unruly patron who had been physically removed from the club were not liable under a negligence theory as the landlord's right to inspect the premises was not equivalent to the right to possess the premises; rather, the landlord had parted with possession of the leased premises. *Boone v. Udoto*, 323 Ga. App. 482, 747 S.E.2d 76, 2013 Ga. App. LEXIS 637 (2013), cert. denied, No. S13C1823, 2014 Ga. LEXIS 214 (Ga. Mar. 3, 2014).

RESEARCH REFERENCES

ALR.

Liability of homeowner for injury to guest caused by dangerous condition of

residential porch, deck, balcony, or patio, 73 A.L.R.7th 7.

44-7-14.1. Landlord's duties as to utilities.

(a) As used in this Code section, the term "utilities" means cooling, heat, light, and water service.

(b) It shall be unlawful for any landlord knowingly and willfully to suspend the furnishing of utilities to a tenant until after the final disposition of any dispossessory proceeding by the landlord against such tenant.

(c) Any person who violates subsection (b) of this Code section shall, upon conviction, be assessed a fine not to exceed \$500.00.

History.

Code 1981, § 44-7-14.1, enacted by Ga. L. 1988, p. 923, § 1; Ga. L. 2024, p. 91, § 3/HB 404, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, inserted "cooling," in subsection (a). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 91, § 1/HB 404, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe at Home Act.'"

Ga. L. 2024, p. 91, § 6/HB 404, not codified by the General Assembly, makes subsection (a) of this Code section applicable to residential lease agreements that are entered into or renewed on or after July 1, 2024.

Law reviews.

For article on the 2024 amendment of this Code section, see 41 Ga. St. U.L. Rev. 51 (2024).

44-7-15. Effect of destruction of tenement on obligation to pay rent.

Law reviews.

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

JUDICIAL DECISIONS

What amounts to eviction. — Grant of summary judgment to an apartment management company on its counterclaim for unpaid rent was affirmed as its alleged failure to provide security or to properly repair the tenant's lock did not constitute acts of a grave and permanent character committed with the intention of depriving

the tenant of the use of their apartment without unreasonable interruption nor did they render the apartment uninhabitable. *George v. Hercules Real Estate Services, Inc.*, 339 Ga. App. 843, 795 S.E.2d 81, 2016 Ga. App. LEXIS 667 (2016), cert. denied, No. S17C0939, 2017 Ga. LEXIS 561 (Ga. June 30, 2017).

44-7-16. Accrual of interest on rent owed.

RESEARCH REFERENCES

ALR.

Propriety of landlord's imposition of fee for late payment of rent, 49 A.L.R.7th Art. 2.

Intentional or negligent infliction of emotional distress in aviation cases involving crashes, hard landings, or in-flight injuries, 49 A.L.R.7th Art. 9.

44-7-20. Notification to prospective tenant of property's propensity toward flooding.

JUDICIAL DECISIONS

Failure to state a claim. — In a suit brought by the tenants against the landlord and property management company (defendants), the trial court properly granted the defendants summary judgment on the per se negligence claim under O.C.G.A. § 44-7-20 since the statute was inapplicable due to the tenants not alleging that the tenants living space

flooded at least three times during the five-year period because of flooding from a river, stream, drainage ditch, or a ponding of water. *Ellis v. Hartford Run Apartments, LLC*, 335 Ga. App. 118, 779 S.E.2d 103, 2015 Ga. App. LEXIS 633 (2015), cert. denied, No. S16C0607, 2016 Ga. LEXIS 289 (Ga. Apr. 4, 2016).

44-7-23. Termination of residential lease after issuance of civil or criminal family violence order or civil or criminal stalking order; notice; occupancy, waiver or modification prohibited.

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

(1) "Civil family violence order" means:

(A) Any protective order issued pursuant to Article 1 of Chapter

13 of Title 19, provided that the respondent was present or had notice of the hearing that resulted in the issuance of such order; or

(B) Any ex parte temporary protective order issued pursuant to Article 1 of Chapter 13 of Title 19, provided that such order is accompanied by a police report showing a basis for such order.

(2) “Civil stalking order” means:

(A) Any protective order issued pursuant to Code Section 16-5-94, provided that the respondent was present or had notice of the hearing that resulted in the issuance of such order; or

(B) Any ex parte temporary protective order issued pursuant to Code Section 16-5-94, provided that such order is accompanied by a police report showing a basis for such order.

(3) “Criminal family violence order” means:

(A) Any order of pretrial release issued as a result of an arrest for an act of family violence; or

(B) Any order for probation issued as a result of a conviction or plea of guilty, nolo contendere, or first offender to an act of family violence.

(4) “Criminal stalking order” means:

(A) Any order of pretrial release issued as a result of an arrest for an act of stalking under Article 7 of Chapter 5 of Title 16; or

(B) Any order for probation issued as a result of a conviction or plea of guilty, nolo contendere, or first offender to an act of stalking under Article 7 of Chapter 5 of Title 16.

(b) A tenant may terminate his or her residential rental or lease agreement for real estate effective 30 days after providing the landlord with a written notice of termination when a civil family violence order, civil stalking order, criminal family violence order, or criminal stalking order has been issued:

(1) Protecting such tenant or his or her minor child; or

(2) Protecting such tenant when he or she is a joint tenant, or his or her minor child, even when such protected tenant had no obligation to pay rent to the landlord.

(c) The notice to the landlord pursuant to subsection (b) of this Code section shall be accompanied by a copy of the applicable civil family violence order, civil stalking order, criminal family violence order, or criminal stalking order and a copy of the police report if such order was an ex parte temporary protective order.

(d) Upon termination of a residential rental or lease agreement under this Code section, the tenant may occupy the real estate until the termination is effective. Such tenant shall be liable for the rent due under such agreement prorated to the effective date of the termination, payable at such time as would have otherwise been required by the terms of such agreement, and for any delinquent or unpaid rent or other sums owed to the landlord prior to the termination of such agreement. The tenant shall not be liable for any other fees, rent, or damages due to the early termination of the tenancy as provided for in this Code section. Notwithstanding any provision of law to the contrary, if a tenant terminates a residential rental or lease agreement pursuant to this Code section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(e) This Code section shall not be waived or modified by the agreement of the parties under any circumstances.

History.

Code 1981, § 44-7-23, enacted by Ga. L. 2018, p. 969, § 2/HB 834; Ga. L. 2021, p. 513, § 1/SB 75.

Effective date.

This Code section became effective July 1, 2018.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted “such order” for “it” in the middle of subparagraph (a)(1)(B); added paragraph (a)(2); redesignated former paragraph (a)(2) as present paragraph (a)(3); added paragraph (a)(4); in subsections (b) and (c), substituted “order, civil stalking order,” for “order or” and inserted “, or criminal stalking order” near the end; and deleted the former first sentence of subsection (e), which read: “This Code section shall apply to all residential real estate rental or lease agreements entered into on or after July 1, 2018, and to any renewals, modifications,

or extensions of such agreements in effect on such date.” See Editor’s notes for applicability.

Cross references.

Offense of violating family violence order, § 16-5-95.

Family violence, T. 19, C. 13.

Editor’s notes.

Ga. L. 2021, p. 513, § 2/SB 75, not codified by the General Assembly, provides that: “This Act shall apply to all residential real estate rental or lease agreements entered into on or after July 1, 2021, and to any renewals, modifications, or extensions of such agreements entered into on or after such date.”

Law reviews.

For article on the 2018 enactment of this Code section, see 35 Ga. St. U. L. Rev. 155 (2018).

For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

44-7-24. Establishment of a prima-facie case of retaliation by tenant against landlord; elements; exception; remedies; rebuttable defense.

(a) A residential tenant establishes a prima-facie case of retaliation by demonstrating that he or she took an action under subsection (b) of this Code section relating to a life, health, safety, or habitability concern and by demonstrating that his or her landlord took an action under subsection (c) of this Code section.

(b) Elements of a prima-facie case under this Code section include that a tenant:

(1) In good faith exercised or attempted to exercise against a landlord a right or remedy granted to such tenant by contract or law;

(2) Gave a landlord a notice to repair or exercise a remedy under this chapter;

(3) Complained to a governmental entity responsible for enforcing building or housing codes or a public utility, and the tenant:

(A) Claims a building or housing code violation or utility problem that is the duty of the landlord to repair; and

(B) Acts in good faith in that a reasonable person would believe that the complaint is valid and that the violation or problem occurred; or

(4) Established, attempted to establish, or participated in a tenant organization to address problems related to the habitability of the property, such as life, health, or safety concerns.

(c) Elements of a prima-facie case under this Code section include that a landlord, within three months after the date that a tenant takes any action described under subsection (b) of this Code section:

(1) Filed a dispossessory action, except for the grounds set forth in paragraph (2) of subsection (d) of this Code section;

(2) Deprived the tenant of the use of the premises, except for reasons authorized by law;

(3) Decreased services to the tenant;

(4) Increased the tenant's rent or terminated the tenant's lease or rental agreement; or

(5) Materially interfered with the tenant's rights under the tenant's lease or rental agreement.

(d) A landlord shall not be liable for retaliation under this Code section:

(1) For increasing rent or reducing services:

(A) Under an escalation clause in a written lease for utilities, taxes, or insurance;

(B) As part of a pattern of rent increases or for reducing services as part of a pattern of service reductions, for an entire multiunit residential building or complex; or

(C) As part of a rent increase due to the terms of the tenant's or landlord's participation in a program regulated by this state or the

federal government involving the receipt of federal funds, tenant assistance, or tax credits; or

(2) For a dispossessory action or lease or rental agreement termination in accordance with this chapter based upon one or more of the following circumstances:

(A) The tenant is delinquent in rent when the landlord gives notice to vacate or files a dispossessory action;

(B) The tenant, a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;

(C) The tenant has breached the lease, other than by holding over, by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts;

(D) The tenant holds over after the tenant gives notice of termination or intent to vacate; or

(E) The tenant holds over after the landlord gives notice of termination at the end of the rental term as agreed upon in the written lease.

(e) In addition to any other remedies provided for by law, if a landlord retaliates against a tenant pursuant to this Code section, such retaliation shall be a defense to a dispossessory action, and the tenant may recover from the landlord a civil penalty of one month's rent plus \$500.00, court costs, reasonable attorney's fees where the conduct is willful, wanton, or malicious, and declaratory relief less any delinquent rents or other sums for which the tenant is liable to the landlord.

(f) It shall be a rebuttable defense under this Code section that the property has been inspected within the prior 12 months pursuant to any federal, state, or local program which certifies that the property complies with applicable building and housing codes or that the property has been inspected within the prior 12 months by a code enforcement officer or a licensed building inspector who certifies that the property complies with applicable building and housing codes.

History.

Code 1981, § 44-7-24, enacted by Ga. L. 2019, p. 1026, § 1/HB 346.

Effective date.

This Code section became effective July 1, 2019.

Code Commission notes.

Pursuant to Code Section 28-9-5, in

2019, "willful" was substituted for "wilful" near the end of subsection (e).

Law reviews.

For article on the 2019 enactment of this Code section, see 36 Ga. St. U.L. Rev. 193 (2019).

44-7-25. Use of brokers by nonresident landlords.

(a) Any landlord that is not a resident of this state that owns or operates single-family or duplex residential rental properties in this state shall employ a broker licensed pursuant to Chapter 40 of Title 43, that may or may not reside within this state. If the broker does not reside within this state, the broker shall employ at least one person, to be located within this state, who shall be responsible for receiving, coordinating, managing, and responding to communications from tenants of such landlord related to maintenance and other issues related to such properties.

(b) The exemptions set forth in paragraphs (7) and (8) of subsection (a) of Code Section 43-40-29 shall not apply to any landlord that is not a resident of this state that owns or operates single-family or duplex residential rental properties as provided for in subsection (a) of this Code section.

History.
Code 1981, § 44-7-25, enacted by Ga. L. 2025, p. 882, § 2/HB 399, effective July 1, 2025.

Effective date.
This Code section became effective July 1, 2025.

ARTICLE 2
SECURITY DEPOSITS

44-7-30.1. Limitation on security deposit.

No landlord shall demand or receive a security deposit in an amount that exceeds the equivalent of two months’ rent.

History.
Code 1981, § 44-7-30.1, enacted by Ga. L. 2024, p. 91, § 4/HB 404, effective July 1, 2024.

Effective date.
This Code section became effective July 1, 2024. See Editor’s notes for applicability.

Editor’s notes.
Ga. L. 2024, p. 91, § 1/HB 404, not codified by the General Assembly,

provides: “This Act shall be known and may be cited as the ‘Safe at Home Act.’”
Ga. L. 2024, p. 91, § 6/HB 404, not codified by the General Assembly, makes this Code section applicable to residential lease agreements that are entered into or renewed on or after July 1, 2024.

Law reviews.
For article on the 2024 enactment of this Code section, see 41 Ga. St. U.L. Rev. 51 (2024).

44-7-33. Lists of existing defects and of damages during tenancy; inspection of premises by landlord upon termination of lease and vacation or surrender of premises; right of tenant to inspect and dissent; action to recover security deposit.

(a) Prior to tendering a security deposit, the tenant shall be presented with a comprehensive list of any existing damage to the

premises which shall be for the tenant's permanent retention. The tenant shall have the right to inspect the premises to ascertain the accuracy of such list prior to taking occupancy. The landlord and the tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list but shall not be conclusive as to latent defects. If the tenant refuses to sign the list, the tenant shall state specifically in writing the items on such list to which he or she dissents and shall sign such statement of dissent.

(b)(1) Within three business days after the termination of the residential lease and vacation of the premises or the surrender and acceptance of the premises, whichever occurs first, the landlord or his or her agent shall inspect the premises and compile a comprehensive list of any damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage. The tenant shall upon request have the right to inspect the premises and such list within five business days after the termination of the residential lease and vacation of the premises or the surrender and acceptance of the premises and the inspection by the landlord or his or her agent. If the tenant is present with the landlord at the time of the inspection, the landlord and the tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list. If the tenant refuses to sign the list, he or she shall state specifically in writing the items on the list to which he or she dissents and shall sign such statement of dissent. The landlord shall then comply with the provisions of Code Section 44-7-34.

(2) If the tenant vacates or surrenders the premises without notifying the landlord, the landlord shall inspect the premises and compile a comprehensive list of any damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage within a reasonable time after discovering the premises has been surrendered by vacancy. The landlord shall sign the list and then comply with the provisions of Code Section 44-7-34.

(c) A tenant who disputes the accuracy of the final damage list compiled pursuant to subsection (b) of this Code section and provided to the tenant pursuant to Code Section 44-7-34 may bring an action in any court of competent jurisdiction in this state to recover the portion of the security deposit which the tenant believes to be wrongfully withheld for damages to the premises. The tenant's claims shall be limited to those items to which the tenant specifically dissented in accordance with this Code section. If the tenant is present for the inspection of the premises after vacancy and signs the landlord's final damage list or fails to dissent specifically in accordance with this Code section, the tenant

shall not be entitled to recover the security deposit or any other damages under Code Section 44-7-35, provided that the lists required under this Code section contain written notice of the tenant's duty to sign or to dissent to the list. A tenant who did not inspect the premises after vacancy or was not present for the landlord's inspection of the premises after vacancy and, in either case, did not request a copy of the landlord's final damage list shall have the right to dispute the damages assessed by the landlord.

History.

Code 1933, § 61-604, enacted by Ga. L. 1976, p. 1372, § 6; Ga. L. 2018, p. 969, § 3/HB 834.

Amendments.

The 2018 amendment, effective July 1, 2018, in subsection (a), substituted "premises which shall" for "premises, which list shall" in the first sentence, substituted "such list" for "the list" in the second and fourth sentences, inserted a comma following "sign the list" in the third sentence, and inserted "or she" in the middle of the fourth sentence; substituted the present provisions of subsection (b) for the former provisions, which read: "Within three business days after the date of the termination of occupancy, the landlord or his agent shall inspect the premises and compile a comprehensive list of any damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage. The tenant shall have the right to inspect the premises within five business days after the termination of the occupancy in order to ascer-

tain the accuracy of the list. The landlord and the tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list. If the tenant refuses to sign the list, he shall state specifically in writing the items on the list to which he dissents and shall sign such statement of dissent. If the tenant terminates occupancy without notifying the landlord, the landlord may make a final inspection within a reasonable time after discovering the termination of occupancy."; and, in subsection (c), in the middle of the first sentence, substituted "compiled" for "given" and inserted "and provided to the tenant pursuant to Code Section 44-7-34", substituted "tenant is present for the inspection of the premises after vacancy and signs the landlord's final damage list or fails" for "tenant fails to sign a list or" near the middle of the third sentence, and added the fourth sentence.

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 155 (2018).

For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

44-7-34. Return of security deposit; grounds for retention of part; delivery of statement and sum due to tenant; unclaimed deposit; court determination of disposition of deposit.

(a) Within 30 days after obtaining possession of the premises as provided in subsection (b) of Code Section 44-7-33, a landlord shall return to the tenant the full security deposit which was deposited with the landlord by the tenant. No security deposit shall be retained to cover ordinary wear and tear which occurred as a result of the use of the premises for the purposes for which the premises were intended, provided that there was no negligence, carelessness, accident, or abuse of the premises by the tenant or members of his or her household or their invitees or guests. In the event that actual cause exists for

retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement identifying the exact reasons for the retention thereof, which shall include the comprehensive list of damages prepared as required by Code Section 44-7-33, if the reason for retention is based on damages to the premises. When such statement is delivered, it shall be accompanied by a payment of the difference between any sum deposited and the amount retained. The landlord shall be deemed to have complied with this Code section by mailing such statement and any payment required to the last known address of the tenant via first-class mail. If the letter containing the payment is returned to the landlord undelivered and if the landlord is unable to locate the tenant after reasonable effort, the payment shall become the property of the landlord 90 days after the date the payment was mailed. Nothing in this Code section shall preclude the landlord from retaining the security deposit for nonpayment of rent or of fees for late payment, for abandonment of the premises, for nonpayment of utility charges, for repair work or cleaning contracted for by the tenant with third parties, for unpaid pet fees, or for actual damages caused by the tenant's breach, provided that the landlord attempts to mitigate the actual damages.

(b) In any court action in which there is a determination that neither the landlord nor the tenant is entitled to all or a portion of a security deposit under this article, the judge or the jury, as the case may be, shall determine what would be an equitable disposition of the security deposit; and the judge shall order the security deposit paid in accordance with such disposition.

History.

Code 1933, § 61-605, enacted by Ga. L. 1976, p. 1372, § 6; Ga. L. 1982, p. 3, § 44; Ga. L. 2018, p. 969, § 3/HB 834.

Amendments.

The 2018 amendment, effective July 1, 2018, in subsection (a), substituted "Within 30 days after obtaining possession of the premises as provided in subsection (b) of Code Section 44-7-33," for "Except as otherwise provided in this article, within one month after the termination of the residential lease or the surrender and acceptance of the premises, whichever occurs last," at the beginning of the first sentence, inserted "or her" near the end of the second sentence, substituted the present provisions of the third

and fourth sentences for the former provisions, which read: "In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention thereof. If the reason for retention is based on damages to the premises, such damages shall be listed as provided in Code Section 44-7-33.", in the fifth sentence, substituted "such" for "the" in the middle and substituted "first-class" for "first class" near the end, and inserted "that" near the end of the last sentence.

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 155 (2018).

44-7-35. Remedies for landlord's noncompliance with article.

(a) A landlord shall not be entitled to retain any portion of a security deposit if:

- (1) The security deposit was not deposited in an escrow account in accordance with Code Section 44-7-31 or a surety bond was not posted in accordance with Code Section 44-7-32;
 - (2) The initial damage list required by subsection (a) of Code Section 44-7-33 was not made and presented to the tenant as required by such subsection; and
 - (3) The final damage list required by subsection (b) of Code Section 44-7-33 was not compiled and made available to the tenant as required by such subsection.
- (b) The failure of a landlord to provide the lists and written statements within the time periods specified in Code Section 44-7-34 shall work a forfeiture of all the landlord's rights to withhold any portion of the security deposit or to bring an action against the tenant for damages to the premises.
- (c) Any landlord who fails to return any part of a security deposit which is required to be returned to a tenant pursuant to this article shall be liable to the tenant in the amount of three times the sum improperly withheld plus reasonable attorney's fees; provided, however, that the landlord shall be liable only for the sum erroneously withheld if the landlord shows by the preponderance of the evidence that the withholding was not intentional and resulted from a bona fide error which occurred in spite of the existence of procedures reasonably designed to avoid such errors.

History.

Code 1933, § 61-606, enacted by Ga. L. 1976, p. 1372, § 6; Ga. L. 2018, p. 969, § 3/HB 834.

Amendments.

The 2018 amendment, effective July 1, 2018, substituted the present provisions of subsection (a) for the former provisions, which read: "A landlord shall not be entitled to retain any portion of a security deposit if the security deposit was not deposited in an escrow account in accordance with Code Section 44-7-31 or a surety bond was not posted in accordance with Code Section 44-7-32 and if the ini-

tial and final damage lists required by Code Section 44-7-33 are not made and provided to the tenant."; and, in subsection (b), substituted "provide the lists and" for "provide each of the" near the beginning, substituted "Code Section 44-7-34" for "Code Sections 44-7-33 and 44-7-34" near the middle, and substituted "the landlord's rights" for "his rights" in the middle.

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 155 (2018).

ARTICLE 3

DISPOSSESSORY PROCEEDINGS

44-7-49. Definitions.

As used in this article, the term:

(1) “Application for execution of a writ of possession” means the request or application for a sheriff, constable, or marshal to execute a writ of possession which was issued pursuant to this article.

(2) “Writ of possession” means a writ issued to recover the possession of land or other property and such writ shall not contain restrictions, responsibilities, or conditions upon the landlord in order to be placed in full possession of the land or other property.

History.

Code 1981, § 44-7-49, enacted by Ga. L. 2007, p. 498, § 1/SB 94; Ga. L. 2019, p. 682, § 1/HB 492.

Amendments.

The 2019 amendment, effective July 1, 2019, substituted the present provisions of this Code section for the former provisions, which read: “As used in this article, the term ‘writ of possession’ means a writ issued to recover the possession of

land or other property and such writ shall not contain restrictions, responsibilities, or conditions upon the landlord in order to be placed in full possession of the land or other property.”

Law reviews.

For comment, “Providing Fair Relief in Georgia Dispossession Proceedings,” see 32 Georgia St. U. L. Rev. 1003 (2016).

For article, “2019 Legislative Review,” see 24 Ga. St. B.J. 28 (June 2019).

JUDICIAL DECISIONS

Waiver of writ of possession not possible. — If the parties are in a landlord-tenant relationship, the landlord-tenant code sets out the landlord’s remedy and the tenant’s rights when a tenant fails to pay rent or stays past a specified rental term. That remedy is to go to court and get a writ of possession, which autho-

rizes the landlord to have the tenant evicted by lawful means and neither that remedy nor the tenants’ rights in such dispossessory proceedings may be waived. *Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 889 S.E.2d 789, 2023 Ga. LEXIS 134 (2023).

44-7-50. Demand for possession; procedure upon a tenant’s refusal; notice to vacate or pay.

(a) In all cases when a tenant holds possession of lands or tenements over and beyond the term for which they were rented or leased to such tenant and in all cases when lands or tenements are held and occupied by any tenant at will or sufferance, whether under contract of rent or not, when the owner of such lands or tenements desires possession of such lands or tenements, such owner may, individually or by an agent, attorney at law, or attorney in fact, demand the possession of the property so rented, leased, held, or occupied. If the tenant refuses or fails to deliver possession when so demanded, the owner or the agent, attorney at law, or attorney in fact of such owner may immediately go before the judge of the superior court, the judge of the state court, or the clerk or deputy clerk of either court, or the judge or the clerk or deputy clerk of any other court with jurisdiction over the subject matter, or a magistrate in the district where the land lies and make an affidavit under oath to the facts. Such affidavit may likewise be made before a notary public.

(b) If issued by a public housing authority, the demand for possession required by subsection (a) or (c) of this Code section may be provided concurrently with the federally required notice of lease termination in a separate writing.

(c) In all cases when a tenant fails to pay the rent, late fees, utilities, or other charges owed to the landlord when it becomes due, if the tenant refuses to pay the amount due or fails to deliver possession when so demanded after being provided with a notice to vacate or pay all past due rent, late fees, utilities, and other charges owed to the landlord within three business days, the owner or the agent, attorney at law, or attorney in fact of such owner may immediately go before the judge of the superior court, the judge of the state court, or the clerk or deputy clerk of either court, or the judge or the clerk or deputy clerk of any other court with jurisdiction over the subject matter, or a magistrate in the district where the land lies and make an affidavit under oath to the facts. Such affidavit may likewise be made before a notary public.

(d) The demand for possession notice under subsection (a) of this Code section or the three-day notice to vacate or pay under subsection (c) of this Code section shall be posted in a sealed envelope conspicuously on the door of the property and delivered via any additional method or methods agreed upon in the rental agreement.

History.

Laws 1827, Cobb's 1851 Digest, p. 901.; Ga. L. 1853-54, p. 52, § 4; Ga. L. 1853-54, p. 55, § 1; Ga. L. 1855-56, p. 268, § 1; Code 1863, § 3983; Ga. L. 1865-66, p. 34, § 1; Code 1868, § 4005; Code 1873, § 4077; Code 1882, § 4077; Civil Code 1895, § 4813; Civil Code 1910, § 5385; Code 1933, § 61-301; Ga. L. 1982, p. 1228, § 1; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 892, § 1; Ga. L. 1986, p. 1446, § 9; Ga. L. 1995, p. 577, § 1; Ga. L. 2006, p. 656, § 1.1/HB 1273; Ga. L. 2016, p. 8, § 3/SB 255; Ga. L. 2018, p. 820, § 8/SB 194; Ga. L. 2024, p. 91, § 5/HB 404, effective July 1, 2024.

Amendments.

The 2016 amendment, effective May 12, 2016, substituted "Code Section 18-4-3" for "Code Section 18-4-61, relating to garnishment affidavits" at the end of subsection (a).

The 2018 amendment, effective May 8, 2018, in subsection (a), substituted "such" for "the" throughout, substituted "when" for "where" twice in the first sentence, and deleted ", subject to the same requirements for judicial approval speci-

fied in Code Section 18-4-3" following "notary public" at the end of the last sentence.

The 2024 amendment, effective July 1, 2024, in subsection (a), in the first sentence, deleted "or fails to pay the rent when it becomes due" following "such tenant" and substituted "agent, attorney at law, or attorney in fact" for "agent, attorney in fact, or attorney at law", and at the beginning of the third sentence, substituted "Such" for "The"; inserted "or (c)" in subsection (b); and added subsections (c) and (d). See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 91, § 1/HB 404, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe at Home Act.'"

Ga. L. 2024, p. 91, § 6/HB 404, not codified by the General Assembly, makes this Code section applicable to residential lease agreements that are entered into or renewed on or after July 1, 2024.

Law reviews.

For annual survey on real property law, see 74 Mercer L. Rev. 233 (2022).

For comment on *Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 889 S.E.2d 789 (2023), see 75 Mercer L. Rev. 1057 (2024).

For article on the 2024 amendment of this Code section, see 41 Ga. St. U.L. Rev. 51 (2024).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

DEMAND FOR POSSESSION

DEFENSES

PROCEDURAL MATTERS

MISCELLANEOUS CONSIDERATIONS

General Consideration

Scope. — Jury could reasonably conclude that the defendant deputy was never a tenant at sufferance after the foreclosure of the deputy's home had been finalized, and the deputy, not the plaintiffs, was the intruder when the deputy arrested the plaintiffs there. When the deputy relinquished possession of the property to move in with family members elsewhere, the deputy ceased being a tenant at sufferance. *Carter v. Butts Cnty.*, 821 F.3d 1310, 2016 U.S. App. LEXIS 8010 (11th Cir. 2016).

Legal relationship must be established first. — In a dispute between three extended-stay room renters and a motel wherein the motel sought to immediately evict them for falling behind in rent, the Georgia Supreme Court remanded the case to the trial court for it to determine the parties' relationship, whether innkeeper and guest or landlord and tenant, under the proper legal framework. *Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 889 S.E.2d 789, 2023 Ga. LEXIS 134 (2023).

Jurisdiction. — In a case in which: (1) a lender foreclosed on real property; (2) the lender filed a dispossessionary warrant in state court pursuant to O.C.G.A. § 44-7-50; (3) a resident of the property petitioned for removal to federal court; and (4) the lender filed an emergency motion to remand the case back to state court, the district court lacked federal question jurisdiction. No federal law or authority was invoked on the face of the dispossessionary warrant; thus, the dispossessionary claim that formed the basis

of the action was exclusively a matter of state law even though the resident argued that Georgia's dispossessionary process violated the resident's rights under the U.S. Constitution. Further, jurisdiction did not exist based on diversity as the resident failed to establish that the parties were diverse and that the amount in controversy, as viewed from the lender's perspective, had been met; the lender's claim seeking only ejectment in a dispossessionary action could not be reduced to a monetary sum for purposes of determining the amount in controversy. *Citimortgage, Inc. v. Dhinoja*, 705 F. Supp. 2d 1378, 2010 U.S. Dist. LEXIS 45085 (N.D. Ga. 2010).

Because a tenant's petition to remove under 28 U.S.C. § 1446 was untimely, the trial court retained jurisdiction of the dispossessionary proceeding; the tenant was served with the dispossessionary affidavit and summons but the tenant did not file the tenant's motion for petition for removal until more than 30 days later. *Lingo v. Smith*, 316 Ga. App. 164, 729 S.E.2d 18, 2012 Ga. App. LEXIS 456 (2012).

No independent legal duty imposed upon third party contractors. — Bank, which was the legal title holder of the foreclosed property, had the duty to comply with the statutory dispossessionary procedures imposed upon the bank and could not be delegated to a third party hired by the bank to ensure the condition of the foreclosed home. Furthermore, there was no evidence that the bank ever sought to accomplish the bank's statutory duties through an agent by contracting with the third party to file a dispossessionary action

General Consideration (Cont'd)

against the plaintiffs, the former property owners, on the bank's behalf. It follows that as undisputed independent contractors the third parties had no separate legal duty to file a dispossessory action and then comply with the statutory procedures applicable in such an action; thus, the plaintiffs could not succeed on wrongful eviction and trespass claims. *Ikomoni v. Exec. Asset Mgmt., LLC*, 309 Ga. App. 81, 709 S.E.2d 282, 2011 Ga. App. LEXIS 202 (2011).

Demand for Possession

Sufficiency of demand. — When an eviction was carried out under a writ of possession, in compliance with statutory requirements, the writ was lawful until the writ was vacated, and an eviction that occurred before the writ was vacated was not wrongful; although the demand for possession misspelled the residential tenant's name as "Fennell" instead of "Fennelly," it was properly sent to the property address by certified mail. *Fennelly v. Lyons*, 333 Ga. App. 96, 775 S.E.2d 587, 2015 Ga. App. LEXIS 439 (2015).

Defenses

Foreclosure sale cannot be asserted as a defense in dispossessory proceeding. — Tenant could not assert errors related to a foreclosure sale because challenges to a foreclosure sale could not be asserted as a defense in a subsequent dispossessory proceeding. *Lingo v. Smith*, 316 Ga. App. 164, 729 S.E.2d 18, 2012 Ga. App. LEXIS 456 (2012).

Procedural Matters

Answer not required to amended pleading. — In a dispossessory action, the landlord's request for an amended order for a default judgment against the tenant was properly denied because the landlord filed a second amended affidavit for dispossessory adding the lessee and, as an amended pleading, a responsive pleading by the tenant was not mandatory. *OM SHIV 2007, LLC v. Varsha 6-1-73, LLC*, 368 Ga. App. 15, 889 S.E.2d 129, 2023 Ga. App. LEXIS 250 (2023).

Failure to grant tenant trial. — Trial court erred in granting a writ of possession to the owner because, inter alia, the trial court failed to follow the procedures required for a dispossessory action. The trial court did not adhere to the requirements of the dispossessory statute as the tenant was entitled to, but was not granted, a trial on the issues, which would have included taking the testimony of witnesses orally in open court and proper notice of a trial. *Metro Atlanta Task Force for the Homeless, Inc. v. Premium Funding Solutions, LLC*, 321 Ga. App. 100, 741 S.E.2d 225, 2013 Ga. App. LEXIS 323 (2013).

Erroneous basis for landlord's entitlement to writ of possession. — In a dispossessory proceeding involving a commercial lease, the trial court's issuance of a writ of possession was reversed because the trial court erred in ordering the tenant to pay back rent; thus, the tenant's failure to pay the erroneously ordered rent could not form the basis for the landlord's entitlement to a writ of possession. *CLS Entertainment, Inc. v. Kenkam, LLC*, 370 Ga. App. 810, 899 S.E.2d 343, 2024 Ga. App. LEXIS 89 (2024).

Summary judgment not warranted. — Claim that the Federal National Mortgage Association violated O.C.G.A. § 44-7-50 survived because the evidence created a genuine dispute as to whether the plaintiff abandoned the property or the plaintiff's possessions or whether the plaintiff ceded possession of the property entirely. *Mwangi v. Fannie Mae*, 162 F. Supp. 3d 1315, 2016 U.S. Dist. LEXIS 27626 (N.D. Ga. 2016).

Miscellaneous Considerations

Fixtures attached to realty. — When an arrestee refused to allow a guest back into the arrestee's home and removed the guest's things, officers were not entitled to qualified immunity as to the arrestee's civil rights claims because the officers did not show that the officers had probable cause to arrest the arrestee for criminal damage to property under O.C.G.A. § 16-7-23; the parties' arguments regarding the exclusive method that a landlord may use to evict a tenant under O.C.G.A. § 44-7-50 et seq. were

irrelevant. *Gray v. City of Roswell*, 486 Fed. Appx. 798, 2012 U.S. App. LEXIS 16852 (11th Cir. 2012).

44-7-51. Issuance of summons; service; time for answer; defenses and counterclaims.

(a) When the affidavit provided for in Code Section 44-7-50 is made, the judge of the superior court, the state court, or any other court with jurisdiction over the subject matter or the judge, clerk, or deputy clerk of the magistrate court shall grant and issue a summons to the sheriff or his or her deputy, any lawful constable of the county where the land is located, or an approved process server. A copy of the summons and a copy of the affidavit shall be personally served upon the defendant. If the sheriff, constable, or approved process server is unable to serve the defendant personally, service may be had by delivering the summons and the affidavit to any person who is sui juris residing on the premises or, if after reasonable effort no such person is found residing on the premises, by posting a copy of the summons and the affidavit on the door of the premises and, on the same day of such posting, by enclosing, directing, stamping, and mailing by first-class mail a copy of the summons and the affidavit to the defendant at his or her last known address, if any, and making an entry of this action on the affidavit filed in the case.

(b) The summons served on the defendant pursuant to subsection (a) of this Code section shall command and require the tenant to answer either orally or in writing within seven days from the date of the actual service unless the seventh day is a Saturday, a Sunday, or a legal holiday, in which case the answer may be made on the next day which is not a Saturday, a Sunday, or a legal holiday. If the answer is oral, the substance thereof shall be endorsed on the dispossessory affidavit. The answer may contain any legal or equitable defense or counterclaim. The landlord need not appear on the date of the tenant's response. The last possible date to answer shall be stated on the summons.

(c) If service is by posting a copy of the summons and the affidavit on the door of the premises and mailing a copy of the summons and the affidavit to the defendant, as provided in subsection (a) of this Code section, the court shall have jurisdiction to enter a default judgment for possession of the premises in the absence of an answer being filed, but in such instance a default judgment for money owed may not be entered unless the defendant files an answer or otherwise makes an appearance in the case.

History.

Laws 1827, Cobb's 1851 Digest, p. 902.; § 1; Ga. L. 1866, p. 25, § 1; Code 1868, § 4006; Code 1873, § 4078; Code 1882, Code 1863, § 3984; Ga. L. 1865-66, p. 34, § 4078; Civil Code 1895, § 4814; Civil

Code 1910, § 5386; Code 1933, § 61-302; Ga. L. 1970, p. 968, § 1; Ga. L. 1971, p. 536, § 1; Ga. L. 1976, p. 1372, § 4; Ga. L. 1978, p. 938, § 1; Ga. L. 1982, p. 1228, § 2; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1991, p. 94, § 44; Ga. L. 1991, p. 968, § 1; Ga. L. 2006, p. 656, § 1.2/HB 1273; Ga. L. 2025, p. 626, § 2/HB 270, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, in subsection (a), in the first

sentence, substituted “or her deputy,” for “deputy or to” and added “, or an approved process server” at the end, and in the last sentence, inserted “, constable, or approved process server” and “or her”.

Editor’s notes.

Ga. L. 2025, p. 626, § 1/HB 270, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Eviction Service Act.’”

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
ANSWER

General Consideration

Removal to federal court proper. — Even though Georgia courts have held that dispossessory actions were not civil actions, a dispossessory action filed by the Federal Home Loan Mortgage Corporation was properly removed to federal court under a Weems analysis since: (1) dispossessory actions were tried before a magistrate court, which was a regular judicial tribunal; (2) dispossessory actions required notice and service under O.C.G.A. § 44-7-51; (3) a dispossessory action was comparable to a civil trial if the tenant answered; and (4) rent was an issue of pecuniary value in a dispossessory action. *Fed. Home Loan Mortg. Corp. v. Matassino*, 911 F. Supp. 2d 1276, 2012 U.S. Dist. LEXIS 183189 (N.D. Ga. 2012).

Answer

Answer not required to amended pleading. — In a dispossessory action,

the landlord’s request for an amended order for a default judgment against the tenant was properly denied because the landlord filed a second amended affidavit for dispossessory adding the lessee and, as an amended pleading, a responsive pleading by the tenant was not mandatory. *OM SHIV 2007, LLC v. Varsha 6-1-73, LLC*, 368 Ga. App. 15, 889 S.E.2d 129, 2023 Ga. App. LEXIS 250 (2023).

Court unauthorized to open default when no answer within statutorily prescribed time. — In a dispossessory action, because the tenant failed to answer the dispossessory suit within seven days as required by O.C.G.A. § 44-7-51(b), the trial court properly granted the lessor a default judgment and properly determined it had no discretion to open the default since the tenant failed to answer. *Mt. Nebo Baptist Life Center v. Abbey Lending*, 371 Ga. App. 466, 901 S.E.2d 206, 2024 Ga. App. LEXIS 168 (2024).

44-7-52. When tender of payment by tenant serves as complete defense.

JUDICIAL DECISIONS

Rent means money. — Even though Georgia courts have held that dispossessory actions were not civil actions, a dispossessory action filed by the Federal Home Loan Mortgage Corporation was

properly removed to federal court under a Weems analysis since: (1) dispossessory actions were tried before a magistrate court, which was a regular judicial tribunal and required notice and service; (2) a

dispossessory action was comparable to a civil trial if the tenant answered under O.C.G.A. § 44-7-53(b); and (3) rent was an issue of pecuniary value in a dispossessory action under O.C.G.A.

§§ 44-7-52(a), 44-7-53(b), and 44-7-54. Fed. Home Loan Mortg. Corp. v. Matassino, 911 F. Supp. 2d 1276, 2012 U.S. Dist. LEXIS 183189 (N.D. Ga. 2012).

44-7-53. When writ of possession issued; trial of issues; possession pending trial.

Law reviews.

For annual survey on real property law, see 74 Mercer L. Rev. 233 (2022).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION ANSWER

General Consideration

Removal to federal court. — Even though Georgia courts have held that dispossessory actions were not civil actions, a dispossessory action filed by the Federal Home Loan Mortgage Corporation was properly removed to federal court under a Weems analysis since: (1) dispossessory actions were tried before a magistrate court, which was a regular judicial tribunal and required notice and service; (2) a dispossessory action was comparable to a civil trial if the tenant answered under O.C.G.A. § 44-7-53(b); and (3) rent was an issue of pecuniary value in a dispossessory action under O.C.G.A. §§ 44-7-52(a), 44-7-53(b), and 44-7-54. Fed. Home Loan Mortg. Corp. v. Matassino, 911 F. Supp. 2d 1276, 2012 U.S. Dist. LEXIS 183189 (N.D. Ga. 2012).

Answer

Effect of failure to answer. — In a

dispossessory action, because the tenant failed to answer the dispossessory suit within seven days as required by O.C.G.A. § 44-7-51(b), the trial court properly granted the lessor a default judgment and properly determined it had no discretion to open the default since the tenant failed to answer. Mt. Nebo Baptist Life Center v. Abbey Lending, 371 Ga. App. 466, 901 S.E.2d 206, 2024 Ga. App. LEXIS 168 (2024).

Answer not required to amended pleading. — In a dispossessory action, the landlord's request for an amended order for a default judgment against the tenant was properly denied because the landlord filed a second amended affidavit for dispossessory adding the lessee and, as an amended pleading, a responsive pleading by the tenant was not mandatory. OM SHIV 2007, LLC v. Varsha 6-1-73, LLC, 368 Ga. App. 15, 889 S.E.2d 129, 2023 Ga. App. LEXIS 250 (2023).

44-7-54. Payment of rent and utility payments into court; issuance of writ upon failure to pay; disposition of funds.

JUDICIAL DECISIONS

Order of court. — In a dispossessory proceeding involving a commercial lease, the consent order entered into by the parties unambiguously stated the tenant

had no further rent obligation under any circumstance, so the trial court erred in contradicting that clear language by ordering the tenant to pay rent. CLS

Entertainment, Inc. v. Kenkam, LLC., 370 Ga. App. 810, 899 S.E.2d 343, 2024 Ga. App. LEXIS 89 (2024).

Removal to federal court. — Even though Georgia courts have held that dispossessory actions were not civil actions, a dispossessory action filed by the Federal Home Loan Mortgage Corporation was properly removed to federal court under a Weems analysis since: (1) dispossessory actions were tried before a magistrate court, which was a regular judicial tribunal and required notice and service; (2) a dispossessory action was comparable to a civil trial if the tenant answered under O.C.G.A. § 44-7-53(b); and (3) rent was an issue of pecuniary value in a dispossessory action under O.C.G.A. §§ 44-7-52(a), 44-7-53(b), and 44-7-54. Fed. Home Loan Mortg. Corp. v. Matassino, 911 F. Supp. 2d 1276, 2012 U.S. Dist. LEXIS 183189 (N.D. Ga. 2012).

Tenant in possession pending litigation. — Under O.C.G.A. § 9-11-60(h), the law of the case had been abolished and did not bind the trial court to the court's interim ruling ordering the wife of a mortgagor to pay rent into the registry of the court pursuant to O.C.G.A. § 44-7-54(a)(1) during a continuance of the lender's dispossessory action. Harper v. JP Morgan Chase Bank Nat'l Ass'n, 305 Ga. App. 536, 699 S.E.2d 854, 2010 Ga. App. LEXIS 747 (2010).

Lessee estopped from denying existence of valid contract. — Defendant lessee was estopped, given the lessee's prior representations, from denying the existence of a valid contract with the plaintiff lessor and that the rent money the lessee paid into the court's registry was a matter of controversy for purposes of O.C.G.A. § 44-7-54(c). The lessee's obligation to pay rent existed wholly apart

from any right to damages arising from the lessor's alleged breach. McDonald Georgia Commerce Ctr. 400, LLC v. F & C Logistics, Inc., No. 4:12-cv-299, 2013 U.S. Dist. LEXIS 22917 (S.D. Ga. Feb. 19, 2013).

No payment to landlord of sums received. — Court declined to order payment to a landlord of any of the sums received from the defendants, a tenant and the tenant's parent company, under O.C.G.A. § 44-7-54(c), because all of the sums the landlord requested were in controversy because the defendants asserted counterclaims for breach of contract and fraud against the landlord for allegedly failing to deliver on promises of railroad access for the property in question and, as a result of the alleged breach, the defendants denied that the defendants owed the landlord rent for two months. McDonald Ga. Commerce Ctr. 400, LLC v. F & C Logistics, Inc., No. 4:12-cv-299, 2013 U.S. Dist. LEXIS 348 (S.D. Ga. Jan. 2, 2013), vacated in part, No. 4:12-cv-299, 2013 U.S. Dist. LEXIS 22917 (S.D. Ga. Feb. 19, 2013).

Payment to court required. — O.C.G.A. § 44-7-54(a) required the defendants, a tenant and the tenant's parent company, to pay to the court all rent and utility payments payable to the landlord under terms of the lease allegedly owed prior to the issuance of the dispossessory warrant because more than two weeks had passed since the date of service, and the court had not decided yet the right of possession issue. McDonald Ga. Commerce Ctr. 400, LLC v. F & C Logistics, Inc., No. 4:12-cv-299, 2013 U.S. Dist. LEXIS 348 (S.D. Ga. Jan. 2, 2013), vacated in part, No. 4:12-cv-299, 2013 U.S. Dist. LEXIS 22917 (S.D. Ga. Feb. 19, 2013).

44-7-55. Judgment; writ of possession; landlord's liability for wrongful conduct; distribution of funds paid into court; personal property.

(a) If, on the trial of the case, the judgment is against the tenant, judgment shall be entered against the tenant for all rents due and for any other claim relating to the dispute. The court shall issue a writ of possession, both of execution for the judgment amount and a writ to be

effective at the expiration of seven days after the date such judgment was entered, except as otherwise provided in Code Section 44-7-56.

(b) If the judgment is for the tenant, he shall be entitled to remain in the premises and the landlord shall be liable for all foreseeable damages shown to have been caused by his wrongful conduct. Any funds remaining in the registry of the court shall be distributed to the parties in accordance with the judgment of the court.

(c) Any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord's property or on other property as may be designated by the landlord and as may be approved by the executing officer; provided, however, that the landlord shall not be a bailee of such personal property and shall owe no duty to the tenant regarding such personal property. After execution of the writ, such property shall be regarded as abandoned.

(d) Subject to subsection (a) of this Code section and Code Section 44-7-59, applications for execution of a writ of possession shall be made within 30 days of issuance of the writ of possession unless such application for said writ is accompanied by an affidavit showing good cause for the delay in applying for execution of the writ. The failure to execute a writ in conformity with this Code section shall require the applicant to apply for a new writ.

(e) Nothing in this Code section shall require a sheriff, constable, or marshal to execute a writ of possession within 30 days from the issuance of any order granting a writ of possession, or the issuance, application, or request for the execution of the writ of possession; provided, however, that, in the event the sheriff, deputy sheriff, constable, or marshal is unable to execute the writ within 14 days from the landlord's application or request for such execution, the landlord shall be entitled to utilize the services of an off-duty sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council having authority within the jurisdiction wherein the premises lie to execute such writ at the landlord's sole cost and expense. The sheriff, deputy sheriff, constable, or marshal shall maintain a list of authorized off-duty sheriffs, deputy sheriffs, constables, marshals, and other individuals certified by the Georgia Peace Officer Standards and Training Council and make the same available upon request by the landlord. The sheriff, deputy sheriff, constable, or marshal shall maintain administrative authority over any persons executing writs under this subsection. The landlord shall provide written notice to the sheriff, deputy sheriff, constable, or marshal of the date and time of the execution of the writ by such off-duty sheriff, deputy sheriff, constable, marshal, or other individual

certified by the Georgia Peace Officer Standards and Training Council at least five calendar days in advance of such execution in order to permit the sheriff, deputy sheriff, constable, or marshal to note the same within his or her own records.

History.

Code 1933, § 61-305, enacted by Ga. L. 1970, p. 968, § 4; Ga. L. 1994, p. 1150, § 2; Ga. L. 1998, p. 1380, § 3; Ga. L. 2004, p. 151, § 1; Ga. L. 2019, p. 682, § 2/HB 492; Ga. L. 2024, p. 403, § 1/HB 1203, effective April 24, 2024; Ga. L. 2025, p. 1029, § 44(6)/SB 153, effective July 1, 2025.

Amendments.

The 2019 amendment, effective July 1, 2019, added subsections (d) and (e).

The 2024 amendment, effective April 24, 2024, rewrote subsection (e), which read: “Nothing in this Code section shall require a sheriff, constable, or marshal to execute a writ of possession within 30 days from the issuance of any order granting a writ of possession, or the issuance,

application, or request for the execution of the writ of possession.”

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, in subsection (e) revised punctuation; substituted “deputy sheriff” for “sheriff deputy” twice in the first sentence, twice in the fourth sentences; and once in the second and third sentence, substituted “deputy sheriffs” for “sheriff deputies” in the second sentence; and in the last sentence, substituted “deputy sheriff, constable, marshal, or other individual” for “sheriff deputy, constable, marshal, or other individuals” and “his or her own” for “their own”.

Law reviews.

For article, “2019 Legislative Review,” see 24 Ga. St. B.J. 28 (June 2019).

JUDICIAL DECISIONS

Legal relationship must be established first. — In a dispute between three extended-stay room renters and a motel wherein the motel sought to immediately evict them for falling behind in rent, the Georgia Supreme Court remanded the case to the trial court for the trial court to determine the parties’ relationship, whether innkeeper and guest or landlord and tenant, under the proper legal framework. *Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 889 S.E.2d 789, 2023 Ga. LEXIS 134 (2023).

Improper disposal of personal property. — Trial court erred in dismissing the complaint for failure to state a claim as the complaint alleged facts sufficient to establish the framework for the grant of relief after the mortgagor alleged that the bank’s agents destroyed or stole the former owner’s personal property, thereby failing to follow the statutory procedure. *Cleveland v. MidFirst Bank*, 335 Ga. App. 465, 781 S.E.2d 577, 2016 Ga. App. LEXIS 6 (2016).

No independent legal duty imposed upon independent contractors. —

Trial court correctly granted limited liability companies (LLC) summary judgment on the mortgagors’ wrongful eviction and trespass claims given the absence of an independent legal duty imposed upon the companies; because a mortgagee was the legal title holder of foreclosed property, the duty to comply with the statutory dispossessionary procedures provided in O.C.G.A. § 44-7-50 et seq. was imposed upon the mortgagee and could not be delegated to a third party, and since there was no evidence that the mortgagee ever sought to accomplish the mortgagee’s statutory duties through an agent by contracting with either company to file a dispossessionary action against the mortgagors on the mortgagee’s behalf. The independent contractors had no separate legal duty to file a dispossessionary action and then comply with the statutory procedures. *Ikomoni v. Exec. Asset Mgmt., LLC*, 309 Ga. App. 81, 709 S.E.2d 282, 2011 Ga. App. LEXIS 202 (2011).

Award of rent was proper. — Trial court properly awarded landlord rent that accrued after the dispossessionary action was

filed. *Waters v. Smith*, 375 Ga. App. 278, 915 S.E.2d 420, 2025 Ga. App. LEXIS 162 (2025).

Tenant's tort claims barred. — When an eviction was carried out under a writ of possession, in compliance with statutory requirements, the writ was lawful until the writ was vacated, and an eviction that

occurred before the writ was vacated was not wrongful. The landlord complied with O.C.G.A. § 44-7-55(c) by placing the tenant's property on the driveway of the home for 24 hours. *Fennelly v. Lyons*, 333 Ga. App. 96, 775 S.E.2d 587, 2015 Ga. App. LEXIS 439 (2015).

44-7-56. Appeal; procedure; possession and payment of rent pending appeal.

(a) Any judgment by the trial court shall be appealable pursuant to Chapters 3, 6, and 7 of Title 5.

(b) An appeal made pursuant to subsection (a) of this Code section shall proceed as follows:

(1) A copy of the petition for review filed in the reviewing superior or state court or the notice of appeal shall be filed with the clerk of the trial court within seven days after the date the judgment was entered in the trial court;

(2) The clerk shall immediately notify the trial judge of the petition for review or notice of appeal, and the trial judge may, within 15 days after the same is filed in the trial court, supplement the record with findings of fact and conclusions of law which will be considered as a part of the order of the judge in that case;

(3) Except as provided in paragraph (5) of this subsection, if the judgment of the trial court is against the tenant and the tenant appeals this judgment, the tenant shall notify the trial court of his or her appeal and pay into the registry of the reviewing superior or state court all sums found by the trial court to be due for rent in order to remain in possession of the premises;

(4) Except as provided in paragraph (5) of this subsection, the tenant shall pay all future rent as it becomes due into the registry of the reviewing superior or state court pursuant to paragraph (1) of subsection (a) of Code Section 44-7-54 until the issue has been finally determined on appeal; and

(5) For appeals to the Court of Appeals or Supreme Court, the tenant shall pay all sums found by the trial court to be due for rent or future rent into the registry of the trial court that rendered the judgment appealed.

History.

Code 1933, § 61-306, enacted by Ga. L. 1970, p. 968, § 5; Ga. L. 1984, p. 859, § 1; Ga. L. 1985, p. 149, § 44; Ga. L. 1994, p.

1150, § 3; Ga. L. 1998, p. 1380, § 4; Ga. L. 2006, p. 656, § 1.3/HB 1273; Ga. L. 2022, p. 767, § 2-35/HB 916; Ga. L. 2024, p. 201, § 10/SB 450, effective April 22, 2024.

Amendments.

The 2024 amendment, effective April 22, 2024, in paragraph (b)(3), substituted “Except as provided in paragraph (5) of this subsection, if” for “If” at the beginning and deleted “and” from the end; in para-

graph (b)(4), substituted “Except as provided in paragraph (5) of this subsection, the” for “The” at the beginning and “; and” for a period at the end; and added paragraph (b)(5).

JUDICIAL DECISIONS**Appellate procedure.**

In a dispossessory action, because the defendants put the machinery of appellate review into motion under O.C.G.A. § 9-11-56(h) and committed a procedural default as the defendants’ application filed 10 days after the judgment was untimely under O.C.G.A. § 44-7-56, the defendants were foreclosed from resubmitting the partial grant of summary judgment for review on appeal. *Born v. Born*, 364 Ga. App. 511, 874 S.E.2d 846, 2022 Ga. App. LEXIS 301 (2022).

In a dispossessory case, the appeal was dismissed due to lack of jurisdiction because the April 15 application for discretionary review and the May 20 notice of appeal were both untimely under O.C.G.A. § 44-7-56, as they were filed more than seven days after the trial court’s March 14 final judgment order. *Stubbs v. Local Homes, LLC*, 915 S.E.2d 91, 2025 Ga. App. LEXIS 171 (Ga. Ct. App. 2025).

44-7-58. False statements in affidavit or answer; penalty.

No negligence per se. — Because the language of the lease agreement did not contain a grace period for rent payments through the fifth of the month as the controlling stipulation specifically stated that rent was due on the first day of each month, the trial court erred by determining that rent was not yet past due when the defendant filed the dispossessory affidavit on February 4, 2019. Thus, the defendant’s sworn statement in the dispossessory warrant that the plaintiff failed to pay rent when it was due was not a false statement and could not be used as a basis for a negligence per se claim under

O.C.G.A. § 44-7-58. *Gleaton & Assocs. v. Cornelius*, 366 Ga. App. 712, 884 S.E.2d 103, 2023 Ga. App. LEXIS 68 (2023).

Because the plaintiffs attempt to pay the plaintiffs’ rent using an online portal and in-person were made after the February 1, 2019 due date for rent and the February 4, 2019 filing of the dispossessory warrant, the dispossessory affidavit stating the plaintiff failed to pay rent when it was due was not false and did not support a negligence per se claim under O.C.G.A. § 44-7-58. *Gleaton & Assocs. v. Cornelius*, 366 Ga. App. 712, 884 S.E.2d 103, 2023 Ga. App. LEXIS 68 (2023).

44-7-59. Removal of transportable housing from lands subject to writ of possession.

If the court issues a writ of possession to property upon which the tenant has placed a manufactured home, mobile home, trailer, or other type of transportable housing and the tenant does not move the same within ten days after a final order is entered, the landlord shall be entitled to have such transportable housing moved from the property at the expense of the tenant by a motor common carrier licensed by the Department of Public Safety for the transportation of manufactured housing. There shall be a lien upon such transportable housing to the extent of moving fees and storage expenses in favor of the person

performing such services. Such lien may be claimed and foreclosed in the same manner as special liens on personalty by mechanics under Code Sections 44-14-363 and 44-14-550, except that storage fees not to exceed \$4.00 per day shall be expressly allowed.

History.

Code 1981, § 44-7-59, enacted by Ga. L. 1987, p. 842, § 1; Ga. L. 2012, p. 580, § 13/HB 865.

Amendments.

The 2012 amendment, effective July 1, 2012, substituted “Department of Pub-

lic Safety” for “Public Service Commission” near the end of the first sentence.

ARTICLE 6

ABANDONED MOBILE HOME

Effective date.

This article became effective May 1, 2019.

44-7-110. Short title.

This article shall be known and may be cited as the “Abandoned Mobile Home Act.”

History.

Code 1981, § 44-7-110, enacted by Ga. L. 2018, p. 666, § 1/HB 381.

Law reviews.

For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

44-7-111. Legislative findings and intent.

The General Assembly finds that abandoned mobile homes are a nuisance that cause blight and depress property values. This article is intended to provide local governing authorities with the authority to appoint an agent to determine the condition of mobile homes in order for landowners to remove or restore abandoned mobile homes left on their property. It is the further purpose of this article to provide landowners with the guidance necessary to efficiently and properly identify and dispose of abandoned mobile homes in this state while protecting the rights of any owner, lienholder, or other interested parties by performing a due diligence search, notification, and hearing process.

History.

Code 1981, § 44-7-111, enacted by Ga. L. 2018, p. 666, § 1/HB 381.

44-7-112. Definitions.

As used in this article, the term:

- (1) “Abandoned mobile home” means a mobile home that has been

left vacant by all tenants for at least 90 days without notice to the landowner and when there is evidence of one or more of the following:

- (A) A tenant's failure to pay rent or fees for 90 days;
- (B) Removal of most or all personal belongings from such mobile home;
- (C) Cancellation of insurance for such mobile home;
- (D) Termination of utility services to such mobile home; or
- (E) A risk to public health, safety, welfare, or the environment due to such mobile home.

(2) "Derelict" means an abandoned mobile home which is in need of extensive repair and is uninhabitable and unsafe due to the presence of one or more of the following conditions:

- (A) Inadequate provisions for ventilation, light, air, or sanitation; or
- (B) Damage caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe.

(3) "Dispose" means to destroy, recycle, or repurpose for use not as living quarters.

(4) "Intact" means an abandoned mobile home which is in livable condition under applicable state law and the building and health codes of a local governing authority.

(5) "Landowner" means the owner of real property upon which a mobile home is located.

(6) "Local government agent" means a person appointed by a local governing authority who is qualified to inspect an abandoned mobile home by demonstrating that he or she is qualified to determine if the abandoned mobile home is derelict or intact.

(7) "Manufactured home" shall have the same meaning as set forth in Code Section 8-2-160.

(8) "Mobile home" shall have the same meaning as set forth in Code Section 8-2-160 and shall include a manufactured home.

(9) "Responsible party" means any person with an ownership interest in an abandoned mobile home as evidenced by the last payor of record as identified by a search of deeds or instruments of title, and shall include any holder of a recorded lien or the holder of any type of secured interest in such abandoned mobile home or a local government with a claim for unpaid taxes.

History.

Code 1981, § 44-7-112, enacted by Ga. L. 2018, p. 666, § 1/HB 381.

44-7-113. Government agent to assess abandoned mobile home; lien on intact mobile home; derelict mobile homes; notice; governmental immunity.

(a) At the request of a landowner, a local government agent shall be authorized to assess the condition of such abandoned mobile home. Upon inspection, the local government agent shall classify such abandoned mobile home as either intact or derelict and provide documentation citing such determination to the requesting landowner within 20 days of such request.

(b) If a local government agent determines an abandoned mobile home to be intact, a landowner shall have a right to file a lien on such abandoned mobile home in the superior court for the circuit where such abandoned mobile home is located and in the amount of any unpaid rent as of the date on which such lien is filed and accrued fees. Such lien may be foreclosed pursuant to the procedure set forth in Code Section 44-7-115.

(c) If a local government agent determines an abandoned mobile home to be derelict, such agent shall post notice of such determination in a conspicuous location on such abandoned mobile home. Such notice shall include a date of issuance and shall be in substantially the following form:

“You are hereby notified that this mobile home (describe make, model, and color, if known) located at (address or description of location) has been deemed abandoned and derelict. You are entitled to a hearing in magistrate court to contest this determination. If you fail to request a hearing within 90 days from the date that appears on this notice or if it is confirmed by a court that this abandoned mobile home is derelict, the owner of the land upon which this mobile home sits shall be entitled to dispose of the mobile home.”

(d)(1) Upon receipt of a determination that an abandoned mobile home is derelict by a local government agent, and on the same date the notice required by subsection (c) of this Code section is posted, a landowner shall send notice, which notice shall include a listing of all responsible parties and last known addresses, to all responsible parties by registered or certified mail or statutory overnight delivery. Such notice shall contain a description of the abandoned mobile home, including the make of the mobile home, the location of such mobile home, and the fact that such abandoned mobile home has been deemed derelict. Such notice shall include a statement that such responsible party is entitled to request a hearing in magistrate court

within 90 days from the date that appears on such notice to contest the determination that such abandoned mobile home is derelict and that failure to request such hearing within 90 days of receipt of such notice shall entitle such landowner to dispose of the derelict mobile home.

(2) If no responsible party can be ascertained, the landowner shall place an advertisement in a newspaper of general circulation in the county where such mobile home is located; if there is no newspaper in such county, shall post such advertisement at the county courthouse in such place where other public notices are posted. Such advertisement shall run in the newspaper once a week for two consecutive weeks or shall remain posted at the courthouse for two consecutive weeks. The advertisement shall contain a description of the mobile home, including the make of the mobile home, the location of such mobile home, and the fact that such mobile home has been deemed derelict. Such advertisement shall include a statement that such responsible party is entitled to request a hearing in magistrate court by a date certain and the advertisement shall state the specific end date to contest the determination that such abandoned mobile home is derelict and that failure to request such hearing by such date shall entitle such landowner to dispose of the derelict mobile home.

(e) Neither the local governing authority nor the local government agent shall bear any liability with respect to any lawful actions taken to make a determination that a mobile home is abandoned or derelict.

History.

Code 1981, § 44-7-113, enacted by Ga. L. 2018, p. 666, § 1/HB 381; Ga. L. 2020, p. 493, § 44/SB 429.

Amendments.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modern-

ize, and correct the Code, in subsection (c), in the form, substituted “(describe make, model, and color, if known) located at (address or description of location)” for “(describe make, model, and color, if known) located at (address or description of location)”.

44-7-114. Hearing on findings of derelict mobile homes.

(a) Within the 90 day period described in Code Section 44-7-113, a responsible party, or after the expiration of such 90 day period, a landowner shall petition a magistrate court to hold a hearing to confirm or deny the decision of a local government agent that an abandoned mobile home is derelict. If a petition is filed pursuant to this Code section, a hearing on such issue shall be held within ten days of the filing of such petition.

(b) The court shall hear evidence of the condition of the abandoned mobile home, which may include introduction of a copy of the determination from the local government agent, and whether the notice provisions set forth have been met.

(c) If, after a full hearing, the court determines the abandoned mobile home to be derelict, the court shall issue an order finding such mobile home to be derelict and authorizing the landowner to dispose of such derelict mobile home. A landowner issued such order shall dispose of such derelict mobile home within 180 days of the date of such order. Within 30 days of disposal of a derelict mobile home, the landowner shall notify the Department of Revenue and local tag agent of such disposal and such department shall cancel the certificate of title for such derelict mobile home, if such certificate exists.

History.

Code 1981, § 44-7-114, enacted by Ga. L. 2018, p. 666, § 1/HB 381.

44-7-115. Foreclosure of liens on abandoned or intact mobile homes.

Notwithstanding any conflicting provisions in Code Section 44-14-349, all liens acquired upon an abandoned mobile home or intact mobile home under Code Section 44-7-113 shall be foreclosed as follows:

(1) Any proceeding to foreclose a lien on an abandoned mobile home determined to be intact by a local government agent shall be instituted in the magistrate court of the county where such mobile home is located within one year from the time the lien is recorded;

(2) The person desiring to foreclose a lien on an abandoned mobile home determined to be intact by a local government agent shall, by certified or registered mail or statutory overnight delivery, make a demand upon the responsible party in the amount of the lien and for the payment of rent and fees accrued after the filing of the lien; provided that the amount of such rent shall not exceed \$3.00 per day. If the responsible party cannot be located, notice shall be published in a newspaper of general circulation for two consecutive weeks;

(3)(A) If, within 30 days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section or within 30 days after the last publication in a newspaper, the responsible party fails to respond to such demand or refuses to pay, or if the responsible party cannot be ascertained, the landowner may move to foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a magistrate court showing all facts necessary to constitute such lien and the amount claimed to be due. Such affidavit shall aver that the notice requirements of Code Section 44-7-113 have been complied with, and such affidavit shall also aver that a demand for payment has been made and refused or that the identity of the responsible party cannot be ascertained. The landowner shall verify the statement by oath or affirmation with a signature affixed thereto.

(B) In addition to the filing fees required by Code Section 15-10-80, the fee for filing such affidavit shall be \$5.00 per abandoned mobile home upon which a lien is asserted;

(4)(A) Upon the filing of such affidavit, the person asserting such lien shall give the clerk or judge of the court the address, if known, of all responsible parties and the clerk or judge of the court shall serve notice informing such responsible parties of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists; that such hearing shall be petitioned for within 30 days of receipt of such notice; and that, if no petition for such hearing is filed within the time allowed, the lien shall conclusively be deemed a valid one, foreclosure thereof allowed, and a public sale pursuant to Code Section 44-7-116 shall be authorized.

(B) Any notice required by this paragraph shall be by certified mail or statutory overnight delivery or, if the responsible party is unknown, by posting such notice at the county courthouse in such place where other public notices are posted;

(5) If a petition for a hearing is filed within the time allowed pursuant to paragraph (4) of this Code section, the magistrate court shall set such a hearing within ten days of filing of the petition. Upon the filing of such petition by a party defendant, neither the prosecuting lienholder nor the court may sell the mobile home. If, at the hearing, the magistrate court determines there is reasonable cause to believe that a valid debt exists, then the person asserting the lien shall retain possession of the mobile home or the court shall obtain possession of the mobile home, as ordered by the court;

(6) If no petition for a hearing is filed, or if, after a full hearing, the magistrate court determines that a valid debt exists, the court shall authorize foreclosure upon and sale of the mobile home subject to the lien to satisfy the debt if such debt is not otherwise immediately paid. The holder of a security interest in or a lien on the mobile home, other than the holder of a lien created by Code Section 44-7-113, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs no later than 15 days after a magistrate court's order to authorize the foreclosure. If the holder of a security interest or lien does so pay the debt and court costs, such person shall have the right to possession of the mobile home, and that person's security interest in or lien on such mobile home shall be increased by the amount so paid. A magistrate court order shall be issued to this effect, and in this instance there shall not be a sale of the mobile home. If the debt owed is not timely paid by the holder of a security interest or an appeal of the magistrate court decision has not been timely filed pursuant to paragraph (8) of this Code section, the court shall issue an order authorizing the sale of such mobile home;

(7) If the magistrate court finds the actions of the person asserting the lien in retaining possession of the mobile home were not taken in good faith, then the court, in its discretion, may award damages to the mobile home owner and to any party which has been deprived of the rightful use of the mobile home; and

(8) Any order issued by the magistrate court shall be appealable pursuant to Chapter 3 of Title 5, provided that any such appeal shall be filed within seven days after the date such order was entered and provided, further, that, after the petition for review is filed with the clerk of the reviewing superior or state court, the clerk of such court shall immediately notify the magistrate court of the petition for review. If the order of the magistrate court is against the responsible party and the responsible party appeals such order, the responsible party shall be required to pay into the registry of the reviewing superior or state court all sums found by the magistrate court to be due in order to remain in possession of the mobile home. The responsible party shall also be required to pay all future rent into the registry of the reviewing superior or state court as it becomes due in such amounts specified in paragraph (2) of this Code section until the issue has been finally determined on appeal.

History.

Code 1981, § 44-7-115, enacted by Ga. L. 2018, p. 666, § 1/HB 381; Ga. L. 2022, p. 767, § 2-36/HB 916.

Amendments.

The 2022 amendment, effective July 1, 2023, in paragraph (8), in the first sentence, deleted “Article 2 of” preceding “Chapter 3”, substituted “seven days after” for “seven days of”, substituted “petition for review” for “notice of appeal” twice, and substituted “reviewing supe-

rior or state court, the clerk of such court shall” for “trial court, the clerk shall”, and, in the second and third sentences, inserted “reviewing superior or state”. See Editor’s note for applicability.

Editor’s notes.

Ga. L. 2022, p. 767, § 3-1/HB 916, not codified by the General Assembly, makes this Code section applicable to petitions for review filed in superior or state court on or after July 1, 2023.

44-7-116. Public sales; procedure; penalty for noncompliance.

(a)(1) As used in this subsection, the term “public sale” means a sale:

(A) Held at a place reasonably available to persons who might desire to attend and submit bids;

(B) At which those attending shall be given the opportunity to bid on a competitive basis;

(C) At which the sale, if made, shall be made to the highest and best bidder; and

(D) Except as otherwise provided in Title 11 for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspa-

per in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the day and hour, between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

(2) Upon order of the magistrate court, the person holding the lien on the abandoned mobile home shall be authorized to sell such mobile home at public sale.

(b) After satisfaction of the lien, the person selling such mobile home shall, not later than 30 days after the date of such sale, provide the clerk of the court with a copy of the bill of sale as provided to the purchaser and remit the remaining proceeds of such sale, if any, to the clerk of the court. Any person who fails to comply with the requirements of this subsection shall be guilty of a misdemeanor.

History.

Code 1981, § 44-7-116, enacted by Ga. L. 2018, p. 666, § 1/HB 381.

44-7-117. Clerk's role in management of proceeds.

The clerk of the magistrate court shall retain the remaining balance of the proceeds of a sale under Code Section 44-7-116, after satisfaction of liens, security interests, and debts, for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned mobile home or any interested party, then the clerk shall pay such remaining balance into the general fund of the municipality or county that employs the local government agent that made the determination that such mobile home was intact pursuant to Code Section 44-7-113.

History.

Code 1981, § 44-7-117, enacted by Ga. L. 2018, p. 666, § 1/HB 381.

44-7-118. Documentation for purchaser.

The purchaser at a sale as authorized by this article shall receive a certified copy of the court order authorizing such sale. Any such purchaser may obtain a certificate of title to such mobile home by filing the required application, paying the required fees, and filing a certified copy of the order of the court with the Department of Revenue. The Department of Revenue shall then issue a certificate of title, which shall be free and clear of all liens and encumbrances.

History.

Code 1981, § 44-7-118, enacted by Ga. L. 2018, p. 666, § 1/HB 381.

44-7-119. Appointment of local government agent not required.

Nothing in this article shall be construed to require a local governing authority to appoint a local government agent.

History.

Code 1981, § 44-7-119, enacted by Ga.
L. 2018, p. 666, § 1/HB 381.

