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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

VOLUME 31

VOLUME 32

CHAPTER 8

WATER RIGHTS

44-8-5. Rights of adjoining landowners in navigable streams; legislative findings.

(a) As used in this chapter, the term "navigable stream" means a stream which is capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year. The mere rafting of timber or the transporting of wood in small boats shall not make a stream navigable.

(b) The rights of the owner of lands which are adjacent to navigable streams extend to the low-water mark in the bed of the stream.

(c)(1) The General Assembly finds that the state procured ownership of all navigable stream beds within its jurisdiction upon statehood and continues to hold title to all such stream beds, except where title in a private party originates from a valid Crown or state grant before 1863. The General Assembly further finds that, by the common law, the citizens of this state have an inherent right to use for passage and for hunting and fishing all navigable streams from low-water mark to low-water mark. The General Assembly further finds that the public retained the aforementioned right even where private title to beds of navigable streams originates from a valid grant, but in such cases, the public's right is limited to only using such navigable streams for passage and for hunting and fishing.

(2) Nothing contained in this subsection shall be construed to permit entry upon privately owned land adjacent to navigable streams.

History.

Orig. Code 1863, §§ 2208, 2209; Code 1868, §§ 2203, 2204; Code 1873, §§ 2229, 2230; Code 1882, §§ 2229, 2230; Civil Code 1895, §§ 3059, 3060; Civil Code 1910, §§ 3631, 3632; Code 1933, §§ 85-1303, 85-1304; Ga. L. 1982, p. 3, § 44; Ga. L. 2023, p. 303, § 1/SB 115, effective July 1, 2023; Ga. L. 2024, p. 793, § 1/HB 1172, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, added subsection (c).

The 2024 amendment, effective July 1, 2024, rewrote subsection (c), which read: "The General Assembly finds that the state procured ownership of all navigable stream beds within its jurisdiction upon statehood and, as sovereign, is trustee of its peoples' rights to use and enjoy all navigable streams capable of use for fishing, hunting, passage, navigation, commerce, and transportation, pursuant to the common law public trust doctrine. The state continues to hold title to all such stream beds, except where title in a private party originates from a valid Crown or state grant before 1863. The General Assembly further finds that the public retained the aforementioned rights under such doctrine even where private title to beds originates from a valid grant."

CHAPTER 9

EASEMENTS

ARTICLE 1

IN GENERAL

44-9-4. Parol license; when revocable; when easement running with land.

RESEARCH REFERENCES

ALR.
Creation and Existence of Easement by Estoppel, 89 A.L.R.7th 5.

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

JUDICIAL DECISIONS

Illustrative Cases

Right of way to railway company limited. — In a dispute over a ten-foot wide strip of land on which sat a railroad spur track constructed in 1913, the Georgia superior court was correct in concluding that the church acquired fee simple title to the property underlying the spur by deed because it was undisputed the railway company's predecessor only received a 20-foot right of way for its mainline, and the spur track sat outside that 20-foot right of way. Hartwell R.R. Co. v. Hartwell First Un. Meth., 370 Ga. App. 134, 894 S.E.2d 481, 2023 Ga. App. LEXIS 520 (2023).

ARTICLE 2

SOLAR EASEMENTS

44-9-20. Short title.

Law reviews.
For note, "Solar Farms in Georgia: Why We Need To Start Thinking About the End," see 39 Ga. St. U.L. Rev. 1131, 1140 (2023).

44-9-21. Legislative findings and declaration of policy.

Law reviews.
For note, "Solar Farms in Georgia: Why We Need To Start Thinking About the End," see 39 Ga. St. U.L. Rev. 1131, 1140 (2023).

RESEARCH REFERENCES

ALR.
Federal Environmental Regulation of Solar Farms, 82 A.L.R. Fed. 3d 2.

44-9-22. Establishment of solar easements.

Law reviews.
For note, “Solar Farms in Georgia: Why We Need To Start Thinking About the End,” see 39 Ga. St. U.L. Rev. 1131, 1140 (2023).

RESEARCH REFERENCES

ALR.
Federal Environmental Regulation of Solar Farms, 82 A.L.R. Fed. 3d 2.

44-9-23. Contents of solar easements.

Law reviews.
For note, “Solar Farms in Georgia: Why We Need To Start Thinking About the End,” see 39 Ga. St. U.L. Rev. 1131, 1140 (2023).

RESEARCH REFERENCES

ALR.
Federal Environmental Regulation of Solar Farms, 82 A.L.R. Fed. 3d 2.

CHAPTER 10

HISTORIC PRESERVATION

Article 3

Farmland Conservation

ARTICLE 1

UNIFORM CONSERVATION EASEMENTS

44-10-1. Short title.

RESEARCH REFERENCES

ALR.
Construction, Improvements, or Uses Permitted Under Conservation Easement, 71 A.L.R.7th 3.

ARTICLE 3

FARMLAND CONSERVATION

Effective date.
This article became effective July 1, 2023.

44-10-40. Short title.

This chapter shall be known and may be cited as the "Georgia Farmland Conservation Act."

History.
Code 1981, § 44-10-40, enacted by Ga. L. 2023, p. 38, § 1/SB 220, effective July 1, 2023.

44-10-41. Legislative findings.

The General Assembly finds and declares that:

(1) Ensuring permanent conservation of farmland is of vital importance to the state and the citizens of Georgia and essential in protecting Georgia's agricultural economy, the ecological benefits provided by agricultural lands and activities, the community character enhanced by agricultural landscapes, and food production in the state;

(2) Creating the Georgia Farmland Conservation Fund Program will enable owners of farmland to voluntarily protect their farmland, facilitate the transition of farms under development pressure to next-generation farmers, increase the supply of locally grown food in this state, and facilitate utilization of federal and local funds to benefit Georgia's farmland; and

(3) Utilizing nonprofit organizations, in addition to government entities, to hold agricultural conservation easements will provide substantial benefit to the state by allowing the state to maximize the availability of matching funds from federal programs designed to protect farmland and food production in the state and reduce the costs and burdens to the state associated with enforcing the terms of agricultural conservation easements.

History.
Code 1981, § 44-10-41, enacted by Ga. L. 2023, p. 38, § 1/SB 220, effective July 1, 2023.

44-10-42. Definitions.

As used in this article, the term:

(1) "Agricultural conservation easement" means a conservation easement that, in accordance with the provisions of Article 1 of Chapter 10 of Title 44, the "Georgia Uniform Conservation Easement Act," imposes limitations or affirmative obligations, the purpose of which include assuring the availability of real property for agricultural uses or the retention or protection of natural, scenic, or open-space values of real property.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Conservation easement" shall have the same meaning as set forth in Code Section 44-10-2.

(4) "Costs of acquisition" means all direct costs of activities, including, but not limited to, appraisals that are required by applicable state laws and local ordinances or policies in order to convey an agricultural conservation easement in qualified farmland to a qualified holder; provided, however, that such costs shall not include any costs for services provided in violation of Chapter 40 of Title 43.

(5) "Council" means Georgia Farmland Advisory Council.

(6) "Department" means the Department of Agriculture.

(7) "Fund" means the Georgia Farmland Conservation Fund.

(8) "Program" means the Georgia Farmland Conservation Fund Program.

(9) "Project proposal" means any application seeking moneys from the Georgia Farmland Conservation Fund.

(10) "Qualified easement holder" means a state agency, federal agency, county, municipality, or a 501(c)(3) nonprofit organization which acquires or proposes to acquire, whether through purchase, donation or transfer, an agricultural conservation easement.

(11) "Qualified farmland" means agricultural land in undeveloped areas or that has been developed only to the extent consistent with agricultural production, including row crops, livestock, nurseries, orchards, or pastures.

History.
Code 1981, § 44-10-42, enacted by Ga. L. 2023, p. 38, § 1/SB 220, effective July 1, 2023.

44-10-43. Farmland Conservation Fund created; investments; expenditures; accounting of expenditures.

(a)(1) The state treasurer shall establish a separate trust fund in the state treasury that shall be known as the Georgia Farmland Conservation Fund, consisting of annual appropriations by the legislature to the fund, public or private grants, gifts, donations, or contributions dedicated to the fund for farmland conservation, and moneys from any other source, including proceeds from the sale of bonds, state, federal or private mitigation funds, or moneys from any local, state, or federal program dedicated to the fund for farmland conservation.

(2) The state treasurer shall invest the money held in the Georgia Farmland Conservation Fund in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by the money held in the trust fund shall be accounted for separately and shall be credited to the trust fund to be disbursed as other moneys in the trust fund.

(b) Moneys in the Georgia Farmland Conservation Fund shall be expended by the Commissioner solely as provided in this article.

(c) The Commissioner shall prepare an accounting of the moneys expended pursuant to this Code section during the most recently completed fiscal year to be provided to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office by January 1 of each year.

History.
Code 1981, § 44-10-43, enacted by Ga. L. 2023, p. 38, § 1/SB 220, effective July 1, 2023.

44-10-44. Farmland Conservation Fund Program created; grants; costs of administration.

(a) There is established the Georgia Farmland Conservation Fund Program to be administered by the department. In administering the program, the department shall, each fiscal year, make available moneys from the Georgia Farmland Conservation Fund for matching grants to any prospective qualified easement holder having a project proposal which has been reviewed by the department and approved by the council.

(b) Any project proposal selected to receive a matching grant through the program shall have as its primary purposes the advancement of farmland conservation and the support of active farming and food production in this state. Award grants from the program may include payment:

(1) To qualified easement holders for the purchase of agricultural

conservation easements on qualified farmland, for advancing farmland conservation, and to support active farming and food production in Georgia; or

(2) For the costs of acquisition related to the purchase of agricultural conservation easements approved by the program.

(c) As a cost of administering the program, the department may annually deduct and retain an amount equal to 5 percent of the fund.

History.
Code 1981, § 44-10-44, enacted by Ga. L. 2023, p. 38, § 1/SB 220, effective July 1, 2023.

44-10-45. Administration of program.

In administering the program, the department shall, under the direction and advice of the council:

(1) Give priority to project proposals that protect agricultural lands susceptible to development, subdivision, and fragmentation;

(2) Adopt a scoring process for evaluating project proposals and prioritizing projects based on the extent that the project will:

(A) Protect farmland in active or planned cultivation;

(B) Prevent development or fragmentation that would result in farmland loss;

(C) Support transition of affordable farmland to next-generation farmers;

(D) Leverage local, federal, or private funding, taking into account whether such funding includes a match requirement;

(E) Support conservation priorities, including, but not limited to, protection of habitat, water quality, watershed conservation, climate resiliency, local conservation plans, and public viewshed;

(F) Preserve or enhance soil quality; and

(G) Create or further enhance compatibility with existing military installations; and

(3) Ensure that, per its terms, any agricultural conservation easement to be acquired through the project:

(A) Is of perpetual duration;

(B) May not be assigned to or enforced by a third party without the express written consent of the landowner; and

(C) Aligns with existing federal and local programs to maximize potential for matching funds.

History.
Code 1981, § 44-10-45, enacted by Ga. L. 2023, p. 38, § 1/SB 220, effective July 1, 2023.

44-10-46. Farmland Advisory Council created; membership; terms; compensation; meetings; quorum.

(a) There is created the Georgia Farmland Advisory Council to advise and assist the department with administration and implementation of the program utilizing the criteria proposed by the department and adopted by the council. The council shall consist of 14 members as follows:

(1) The Commissioner, or his or her designee, who shall also serve as chairperson of the council;

(2) Two members appointed by the Governor as follows:

(A) One member who operates a family farm in this state; and

(B) One member who is the designated representative of a banking or lending organization and with significant experience in agricultural lending;

(3) One member who operates a family farm in this state, appointed by the Lieutenant Governor;

(4) Four members appointed by the Commissioner as follows:

(A) One member who operates a family farm in this state;

(B) One member who is the designated representative of a statewide agricultural organization;

(C) One member who is a designated representative of a statewide nonprofit agricultural or conservation organization operating in this state; and

(D) One member from the state at-large;

(5) One member who operates a family farm in this state, appointed by the Speaker of the House of Representatives;

(6) The president of the Georgia Agribusiness Council;

(7) The deans of the Colleges of Agriculture at the University of Georgia, Abraham Baldwin Agricultural College, or Fort Valley State University, who shall each serve rotating, nonconcurrent three-year terms, or his or her designee;

(8) The executive director of the State Soil and Water Conservation Commission;

(9) The president of the Georgia Farm Bureau or his or her designee; and

(10) The Georgia state conservationist of the Natural Resources Conservation Service, who shall serve as a nonvoting member.

(b) Initially appointed members shall serve staggered terms of office as follows: two members as appointed by the Speaker of the House of Representatives and the Commissioner for one year, three members as appointed by the Commissioner for two years, and three members as appointed by the Governor and Lieutenant Governor for three years.

(c) The members shall serve without compensation; provided, however, that the members shall receive the same per diem allowance and reimbursement of expenses as allowed for members of the General Assembly.

(d) The council shall meet at least quarterly each year for the transaction of its business.

(e) Three-fifths of the members of the council present at any board meeting shall constitute a quorum necessary for the transaction of business; provided, however, that in absence of a quorum, a majority of the members present may adjourn the meeting from time to time until a quorum shall attend. Unless otherwise specified in this Code section, any council action or recommendation shall be approved by a simple majority of the members of the entire council then in office.

History.
Code 1981, § 44-10-46, enacted by Ga. L. 2023, p. 38, § 1/SB 220, effective July 1, 2023.

44-10-47. Powers and duties of council.

The council shall have the power and duty to:

(1) Annually review and approve award grants recommended by the department;

(2) Review and approve rules and regulations promulgated by the department for administration of the program; and

(3) Review the outcomes of the program and recommend to the department changes in program administration or rules to ensure the success of the program.

History.
Code 1981, § 44-10-47, enacted by Ga. L. 2023, p. 38, § 1/SB 220, effective July 1, 2023.

CHAPTER 11

EJECTMENT AND PROCEEDINGS AGAINST INTRUDERS

Article 2

Proceedings Against Intruders

ARTICLE 2

PROCEEDINGS AGAINST INTRUDERS

44-11-30. Manner of ejecting intruders; affidavit; ejection by sheriff and other peace officers; counteraffidavit.

When any person, either by himself or herself, his or her agent, or his or her attorney in fact, shall take and subscribe an affidavit in writing before any officer authorized to administer an oath setting forth that he or she claims, in good faith, the right of possession to the described land or tenement and that such land or tenement is in the hands of another named person who does not in good faith claim a right to such possession and yet refuses to abandon the same, it shall be the duty of the sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council of the county where the land or tenement is located, upon receiving such affidavit, to exhibit such affidavit to the person described as being in possession of such land or tenement at least three days prior to turning such person out of possession unless the person in possession tenders to such sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council a counteraffidavit stating that he or she claims, in good faith, a legal right to the possession of the land or tenement. Such sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council shall turn out such person once three days have elapsed from the day such affidavit was exhibited.

History.

Ga. L. 1853-54, p. 52, § 1; Code 1863, § 3979; Code 1868, § 4000; Code 1873, § 4072; Code 1882, § 4072; Civil Code 1895, § 4808; Civil Code 1910, § 5380; Code 1933, § 105-1501; Ga. L. 2024, p.

400, § 4/HB 1017, effective April 24, 2024; Ga. L. 2025, p. 1029, § 44(7)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective April 24, 2024, rewrote this Code section.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "deputy sheriff," for "sheriff deputy," twice in the first sentence and once in the last sentence.

Editor's notes.

Ga. L. 2024, p. 400, § 1/HB 1017, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Squatter Reform Act.'"

44-11-31. Sheriff and other peace officers competent to administer oath to person in possession.

The sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council shall be a competent officer to administer the oath to the person in possession if he desires to tender the counteraffidavit provided for in Code Section 44-11-30.

History.

Ga. L. 1853-54, p. 52, § 2; Code 1863, § 3980; Code 1868, § 4001; Code 1873, § 4073; Code 1882, § 4073; Civil Code 1895, § 4809; Civil Code 1910, § 5381; Code 1933, § 105-1502; Ga. L. 2024, p. 400, § 5/HB 1017, effective April 24, 2024; Ga. L. 2025, p. 1029, § 44(8)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective April 24, 2024, inserted ", sheriff deputy, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council" in this Code section.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "deputy sheriff," for "sheriff deputy,".

Editor's notes.

Ga. L. 2024, p. 400, § 1/HB 1017, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Squatter Reform Act.'"

Ga. L. 2025, p. 1029, § 44(8)/SB 153, which amended this Code section, purported to amend Code Section 43-11-31 but actually amended Code Section 44-11-31.

44-11-32. Procedure on submission of counteraffidavit; trial; nonmeritorious submission; appeal.

(1) If the party in possession submits a counteraffidavit as provided in Code Section 44-11-30, the sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council shall not turn him or her out of possession but shall leave both parties in their respective positions. In such an event, the sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council shall return both affidavits to the office of the clerk of the magistrate court of the county in which the land is located for a nonjury trial in accordance with the laws of this state.

(2) If the party in possession submits any counteraffidavit or other documentation at trial, upon the magistrate's determination that the

affidavit is not meritorious based on the preponderance of the evidence, the sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer Standards and Training Council shall turn him or her out of possession to occur as soon as practicable pursuant to a writ of possession.

(3) The court may award the plaintiff the fair market value rent for the duration of the party's occupancy, and other monetary relief found appropriate by the court. A party shall have the right to appeal the decision of such magistrate court and such decision shall be directly appealable to the Georgia appellate courts and not by de novo review by the superior court.

History.

Ga. L. 1853-54, p. 52, § 3; Code 1863, § 3981; Code 1868, § 4002; Code 1873, § 4074; Code 1882, § 4074; Civil Code 1895, § 4810; Civil Code 1910, § 5382; Code 1933, § 105-1503; Ga. L. 2024, p. 400, § 6/HB 1017, effective April 24, 2024; Ga. L. 2025, p. 1029, § 44(9)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective April 24, 2024, rewrote this Code section.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted the subsection (a) designation and substituted "deputy sheriff," for "sheriff deputy," twice in paragraph (1) and once in paragraph (2).

Editor's notes.

Ga. L. 2024, p. 400, § 1/HB 1017, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Squatter Reform Act.'"

44-11-33. Issuance of writ of possession; fi. fa. for costs; presentation to law enforcement.

If the trial provided for in Code Section 44-11-32 finds a verdict for the plaintiff, the clerk of the court shall issue a writ of possession instanter and a fi. fa. for the costs of the proceeding and any other monetary relief awarded by the court. The plaintiff and the court shall be authorized to present the final order to law enforcement for investigation or prosecution.

History.

Ga. L. 1853-54, p. 52, § 3; Code 1863, § 3982; Code 1868, § 4003; Code 1873, § 4075; Code 1882, § 4075; Civil Code 1895, § 4811; Civil Code 1910, § 5383; Code 1933, § 105-1504; Ga. L. 2024, p. 400, § 7/HB 1017, effective April 24, 2024; Ga. L. 2025, p. 1029, § 44(10)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective April 24, 2024, in the first sentence in this Code section, deleted "the jury, upon" following "If" at the beginning, inserted "instanter" near the middle, and added "and any other monetary relief awarded by the court" at the end, and added the second sentence.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "44-11-32 finds" for "44-11-32 finds" in the first sentence.

Editor's notes.

Ga. L. 2024, p. 400, § 1/HB 1017, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Squatter Reform Act.'"

CHAPTER 12

RIGHTS IN PERSONALTY

ARTICLE 2

CHOSES IN ACTION

44-12-24. What rights of action may and may not be assigned.

JUDICIAL DECISIONS

Analysis

Nonassignable Rights of Action

2. Personal Torts

Tort claim becomes part of bankruptcy estate. — Notwithstanding Georgia's anti-assignment statute, O.C.G.A. § 44-12-24, claims brought against defendant, a debtor insider, became property of the debtor's bankruptcy estate as a matter of federal law, 11 U.S.C.S. § 541, thereby allowing the Trustee to pursue the claims under 11 U.S.C.S. § 1123(b)(3). Wender v. Miles (In re Curepoint, LLC), No. 22-56501-PMB, No. 23-5162, 2024 Bankr. LEXIS 2373 (Bankr. N.D. Ga. Sept. 30, 2024).

ARTICLE 5

DISPOSITION OF UNCLAIMED PROPERTY

44-12-192. Definitions.

As used in this article, the term:

(1) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(2) "Banking organization" means a bank, trust company, savings bank, industrial bank, land bank, safe-deposit company, private banker, or any other organization defined by federal law or the law of another state as a bank or banking organization.

(3) "Business association" means any corporation, other than a public corporation, a joint-stock company, an investment company, a business trust, or a partnership or association for business purposes of two or more individuals whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(3.1) "Claimant" means the person on whose behalf a claim is filed.

(3.2) "Claimant's designated representative" means a person who has successfully registered with the commissioner pursuant to Code Section 44-12-239 to file unclaimed property claim on behalf of a claimant.

(4) "Commissioner" means the commissioner of revenue.

(4.1) "Department" means the Department of Revenue.

(5) "Domicile" means the state of incorporation, in the case of a corporation incorporated under the laws of a state, and the state of the principal place of business, in the case of a person not incorporated under the laws of a state.

(6) "Due diligence" means, but shall not be limited to, the mailing of a letter by first-class mail to the last known address of the owner as indicated on the records of the holder.

(7) "Financial organization" means any savings and loan association, cooperative bank, building and loan association, or credit union.

(8) "Holder" means a person, wherever organized or domiciled, who is:

(A) In possession of property belonging to another;

(B) A trustee in case of a trust; or

(C) Indebted to another on an obligation.

(9) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage of any type.

(10) "Intangible property" means and includes:

(A) Moneys, checks, drafts, deposits, interest, dividends, and income;

(B) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, and unidentified remittances;

(C) Stocks and other intangible ownership interests in business associations;

(D) Moneys deposited to redeem stocks, bonds, coupons, and other securities or to make distributions;

(E) Amounts due and payable under the terms of insurance policies; and

(F) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(11) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(12) “Owner” means a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this article or his legal representative.

(13) “Payable” means the earliest date upon which the owner of property could become entitled to the payments, possession, delivery, or distribution of such property from a holder.

(14) “Person” means an individual, business association, government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(14.1) “Selling claimant” means a claimant who has agreed to sell their interest in unclaimed property in the custody of the department.

(15) “State” means any state, district, commonwealth, territory, insular possession, or any other area subject to the authority of the United States.

(16) “Unclaimed Property Agreement Addendum” means an addendum to accompany claims as provided in Code Section 44-12-224.

(17) “Unclaimed Property Purchase Agreement” means an agreement between a selling claimant and a claimant’s designated representative wherein the selling claimant agrees to sell their interest in unclaimed property to the selling claimant’s designated representative.

(18) “Unclaimed Property Recovery Agreement” means an agreement between a claimant and claimant’s designated representative for the recovery of unclaimed property in the custody of the department.

(19) “Utility” means a person that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History.

Code 1981, § 44-12-192, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2023, p. 266, § 1/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, added paragraphs (3.1), (3.2), (4.1), (14.1), (17), (18), and (19) and substituted the present provisions of paragraph (16) for the former provisions, which read: “‘Utility’ means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.”

44-12-209. Rent due on safe-deposit boxes; notice of opening of box and sealing of contents when contents deemed abandoned; delivery to commissioner; retention of documents by commissioner.

(a) If the rental due on a safe-deposit box has not been paid for one year, the lessor shall send a notice by registered mail or statutory overnight delivery to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the holder shall provide written notification to the commissioner of the drilling date not less than 30 days prior to this time. The commissioner may designate a representative to be present during the opening of the safe-deposit box. The safe-deposit box shall be opened in the presence of an officer of the lessor. The contents shall be sealed in a package by the officer who shall write on the outside the name of the lessee and the date of the opening. If a will, codicil, trust instrument, or amendment to a trust instrument is among the contents of a safe-deposit box, the officer shall remove such document from the safe-deposit box for separate cataloging and packaging. The officer shall execute a certificate reciting the name of the lessee, the date of the opening of the safe-deposit box, and a list of its contents. A separate certificate shall be executed for any will, codicil, trust instrument, or amendment to a trust instrument, which shall be packaged separately but shall be transmitted along with the package containing the remainder of the contents of the safe-deposit box. The certificate or certificates shall be included in the package or packages and a copy of the certificate shall be sent by registered mail or statutory overnight delivery to the last known address of the lessee. The package or packages shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the safe-deposit box.

(b) If the contents of the safe-deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the safe-deposit box will be delivered to the commissioner as abandoned property under the provisions of Code Section 44-12-214.

(c) The lessor shall submit to the commissioner a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the safe-deposit box or such part thereof as shall be required by the commissioner under Code Section 44-12-214, but the lessor shall not deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental but shall submit to the commissioner a verified statement of such charges and deductions. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the commissioner shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to the commissioner, less any costs or expenses of sale; but, if the charges or balance due exceeds the value of such property, the commissioner shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the commissioner to the lessor shall be deducted from the value of the property of the lessee delivered to the commissioner.

(d) A copy of this Code section shall be printed on every contract for rental of a safe-deposit box.

(e) If, after July 1, 2024, a will, codicil, trust instrument, or amendment to a trust instrument is separately packaged and transmitted along with the contents of a safe-deposit box or other safekeeping repository and delivered to the commissioner, the commissioner shall:

(1) Retain each original will, codicil, trust instrument, or amendment to a trust instrument; provided, however, that, upon request, the commissioner shall:

(A) Deliver any will, codicil, trust instrument, or amendment to a trust instrument to the testator or settlor upon the presentation to the commissioner of satisfactory competent evidence of the identity of such testator or settlor;

(B) Deliver any will or codicil of a deceased testator to the probate court having jurisdiction of such testator's estate in the same circumstances under which a financial institution would deliver such will or codicil to such probate court pursuant to paragraph (1) of subsection (a) of Code Section 7-1-356 upon the presentation to the commissioner of satisfactory competent evidence of the death of the testator;

(C) Permit the removal of such will, codicil, trust instrument, or amendment to a trust instrument in the same circumstances under which a financial institution would permit the removal thereof pursuant to subsection (d) of Code Section 7-1-356; and

(D) Deliver any trust instrument or amendment to a trust instrument to the trustee of the trust upon the presentation to the commissioner of satisfactory competent evidence of the death of the settlor, satisfactory competent evidence of the identity of the trustee, and a certification of trust by the trustee made under oath and containing all of the information set forth in paragraph (3) of subsection (b) of Code Section 53-12-280;

(2) Upon request and upon payment of reasonable charges therefor, provide a true and correct photostatic or certified copy of:

(A) Any will or codicil to any person upon the presentation to the commissioner of satisfactory competent evidence of the death of the testator and satisfactory competent evidence of the identity of such person showing that, with respect to such will or codicil, such person is an interested person within the meaning of subsection (a) of Code Section 53-5-2 or is a registered claimant's designated representative pursuant to Code Section 44-12-239; and

(B) Any trust instrument or amendment to a trust instrument to any person upon the presentation to the commissioner of satisfactory competent evidence of the death of the settlor and satisfactory competent evidence of the identity of such person showing that, with respect to such trust or amendment, such person is a trustee, trust director, or qualified beneficiary, as such terms are defined in Code Sections 53-12-2 and 53-12-500, or is a registered claimant's designated representative pursuant to Code Section 44-12-239; and

(3) Have no duty to open any safe-deposit box to retrieve any will, codicil, trust, instrument, or amendment to a trust instrument contained therein.

History.

Code 1981, § 44-12-209, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2000, p. 1589, § 4; Ga. L. 2023, p. 266, § 2/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, in subsection (a), added the sixth and eighth sentences, inserted "or certificates" in the next-to-last sentence, and inserted "or packages" in the next-to-last and last sentences; in subsection (c), substituted "delivered to the commissioner" for "delivered to him" in the second sentence; substituted "A copy" for "On or after January 1, 1991, a copy" at the beginning of subsection (d); and added subsection (e).

44-12-217. Sale or destruction of property.

(a) Except as otherwise provided in subsection (b) of this Code section, all abandoned property, other than money delivered to the commissioner under this article, shall, within three years after the delivery, be sold by the commissioner to the highest bidder at public sale in whatever city in the state affords, in his or her judgment, the most favorable market for the property involved. The commissioner may decline the highest bid and reoffer the property for sale if, in the commissioner's sole judgment, the commissioner considers the price bid insufficient. The commissioner need not offer any property for sale if, in his or her opinion, the probable cost of the sale exceeds the value of the property.

(b) Any tangible personal property sold pursuant to this article at a sale conducted at a specific, physical location shall be preceded by a single publication of notice thereof at least three weeks in advance of the sale in a newspaper of general circulation in the county where the property is to be sold. Where such tangible personal property is sold online or through any other means not associated with a specific, physical location, such sale shall be preceded by notice published on the department's website.

(b.1)(1) Securities listed on an established stock exchange shall be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the commissioner deems advisable. The commissioner may authorize the agent or broker acting on behalf of the commissioner to deduct fees from the proceeds of such sales at a rate agreed upon in advance by the agent or broker and the commissioner.

(2) After July 1, 2024, and unless the commissioner deems it to be in the public interest to do otherwise, all securities presumed unclaimed and delivered to the department may be sold upon receipt without further notification obligations. Any person making a claim pursuant to this article shall be entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, but no person shall have any claim under this article against the state, the holder, any transfer agent, any registrar, or any other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the department.

(3) Certificates for unclaimed stock or other equity interest of business associations that cannot be canceled and are registered in the department's name or that cannot be readily liquidated and converted into the currency of the United States may be sold for the value of the certificate, if any, in accordance with paragraph (1) of this subsection or may be destroyed in accordance with subsection (d) of this Code section.

(c) At any sale conducted by the commissioner pursuant to this article, the purchaser shall receive title to the property purchased free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The commissioner shall execute all documents necessary to complete the transfer of title.

(d) If the commissioner determines after investigation that any property delivered under this article has insubstantial commercial value of less than $100.00, he or she may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against any holder for or on account of any action taken by the commissioner pursuant to this subsection.

History.
Code 1981, § 44-12-217, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2023, p. 266, § 3/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, rewrote subsections (a) and (b); added subsection (b.1); and, in subsection (d), inserted "or she" in the first sentence.

44-12-218. Disposition of funds received under article.

All funds received under this article, including the proceeds from the sale of abandoned property under Code Section 44-12-217, shall be deposited by the commissioner in the general fund; provided, however, that the commissioner may deduct and retain moneys necessary to properly administer this article, including, but not limited to, the costs of personnel and the direct administrative expenses required to identify, locate, secure, and transmit abandoned property prior to depositing such funds; provided, further, that such administrative expenses shall not be less than 1 percent of the funds deposited annually. Before making a deposit he or she shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant and, with respect to each policy or contract listed in the report of an insurance company, its number, the name of the corporation, and the amount due.

History.

Code 1981, § 44-12-218, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2013, p. 636, § 2/HB 359; Ga. L. 2015, p. 30, § 3/SB 82; Ga. L. 2023, p. 266, § 4/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, in the first sentence, substituted "commissioner may deduct and retain moneys necessary to properly administer this article, including, but not limited to, the costs of personnel and the direct" for "may deduct moneys necessary to cover the direct", added the proviso at the end, and substituted "insurance company" for "insurance corporation" near the end of the last sentence.

44-12-220. Claims for property paid or delivered to commissioner; procedure.

(a) A person, other than a state, but including a registered claimant's designated representative, who claims an interest in any property paid or delivered to the commissioner may file with the commissioner a claim on a form prescribed by the commissioner and verified by the claimant or the claimant's designated representative. Except as provided in subsection (g) of Code Section 44-12-224, failure to use the claim form prescribed by the commissioner shall void the claim. The claim form shall require information the commissioner believes to be reasonably necessary to administer the requirements of this article, including, but not limited to:

(1) A legible copy of the claimant's valid driver's license;

(2) If the claimant has not been issued a valid driver's license at the time of the original claim form is filed, a legible copy of a

photographic identification of the claimant issued by the United States or a state or territory of the United States, a valid passport or national identification card issued by a foreign nation, or other evidence deemed acceptable by the commissioner; and

(3) For claims submitted by a registered claimant's designated representative, a duly executed copy of the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement, as applicable, and as further described in this Code section.

(b) The commissioner shall consider each claim within 90 days after it is filed and give written notice to the claimant and, if the person is utilizing the services of a designated representative, to the claimant's designated representative if the claim is denied in whole or in part. The notice may be given by mailing it to the claimant's designated representative, if any, and to the claimant's last address, if any, as stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant, or if the claim is deemed void pursuant to subsection (a) of this Code section.

(c) If a claim submitted by the claimant is approved, the commissioner shall pay over or deliver to the claimant the property or the amount the commissioner actually received or the net proceeds if it has been sold by the commissioner.

(d)(1) If a claim submitted by a claimant's designated representative is approved, the commissioner shall pay over or deliver to the claimant the balance remaining after deduction and payment of the amount due to the claimant's designated representative by the commissioner; provided, however, that any payments made directly to the claimant's designated representative shall be made only pursuant to the terms of the Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement, including those permitted by subsection (g) of Code Section 44-12-224, that have been submitted with the claim and only if the claimant's designated representative is registered pursuant to Code Section 44-12-239.

(2) The commissioner is authorized to make distribution of the property or money in accordance with the Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement. The Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement shall be executed by the claimant or selling claimant and shall be filed with the commissioner along with the claim.

(3) Payments of fees and costs to the claimant and the claimant's designated representative authorized under an Unclaimed Property

Recovery Agreement for approved claims shall be made by paper check or other means approved by the commissioner on such periodic schedule as the department may define; provided, however, payment for approved claims shall be made to both the claimant and the claimant's representative within 60 days of approval.

(4) This Code section shall not apply to actions that are subject to Code Section 44-12-211.1 and subsection (c) of Code Section 48-4-5.

(e) The contents of safe-deposit boxes shall be delivered directly to the claimant and not to the claimant's designated representative. Any lien owed to the lessor of the safe-deposit box shall be deducted from the value of the contents of the safe-deposit box pursuant to Code Section 44-12-216.

(f) The owner of any property delivered to the commissioner pursuant to this article shall not be entitled to receive income or other increments on account of such property that accrues after such property is delivered to the commissioner.

(g) When the department receives conflicting claims for the same unclaimed property account or accounts, the property shall be remitted in accordance with the following, notwithstanding the withdrawal of a claim:

(1) Preference shall be given to the person submitting the first claim received by the Unclaimed Property Division that is complete or made complete. A claim is complete when entitlement to the unclaimed property has been established;

(2) When a claimant's claim and a claimant's designated representative's claim are received by the Unclaimed Property Division on the same day and both claims are complete, the claimant shall be given preference;

(3) If a buyer's claim and a claimant's claim or a claimant's designated representative's claim are received by the Unclaimed Property Division on the same day and all claims are complete, the buyer shall be given preference;

(4) If more than one buyer's claim received by the Unclaimed Property Division is complete or made complete on the same day, the buyer that demonstrates that its agreement complies with this article and was executed first shall receive preference;

(5) If more than one claim by a claimant's designated representative received by the Unclaimed Property Division is complete or made complete the same day, the claimant's designated representative that has agreed to receive the lowest fee shall be given preference. If two or more such claimant's designated representatives are charging the

same lowest fee, the claimant's designated representative that demonstrates its agreement complies with this article and was executed first shall be given preference; and

(6) Nothing in this subsection shall extinguish, impair, or affect any private right of action that one person may have against another for breach of contract, tort, or other statutory or common-law cause of action; provided, however the department shall not be liable to any person for acting in conformance with this article and its rules and regulations.

(h) The commissioner shall maintain an electronic copy of all records related to the property received by the commissioner. Each certified electronic copy of a document that is stored pursuant to this subsection shall be deemed an original pursuant to Chapter 10 of Title 24. Such records shall be retained pursuant to the departmental retention schedules, which shall provide for a retention period of no less than ten years.

History.

Code 1981, § 44-12-220, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2023, p. 266, § 5/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, rewrote this Code section.

44-12-221. Appeal of commissioner's decision.

Any person aggrieved by a decision of the commissioner to approve or deny a claim or whose claim the commissioner has failed to act upon within 90 days after the filing of the claim may appeal such decision or lack of decision, either of which shall be deemed the final agency decision, to the Superior Court of Fulton County. The proceeding shall be brought within 90 days after the decision of the commissioner or within 180 days of the filing of the claim if the commissioner fails to act. The appeal shall be tried de novo without a jury. The record on appeal shall be limited to the documents or evidence admitted at any hearing before the commissioner; provided, however, that the court may allow a party to supplement the record for good cause.

History.

Code 1981, § 44-12-221, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2023, p. 266, § 6/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, inserted "to approve or deny a claim" following "decision of the commissioner" and inserted ", either of which shall be deemed the final agency decision," in the first sentence, and added the last sentence.

44-12-222. Determination of claim; hearing.

(a) The commissioner shall consider any claim filed under this article, and in rendering a determination on the merits of any such claim, shall rely on the applicable statutes, regulations, and relevant court decisions.

(b) In his or her sole discretion, the commissioner may hold a hearing and receive evidence concerning any unclaimed property claim filed under this article. If a hearing is held, the commissioner, or his or her designated representative, shall consider evidence that would be admissible in contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In any proceeding for determination of a claim to property, the burden shall be upon the claimant, or the claimant's agent, including a claimant's designated representative, to establish entitlement to the property by a preponderance of evidence.

(c) If a hearing is held, the commissioner, or his or her designated representative, shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him or her and the reasons for his or her decision. The decision shall be a public record and deemed the final agency decision.

(d) If the claim is approved, the commissioner shall make payment pursuant to paragraph (2) of subsection (d) of Code Section 44-12-220. Claims shall be paid without deduction for costs of notice.

History.

Code 1981, § 44-12-222, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2023, p. 266, § 7/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, rewrote this Code section.

44-12-224. Development and publication of unclaimed property forms by commissioner; use of forms to file claim; contents of forms; fees and costs; revocation of agreements; addendums; immunity from liability.

(a) To protect the interests of owners of unclaimed property, the commissioner shall develop and publish a form entitled "Unclaimed Property Recovery Agreement," and a form entitled "Unclaimed Property Purchase Agreement."

(b) A claimant's designated representative shall use the Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement to file a claim with the commissioner. Except as provided in subsection (g) of this Code section, the failure of a claimant's designated representative to use such agreement or agreements as required by this subsection shall void the claimant's designated representative's claim.

(c) The Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement shall include and disclose the following:

(1) The total dollar amount of unclaimed property accounts claimed or sold if the information provided by the holder contains the value of the unclaimed property;

(2) If the information provided by the holder contains the value of the unclaimed property, the total percentage of all authorized fees and costs to be paid to the claimant's designated representative or the percentage of the value of the property to be paid as net gain to the selling claimant's designated representative;

(3) If the information provided by the holder contains the value of the unclaimed property, the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's designated representative or the total net dollar amount to be received by the selling claimant's designated representative. If the information provided by the holder does not contain the value of the unclaimed property, then the form shall require the claimant's designated representative to identify the percentage of the net value of the claim that is due to the claimant's designated representative;

(4) If the information provided by the holder contains the value of the unclaimed property, the net dollar amount to be received by the claimant or the seller;

(5) For each account claimed, the unclaimed property account number;

(6) The name, address, email address, phone number, and registration identification number of the claimant's designated representative;

(7) The manual signature of the claimant or seller and the date signed, affixed on the agreement by the claimant or seller; provided, however, that a signature that complies with Code Section 10-12-17 shall be sufficient so long as any electronic signature uses an electronic signature product and protocol authorized by the department; and

(8) The social security number or taxpayer identification number of the claimant or seller, if a number has been issued to the claimant or seller.

(d)(1) The total fees and costs under an Unclaimed Property Recovery Agreement may not exceed 30 percent of the claimed amount or the unclaimed property's value, whichever is lower. If the total fees and costs exceed 30 percent, the fees and costs shall be reduced to 30 percent and the net balance shall be remitted directly by the commissioner to the claimant. Such 30 percent compensation limit shall not apply:

(A) If a judicial order, judgment, or decree to document entitlement is required; or

(B) To Unclaimed Property Purchase Agreements.

(2) For an Unclaimed Property Purchase Agreement form, proof that the purchaser has made payment shall be filed with the department along with the claim. If proof of payment is not provided, the claim is void. Proof may be demonstrated by a receipt signed by claimant and claimant's designated representative, if any; a copy of check issued; bank wire confirmation; or other information provided by the department's rules and regulation.

(e) A claimant may revoke an Unclaimed Property Recovery Agreement or an Unclaimed Property Purchase Agreement for any reason permitted by law. If a claimant's designated representative files a claim with the department, a claimant's designated representative shall inform the department in the event the claimant successfully and effectively revokes the relevant Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement.

(f) The Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement may not create an assignment of any portion of unclaimed property held by the department other than that property described in a duly executed Unclaimed Property Purchase Agreement.

(g)(1) When a claimant's designated representative submits a claim for which the total known value of the claimant's unclaimed property in the custody of the department exceeds $2,000.00, the claimant's designated representative may add terms and conditions to the Unclaimed Property Recovery Agreement or to an Unclaimed Property Purchase Agreement in accordance with the process outlined in this subsection, so long as the additional terms and conditions are:

(A) Not inconsistent with the requirements of this Code section;

(B) Printed in at least ten-point font; and

(C) Located after or below the terms of the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement as published by the commissioner pursuant to this Code section.

(2) The commissioner shall develop and publish an Unclaimed Property Agreement Addendum form for use by a claimant and claimant's designated representative to indicate whether they dispute or agree with the terms and conditions added to the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement pursuant to this subsection. The Unclaimed Property Agreement Addendum form shall be published online and shall be downloadable.

(3) For claims made under this subsection, the Unclaimed Property Agreement Addendum shall be completed, signed by both the

claimant and the claimant's designated representative, and filed with the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement. Any terms and conditions added to an Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement shall be void in the absence of a duly executed Unclaimed Property Agreement Addendum. A signature that complies with Code Section 10-12-17 shall be sufficient so long as the signatory uses an electronic signature product and protocol authorized by the department.

(4) The commissioner may file an interpleader action in the Superior Court of Fulton County if either the claimant or the claimant's designated representative indicate on the Unclaimed Property Agreement Addendum that a dispute exists regarding the terms and conditions added to the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement. Appropriate notice of the interpleader action shall be provided to the claimant and the claimant's designated representative. The cost of the interpleader action shall be divided between the claimant and the claimant's designated representative.

(5) Except as provided in this article, Unclaimed Property Recovery Agreements and Unclaimed Property Purchase Agreements authorized by this subsection shall be deemed the same as those without additional terms and conditions.

(h) The department shall not be administratively, civilly, or criminally liable for any property or funds distributed pursuant to this Code section, provided such distribution is made in good faith.

History.
Code 1981, § 44-12-224, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2023, p. 266, § 8/SB 103, effective July 1, 2024.

Amendments.
The 2023 amendment, effective July 1, 2024, rewrote this Code section.

44-12-228. Maintenance and retention of records.

(a) Every financial institution, banking organization, and business association and all other holders required to file a report under Code Section 44-12-214 shall retain all books, records, and documents necessary to establish the accuracy and compliance of such report for ten years after the property becomes reportable, except to the extent that shorter time is provided in accordance with Article 5 of Chapter 18 of Title 50, the "Georgia Records Act," or in subsection (b) of this Code section or by rule of the commissioner. As to any property for which it has obtained the last known address of the owner, the holder shall maintain a record of the name and last known address of the owner for the same ten-year period.

(b) Any business associations that sell in this state their traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

(c) Every claimant's designated representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this article to enable the department to determine whether such person is in compliance with this article and the rules adopted by the department under this article. Every claimant's designated representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement between the owner and such claimant's representative or buyer, for at least three years after the date of the initial agreement.

(d) Upon request by the department, a claimant's designated representative or buyer of unclaimed property shall provide all books, accounts, and records maintained in compliance with subsection (c) of this Code section to the department for examination.

(e) Electronic documents shall satisfy the requirements of this Code section.

History.

Code 1981, § 44-12-228, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2023, p. 266, § 9/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, added subsections (c), (d), and (e).

44-12-229. Investigations and examinations of claims, reports, and other records; commissioner may compel filing of report and may examine records; failure to maintain records.

(a) The department may make investigations and examinations of claims, reports, and other records as it deems necessary to administer and enforce the provisions of this article.

(b) The commissioner may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this article.

(c) The commissioner may at reasonable times and upon reasonable notice examine the records of any person to determine whether the person has complied with the provisions of this article. The commissioner may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this article.

(d) If a holder fails to maintain the records required by Code Section 44-12-228 and the records of the holder available for the periods subject to this article are insufficient to permit the preparation of a report, the holder shall be required to report and pay such amounts as may reasonably be estimated from any available records.

History.

Code 1981, § 44-12-229, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 2023, p. 266, § 10/SB 103, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2024, added present subsection (a) and redesignated former subsections (a), (b), and (c) as present subsections (b), (c), and (d), respectively.

44-12-231. Enforcement of article; properties not paid over on a timely basis.

(a) The commissioner may bring an action in a court of competent jurisdiction to enforce this article. Notwithstanding the provisions of Code Section 44-12-214, the commissioner shall commence enforcement for the reporting, payment, or delivery of property presumed abandoned under this article, with the exception of property held in a fiduciary capacity, not later than seven years from the date the property is presumed abandoned.

(b) Properties due and owing under this Code section and not paid over to the commissioner on a timely basis shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the manner provided for assessment and collection of state taxes in Chapters 2, 3, and 4 of Title 48. The commissioner is authorized to issue an execution for the amounts due as provided in Code Section 48-3-3. The remedies specified in this subsection shall be in addition to all other remedies provided for in this article.

History.

Code 1981, § 44-12-231, enacted by Ga. L. 1990, p. 1506, § 1; Ga. L. 1993, p. 1813, § 1; Ga. L. 2025, p. 1029, § 44(11)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, in subsection (b), substituted "Code Section 48-3-3" for "Code Section 48-3-1".

44-12-239. Required fee and form; background checks; penalty for falsification; required notice; naming convention; registration term; adverse treatment of registration; hearings.

(a) In order to file claims as a claimant's designated representative, receive a distribution of fees and costs from the department, or obtain information pertaining to unclaimed property held by the department, a claimant's designated representative shall register with the department by paying a $1,200.00 registration fee and completing a form published by the department soliciting the information the commissioner deems reasonably necessary to administer the requirements of this article, including, but not limited to:

(1) The business address and telephone number of the registrant and, if applicable, the registrant's employer;

(2) The tax identification number of the registrant and, if applicable, the registrant's employer;

(3) A legible copy of the registrant's current driver's license showing the full name and current address of such person. If a current driver's license is not available, another form of photo identification as prescribed by the commissioner shall be filed with the department;

(4) The names of agents or employees, if any, who are designated to submit claims on behalf of the registrant, together with a legible copy of their driver's license showing their full name and address or other form of photo identification as prescribed by the commissioner; and

(5) Sufficient information to enable the department to disburse fee payments to the registrant.

(b) Registrants shall submit to a background check for all employees designated to submit or process claims on behalf of the registrant.

(c) The knowing submission of false information by any registrant pursuant to this article may be punishable by law, including as a false statement prohibited under Code Section 16-10-20.

(d) A claimant's designated representative is ineligible for registration if, within the immediately preceding 20 years, the designated representative, or such designated representative's officer, owner, or employee designated to act on behalf of the representative, was convicted of a misdemeanor or felony involving dishonesty, deceit, or fraud, or adjudications of responsibility in civil actions pertaining to breach of fiduciary duties.

(e) If a material change in the status of a registration occurs, a registrant shall, within 30 days, provide the department with the updated documentation and information in writing. Material changes include, but are not limited to a designated agent or employee ceasing to act on behalf of the designating person; changes in any of the contact information provided pursuant to this Code section; any criminal convictions for crimes, whether felonies or misdemeanors, involving dishonesty, deceit, or fraud; or adjudications of responsibility in civil actions pertaining to breach of fiduciary duties. Failure to comply with this subsection shall result in immediate revocation of the registration as a claimant's designated representative.

(f) Any solicitation from a claimant's designated representative to an owner or apparent owner of unclaimed property shall include the following notice in all capital letters in at least 12 point type or in a font larger than the font utilized in the solicitation, whichever is larger: "THIS IS A SOLICITATION. THIS IS NOT A BILL OR OFFICIAL GOVERNMENT DOCUMENT AND HAS NOT BEEN SENT BY THE STATE OF GEORGIA. YOU ARE NOT REQUIRED TO USE THE SERVICES OFFERED IN THIS SOLICITATION."

(g) A claimant's designated representative may not register under or use a business name that might lead a reasonable person to conclude that the representative, firm, or employer is an agent of the United States, or an agency thereof, or a state or an agency or political subdivision of a state.

(h) Registration by a claimant's designated representative shall have a four-year term and may be renewed if the claimant's designated representative continues to meet the applicable criteria. Upon renewal, a claimant's designated representative shall pay a renewal fee of $1,200.00.

(i) A duly registered claimant's designated representative is authorized to submit claims and respond to requests for additional information on behalf of a claimant and apparent owner, and to receive information related to accounts claimed directly from the commissioner.

(j) Any decision by the commissioner or the commissioner's authorized agent to deny, suspend, revoke, or not renew a claimant's designated representative's registration shall set forth the basis for such action. An applicant for registration or renewal aggrieved by any decision of the commissioner or the commissioner's designated representative is entitled, upon request, to a hearing before the commissioner or the commissioner's designated representative. The request shall set forth with specificity the reasons for the request and the manner of relief sought.

(k) Hearings conducted under subsection (j) of this Code section shall be conducted under the terms and conditions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.

Code 1981, § 44-12-239, enacted by Ga. L. 2023, p. 266, § 11/SB 103, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2024.

44-12-239.1. Data base for unclaimed accounts.

(a) The commissioner shall provide a registered claimant's designated representative with access to a downloadable or deliverable, searchable and sortable data base for all unclaimed accounts containing the following information, if provided by the holder:

(1) Name of the apparent owner. If the property is from an insurance policy, the name of the insured and beneficiary, if applicable;

(2) Last known address of the apparent owner. If the apparent owner is the insured under an insurance policy, the address of the beneficiary, if applicable;

(3) Owner account relation utilized by the National Association of Unclaimed Property Administrators;

(4) Amount of cash, if applicable;

(5) For unliquidated securities or mutual funds account, the number of shares, the name of the issuer of the security or mutual funds account, and the Committee on Uniform Securities Identification Procedures number, if available;

(6) For safe-deposit box contents, descriptions that are substantially similar to those utilized by the National Association of Unclaimed Property Administrators;

(7) Property type descriptions that are substantially similar to those utilized by the National Association of Unclaimed Property Administrators;

(8) Date of last activity;

(9) Year property was reported to the commissioner; and

(10) Holder's name and contact information.

(b) A claimant's designated representative who receives unclaimed property information from the commissioner is prohibited from distributing such information except for the purpose of soliciting owners of unclaimed property to offer claim services. The commissioner may refer a suspected violation of this Code section to the Attorney General for prosecution.

(c) Notwithstanding Code Section 44-12-225, information identified in subsection (a) of this Code section shall not be deemed confidential to registered claimant's designated representatives.

History.
Code 1981, § 44-12-239.1, enacted by Ga. L. 2023, p. 266, § 11/SB 103, effective July 1, 2024.

Effective date.
This Code section became effective July 1, 2024.

44-12-239.2. Grounds for administrative enforcement action.

(a) The following acts are violations of this article and shall constitute grounds for an administrative enforcement action by the department:

(1) Failure to comply with any provision of this article, any rule or order adopted under this article, or any written agreement entered into with the department;

(2) Fraud, misrepresentation, deceit, or gross negligence in any matter within the scope of this article;

(3) Fraudulent misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to an owner or apparent owner under this article, regardless of reliance by or damage to the owner or apparent owner;

(4) Willful imposition of illegal or excessive charges in any unclaimed property transaction;

(5) False, deceptive, or misleading solicitation or advertising within the scope of this article;

(6) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by this article, by any rule or order adopted under this article, or by any agreement entered into with the department under this article;

(7) Refusal to permit inspection of books and records in an investigation or examination by the department or refusal to comply with a subpoena issued by the department under this article;

(8) Criminal conduct in the course of a person's business;

(9) Failure to timely pay any fee or fine imposed or assessed under this article or any rule adopted under this article;

(10) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, or entering into, or making a solicitation to enter into, an agreement to file a claim for unclaimed property owned by another, or a contract or agreement to purchase unclaimed property, unless such person is registered with the department under this article; provided, however, that this paragraph shall not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the

court appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner;

(11) Failure to authorize the release of records in the possession of a third party after being requested to do so by the department regarding a pending examination or investigation; and

(12) Receipt or solicitation of consideration to be paid in advance of the approval of a claim under this article.

(b) Upon a finding by the department that any person has committed any of the acts set forth in subsection (a) of this Code section, the department may enter an order:

(1) Requiring such person to cease and desist or take corrective action as specified by the department;

(2) Revoking a registration previously granted under this article during which time the registrant may not reapply for a registration under this article;

(3) Placing a registrant on probation for a period and subject to such conditions as the department may specify;

(4) Placing permanent restrictions or conditions upon issuance or maintenance of a registration under this article;

(5) Imposing an administrative fine not to exceed $2,000.00 for each such act which shall be retained by the department for purposes of administering this article; or

(6) Prohibiting any person from being a director, officer, agent, employee, or ultimate equitable owner of a 10 percent or greater interest in an employer of a claimant's designated representative.

(c) A claimant's designated representative is subject to the disciplinary actions specified in subsection (b) of this Code section for violations of subsection (a) of this Code section by an agent or employee of the registrant's employer if the registrant knew or should have known that such agent or employee was violating any provision of this article.

(d) A person aggrieved by any enforcement action imposed by the department is entitled, upon request, to a hearing before the commissioner or the commissioner's designated representative which shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Such hearing request shall set forth with specificity the reasons for the request and the manner of relief sought.

(e) The department may seek any appropriate civil legal remedy available to it by filing a civil action in a court of competent jurisdiction against any person who has, directly or through a claimant's representative, wrongfully submitted a claim as the ultimate owner of property and improperly received funds from the department in violation of this article.

(f) In addition to any other powers conferred upon it to enforce and administer the provisions of this article, the commissioner may refer to the Attorney General for further investigation any conduct the commissioner believes, in the commissioner's sole discretion, may warrant civil or criminal enforcement.

History.
Code 1981, § 44-12-239.2, enacted by Ga. L. 2023, p. 266, § 11/SB 103, effective July 1, 2024.

Effective date.
This Code section became effective July 1, 2024.

ARTICLE 7

PROTECTION OF AMERICAN INDIAN HUMAN REMAINS AND BURIAL OBJECTS

PART 2

COUNCIL ON AMERICAN INDIAN CONCERNS

44-12-280. Council on American Indian Concerns created; membership; assignment for administrative purposes; terms of office; removal for failure to attend meetings.

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

(1) "Anthropologist" means a physical anthropologist who holds a Ph.D. in physical anthropology with demonstrated experience in on-site identification of human skeletal remains and who is currently active in the profession.

(2) "Archeologist" means any person who:

(A) Is a member of or meets the criteria for membership in the Society of Professional Archaeologists and can demonstrate experience or formal training in the excavation and interpretation of human graves; or

(B) Was employed on July 1, 1992, by the state or by any county or municipal governing authority as an archeologist.

(b) There is created the Council on American Indian Concerns, which shall consist of nine members to be appointed by the Governor. Five members shall be American Indians, with at least one member representing each of the American Indian tribes of Georgia identified in Code

Section 44-12-300. Three members shall represent the scientific community and shall include at least one archeologist and one anthropologist; provided, however, that, if no anthropologist can be identified who is willing to serve, then the membership reserved to an anthropologist shall be filled by a person who holds a master's degree or a higher degree in the field of anthropology and is currently active in the profession. One member shall be selected from the general public at large. All members of the council shall be legal residents of the State of Georgia. The Governor shall consult the tribal groups located in the state recognized by general law, the Human Relations Commission, the Georgia Council of Professional Archaeologists, the Society for Georgia Archaeology, and the Department of Natural Resources for recommendations before appointing members of the council.

(c) The council is assigned to the Department of Natural Resources for administrative purposes only, as specified in Code Section 50-4-3.

(d) The terms of appointment for members of the council shall be as follows: two American Indians, one scientist, and one representative of the general public shall be appointed for an initial term of three years; two American Indians, one scientist, and one representative of the general public shall be appointed for an initial term of two years; and one scientist shall be appointed for an initial term of one year. The member who represents the general public and who has the least time left in his or her term on July 1, 2002, shall cease to be a member on that date, and a member who is an American Indian shall be appointed to take office on that day for a term of three years. The Governor shall specify the length of the initial term of the councilmembers in their initial appointments. After such initial terms, all councilmembers shall be appointed for terms of three years. Active and continued participation by members of the council is needed. The Governor may remove any member who fails to attend three regularly scheduled consecutive meetings. Councilmembers may succeed themselves.

History.

Code 1981, § 44-12-280, enacted by Ga. L. 1992, p. 1790, § 6; Ga. L. 2002, p. 632, § 2; Ga. L. 2017, p. 212, § 1/HB 153; Ga. L. 2024, p. 659, § 1/HB 43, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, inserted ", with at least one member representing each of the American Indian tribes of Georgia identified in Code Section 44-12-300" at the end of the second sentence in subsection (b).

Law reviews.

For article, "Tribal Land, Tribal Territory," see 56 Ga. L .Rev. 967 (2022).

For note, "To Trust or Not To Trust: Native American Healthcare Improvement in the Supreme Court's Hands," see 56 Ga. L. Rev. 1281 (2022).

Part 3

Legitimate American Indian Tribes

44-12-300. Tribes, bands, groups, or communities recognized by state as legitimate American Indian tribes.

(a) The State of Georgia officially recognizes as legitimate American Indian tribes of Georgia the following tribes, bands, groups, or communities:

(1) The Georgia Tribe of Eastern Cherokee
P.O. Box 1323
Dahlonega, Georgia 30533;

(2) The Lower Muscogee Creek Tribe
Tama Reservation
107 Tall Pine Drive
Whigham, Georgia 39897; and

(3) The Cherokee of Georgia Tribal Council
110 Cherokee Way
Saint George, Georgia 31562.

(b) The General Assembly may recognize tribes, bands, groups, or communities other than those stated in subsection (a) of this Code section as the General Assembly deems appropriate.

History.

Code 1981, § 44-12-300, enacted by Ga. L. 1993, p. 1813, § 2; Ga. L. 2024, p. 659, § 2/HB 43, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, updated the addresses in paragraphs (a)(1), (a)(2), and (a)(3).

Law reviews.

For article, "Tribal Land, Tribal Territory," see 56 Ga. L .Rev. 967 (2022).

For note, "To Trust or Not To Trust: Native American Healthcare Improvement in the Supreme Court's Hands," see 56 Ga. L. Rev. 1281 (2022).

CHAPTER 13

EXEMPTIONS FROM LEVY AND SALE

ARTICLE 2

STATUTORY EXEMPTIONS

44-13-100. Exemptions for purposes of bankruptcy and intestate insolvent estates.

Law reviews.
For article, "Bankruptcy Law," see 74 Mercer L. Rev. 1313 (2023).

JUDICIAL DECISIONS

Applicability of Exemption to Particular Property, Persons, and Situations

Funds withdrawn from inherited IRA not exempt. — Funds withdrawn from an inherited IRA were not exempt per O.C.G.A. § 44-13-100(a)(2)(F) where the account existed prepetition as the debtor's property, the debtor had the option of withdrawing the inherited IRA's value at any time, and as of the time of the withdrawal, there was no obligation for the inherited IRA to distribute funds to the debtor other than at his request. Given the absence of an obligation to fulfill, the withdrawn funds were not payments under the statute. Gordon v. Johnson (In re Johnson), 2022 Bankr. LEXIS 3109.

ARTICLE 3

DOMESTICATED JUDGMENT

44-13-120. Rights of Georgia residents.

JUDICIAL DECISIONS

Exemption applied. — In an action to recover property that was allegedly fraudulently transferred from defendants below, including the appellant, the trial court erred when it refused to grant the appellant a homestead exemption concerning the property in Georgia, where the appellate continued to live, because under the plain language of O.C.G.A. § 44-13-120, the appellant was entitled under Georgia law to assert an exemption equal to the Florida homestead exemption. Law v. SE Property Holdings, LLC, 365 Ga. App. 475, 879 S.E.2d 109, 2022 Ga. App. LEXIS 461 (2022).

CHAPTER 14

MORTGAGES, CONVEYANCES TO SECURE DEBT, AND LIENS

Article 8

Liens

PART 8

HOSPITALS AND NURSING HOMES

Article 9

Lis Pendens

ARTICLE 2

MORTGAGES

44-14-33. Attestation or acknowledgment of mortgage; additional witness in case of land; constructive notice.

JUDICIAL DECISIONS

ANALYSIS

PARTICULAR TRANSACTIONS

Particular Transactions

Attestation of security deed. — 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).

ARTICLE 3

CONVEYANCES TO SECURE DEBT AND BILLS OF SALE

Part 1

In General

44-14-60. Deed to secure debt as absolute deed; necessity of bond of title or to reconvey.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Assignment of lender's ability to collect rent to landlords. — Because the security deed between the lender and the landlords allowed the landlords to remain in possession of the property, use, operate, and manage the property, and collect rent, and the language used in the deed could be read as an assignment of the lender's ability to collect rent to the landlords, the trial court did not clearly err in finding that the landlords had standing to enforce the lease against the appellants. Global Education-SAT Acad. v. DF Duluth, 366 Ga. App. 775, 884 S.E.2d 37, 2023 Ga. App. LEXIS 49 (2023).

Insufficient evidence to prove security deed. — Mortgage servicer failed to provide sufficient evidence to prove the servicer's alleged security deed, the relationship with the lender, or an entitlement to the full loan payoff amount as bare statements of interest were not enough to establish a right to excess funds in an interpleader action. Home Equity Credit Series 2021 v. Labat, 375 Ga. App. 178, 915 S.E.2d 82, 2025 Ga. App. LEXIS 155 (2025).

44-14-61. Signing of deeds to secure debt and bills of sale.

JUDICIAL DECISIONS

Unwitnessed paper.

A security deed that does not include the signature of an unofficial witness as required by O.C.G.A. § 44-14-61 does not provide constructive notice to bona fide purchasers. WW3 Ventures v. Bank of N.Y. Mellon, 370 Ga. App. 160, 894 S.E.2d 680, 2023 Ga. App. LEXIS 536 (2023).

Attestation of security deed.

Court could not find that the clause served as a proper attestation in accordance with the Recording Statute because the passive use of the term of art "was attested" placed the debtor and his wife in the positions of witnesses to their own signatures, and this could not be. Layng v. United Wholesale Mortg. (In re Bu Yong Kim), No. 19-62423-LRC, No. 20-6024-LRC, 2023 Bankr. LEXIS 628 (Bankr. N.D. Ga. Mar. 10, 2023).

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).

44-14-64. Transfers of deeds to secure debt; execution; partial transfers; transfers by certain financial institutions; requirements for recording; payoff balance.

RESEARCH REFERENCES

ALR.

Acts in violation of bankruptcy stay as void or voidable under federal law — federal appellate cases, 81 A.L.R. Fed. 3d 6.

Part 2

Reversion

44-14-80. Reversion of realty to grantor; renewals and affidavits; effect; fees; construction of Code section.

JUDICIAL DECISIONS

Security deed subject to reversionary statute. — Trial court did not err when the court determined that the security deed was not subject to a statute of limitation and instead was subject only to the reversionary statute because, regardless of whether the statute of limitation barred enforcement of the note, the enforceability of the security deed was unaffected by the statute of limitation for the underlying debt, and the appellants' claim that acceleration of the underlying debt also accelerated the expiration of the reversionary period contravened the plain language of the revisionary statute. Head v. Planet Home Lending, LLC, 370 Ga. App. 152, 895 S.E.2d 512, 2023 Ga. App. LEXIS 548 (2023).

Reversion period was 20 years. — Trial court did not err when it concluded that the security deed contained an affirmative statement showing an intent to create a perpetual security interest and that as a result, a 20-year reversionary period applied, and the seller therefore validly exercised the deed's power of sale, less than 20 years after the 2004 conveyance. Freeport Title & Guar. v. Braswell, 367 Ga. App. 123, 885 S.E.2d 73, 2023 Ga. App. LEXIS 117 (2023).

Statutory reversion occurs automatically and independently of statutes of limitation. — Statutory reversion of title held to occur automatically and independently of operation of statutes of limitation, and once automatic reversion occurred, the deed holder's right of foreclosure was extinguished, regardless of the running (or tolling) of any applicable limitation period, and regardless of any equitable considerations. White Properties Investments, LLC v. DIP Lending I, LLC, 366 Ga. App. 242, 881 S.E.2d 706, 2022 Ga. App. LEXIS 544 (2022).

ARTICLE 7
FORECLOSURE

PART 1

IN GENERAL

44-14-162.2. Mailing or delivery of notice to debtor; procedure.

JUDICIAL DECISIONS

Notice held insufficient. — Dismissal of plaintiff's complaint was reversed, in part, as to the wrongful foreclosure claim as plaintiff sufficiently alleged that the bank failed to provide proper foreclosure notice as a result of foreclosing in January 2020 without first having sent plaintiff notice of the initiation of foreclosure proceedings by registered or certified mail as required by O.C.G.A. § 44-14-162.2 as the exhibits attached to the pleadings did not conclusively establish proper notice was given. Marques v. JP Morgan Chase Bank, N.A., 370 Ga. App. 305, 896 S.E.2d 1, 2023 Ga. App. LEXIS 552 (2023).

RESEARCH REFERENCES

ALR.

What matters not contained in pleadings may be considered in ruling on motion to dismiss under Rule 12(b)(6) of Federal Rules of Civil Procedure or motion for judgment on pleadings under Rule 12(c) without conversion to motion for summary judgment — Sixth Circuit, 77 A.L.R. Fed. 3d 2.

ARTICLE 8
LIENS

PART 3

MECHANICS AND MATERIALMEN

44-14-361. Creation of liens; property to which lien attaches; items to be included in lien.

JUDICIAL DECISIONS

ANALYSIS

Materialmen

Materialman's liens must strictly comply with section.

In a suit on a bond posted to discharge a materialman's lien, the denial of appellants' motion for summary judgment was reversed because appellee did not qualify as a proper lien claimant under Georgia law since it did not furnish materials at the instance of the owner, contractor, or some other person acting for the owner or contractor under O.C.G.A. § 44-14-361(a) as the general contractor never obtained appellant's written consent to delegate any portion of the work, including furnishing materials, to appellee. EMJ Construction, LLC v. Beacon Sales Acquisition, Inc., 373 Ga. App. 453, 908 S.E.2d 699, 2024 Ga. App. LEXIS 456 (2024).

RESEARCH REFERENCES

ALR.

Partial Waiver of Mechanics or Construction Lien, 91 A.L.R.7th 4.

44-14-361.1. How liens declared and created; amendment; record; commencement of action; notice; priorities; parties; limitation on aggregate amount of liens.

JUDICIAL DECISIONS

Analysis

Commencement of Action

Commencement of Action

Filing of notice prerequisite to enforceability of lien. — Trial court did not err in denying the property owner's motion for summary judgment in a materialman's lien action because the material provider chose to enforce its lien directly against the property rather than the contractor who purchased the materials and filed the required notice of commencement. The fact that it later filed a proof of claim in the contractor's bankruptcy proceeding did not require it to then comply with the applicable notice requirement for that scenario because, at that point, such notice was not a prerequisite to enforcing the lien against the improved property. West Main I, LLC v. SiteOne Landscape Supply, LLC, 369 Ga. App. 87, 892 S.E.2d 185, 2023 Ga. App. LEXIS 407 (2023).

44-14-366. Waiver of lien or claim upon bond in advance of furnishing labor, services, or materials void; interim waiver and release upon payment; unconditional waiver and release upon final payment; affidavit of nonpayment.

JUDICIAL DECISIONS

Tolling not applicable when there was no judicial or legal proceeding. — In an action concerning a lien for nonpayment, the tolling provisions of the 2020 Statewide Judicial Emergency Orders did not extend the deadline for filing an affidavit of nonpayment under Georgia's lien waiver statute, O.C.G.A. § 44-14-360, because the filing of an affidavit was not a judicial or legal proceeding subject to the tolling provisions. Arco Design/Build, LLC v. Savannah Green I Owner, LLC, 364 Ga. App. 380, 875 S.E.2d 385, 2022 Ga. App. LEXIS 316 (2022).

RESEARCH REFERENCES

ALR.
Partial Waiver of Mechanics or Construction Lien, 91 A.L.R.7th 4.

Part 8

Hospitals and Nursing Homes

44-14-470. Lien on causes of action accruing to injured person for costs of care and treatment of injuries arising out of such causes of action.

(a) Except where the context otherwise requires in subsection (b) of this Code section, as used in this part, the term:

(1) "Chiropractic practice" means any chiropractic practice that includes one or more chiropractors licensed to practice chiropractic in this state.

(2) "Hospital" means any hospital or nursing home subject to regulation and licensure by the Department of Community Health.

(3) "Hospital care, treatment, or services" means care, treatment, or services furnished by a hospital or nursing home.

(4) "Nursing home" means any intermediate care home, skilled nursing home, or intermingled home.

(5) "Physician practice" means any medical practice that includes one or more physicians licensed to practice medicine in this state.

(6) "Traumatic burn care medical practice" means care, treatment, or services rendered by a medical practice with respect to a patient whose burn care, treatment, or services resulted in charges in excess of $50,000.00, arising out of a single accident or occurrence.

(b) Any person, firm, hospital authority, or corporation operating a hospital, nursing home, physician practice, or chiropractic practice, or providing traumatic burn care medical practice in this state shall have a lien for the reasonable charges for hospital, nursing home, physician practice, chiropractic practice, or traumatic burn care medical practice care and treatment of an injured person, which lien shall be upon any and all causes of action accruing to the person to whom the care was furnished or to the legal representative of such person on account of injuries giving rise to the causes of action and which necessitated the hospital, nursing home, physician practice, chiropractic practice, or provider of traumatic burn care medical practice care, subject, however, to any attorney's lien and in the case of any chiropractic lien, said lien shall also be subject to any hospital lien. The lien provided for in this subsection is only a lien against such causes of action and shall not be a lien against such injured person, such legal representative, or any other property or assets of such persons and shall not be evidence of such person's failure to pay a debt. This subsection shall not be construed to interfere with the exemption from this part provided by Code Section 44-14-474.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 105, § 1; Ga. L. 1983, p. 548, § 1; Ga. L. 1986, p. 222, § 1; Ga. L. 2002, p. 1141, § 1; Ga. L. 2002, p. 1429, § 1; Ga. L. 2004, p. 394, § 1; Ga. L. 2008, p. 12, § 2-36/SB 433; Ga. L. 2023, p. 399, § 1/SB 168, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, added paragraph (a)(1) and redesignated former paragraphs (a)(1) through (a)(5) as present paragraphs (a)(2) through (a)(6), respectively; and, in subsection (b), deleted "or" following "nursing home" near the beginning, inserted ", or chiropractic practice," and twice inserted "chiropractic practice," following "physician practice", and inserted "and in the case of any chiropractic lien, said lien shall also be subject to any hospital lien" at the end of the first sentence.

JUDICIAL DECISIONS

Debt need not be owed by patient to enforce lien. — Summary judgment in favor of a medical center was upheld in the center's suit seeking reimbursement under the lien statute, O.C.G.A. § 44–14–470 et seq., for charges the medical center provided to a minor aged patient because the court rejected the principle that the debt must be owed by the patient for a hospital to foreclose on a lien as that condition was not stated in the lien statute. Progressive Mt. Ins. Co. v. AU Med. Ctr., Inc., No. A25A0721, 2025 Ga. App. LEXIS 164 (Ga. Ct. App. Apr. 30, 2025).

44-14-471. Filing of verified statement; contents; notice.

(a) In order to perfect the lien provided for in Code Section 44-14-470, the operator of the hospital, nursing home, physician practice, chiropractic practice, or provider of traumatic burn care medical practice:

(1) Shall, not less than 15 days prior to the date of filing the statement required under paragraph (2) of this subsection, provide written notice to the patient and, to the best of the claimant's knowledge, the persons, firms, corporations, and their insurers claimed by the injured person or the legal representative of the injured person to be liable for damages arising from the injuries and shall include in such notice a statement that the lien is not a lien against the patient or any other property or assets of the patient and is not evidence of the patient's failure to pay a debt. Such notice shall be sent to all such persons and entities by first-class and certified mail or statutory overnight delivery, return receipt requested; and

(2) Shall file in the office of the clerk of the superior court of the county in which the hospital, nursing home, physician practice,

chiropractic practice, or provider of traumatic burn care medical practice is located and in the county wherein the patient resides, if a resident of this state, a verified statement setting forth the name and address of the patient as it appears on the records of the hospital, nursing home, physician practice, chiropractic practice, or provider of traumatic burn care medical practice; the name and location of the hospital, nursing home, physician practice, chiropractic practice, or provider of traumatic burn care medical practice and the name and address of the operator thereof; the dates of admission and discharge of the patient therefrom or with respect to a physician practice or chiropractic practice, the dates of treatment; and the amount claimed to be due for the hospital, nursing home, physician practice, chiropractic practice, or provider of traumatic burn care medical practice care, which statement must be filed within the following time period:

(A) If the statement is filed by a hospital, nursing home, or provider of traumatic burn care medical practice, then the statement shall be filed within 75 days after the person has been discharged from the facility; or

(B) If the statement is filed by a physician practice or chiropractic practice, then the statement shall be filed within 90 days after the person first sought treatment from the physician practice or chiropractic practice for the injury.

(b) The filing of the claim or lien shall be notice thereof to all persons, firms, or corporations liable for the damages, whether or not they received the written notice provided for in this Code section. The failure to perfect such lien by timely complying with the notice and filing provisions of paragraphs (1) and (2) of subsection (a) of this Code section shall invalidate such lien, except as to any person, firm, or corporation liable for the damages, which receives prior to the date of any release, covenant not to bring an action, or settlement, actual notice of a notice and filed statement made under subsection (a) of this Code section, via hand delivery, certified mail, return receipt requested, or statutory overnight delivery with confirmation of receipt.

(c) No filing of a claim or lien under this part shall be enforceable unless the person, firm, hospital authority, or corporation operating a hospital, nursing home, physician practice, chiropractic practice, or traumatic burn care medical practice filing such claim or lien first submitted a claim to each health insurer of the injured person, if such injured person has health insurance coverage, and had such claim rejected.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 105, § 2; Ga. L. 1978, p. 1371, § 1; Ga. L. 2002, p. 1141, § 2; Ga. L. 2002, p. 1429, § 2; Ga. L. 2003, p. 140, § 44; Ga. L. 2004, p. 394, § 2; Ga. L. 2006, p. 334, § 2/SB 306; Ga. L. 2023, p. 399, § 1/SB 168, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, inserted "chiropractic practice," in the beginning of subsection (a) and in four places in paragraph (a)(2); inserted "chiropractic practice" in two places in subparagraph (a)(2)(B); and added subsection (c).

44-14-472. Duties of clerk; lien book; fee.

The clerk of the superior court shall endorse the date and hour of filing on the statement filed pursuant to Code Section 44-14-471; and, at the expense of the county, the clerk shall provide a lien book with a proper index in which the clerk shall enter the date and hour of the filing; the names and addresses of the hospital, nursing home, physician practice, chiropractic practice, or provider of traumatic burn care medical practice, the operators thereof, and the patient; and the amount claimed. The information shall be recorded in the name of the patient. The clerk shall receive a fee as required by subparagraph (f)(1)(A) of Code Section 15-6-77 as his or her fee for such filing.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 105, § 3; Ga. L. 1981, p. 1396, § 18; Ga. L. 1992, p. 6, § 44; Ga. L. 2002, p. 1141, § 3; Ga. L. 2002, p. 1429, § 3; Ga. L. 2003, p. 140, § 44; Ga. L. 2004, p. 394, § 3; Ga. L. 2006, p. 334, § 3/SB 306; Ga. L. 2023, p. 399, § 1/SB 168, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, inserted "chiropractic practice," following "physician practice," in the first sentence.

44-14-473. Effect of covenant not to bring an action; action to enforce lien; limitation; affidavit of payment.

(a) No release of the cause or causes of action or of any judgment thereon or any covenant not to bring an action thereon shall be valid or effectual against the lien created by Code Section 44-14-470 unless the holder thereof shall join therein or execute a release of the lien; and the claimant or assignee of the lien may enforce the lien by an action against the person, firm, or corporation liable for the damages or such person, firm, or corporation's insurer. If the claimant prevails in the action, the court may allow reasonable attorney's fees. The action shall be commenced against the person liable for the damages or such person's insurer within one year after the date the liability is finally determined by a settlement, by a release, by a covenant not to bring an action, or by the judgment of a court of competent jurisdiction.

(b) No release or covenant not to bring an action which is made before or after the patient was discharged from the hospital, nursing home, chiropractic practice, or provider of traumatic burn care medical practice or, with respect to a physician practice, which is made after the patient first sought treatment from the physician practice or chiropractic practice for the injuries shall be effective against the lien perfected in accordance with Code Section 44-4-471, if such lien is perfected prior to the date of the release, covenant not to bring an action, or settlement unless consented to by the lien claimant; provided, however, that any person, firm, or corporation which consummates a settlement, release, or covenant not to bring an action with the person to whom hospital, nursing home, physician practice, chiropractic practice, or traumatic burn care medical practice care, treatment, or services were furnished and which first procures from the injured party an affidavit as prescribed in subsection (c) of this Code section shall not be bound or otherwise affected by the lien except as provided in subsection (c) of this Code section, regardless of when the settlement, release, or covenant not to bring an action was consummated.

(c) The affidavit shall affirm:

(1) That all hospital, nursing home, physician practice, chiropractic practice, or provider of traumatic burn care medical practice bills incurred for treatment for the injuries for which a settlement is made have been fully paid; and

(2) The county of residence of such affiant, if a resident of this state;

provided, however, that the person taking the affidavit shall not be protected thereby where the affidavit alleges the county of the affiant's residence and the lien of the claimant is at such time on file in the office of the clerk of the superior court of the county and is recorded in the name of the patient as it appears in the affidavit.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 105, § 4; Ga. L. 1982, p. 3, § 44; Ga. L. 2002, p. 1141, § 4; Ga. L. 2002, p. 1429, § 4; Ga. L. 2004, p. 394, § 4; Ga. L. 2006, p. 334, § 4/SB 306; Ga. L. 2021, p. 922, § 44/HB 497; Ga. L. 2023, p. 399, § 1/SB 168, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (b), inserted "chiropractic practice," following "nursing home," and following "physician practice," and inserted "or chiropractic practice" following "physician practice" and, in subsection (c), inserted "chiropractic practice," following "physician practice," in paragraph (c)(1).

44-14-474. Exemptions from part.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 105, § 6; Ga. L. 1977, p. 277, § 1; Ga. L. 1991, p. 1608, § 2.3; reenacted without change, Ga. L. 2023, p. 399, § 1/SB 168, effective July 1, 2023.

Editor's notes.

Ga. L. 2023, p. 399, § 1/SB 168, reenacted this Code section without change.

44-14-475. Effect of part on settlement before entry into hospital, nursing home, or traumatic burn care medical facility.

No settlement or release entered into or executed prior to the entry of the injured party into the hospital, nursing home, or facility which provides traumatic burn care medical practice or prior to the time the patient first sought treatment from the physician practice or chiropractic practice for the injuries shall be affected by or subject to the terms of this part.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 105, § 7; Ga. L. 2002, p. 1141, § 5; Ga. L. 2004, p. 394, § 5; Ga. L. 2006, p. 334, § 5/SB 306; Ga. L. 2023, p. 399, § 1/SB 168, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, inserted "or chiropractic practice" following "physician practice".

44-14-476. No independent right of action.

This part shall not be construed to give any hospital, nursing home, physician practice, chiropractic practice, or provider of traumatic burn care medical practice referred to in this part an independent right of action to determine liability for injuries sustained by a person or firm.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 105, § 8; Ga. L. 2002, p. 1141, § 6; Ga. L. 2004, p. 394, § 6; Ga. L. 2023, p. 399, § 1/SB 168, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, inserted "chiropractic practice," following "physician practice,".

44-14-477. False swearing in affidavits under Code Section 44-14-473.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 105, § 5; reenacted without change, Ga. L. 2023, p. 399, § 1/SB 168, effective July 1, 2023.

Editor's notes.
Ga. L. 2023, p. 399, § 1/SB 168, reenacted this Code section without change.

Part 14

Bankruptcy Proceedings

44-14-590. Recording of bankruptcy petition, decree, or order; fees.

Law reviews.
For article, "Portraits of Bankruptcy Filers," see 56 Ga. L. Rev. 573 (2022).

ARTICLE 9

LIS PENDENS

44-14-610. Necessity of recordation for operation of lis pendens as to real property.

(a) No action, whether seeking legal or equitable relief or both, as to real property in this state shall operate as a lis pendens as to any such real property involved therein until there shall have been filed in the office of the clerk of the superior court of the county where the real property is located a notice of the institution of the action containing the names of the parties, the time of the institution of the action, the name of the court in which it is pending, a description of the real property involved, and a statement of the relief sought regarding the property, provided that:

(1) The real property is involved in a civil action into which realty is actually and directly brought by the pleadings in a pending suit and in which relief is sought regarding that particular property; and

(2) Any person with a claim of a legal or equitable interest in such real property shall have the right to intervene and file a motion to object in the civil action to the filing of the lis pendens, and, if so filed, the court shall review and make a determination within 60 days of such filing, unless otherwise extended by the court, as to whether:

(A) The filing of the lis pendens meets the requirements of this paragraph. If the court finds that such filing does not meet the requirements of this paragraph, the court shall enter an order canceling the lis pendens; and

(B) The filer of the lis pendens shall be required to pay or post into the court's registry a bond in an amount to be determined by the court.

(b) During the pendency of the civil action, the court may enter an order canceling the lis pendens, on the court's own motion or on the motion of a party to the underlying action, upon a showing that the real property is no longer involved in the pending action.

History.

Repealed and reenacted by Ga. L. 2023, p. 605, § 1-1/HB 444, effective July 1, 2023; Ga. L. 1939, p. 345, § 1; Ga. L. 1982, p. 3, § 44.

Effective date.

This Code section became effective July 1, 2023. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2023, p. 605, § 1-1/HB 444, repealed former Code Section 44-14-610, effective July 1, 2023. The former Code section related to necessity of recordation for operation of lis pendens as to real property, and was based on Ga. L. 1939, p. 345, § 1; Ga. L. 1982, p. 3, § 44.

Ga. L. 2023, p. 605, § 3-1/HB 444, not

codified by the General Assembly, provides: “This Act shall apply to any lis pendens filed in the office of the clerk of the superior court on or after July 1, 2023.”

44-14-611. Lis pendens docket; indexing; recording fees.

The clerks of the superior courts of this state shall record all notices of lis pendens on real property filed with them and shall be allowed a fee, as required by subparagraph (f)(1)(A) of Code Section 15-6-77, for recording the lis pendens in the lis pendens docket.

History.

Ga. L. 1939, p. 345, § 2; Ga. L. 1981, p. 1396, § 21; Ga. L. 1992, p. 6, § 44; Ga. L. 2023, p. 605, § 1-2/HB 444, effective July 1, 2023.

Effective date.

This Code section became effective July 1, 2023. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2023, p. 605, § 1-1/HB 444, repealed former Code Section 44-14-611, effective July 1, 2023. The former Code section related to lis pendens docket; indexing; and recording fees, and was based on Ga. L. 1939, p. 345, § 2; Ga. L. 1981, p. 1396, § 21; Ga. L. 1992, p. 6, § 44.

Ga. L. 2023, p. 605, § 3-1/HB 444, not codified by the General Assembly, provides: “This Act shall apply to any lis pendens filed in the office of the clerk of the superior court on or after July 1, 2023.”

44-14-612. Entry of dismissal, settlement, or final judgment.

Upon the dismissal of any action or cancellation pursuant to subsection (a) of Code Section 44-14-610 or when a settlement or final judgment is entered therein, or upon order of the court, the party initiating the filing of a lis pendens shall file a release of the lis pendens with the clerk of the superior court of each county where the lis pendens was recorded.

History.

Ga. L. 1939, p. 345, § 3; Ga. L. 2023, p. 605, § 1-3/HB 444, effective July 1, 2023.

Effective date.

This Code section became effective July 1, 2023. See Editor’s notes for applicability.

Editor’s notes.

Ga. L. 2023, p. 605, § 1-1/HB 444, repealed former Code Section 44-14-612, effective July 1, 2023. The former Code section related to entry of dismissal, settlement, or final judgment, and was based on Ga. L. 1939, p. 345, § 3.

Ga. L. 2023, p. 605, § 3-1/HB 444, not codified by the General Assembly, provides: “This Act shall apply to any lis pendens filed in the office of the clerk of the superior court on or after July 1, 2023.”

CHAPTER 15

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS

44-15-3. Considerations and standard of conduct for institutions receiving gifts.

(a) Subject to the intent of a donor expressed in a gift instrument or any express written agreement between the donor and the institution, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest such fund in good faith and with the care, skill, and caution an ordinarily prudent person in a like position would exercise under similar circumstances, considering the purposes, terms, distribution requirements, and other circumstances of the institutional fund.

(c) In managing and investing an institutional fund, an institution:

(1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution and the institutional fund, and the skills reasonably available to the institution; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of such fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules shall apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of such fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and such fund to make distributions and to preserve capital;

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution or to the donor; and

(I) Any special circumstances;

(2) Management and investment decisions about an individual asset shall not be made in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the institutional fund and to the institution;

(3) An institution may invest in any kind of property or type of investment consistent with the provisions of this Code section;

(4) An institution shall reasonably manage the risk of concentrated holdings of assets by diversifying the investments of the institutional fund or by using some other appropriate mechanism, except as provided in this paragraph, as follows:

(A) The duty imposed by this paragraph shall not apply if the institution reasonably determines that, because of special circumstances, or because of the specific purposes, terms, distribution requirements, and other circumstances of the institutional fund, the purposes of such fund are better served without complying with the duty. For purposes of this paragraph, special circumstances shall include an asset's special relationship or special value, if any, to the charitable purposes of the institution or to the donor;

(B) No person responsible for managing and investing an institutional fund shall be liable for failing to comply with the duty imposed by this paragraph to the extent that the terms of the gift instrument or express written agreement between the donor and the institution limits or waives the duty; and

(C) The governing board of an institution may retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to the rebalancing of a portfolio, in order

to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution or the institutional fund as necessary to meet other circumstances of the institution or the institutional fund and the requirements of this chapter;

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that such person has special skills or expertise, has a duty to use those skills or expertise in managing and investing institutional funds; and

(7) In investing and managing institutional funds, an institution may consider the personal values of the donor, including, but not limited to, a desire to engage in investing strategies that align with social, political, religious, philosophical, environmental, governance, or other values or beliefs of the donor; provided, however, that nothing in this paragraph shall allow an institutional fund to be used for a purpose other than a charitable purpose of the institution.

History.

Code 1981, § 44-15-3, enacted by Ga. L. 2008, p. 149, § 1/HB 972; Ga. L. 2025, p. 806, § 28/HB 327, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, inserted ", skill, and caution" in subsection (b); inserted "shall" in subsection (e); deleted "and" at the end of subparagraph (e)(1)(G) and at the end of paragraph (e)(5); inserted "and" at the end of subparagraph (e)(1)(H); added subparagraph (e)(1)(I) and paragraph (e)(7); inserted "; and" at the end of paragraph (e)(6); and inserted "the provisions of" in paragraph (e)(3).

44-15-4. Management of institutional funds for endowment.

(a) Subject to the intent of a donor expressed in the gift instrument or to any express written agreement between a donor and an institution, an institution may appropriate for expenditure or accumulate assets of an endowment fund as the institution determines shall be prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund shall be donor restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate assets, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; shall exercise reasonable care, skill, and caution; and shall consider, if relevant, the following factors:

(1) The duration and preservation of the endowment fund;

(2) The purposes of the institution and the endowment fund;

(3) General economic conditions;

(4) The possible effect of inflation or deflation;

(5) The expected total return from income and the appreciation of investments;

(6) Other resources of the institution;

(7) The investment policy of the institution; and

(8) Any special circumstances.

(b) To limit the authority to appropriate assets for expenditure or accumulation under subsection (a) of this Code section, a gift instrument shall specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only income, interest, dividends, or rents, issues, or profits, or to preserve the principal intact, or other words of similar meaning shall:

(1) Create an endowment fund of permanent duration, unless otherwise provided by the gift instrument for limiting the duration of such fund; and

(2) Not otherwise limit the authority to appropriate assets for expenditure or accumulation under subsection (a) of this Code section.

History.

Code 1981, § 44-15-4, enacted by Ga. L. 2008, p. 149, § 1/HB 972; Ga. L. 2025, p. 806, § 29/HB 327, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, in subsection (a), deleted a comma following “circumstances” and inserted “; shall exercise reasonable care, skill, and caution;” in the last sentence; deleted “and” at the end of paragraph (a)(6); inserted “; and” at the end of paragraph (a)(7); and added paragraph (a)(8).

44-15-6. Modification of restrictions.

(a) If the donor or a donor’s designee consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow an institutional fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of such fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of such fund. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of such fund or the restriction on the use of such fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(1) The institutional fund subject to the restriction has a total value of less than $100,000.00;

(2) More than 20 years have elapsed since the institutional fund was established; and

(3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(e) For purposes of subsection (a) of this Code section, a donor's designee includes, but is not limited to, an agent under a power of attorney to the extent authorized by the power of attorney and the duly constituted conservator of a donor who is a protected person, as such term is defined in Code Section 29-11-2, to the extent such conservator is so empowered pursuant to Code Section 29-5-23 or other applicable law.

(f) For purposes of subsection (b) of this Code section, if the gift instrument establishes an express trust, as such term is defined in Code Section 53-12-2, a court shall include a probate court or superior court as provided in Code Section 15-9-127 or 53-12-6.

History.

Code 1981, § 44-15-6, enacted by Ga. L. 2008, p. 149, § 1/HB 972; Ga. L. 2025, p. 806, § 30/HB 327, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, added subsections (e) and (f).

CHAPTER 17

TRANSFER-ON-DEATH DEEDS

Effective date.

This chapter became effective July 1, 2024.

44-17-1. Definitions.

As used in this chapter, the term:

(1) "Interest in real estate" means any estate or interest in, over or under land, including surface, minerals, structures, fixtures, and easements.

(2) "Joint owner" means a person that owns an interest in real estate as a joint tenant with right of survivorship.

History.

Code 1981, § 44-17-1, enacted by Ga. L. 2024, p. 446, § 3/SB 420, effective July 1, 2024.

Law reviews.

For article on the 2024 enactment of this Code section, see 41 Ga. L. Rev. 229 (2024).

44-17-2. Requirements.

(a) An interest in real estate may be titled in a transfer-on-death form by recording a deed, signed by the record owner of the interest, designating a grantee beneficiary or beneficiaries of the interest. Such deed shall transfer ownership of such interest upon the death of the record owner. A transfer-on-death deed need not be supported by consideration.

(b) The signature, consent, or agreement of or notice to a grantee beneficiary or beneficiaries of a transfer-on-death deed shall not be required for any purpose during the lifetime of the record owner.

(c) To accept real estate pursuant to a transfer-on-death deed, a designated grantee beneficiary shall execute an affidavit affirming:

(1) Verification of the record owner's death;

(2) Whether the record owner and the designated grantee beneficiary were married at the time of the record owner's death; and

(3) A legal description of the real estate.

(d) The designated grantee beneficiary shall attach a copy of the record owner's death certificate to the affidavit provided for in subsection (c) of this Code section. For a record owner's death occurring on or after July 1, 2024, the designated grantee beneficiary shall record such affidavit and related documents with the office of the clerk of superior court of the county where the real estate is located within nine months of the record owner's death or the interest in the property shall revert to the deceased record owner's estate; provided, however, that for a record owner's death occurring before July 1, 2024, such recording of the affidavit provided for in subsection (c) of this Code section and related documents by the designated grantee beneficiary or beneficiaries shall not be subject to the nine-month time limitation.

History.

Code 1981, § 44-17-2, enacted by Ga. L. 2024, p. 446, § 3/SB 420, effective July 1, 2024.

Law reviews.

For article on the 2024 enactment of this Code section, see 41 Ga. L. Rev. 229 (2024).

44-17-3. Form.

An interest in real estate may be titled in a transfer-on-death form by executing, attesting, and recording in the office of the clerk of superior court of the county where the real estate is located, prior to the death of the record owner, a deed in substantially the following form:

"AFTER RECORDING, PLEASE RETURN TO:

____
(Name)

____
____
(Address)

STATE OF ____________________
COUNTY OF ____________________

TRANSFER-ON-DEATH DEED UNDER O.C.G.A. § 44-17-3

THIS INDENTURE is made the ____________________ day of ____________________, 20____, between ____________________ (name of record owner), a resident of ____________________ (hereinafter called 'Grantor'), and ____________________, a resident of ____________________ (hereinafter called 'Grantee').

W I T N E S S E T H:

Grantor, being of competent mind and having the legal capacity to execute this document, as record owner, does hereby grant, bargain, sell, transfer, alien, convey, and confirm on death to Grantee, as beneficiary, the following described interest in real estate:

(insert description of the interest in real estate).

TO HAVE AND TO HOLD the said described property, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE, but subject to the following limitations: THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE GRANTOR. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS GRANTOR FOR THIS INTEREST IN REAL ESTATE. THE GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED AT ANY TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED THAT THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY OR ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

Grantor will warrant and forever defend the right and title to the said described property unto the said Grantee against the claims of all persons claiming by, under or through Grantor, subject to the restrictions and limitations set forth in this instrument.

IN WITNESS WHEREOF, the Grantor(s) declare(s) that this deed is a revocable transfer-on-death deed of the real property described herein and has(ve) signed and sealed this deed, the day and year above written.

______________________________________ (SEAL)
(Signature of Grantor)

______________________________________ (SEAL)
(Signature of Grantor)

Signed, sealed, declared and delivered in the presence of:

____
Unofficial Witness

Notary Public

My Commission Expires:

(SEAL)”

History.
Code 1981, § 44-17-3, enacted by Ga. L. 2024, p. 446, § 3/SB 420, effective July 1, 2024.

Law reviews.
For article on the 2024 enactment of this Code section, see 41 Ga. L. Rev. 229 (2024).

44-17-4. Revocation or amendment.

(a) A record owner of an interest in real estate who has titled such interest in a transfer-on-death deed form and designated a beneficiary or beneficiaries in the manner provided in this chapter may revoke such designation of the grantee beneficiary or beneficiaries at any time prior to the death of such record owner, by executing, acknowledging, and recording in the office of the clerk of superior court of the county where the real estate is located an instrument revoking such designation. The instrument of revocation shall refer to the initial transfer-on-death deed, shall be signed by the record owner or such record owner’s duly authorized attorney-in-fact, and such signature shall be attested by an officer as provided in Code Section 44-2-15 and attested by two other witnesses. Such revocation may be included in another deed or other instrument of conveyance that is recorded. The signature, consent, or agreement of or notice to the designated grantee beneficiary or beneficiaries to the revocation shall not be required.

(b) A record owner of an interest in real estate who has titled such interest in a transfer-on-death deed form and designated a beneficiary or beneficiaries in accordance with this chapter may change such designation of the grantee beneficiary or beneficiaries at any time prior to the death of such record owner, by executing, acknowledging, and recording in the office of the clerk of superior court of the county where the real estate is located a subsequent transfer-on-death deed in accordance with this chapter. The signature, consent, or agreement of or notice to the designated grantee beneficiary or beneficiaries shall not be required. A subsequent transfer-on-death beneficiary designation revokes all prior designations of grantee beneficiary or beneficiaries by the record owner for the interest in real estate.

(c) A transfer-on-death deed executed, acknowledged, and recorded in accordance with this chapter may not be revoked by the provisions of a will.

History.

Code 1981, § 44-17-4, enacted by Ga. L. 2024, p. 446, § 3/SB 420, effective July 1, 2024.

Law reviews.

For article on the 2024 enactment of this Code section, see 41 Ga. L. Rev. 229 (2024).

44-17-5. Grantee beneficiary rights; prior death of designated grantee beneficiary.

(a) A grantee beneficiary or the beneficiaries of a transfer-on-death deed shall take the interest in real estate of the record owner at the death of such record owner, free and clear of any claims or interest as to a person who became the spouse of the record owner subsequent to the execution of the transfer-on-death deed, subject to all recorded conveyances, assignments, contracts, mortgages, liens, and security pledges made by the record owner or to which the record owner was subject during the lifetime of such record owner including, but not limited to, any recorded executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust or lien, and to any interest conveyed by the record owner that is less than all of the record owner's interest in the property; provided, however, that a nonconsensual lien against the grantee beneficiary or beneficiaries shall not attach to the property until the recording of the affidavit described in Code Section 44-17-2.

(b) If one or more of the designated grantee beneficiaries dies prior to the death of the record owner, the transfer to those beneficiaries who predecease the record owner shall lapse and shall be deemed revoked. In the event the grantee beneficiary or beneficiaries are designated in the deed to be joint tenants with right of survivorship, the death of one or more of the designated grantee beneficiaries prior to the death of the record owner shall not invalidate an otherwise validly created joint tenancy estate as to those designated grantee beneficiaries who are living at the time of the death of the record owner.

History.

Code 1981, § 44-17-5, enacted by Ga. L. 2024, p. 446, § 3/SB 420, effective July 1, 2024.

Law reviews.

For article on the 2024 enactment of this Code section, see 41 Ga. L. Rev. 229 (2024).

44-17-6. Record joint owner.

A record joint owner of an interest in real estate may use the provisions of this chapter to title the interest in a transfer-on-death form; provided, however, that title to the interest shall vest in the designated grantee beneficiary or beneficiaries only if the record joint owner is the last to die of all of the record joint owners of the interest. A deed in a transfer-on-death form shall not sever a joint tenancy.

History.
Code 1981, § 44-17-6, enacted by Ga. L. 2024, p. 446, § 3/SB 420, effective July 1, 2024.

Law reviews.
For article on the 2024 enactment of this Code section, see 41 Ga. L. Rev. 229 (2024).

44-17-7. Limitations.

A record owner who executes a transfer-on-death deed shall remain the legal and equitable owner until the death of such record owner, and during his or her lifetime shall be considered an absolute owner with regard to creditors and purchasers.

History.
Code 1981, § 44-17-7, enacted by Ga. L. 2024, p. 446, § 3/SB 420, effective July 1, 2024.

Law reviews.
For article on the 2024 enactment of this Code section, see 41 Ga. L. Rev. 229 (2024).