

Real Property Law Section NEWSLETTER

State Bar of Georgia

A Publication for Real Property Lawyers

Winter 2004

COMMENTS FROM THE CHAIR

By: Rachel Iverson, Section Chair
Morris, Manning & Martin, LLP

I am surprised by the number of calls and letters I receive as Chair of this law section. It is encouraging to talk to so many of our members who are concerned about different issues affecting our practice. At each Executive Committee meeting, I share with our committee members the feedback I have received from the membership and when appropriate, we take action.

Those discussions have caused the Committee to consider the scope and purpose of the Real Property Law Section. We are committed to providing pertinent information to the membership. An example of that would be informing the membership of the recent Supreme Court decision upholding the opinion by the Standing Committee of the Unlicensed Practice of Law finding that real estate closings were the practice of law and could only be conducted by a licensed attorney at law (www.state.ga.us/courts/supreme/index.html). We also provide information to attorneys regarding practices that are clearly unauthorized. For instance, the Executive Committee determined that numerous attorneys were unaware that witness only closings by attorneys should not take place in the State of Georgia and further that should a lawyer participate, he/she would have liability regardless of any representation made by the Lender. We were further aware that some out of state Lenders were targeting members of our profession who were unaware of this to conduct witness only closings. In our Fall 2003 newsletter we included an important notice from the Executive Committee about witness only closings. This notice received so much positive response and discussion from our Bar that we elected to publish the piece again in this newsletter. One lawyer called to thank our section for publishing the notice. Although he did not personally see the newsletter, a colleague read and advised him of the notice. Unfortunately, many lawyers who are targeted to conduct witness only closings are not Real Estate Lawyers. If you know someone who may be a target, I would ask that you share the notice.

The Real Property Section, the largest section of the State Bar, has several active committees. A description of some of the committees follows. The legislative committee monitors legislation affecting real property law, serves as a resource to legislators, and introduces legislation to make substantive improvements. The Pro-Bono committee assesses pro-bono projects applicable to our practice for our section to participate in, coordinates scholarships with Georgia law schools and orchestrates the nomination of the Pindar Award. The Section has several CLE committees that put on CLE seminars for its members

including the Fall Title Standards Seminar Project, Fall Commercial Seminar Project, Spring Practice and Procedure Seminar, The Real Property Institute as well as select seminars such as the Predatory Lending Seminar held in August 2003. We have an extremely active Unauthorized Practice of Law/Disciplinary/Professionalism Committee. This year the Long Range Planning Committee has submitted a proposed long-range plan for the Section that is being considered by the Executive Committee. The title standards are constantly monitored and being revised on a regular basis to address changes that are appropriate by the Title Standards Committee. The newsletter committee produces several newsletters each year and maintains our website to keep our members informed.

I started the column by giving a few examples of what the Real
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UPL PUBLIC HEARING

On March 19th, the UPL Standing Committee will conduct a public hearing as to the following question:

Is the preparation or filing of a lien considered the unlicensed practice of law if it is done by someone other than the lienholder or a licensed Georgia attorney?

The public hearing will be held at 10:00 a.m., Friday, March 19th 2004, at the Holiday Inn, on highway #75, near Riverside Drive in Macon, Georgia.

For those attorneys in middle and south Georgia it is incumbent on you to attend the hearing if at all possible. We need all the representation we can get.

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Property Law Section does do so that I can come to the point of this column: What the Real Property Law Section does NOT do. The Executive Committee believes that we do not have the authority nor is it within the scope and purpose of the Real Property Law Section to render opinions or give legal advice on any particular matter. As a result of the recent Supreme Court decision (referenced herein), we have seen several issues arise and undoubtedly there will be many more. This Section cannot opine about those issues. In response to the plethora of inquiries, the Executive Committee has determined we must be in a position to state our scope and purpose and more particularly state what it is not. One of the members, Bruce Cohen, has assisted in formulating our position statement and the final product is as follows:

The Real Property Section (RPLS) of the State Bar does not have the authority nor is it within the scope and purpose of the RPLS to render opinions or give legal advice on any particular matter or client issue. The State Bar of Georgia, through its Board of Governors can address such matters, to the extent that they are within the State Bar's scope and purpose. This function lies outside the scope of the Sections of the State Bar. The Bar provides a mechanism for Formal Advisory Opinions and the Supreme Court has promulgated Unlicensed Practice of Law regulations for appropriate situations.

The RPLS may collect information and inquiries from our members and others and forward them to the State Bar. The section can direct inquiries to look at the Code, Bar regulations, Supreme Court rulings etc., but we cannot give the references as we may take on liability if it is wrong or incomplete. We can educate and inform the State Bar as to facts, custom, process and procedure. We can advise and inform our membership of laws, statutes and regulations for them to become aware of. We can request interpretations from the State Bar or the Unauthorized Practice of Law Standing Committee and pass the decision on to our membership.

Notwithstanding the foregoing, nothing shall prohibit an attorney who is a member of the Section or on the Executive Committee of the Section from expressing his or her opinion.

The Executive Committee is committed to the Section serving as a valuable resource to each of its members. I hope each of you find value in the Section and its resources. Input from our members is welcomed and encouraged.

TRANSFER TAX FORM PROCEDURES

Tim Bailey

Moore, Ingram, Johnson, & Steele

I have great news for those of you who are frustrated with the antiquated transfer tax filing procedure: The Georgia Superior Court Clerk's Cooperative Authority (the "Authority") and the Department of Revenue ("DOR") recently met to discuss this very issue. These discussions led to a proposal for a new, stream-lined filing procedure.

Under the current system, the closing attorney and his or her staff must manually complete the small, green, multi-part Form PT61. This form is then filed with the Clerk along with the deed. The Clerk then manually distributes the appropriate parts of the form to the Tax Commissioner, the Assessors, and the Department of Audits. The Department of Audits enters the information from the Form PT61 into a data base which then

serves as a source of data for users. This current procedure of typing a multi-part carbon half-sheet form is antiquated and therefore inefficient. A new on-line procedure would solve many of the problems of the current form.

Under the proposed system, the filer would access the transfer tax form through the Authority's web-site. The filer would be prompted to enter requested information on successive screens for seller's information, buyer's information, property information and then the actual tax information. The information requested would be substantially similar to the information requested on the current Form PT61. The system would calculate the appropriate tax amount automatically, and would even prompt the user for the various exemptions, if applicable. After the data is entered and the tax is calculated, the user would electronically submit the form to the Authority and then print the form. Both the printed form and the electronic version submitted to the Authority would contain a reference number in the upper right hand corner. The printed transfer tax form would be submitted to the Clerk when the deed is filed for recording. The Clerk would enter the reference number, which would match the electronic form already in the data base and this would "close the loop". Subsequently, instead of the Clerk having to manually deliver copies of the form to the various departments, these departments would have direct, immediate on-line access to the database.

An obvious question is, "What happens if the form is never filed?" Once the form is submitted electronically, it would remain in the database at the Authority. After a certain amount of time (yet to be determined) if a printed form has not been filed, the system would purge the electronic form and its reference number. Therefore electronic forms would not remain in the database indefinitely. Additionally, if changes need to be made to a form before filing, the filer would simply create a second form and the first form would eventually be purged as described above.

A group of Clerks reviewed a prototype of this system and their reactions were positive. In addition, the Authority sought the participation and review of several members of the Real Property Law Section, who also approved of the on-line system. The DOR and the Authority met again at the end of December, 2003 and are ready to move forward to implement this new system. The intent is to have the on-line system running on May 1, 2004 and continue in a transition period until December 31, 2004. During this transition period, the Clerks would accept either the on-line procedure or the current manual Form PT61. Beginning January 1, 2005, only the on-line system would be used.

The Authority and the DOR are optimistic that this proposed system will alleviate the inefficiencies generated by the current procedure. As with any new system, there will be an adjustment period where unforeseen glitches will be addressed. However, the proposal appears to be a step in the right direction.

NOTICE

If you know someone who has not joined the Real Property Law Section, please encourage them to do so.

REPORTING A SUSPECTED UPL VIOLATION

In the aftermath of the recent Supreme Court UPL ruling concerning closings, numerous questions have been asked of the Real Property Law Section (RPLS) as to the procedure and process to report a suspected UPL violation. In the furtherance of protecting the public, if an attorney becomes aware of possible violation he/she can report it as follows:

- The State Bar Journal's Table of Contents, lists a UPL Hotline phone number 404.527.8743, along with other Bar phone numbers.
- The State Bar's Directory, on page A-9, lists the UPL Bar staff people, email addresses, and phone numbers. On page A-47, the Standing and District Committee members are listed.
- The State Bar's website <http://www.gabar.org/pdf/uplgrievacnceform.pdf> has information on UPL and the REQUIRED form to initiate an inquiry/complaint.

To help expedite the process, the 'complaint' should contain as much information, documentation, recitation of facts, contact information, etc. as possible. Once received, it is reviewed, and, if it meets the threshold test, it can be referred to the UPL investigator. Then it is sent to the District Committee for a decision. If its decision is to proceed to a lawsuit, then the file is referred to the Standing Committee. Thereafter, the State Bar can bring the suit at the local level.

In addition to actual cases, there is a procedure to request Advisory Opinions from the Standing Committee for other issues that do relate to an actual specific case or controversy

The process takes time as preliminary information has to be gathered, a determination on whether to proceed, notice given, hearings held (the Standing Committee meets approximately 4 times a year), a decision reached, the decision sent to the State Bar and the Supreme Court for further handling.

The Court may accept or reject accepting the matter for consideration. It can hold hearings, accept, reject, remand, or revise the Standing Committee's finding. Once the Court issues its Order, then the State Bar is authorized, as an arm of the Supreme Court, to enforce compliance thereof.

Note: the Committee members are from both the general public and Georgia attorneys. The Georgia Supreme Court appoints them. They render this public service with no compensation for their time or out of pocket expenses.

PLAN NOW FOR LEARNING, SUN AND FUN AT AMELIA ISLAND!

Mark your calendars for this year's Real Property Law Institute, which will be held Thursday, May 6th through Saturday, May 8th, 2004 at the Conference Center at Amelia Island Plantation. Satisfy a full year's worth of CLE requirements with our diverse program on current topics of interest to the residential and commercial real estate practitioner and enjoy camaraderie and fellowship with your fellow Bar members from around the State in the warm Florida sunshine.

In addition to our annual features such as the legislative and judicial updates, and ethics and professionalism presentations, this year's Institute will feature speakers on the recent unauthorized practice of law ruling by the Georgia Supreme Court, government leasing, "green" development, the Georgia Fair Lending Act, issues in CMBS transactions and dealing with receivers, just to name a few. Also plan to participate in the annual Raiford Memorial Golf Tournament on Thursday afternoon and the Tennis Tournament on Friday afternoon. As always, the title companies will be in attendance and hosting their respective bashes. Keep a lookout for ICLE's seminar mailing and reserve your room early.

UPCOMING 2004 CALENDAR DATES EXECUTIVE COMMITTEE, REAL PROPERTY LAW SECTION STATE BAR OF GEORGIA

— 2004 —

MARCH 16th, 2004
EXECUTIVE COMMITTEE MEETING
AT ATLANTA FINANCIAL
CENTER #1600
4:00 – 6:00 PM

APRIL 16th, 2004
FORECLOSURE PRACTICE

APRIL 20th, 2004
EXECUTIVE COMMITTEE MEETING
AT ATLANTA FINANCIAL CENTER #1600
4:00 – 6:00 PM

MAY 6th, 7th, & 8th, 2004
REAL PROPERTY LAW INSTITUTE
AMELIA ISLAND PLANTATION
Chair: Doug Selph

MAY 8th, 2004
EXECUTIVE COMMITTEE MEETING
1:00 – 2:00 PM (Amelia Island)

PRO BONO OPPORTUNITIES

The Legal Aid Society, Georgia Legal Services Program and the Pro Bono Project of the State Bar of Georgia have launched a new web site at GeorgiaAdvocates.org. As the GeorgiaAdvocates.org website indicates, "throughout Georgia there are a number of pro bono and 'low bono' programs that help low-income people secure legal help." These organizations have developed the Georgia Online Justice Community, to connect pro bono attorneys with, inter alia, a listing of Volunteer Pro Bono Opportunities Sorted by Topic and Geographic Area. If you are interested, go to the GeorgiaAdvocates.org web site and click on the "Georgia Online Justice Community" link to sign up to become a member. Then click on "Join This Practice Area" and fill out the form online. Once your application has been approved, you will be able to click on "New Volunteer Opportunities" to find pro bono cases near you.

WHAT IS UNMARKETABILITY OF TITLE?

By
Leon Adams
Alston & Bird, LLP

Somewhat like obscenity, “unmarketability” is difficult to define, but we real estate practitioners know it when we see it, or claim that we do. In the standard ALTA title insurance policy “unmarketability of the title” is defined as an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title. You may, with some justification, feel that this definition is not completely helpful. In defining “unmarketability”, the definition assumes that we know what “marketable” means.

One significant thing to note about the title policy definition of unmarketability is that matters that are excluded from coverage, or listed as title exceptions, cannot be the basis for a marketability claim under the policy. The standard title policy has some very significant pre-printed exclusions for matters of governmental regulation and police powers. Without the added protection of special endorsements, this would exclude regulations for zoning, subdivision, health, etc. from coverage under the policy. The rationale is that these are not matters affecting the title to (the insured) property, specifically, but rather are matters of general application. Not only are these matters expressly carved out of the contractual coverage under the policy, but also they are generally considered not to be matters of title and therefore not matters that can give rise to an unmarketability of title claim. To the extent that these excluded matters, as opposed to specific title exceptions, are not matters of title, they would probably not give rise to a claim under a sales contract either, unless in breach of other representations of the seller. For this reason, the consideration of the term “unmarketability of title” should be much the same within or without the title insurance context. Many of the cases considered for this article involved title insurance.

“Good title” in a contract generally means a marketable title, although there may be a distinction in that a title can be “good” legally, but dependent upon facts that do not appear of record, meaning that it is not marketable.¹ This distinction could be important for a prescriptive title, which might be legally good, but unmarketable. “It is not the fact that the grantor has good title, but the appearance of that fact of record, that renders a title merchantable.”² Aside from this distinction, the terms “good” and “marketable” seem to be used interchangeably.

“Marketable title” is commonly defined as one that is free from reasonable doubt both as to fact and law, and one that can again be freely sold to a reasonable purchaser or mortgaged to a person of reasonable prudence.³ The key is marketability of title, not the economic marketability of the property.⁴ Defects that merely diminish the value of the property, as opposed to those that preclude a clear title to the property, will not render the title unmarketable.⁵ Matters that do not relate to title cannot impair marketability of title. The title defect must be one of substance and one that affects the value of the title, not the value of the land.⁶ The title to the land may be perfect, but the land valueless; in other words, the title is marketable but the land is not.

Defects that appear remotely and several links back in the chain of title may be given lesser importance in the determination of marketability, based on many years of adverse possession.⁷ In determining marketability, reference should be made to the State Bar of Georgia Title Standards, which is a compilation of practices of examining and closing attorneys in regard to certain recurring title issues. Familiarity with the Title Standards, and compliance by title examiners and closing attorneys, may alleviate concerns about the marketability of particular titles.

The fact that one or more title companies refuse to insure the title does not necessarily make it unmarketable. The fact that land is subject to restrictions or to the usual utility easements probably does not impair marketability unless they might deter future purchasers or lenders.⁸ Monetary encumbrances that can be cleared from the sales proceeds will not be deemed to render the title unmarketable.⁹ Zoning violations are not impairments of marketability of title. The location of the property within a flood plain does not render title unmarketable¹⁰; furthermore, this is not a matter of title and thus would not be a title defect within the meaning of a title insurance policy, any more than poor soil or contamination, even though it may affect the market value of the land.

There is an interesting Georgia case wherein the Court of Appeals held that covenants preventing property from being used for religious purposes did not render the title unmarketable, because it would not deter a reasonable person from buying the property or lending money against it.¹¹ The remarkable thing is that the purchaser intended to use the lot for a church, and there was express language to this effect in the contract. The court acknowledged that courts of other states had reached conclusions to the contrary.

Other examples of matters that have been held not to affect marketability of title are these¹²: lack of a legally effective subdivision; defects in surveying (Georgia case where the parties relied upon an older survey for closing and it turned out the

boundary lines were shorter than represented by the old survey, but the purchaser got title to the land he saw and bargained for)¹³; existence of a special taxing district; where a permit from the state was required by statute to build on former railroad right-of-way (also held not to be a defect, lien or encumbrance on title within the meaning of the title policy); change in grade of street abutting the property; notice of non-compliance with health regulations due to sewer discharges on the property; and the existence of a city ordinance prohibiting construction of the intended apartment project (excluded from policy coverage as a matter of governmental regulation). It should be noted that most of the foregoing matters probably resulted in a decrease in the value of the land.

It is obvious from the foregoing that a title defect does not necessarily render the title unmarketable. "Defect" within the meaning of a title policy is a broader term than "marketability". Aside from the marketability provisions, does the defect nevertheless entitle the insured to damages under the title policy? Possibly. If the defect is a covered item, and not excluded or excepted to, recovery of damages depends upon whether the insured has suffered a "loss" within the meaning of the term in the title policy. What is a loss for an owner may not be a loss for a lender. For example, the loss of one acre would usually entitle the owner to recovery, but it may be that the lender still has adequate collateral left to secure its loan, and thus has not suffered a loss.

Here are some examples of situations where courts have found the title to be unmarketable: where title depends upon a judgment that is not binding on all interested parties¹⁴; where a "missing heir" holds an interest;¹⁵ where the Internal Revenue Service holds redemption rights¹⁶; bankruptcy of the seller prior to closing¹⁷; where the state held title to all lands beneath navigable waters up to the high water mark¹⁸; and where a seller insisted on including language in a deed making it "subject to any and all easements or claims of easements".¹⁹ In the latter case, this was not considered "good and marketable" title, as called for by the contract, although there may have been a different result had the language read "any and all recorded easements".

The concept of "marketability" comes up frequently in the situation where coverage is sought from a title insurer for an issue that has been "insured over" previously for the seller. Having insured a certain quality of title once, title companies are generally willing to insure it again for future purchasers or lenders, within certain limitations (for example, they may decline if the value of the land, and therefore the risk, has increased greatly). To do otherwise might result in a rejection of the title by the purchaser and a possible claim of unmarketability by the current insured.

What does "insurable" title mean, anyway? Technically, the title policy is insuring the marketability of title, but subject to the standard exclusions and the itemized exceptions specified in the policy. These exceptions, of course, could render the title unmarketable, although not under the definition used by the title policy. This is where real estate attorneys need to be vigilant, in order to protect their clients from closing on such a title without remedial action for the offensive exceptions.

¹ George A. Pindar & Daniel F. Hinkel, *Georgia Real Estate Law and Procedure*, Section 12-65 (5th ed. 1998).

² *Douglass v. Ransom*, 205 Wis. 439, 237 N.W. 260 (1931).

³ *Cowdery v. Greenlee*, 126 Ga. 786, 55 S.E. 918 (1906); *Atlanta Title & Trust Co. v. Erickson*, 67 Ga. App. 891, 21 S.E.2d 548 (1942).

⁴ *Chicago Title Ins. Co. v. Investguard, Ltd.*, 215 Ga. App. 121, 449 S.E.2d 681 (1994).

⁵ Joel E. Smith, J.D., Annotation, *Defects Affecting Marketability of Title Within Meaning of Title Insurance Policy*, 18 A.L.R. 4th 1311 (1982 & Supp. Aug 2003).

⁶ *Horne v. Rodgers*, 113 Ga. 224, 228, 38 S.E. 768 (1901).

⁷ Pindar, *supra* note 1, at Section 12-65.

⁸ George A. Pindar & Daniel F. Hinkel, *Georgia Real Estate Law and Procedure*, Section 18-16 (5th ed. 1998).

⁹ *Willingham Loan & Trust Co. v. Moore*, 160 Ga. 550, 128 S.E. 751 (1925).

¹⁰ *Chicago Title Ins. Co. v. Investguard, Ltd.*, 215 Ga. App. 121, 449 S.E.2d 681 (1994).

¹¹ *Swinks v. O'Hara*, 98 Ga. App. 542, 106 S.E.2d 186 (1958).

¹² Smith, *supra* note 5.

¹³ *Lynburn Enters. v. Lawyers Title Ins. Corp.*, 191 Ga. App. 710, 382 S.E.2d 599 (1989).

¹⁴ *Cowdery v. Greenlee*, 126 Ga. 786, 790, 55 S.E. 918 (1906) (citing *Swayne v. Lyon*, 67 Pa. 436 (1871)).

¹⁵ *Cowdery v. Greenlee*, 126 Ga. 786, 790, 55 S.E. 918 (1906) (citing *Vought v. Williams*, 120 N.Y. 253, 24 N.E. 195 (1890)).

¹⁶ *Lawyers Title Ins. Corp. v. Vella*, 570 So.2d 578 (Ala. 1990), *overruled on other grounds*, *State Farm Fire and Cas. Co. v. Owen*, 729 So.2d 834 (Ala. 1998).

¹⁷ *Crocker v. Tam*, 158 Ga. App. 481, 280 S.E.2d 894 (1981).

¹⁸ *Denson v. Stack*, 997 F.2d 1356 (11th Cir. 1993).

¹⁹ *Walker v. Bush*, 234 Ga. 366, 216 S.E.2d 285 (1975).

IMPORTANT NOTICE

TO: All Attorneys licensed to practice law in the state of Georgia.

FROM: The Executive Committee of the Real Property Law Section of the State Bar of Georgia.

ISSUE: “Witness-only” closings by attorneys should not take place in the State of Georgia!!

PREAMBLE: Attorneys all over the state of Georgia are being asked to participate in the process of having residential real estate loans, primarily refinances, closed through a procedure commonly called “witness-only closings” or “signature closings.” The attorneys are told that they do not have to have a background in real estate, will have “no liability” from the transaction and that their participation is allowed in this state. This is not a correct position on this very important matter.

WHAT IS A WITNESS-ONLY CLOSING?

The Supreme Court of Georgia has issued opinions that clearly dictate that the conveyancing of title to real estate, the rendering of opinions as to title and the preparing of documents for such purposes constitutes the practice of law and, as such, must be handled by attorneys. In the course of handling such a closing, the attorney is responsible for supervising all elements of the closing, from title exam and title clearance to recording of documents and disbursement of funds. In the process, all lender instructions, contract terms and collateral issues of insurance, termite letters, payoffs and title insurance must be dealt with in a professional and responsible manner. The actual execution of documents at the closing table is but one of many aspects of the attorney’s obligations.

However, in a “witness-only” closing, the only action asked of an attorney is to have the documents signed in the attorney’s presence – as a “witness.” For this he/she gets paid a nominal fee, ranging from \$50.00 to \$150.00. The source of the loan, whether it is a lender or title company or out-of-state entity, is preparing the documents, handling title issues, disbursing funds (including payoffs) and all other phases of a closing that the Georgia Supreme Court has stated should be done only by attorneys. To participate in the execution of documents at a witness-only closing could be construed as aiding non-attorneys in the unauthorized practice of law.

Also, regardless of what you might be told, you do have liability for your actions. If there are title problems, open (unpaid) liens, incorrect payoffs or any of many other post-closing issues, the attorney who signed the documents, as a witness or notary, will be expected to clear the problem. The attorney has obligations that can affect his E&O insurance coverage, create personal liability and possibly subject that attorney to State Bar sanctions.

CONCLUSION: No attorney licensed to practice law in the state of Georgia should participate in a “witness-only” closing.

REAL PROPERTY LAW SECTION SPONSORS THE RESIDENTIAL REAL ESTATE PRACTICE & PROCEDURE SEMINAR

*Edward P. Hudson
Hudson Law Offices, LLC
Columbus, Georgia*

The Real Property Law Section sponsored the annual Residential Real Estate Practice & Procedure seminar on Friday, February 6, 2004. The seminar was held live at the GPTV studios in Atlanta and was broadcast to twenty locations throughout the state. The seminar was rebroadcast on Thursday, February 12, 2004. As in previous years, the seminar was well-attended. Approximately 250 attorneys participated in the 6-hour seminar.

In the morning session, Lee Cohen spoke on the recent Georgia Supreme Court ruling regarding closings and other “Recent Developments Regarding the Unauthorized Practice of Law.” Jimmy Moore gave a presentation on the increasingly important topic of “Improving Your Practice Through the Use of Technology.” With the recent developments in bundled services, Therese Franzen’s discussion of “RESPA and Other Current Lender Issues” was very timely. Pam Nix gave some very helpful suggestions in her talk on “Current Trends in Title Insurance

Claims and How to Avoid Them.” Jed Beardsley presented a comprehensive presentation on the requirements for Section 1031 Exchanges in his talk, “Section 1031 Exchanges in Residential Real Estate.” Kellie Strange presented an overview of the 1099 requirements in her presentation on “The Fundamentals of Information Reporting in Residential Closings.”

The afternoon session began with Machel Redmond covering “Real Property Conveyances by Entities.” With the large number of title insurance policy forms in use today, Stephen Greenberg gave a very useful talk entitled “Overview of Title Insurance Policies Available in Georgia Closings.” The growing number of ethical dilemmas facing closing attorneys made Vanessa Goggans’ presentation on “Ethical Issues Facing Residential Real Estate Closing Attorneys” very helpful. Mike Holiman covered use of the Clerks’ website in his talk “Update from GSCCCA.” Patrise Perkins-Hooker dealt with “Common Issues in Residential Real Estate Contracts.” The final presentation of the seminar was a “Legislative Update” by Tim Minors.

If there are any questions regarding the topics presented at the seminar, please feel free to contact the speakers directly or Edward Hudson. Furthermore, the annual seminar is intended to cover topics that are timely and helpful to closing attorneys. Please forward any topics of interest for future seminars to Edward Hudson or E-Mail to: ehudson@hudsonlawoffices.com.

PRACTICE TIPS - REAL PROPERTY LAW SOURCE MATERIAL

Compiled by Bruce P. Cohen

From time to time, members of the Real Property Law Section are asked for reference materials that might be helpful in the real property law practice. Therefore, please refer to:

1. TITLE STANDARDS, Real Property Law Section, State Bar of Georgia, Institute of Continuing Legal Education (ICLE) and State Bar's Web Site.
2. THE PRACTICAL REAL ESTATE LAWYER, The American Law Institute, American Bar Association Committee on Continuing Professional Education (ALI-BABA).
3. INSTITUTE of CONTINUING LEGAL EDUCATION, Georgia, Mr. Larry Jones, Director, 1.800.422.0893 and 770.466.0886.
4. GEORGIA REAL ESTATE FINANCE AND FORECLOSURE LAW (with forms), Frank S. Alexander, The Harrison Company.
5. GEORGIA REAL ESTATE TITLE EXAMINATIONS AND CLOSINGS, (with forms), Daniel F. Hinkel (M. Windle Davis, Jr.).
6. DESK BOOK, Real Property Law Section, State Bar of Georgia, ICLE.
7. STATE BAR OF GEORGIA WEB SITE –www.gabar.org
8. REAL PROPERTY, PROBATE & TRUST JOURNAL, American Bar Association.
9. PINDAR'S GEORGIA REAL ESTATE LAW AND PROCEDURE (with form), Daniel F. Hinkel, The Harrison Company.
10. RESIDENTIAL REAL ESTATE CONTRACTS, Seth G. Weissman and Candyce D. Cavanaugh, The Georgia Association of Realtors.
11. TITLE UNDERWRITING MANUALS, Title Insurance Company Underwriters.
12. SECRETARY OF STATE, STATE OF GEORGIA web site
13. GEORGIA CLERK'S COOPERATIVE ASSOCIATION web site
14. RESPA, TRUTH IN LENDING & ECOA IN REAL ESTATE TRANSACTIONS, Comer Woodward Padrick, Jr, The Harrison Company.
15. GEORGIA LANDLORD AND TENANT BREACH AND REMEDIES (with forms), William J. Dawkins, The Harrison Company.
16. GEORGIA REAL ESTATE SALES CONTRACTS, Daniel F. Hinkel (Joseph L. Abraham), The Harrison Company.
17. GEORGIA REAL ESTATE FORMS, Bruce P. Cohen, Deborah E. Glass, and Russell S. Grove, Lexis-Nexis (Michie, Reed Elsevier Properties, Inc.).
18. REPORT ON LEGAL OPINIONS TO THIRD PARTIES IN REAL ESTATE SECURED TRANSACTIONS, Real Property Law Section, State Bar of Georgia, ICLE, and State Bar's web site.
19. AMERICAN COLLEGE OF REAL ESTATE LAWYERS, (ACREL PAPERS), ALI-BABA.

Caveats:

1. This list is not all inclusive. Please email your suggestions to cdstc@aol.com for future publication.
2. This list is not in any particular order, priority, or importance.
3. Listing herein is not an endorsement of the material, but merely collecting and forwarding information to our members for their review and determination as to applicability to their client's needs and problems.

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REPORT ON FALL COMMERCIAL SEMINAR

The Fall commercial seminar was held at the Galleria Conference Center in Cobb County on November 13, 2003. This day long seminar offers 6 hours of CLE credit, including one hour of ethics. The Galleria Conference Center is conveniently located near the intersection of I-75 and I-285 in Cobb County, and offers convenient access and free parking.

Gerald Pouncey began the program with a presentation on common environmental issues in real estate transactions. Susan Elliot of Powell Goldstein made a presentation regarding the Patriot Act and its implications for real estate practitioners. Henry Rogers of Lawyers Title Insurance Corporation spoke on title insurance endorsements and affirmative coverage. The seminar included two 20-minute bullet presentations from David Burre on surveying, and from Ron Neyhart of CB Richard Ellis on recent developments in appraisal requirements. The seminar was well received and well attended. The Real Property Law Section expects to continue this seminar on an annual basis in cooperation with the Institute for Continuing Legal Education. We thank all of those who made presentations at this outstanding program.