

Real Property Law Section NEWSLETTER

State Bar of Georgia

A Publication for Real Property Lawyers

Fall 2004

COMMENTS FROM THE CHAIR

By: *Doug Selph, Section Chair*
Morris, Manning & Martin, LLP

Having served on the Executive Committee for the Real Property Law Section since 1997, I have been fortunate to learn from and observe a long line of distinguished Bar leaders that have preceded me. Each Chair is always charged with the responsibility to make their "year" an active and successful one, and I hope that this one will not disappoint. As my official Bar "year" kicks into high gear, I am pleased to report on two encouraging developments regarding unlicensed practice of law (UPL) that transpired over the summer.

1. DOJ CID

First (and foremost), the Civil Investigative Demand ("CID") made by the U.S. Department of Justice (the "DOJ") upon the State Bar has been dismissed. As those members in attendance at last May's Real Property Law Institute may remember from my remarks, the DOJ had instigated the CID back in the spring of this year to investigate whether certain statements made in recent Real Property Law Section Newsletters regarding the Georgia Supreme Court's decision on UPL and the ramifications for witness only closings constituted an activity in restraint of trade in violation of the Sherman Act. The DOJ withdrew the demand after the Bar responded to the initial round of interrogatories and requests to produce documents. Many thanks to Robert McCormack, Bar Counsel, and Jim McGibbon and Leighton Moore of Sutherland, Asbill & Brennan, who served as the Bar's outside counsel, for bringing about a swift resolution of this matter.

2. UPL Advisory Opinion No. 2004-1

As most of you already know from an earlier email, the Bar sent to all members of the Section at the request of the Executive Committee, the Standing Committee on the Unlicensed Practice of Law issued UPL Advisory Opinion No. 2004-1 on August 6, 2004, which Opinion states that a non-lawyer's preparation of a lien for another in exchange for a fee is the unlicensed practice of law. While this was the expected outcome of the Standing Committee's hearing on this issue, the Section again retained the services of Bondurant Mixson & Elmore to argue the position of the Section as part of our continuing commitment to clarify UPL issues. Kudos to Nicole Iannarone and Jeff Bramlett with Bondurant Mixson & Elmore for their successful efforts in this regard.

As we head into the remainder of 2004, I am very interested in
Continued on page 2

EXECUTIVE COMMITTEE CHANGES

The end of the 2003-04 Bar year and the start of the 2004-05 year saw several changes in the members of the Executive Committee for the Section. Many thanks to the following outgoing members for their contributions to the Executive Committee:

Eldon Basham, Marietta
Bruce Cohen, Atlanta
Gil Hudnal, Atlanta
Steve Thompson, Atlanta
Roy Tritt, Augusta

The following individuals have begun new three year terms with the Executive Committee:

Daniel F. Hinkel, Atlanta
Peter L. Lublin, Roswell
Drew Marlar, Atlanta
J. Noel Schweers III, Augusta
Diedra L. Sorohan, Duluth
Mark A. Shaffer, Atlanta

Please let these individuals know that you appreciate their time and commitment to serving the Section. Positions on the Executive Committee usually become available at the end of each Bar year in May and we are always looking for interested attorneys who would like to serve. We especially need to increase our representation of attorneys in the southern and central portions of the state. Please contact any member of the Executive Committee if you are interested.

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hearing from Section members on how the Real Property Law Section can become more relevant to your daily practice and what the Section can do to better serve its membership. The Executive Committee of the Section acknowledges and appreciates that membership in the Section is totally voluntary and we are always looking for ways to provide each member with some "return" on his or her "investment" of dues. Please let us hear from you with suggestions or comments. A list of the 2004-2005 Executive Committee Members with brief biographical and contact information is included below in this newsletter.

In addition to publishing this newsletter, launching our new and improved web site and gearing up for the 2005 Legislative Session, the Executive Committee has been working on our usual round of seminars on title standards, commercial real estate, residential real estate and foreclosure, as well as next May's Real Property Law Institute, our annual meeting. Please remember that this will be the last year for Amelia Island, as the RPLI will be heading to Sandestin, Florida for 2006. While I know that many of you lament the planned move and relish happy memories of our many years at Amelia (except for the parking), we encourage everyone to give the new location a try in 2006.

PINDAR AWARD PRESENTED POSTHUMOUSLY TO HENRY "TROT" HALL WARE, JR.

The many accomplishments and contributions of Henry Hall Ware, Jr. were recognized at the May ICLE Real Property Law Institute by awarding him posthumously the prestigious George A Pindar award.

In his presentation of the award to Mr. Ware's son, Bruce P. Cohen, a former Pindar award winner and a past member of the RPLS Executive Committee, delivered the following remarks.

"Henry Hall Ware, Jr. was born on March 30, 1903, in Heard County, Georgia, the son of Henry Hall Ware and Emma Allen Ware. As a young child he was nicknamed "Trot" by his older sisters, whom he constantly followed around at a run, and the name stuck permanently. He attended Mercer University where he was a member of Alpha Tau Omega and a dedicated sports fan. He subsequently received an LLB degree from John Marshall Law School.

He married Katherine Catchings on June 1, 1929, and they settled in Atlanta, where they raised two children, Margaret Ware Deimling and Henry Hall Ware, III, both of whom also became attorneys. He practiced law in Atlanta for his entire career, specializing in the area of residential real property. During his professional career, he was a partner in the respective firms of Crenshaw, Hansell & Ware; Crenshaw, Hansell, Ware & Brandon; Ware and Sterne; Ware Sterne & Griffin; Huie, Ware, Sterne, Brown & Ide (from which W. Stell Huie served as President of the

State Bar of Georgia and William Ide served as President of the American Bar Association); Kutak, Rock & Huie; Ware, Hopkins, Dunlevie & McNairy; and Parker, Johnson, Cook & Dunlevie. He was a member of this last firm at the time of his death in October, 1984, having never officially retired.

He raised funds on behalf of Mercer University to restore the Administration Building, as well as the music building which was renamed the Katherine Catchings Ware Music Hall due to his significant personal financial contribution. He also established a music scholarship in memory of Mrs. Ware's mother, Susie Martin Catchings, at Wesleyan College, where both mother and daughter had matriculated.

In the early stages of his career, he personally established the envelope method of title examinations which remains significantly in use today. Throughout his career, he was instrumental in various refinements in the real property practice. He served as the mentor for a vast array of attorneys who went on to form the nucleus of the real property practice, both residential and commercial, in the Atlanta metropolitan area. In interviews for this biography, he was frequently referred to as "the Dean of real property law" who "set the standard for the residential real estate practice". Due to his significant contributions to the profession, he was awarded honorary doctorates of law from both John Marshall Law School and Mercer University.

He remained an avid Mercer supporter throughout his life, virtually single handedly establishing the basketball program at his beloved alma mater and then cajoling other State of Georgia schools to play against them. A loyal alumnus to the very end, he was buried in a bright orange Mercer blazer bearing the school crest."

———— NEW WEB PAGE IDEAS? ————

The Executive Committee, Real Property Law Section, is in the process of enhancing its web site and would like input from our members about what they would like to see implemented. If you have ideas for content, links or any other web-based services that would help you in your practice, please contact Drew Marlar at: drew.marlar@kutakrock.com or (404) 222-4688. The current web page can be found at www.gabar.org/SectionDisplay.asp?ID=1&Section=19

TRANSFER TAX FILING AVAILABLE ON-LINE

By: *Tim Bailey*

Moore Ingram Johnson & Steele, LLP

The new transfer tax filing procedure is now on-line. As hoped, the new procedure is user-friendly and a much-needed improvement over the old green, multi-part form.

To use the new procedure, log on to the Clerk Authority's web-site at www.GSCCCA.org. Click on "PT-61 E-Filing." The information sections provide a good overview of the new procedure and are helpful. To actually complete a form, follow the prompts to successive screens for seller's information, buyer's information, property information and then the actual tax information. The information requested is substantially similar to the information requested on the current Form PT61. The system calculates the appropriate tax amount automatically, and even prompts the user for the various exemptions, if applicable. After the data is entered, print the form and submit it with the deed when filed for recording.

The new procedure started September 1, 2004. However, not all staff at the different counties were aware of the procedure, and at first some would not accept the new forms. If you still have difficulty with a particular Clerk rejecting the new form, please contact me so we can resolve this issue.

Another issue is whether the new forms need to be signed. They do not. Again, this may cause minor problems if the Clerk in your county is not familiar with the new process.

Finally, there is nothing on the web-site explaining how many copies must be submitted to the Clerk. The safest bet at this point is to send the original with a copy.

Some attorneys report receiving notices from some Superior Court Clerks that, effective November 1, 2004, no paper PT-61 forms will be accepted by Superior Court Clerks in Georgia.

This newer procedure is more efficient and easy to use. Attorneys and their staff should find this a much needed improvement over the previous procedure.

INSTITUTE WRAP-UP

The annual Real Property Law Institute held May 6-8, 2004 at Amelia Island, Florida, was another great success with over 480 attorneys in attendance. As usual, the weather was outstanding and all the title insurance companies were on hand to keep attendees entertained with their parties and give-aways.

Chair-Elect Doug Selph organized and moderated the program, which included such annual features as legislative and judicial updates as well as presentations on cutting-edge topics of interest to commercial and residential real estate practitioners. Highlighting the first day was an ethics presentation on multi-jurisdictional practice rules and the presentation of the Pindar Award to Trot Ware (posthumously). The second day featured breakout sessions for Commercial Real Estate and Residential Real Estate. Among other topics, Commercial Real Estate attendees were treated to an in-depth look at smart growth strategies in conservation and green development, while Residential Real Estate attendees learned about condominium law and affiliated business arrangements. The final day saw the annual meeting of the Real Property Law Section at which officers for 2004-05 were elected. Outgoing members of the Executive Committee for the Section were recognized for their contributions and incoming members were introduced. Incoming Chair Doug Selph presented outgoing Chair Rachel Iverson with an engraved plaque and crystal gavel in appreciation for her service as Chair.

During the Institute, members also enjoyed participating in the annual Raiford Memorial Golf Tournament (named for Thomas C. Raiford, Jr., a former Chair of the Section) and a round robin tennis tournament. Congratulations to the winners of those events.

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

— 2004 —

OCTOBER 19th, 2004

MONTHLY MEETING – BOARD ROOM,
MORRIS, MANNING & MARTIN;
18th FLOOR • 4:00 – 6:00 PM

NOVEMBER 11th, 2004

FALL COMMERCIAL REAL ESTATE LAW
SEMINAR, [Cobb Galleria Center];
Board Meeting immediately following.
Speakers' Dinner-Canoe

DECEMBER 14th, 2004

MONTHLY MEETING – BOARD ROOM,
MORRIS, MANNING & MARTIN;
18th FLOOR • 4:00 – 6:00 PM

— 2005 —

JANUARY 18th, 2005

MONTHLY MEETING – BOARD ROOM,
MORRIS, MANNING & MARTIN;
18th FLOOR • 4:00 – 6:00 PM

FEBRUARY 4th, 2005

SPRING RESIDENTIAL PRACTICE
SEMINAR – GPTV

FEBRUARY 10th, 2005

REPLAY

FEBRUARY 15th, 2005

MONTHLY MEETING – BOARD ROOM,
MORRIS, MANNING & MARTIN;
18th FLOOR • 4:00 – 6:00 PM

MARCH 15th, 2005

MONTHLY MEETING – BOARD ROOM,
MORRIS, MANNING & MARTIN;
18th FLOOR • 4:00 – 6:00 PM

APRIL 8th, 2005

FORECLOSURE SEMINAR

APRIL 19th, 2005

MONTHLY MEETING – BOARD ROOM,
MORRIS, MANNING & MARTIN;
18th FLOOR • 4:00 – 6:00 PM

MAY 12TH - 14TH, 2005

REAL PROPERTY LAW INSTITUTE,
AMELIA ISLAND, FL
(2006 RPLI TO BE HELD IN DESTIN, FLORIDA)

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Many thanks to our social sponsors – American Pioneer Title Insurance Company, Attorneys' Title Guaranty Fund, Inc., Chicago Title/Ticor Title Insurance Companies, Commonwealth Land Title Insurance Company, Comsquared Systems, Document Conversion Solutions, Fidelity National Title Insurance Company of New York, First American Title Insurance Company, Golder Associates, GRECAA, Landtech Services, Lawyers Title Insurance Corporation, LexisNexis, Old Republic National Title Insurance Company, Stewart Title Guaranty Company, and Thomson West. Special thanks also to Dan White and all of the other folks at ICLE who always make the Institute run so smoothly.

Plan now to attend the 2005 Institute which will be held one last time at Amelia on May 12-14, 2005, before moving to the Sandestin Resort in Destin, Florida in 2006.

GEORGIA STATE BAR REAL PROPERTY LAW SECTION 2004 LEGISLATIVE INITIATIVE

*By: David J. Burge
Smith, Gambrell & Russell, LLP*

During each session of the Georgia General Assembly, the Real Property Law Section takes a very active role in proposing and shaping legislation that affects real estate practitioners. I am a member of the Executive Committee of the State Bar of Georgia Real Property Law Section and was named the Section's Legislative Chairman in May 2003. In this capacity, I recently led a successful effort to enact legislation in Georgia that should facilitate real estate closings for both commercial and residential sellers.

The Georgia General Assembly is a part-time Legislative body that meets for only 40 days each year and has a very limited legislative staff. As such, the State Bar of Georgia has historically played a major role in proposing and advising on legislation that affects the whole spectrum of legal issues handled by lawyers in Georgia. Each year the various sections in the State Bar are encouraged to propose changes to the Georgia Code that would enhance the practice of law for that section's particular practice area. Each section is also called upon to comment and advise on legislation proposed by others that would affect that section's practice area.

Throughout the summer of 2003, I and my legislative subcommittee solicited input from members of the Real Property Law Section on issues and problems that affect real estate closings and practice in Georgia that could be addressed by legislative changes. A common complaint received by the subcommittee was the difficulty encountered by closing attorneys in clearing up old judgment liens that had been filed against a property seller in prior years and that had been paid off, but the lien was not yet cancelled in the county courthouse records. Even if the judgment lien had been fully paid off, the filed lien remains a cloud on title for all real estate owned by that seller in that

particular county until the lien itself is cancelled of record. Then existing Georgia law set forth a general obligation to cancel judgment liens after full payment, but provided no penalties or alternatives if the judgment creditor failed to cancel its lien at the courthouse. Since the judgment creditor had already received its money and often had limited motivation to cancel its lien in the courthouse records, closing attorneys asked for additional tools to require judgment creditors to cancel stale liens in a timely manner.

I decided to address this issue as the Section's legislative initiative for the 2004 General Assembly Session. The first step was to draft a proposed bill. Georgia already had on its books legislative revisions that require the holder of a security deed in Georgia to promptly cancel that security deed once the loan is paid off and provide penalties and alternative security deed cancellation methods for security deed holders that fail to promptly cancel their security deed upon receipt of full payment. These existing provisions in the Georgia Code have helped closing attorneys get old security deeds cancelled in a more timely manner. Our subcommittee decided that borrowing this already existing legislation for security deeds and applying it to judgment liens would be the most efficient way to help clear up stale judgment liens as well. From past experience, we believed that modifying legislative provisions already on the books would result in an easier path in the General Assembly than crafting new legislation from scratch.

The subcommittee took Georgia's statutory language for security deed cancellations and revised it to apply to judgment liens, making a number of corrections and improvements based on perceived problems with the existing security deed cancellation law. I also drafted a complete legislative summary and explanation of the bill. The bill was proposed to the Executive Committee of the Real Property Law Section for comment in October, 2003. The Executive Committee suggested a few revisions, which were incorporated in the revised bill.

The next step was to submit the bill to the full State Bar of Georgia for its approval and adoption as a formal legislative proposal of the State Bar. The bill was submitted to the State Bar and assigned to the State Bar's Advisory Committee on Legislation for review. The Advisory Committee reviews all legislative proposals from all sections of the Bar and forwards to the State Bar Board of Governors those proposals that it feels are worthy to be State Bar legislative initiatives. In December, 2003, I presented the bill to the Advisory Committee, which approved the proposal as a State Bar initiative. The bill was then submitted to the State Bar Board of Governors, which adopted it as a State Bar legislative initiative in early January, 2004.

The House and Senate passed it on April 7, 2004, the last day of the legislative session. Governor Sonny Purdue signed the bill on May 13, 2004, and the bill became effective as part of the Georgia Code on July 1, 2004. The newly enacted statute can be found in the Official Code of Georgia Annotated Section 9-13-80.

Transfer Tax and the Online PT-61 Forms

By: *Machelle Redmond*

Neel & Robinson, Attorneys at Law, LLC

The Georgia Department of Revenue imposes an excise tax on "the privilege of selling property." The tax is imposed at a rate of \$1.00 for the \$1,000.00 or fraction thereof and .10¢ for each additional \$100.00 or fraction thereof, O.C.G.A. § 46-6-1. The new online PT-61 form will calculate the required tax; however, the new form requires that a specific exemption code be entered for transfers exempt from the tax imposed by O.C.G.A. § 48-6-1.

Security Deeds do not require the collection of a transfer tax pursuant to O.C.G.A. § 48-6-2(a)(1), but may be subject to an intangible tax pursuant to O.C.G.A. § 48-6-61. To follow is a list of exempt codes available on the online PT-61 form:

- "Deed of Gift" any deed that transfers gift property, O.C.G.A. §48-6-2(a)(2);
- "Govt/NonProfit Public Corp" a transfer tax is not required on any deed, to or from the United States, the State of Georgia, any agency, board, commission, department, or political subdivision of the United States or the State of Georgia, any public authority, or any nonprofit public corporation. O.C.G.A. §48-6-2(a)(3);
- "Divorce Based Transfer" any transfer of real estate between a husband and wife in connection with a divorce case, O.C.G.A. §48-6-2(a)(5);
- "Year's Support Order" any order for year's support awarding an interest in real property as provided in Code Section 53-3-11 (O.C.G.A. §53-5-11 prior to 1998), O.C.G.A. §48-6-2(a)(6).
- "Deed in Lieu of Foreclosure" any deed issued in lieu of foreclosure if the deed issued in lieu of foreclosure is for a purchase money deed to secure debt that has been in existence and properly executed and recorded for a period of 12 months prior to the recording of the deed in lieu of foreclosure, O.C.G.A. §48-6-2(a)(7)
- "First Transferee Foreclosure" the deed from the debtor to the first transferee at a foreclosure sale is not subject to a transfer tax, O.C.G.A. §48-6-2(a)(7.1);
- "Public Road Acquisition" transfer of property which is acquired as provided in Code Sections 32-3-2 and 32-3-3, O.C.G.A. §48-6-2(a)(8);
- "Estate Deed" any deed of assent or distribution by an executor, administrator, guardian, trustee, or custodian; any deed or other instrument carrying out the exercise of a power of appointment; and any other instrument transferring real estate to or from a fiduciary; provided, however, that the exemption provided under this paragraph shall apply only if the transfer is without valuable consideration, O.C.G.A. §48-6-2(a)(9);
- "Joint Tenant Division" any deed, instrument, or other writing which effects a division of real property among joint tenants or tenants in common if the transaction

does not involve any consideration other than the division of the property, O.C.G.A. §48-6-2(a)(10);

- "Individual to Company Transfer" a transfer tax is not due on the transfer from an individual or individuals to a corporation, partnership, or other entity, if a individual owner or owners have a majority ownership interest in the corporation, partnership, or other entity to which the property is transferred, O.C.G.A. §48-6-2(a)(11)(A)
- "Company to Individual Transfer" a transfer tax is not due on the transfer from a corporation, partnership, or other entity to an individual or individuals, if a individual or individuals have a majority ownership interest in the corporation, partnership, or other entity from which the property is being transferred, O.C.G.A. §48-6-2(a)(11)(B).

The online PT-61 form does not list an exemption code for leases, O.C.G.A. §48-6-2(4) permits and exemption for any lease of lands, tenements, standing timber, or other realty or any lease of any estate, interest, or usufruct in any lands, tenements, standing timber, or other realty. The manual green form should be used until the online system has been updated, should a situation arise that requires the use of the lease exemption.

STATEWIDE VOLUNTEER WEBSITE LAUNCHED:

WWW.GEORGIAADVOCATES.ORG/GOJC

The Georgia Legal Services Program and the Atlanta Legal Aid Society have joined forces with the State Bar of Georgia ProBono Project to create a statewide volunteer lawyer website at: www.georgiaadvocates.org/gojc. Section members are encouraged to check out this site to learn about volunteer opportunities and to find resources, news and networking opportunities for volunteers. The website is free, non-commercial and spam-free!"

PLAN TO ATTEND FALL COMMERCIAL SEMINAR

The Fall Commercial Seminar will be held on Thursday, November 11th, 2004 at the Cobb Galleria Conference Center. This day long seminar, chaired by Linda Curry, RPLS Secretary/Treasurer, offers 6 hours of CLE credit, including one hour of ethics. The Conference Center is conveniently located near the intersection of I-75 and I-285 in Cobb County. Parking is free!

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**Suggestions?
Comments?**

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Executive Committee of the Real Property Law Section

The Executive Committee of the Real Property Law Section, State Bar of Georgia is always working in the best interests of its members. Please use this directory guide as a reference tool should you have any pertinent questions you would like addressed. In addition to their names, firms and e-mail addresses, you will find their areas of concentration.

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