



REAL PROPERTY LAW SECTION

A publication of the Real Property Law Section of the State Bar of Georgia – 3rd Quarter 2024 Newsletter



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Letter from the Chair

By: *Stuart Gordan, RPLS Chair 2024-2025*



I hope everyone had a great Summer and is enjoying the start of the Fall season. It sure seems like yesterday when I first joined the RPLS Executive Committee, and I am excited to serve as Chair for this upcoming 2024-2025 year.

After what seemed like a way-to-short summer break, our Executive Committee has been preparing and planning for the coming year. In late August, we met at our annual summer planning retreat, at which time each subcommittee met in-person to discuss their specific goals and initiatives. From the Executive Committee as a whole, our overall goals for the Section include providing educational and networking opportunities for members, attracting new members to the Section, and continuing recent efforts of increasing communication with Section members through social media and traditional means.

We already held one event designed to tackle such objectives, co-hosting with the Atlanta Bar Association's Real Estate Section a seminar titled "Real Estate Boot Camp: Title, Survey and Closing." This CLE program was designed for recently admitted attorneys, or those new to the real property practice, and provided introductions to both commercial and residential real estate practice areas. The program sold-out, was well-received and we thank Taylor English Duma LLP for hosting the joint event in their office. Another great event coming up soon, the Commercial Real Estate Seminar scheduled for Thursday, November 14, 2024, at the State Bar building in downtown Atlanta. Last year's Commercial Seminar received such positive feedback about one portion of the event that focused on reading surveys and drafting legal descriptions, that this year's Seminar will be devoted entirely to surveys and legal descriptions. It also will include a work-shop aspect in addition to a traditional presentation, and is open to RPLS members and their staff or paralegals. For more information or to register, please click [here](#).

For a calendar of all RPLS events scheduled during the 2024-2025 year, please click [here](#).

For your reference, below is a list of each subcommittee and its respective chair(s). If you are interested in volunteering to serve on one of the subcommittees, please reach out to the identified chairperson. Subcommittee membership is open to all RPLS members, the time commitment varies by subcommittee but never is burdensome, and it would be great to have more involvement from the Section membership.

Commercial Real Estate:

[Kyle Levstek](#)
[Paula Rothenberger](#)

Communication:

[Kelsea Laun](#)

Ethics and Professionalism:

[Katharine Oates](#)

Legislative and Governmental Relations:

[Matthew Totten](#)

Litigation:

[Larry Evans](#)

Pro Bono Initiatives:

[Jennifer Rentenbach](#)
[Ellen Smith](#)

Recognition:

[Thua Barlay](#)

Residential Real Estate:

[Tamara Brooks](#)
[Kirsten Howard](#)

Title Standards:

[Allie Jett](#)
[Aimee Latourette](#)

One initiative that the Executive Committee has tried to advance over the past couple of years is our presence on and involvement in social media. I personally am not active on social media so I certainly can't fault others who aren't as well, but if you are someone who is active then please follow and support the Section's accounts on [Instagram](#), [Facebook](#), and [LinkedIn](#). I am looking forward to a great year, and hopefully will see many of you at one or more of our events!

About the Section

Special thanks to our outgoing 2023-24 committee officers:

Chair: Amanda Calloway, Chair- Elect: Stuart Gordan, and Secretary/Treasurer: Tenise C. Chung, who were assisted by prior Past Chair: Hilary Fentress.

The 2024-25 Committee will be led by Chair: Stuart Gordan, Chair-Elect: Tenise Chung, and Secretary/Treasurer: Beth Jones, who will be assisted by Immediate Past Chair: Amanda Calloway.

In turn, the officers are supported by several subcommittees. While Committee officers and subcommittee chairpersons are limited, any member of the section can volunteer to work with a subcommittee. Each of the subcommittees serves a different purpose and agenda for the year, and each welcomes the participation of the Section membership. Look for additional information about the 2024-25 subcommittees in the next newsletter.

Upcoming Events

❖ **Real Property Law Section | Commercial Real Estate Seminar**

What: 6-Hour CLE covering topics such as Survey and Legal Description Workshop, Title and Survey Underwriting, Frequent Title and Survey Problems, "Survey" Endorsements.

When: November 14, 2024
from 8:30 a.m. - 3:30 p.m.

Where: State Bar Conference Center
(104 Marietta Street NW,
Atlanta, GA 30303)

Cost: \$150 for Paralegals and YLD Members,
\$200 for members

Register Today: www.gabar.org

❖ **Real Property Law Section | Residential Real Estate Seminar**

When: January 15, 2025

Where: State Bar Conference Center

What: 6-hour CLE, followed by networking reception

❖ **Real Property Law Section | Title Standards Seminar - Part 1**

When: February 11, 2025, from 8 a.m.-12 p.m.

Where: State Bar Conference Center

What: 3-Hour CLE, preceded by networking breakfast

❖ **Real Property Law Section | Title Standards Seminar - Part 2**

When: February 27, 2025, from 2 p.m.-6 p.m.

Where: State Bar Conference Center

What: 3-Hour CLE, followed by networking reception

❖ **Real Property Law Section | Real Property Law Institute**

When: May 7-10, 2025

Where: Omni, Amelia Island Plantation

What: Annual CLE event with breakout sessions focusing on commercial and residential real estate. Save the date! (Details and room block information to follow closer to the event)



Stuart Gordan, Chair, presenting on real estate closing practices



Kyle Levstek and Mark Chastain presenting on survey basics

Recent Events

CLE and Networking Reception

On September 12, the Section co-hosted a CLE and networking event with the Atlanta Bar. Attendees earned three continuing legal education hours with introductory seminars on surveys, title insurance, and residential vs. commercial closing practices. Speakers included:

Kyle Levstek, *Calloway Title & Escrow*

Mark Chastain, *PLS, Chastain & Associates, P.C.*

Amanda Calloway, *Calloway Title & Escrow*

Stuart Gordan, *McCalla Raymer Leibert & Pierce, LLC*

The event was well-attended, and we look forward to co-hosting additional events in the future.



Amanda Calloway presenting on title insurance matters

From the Membership

New Transparency Reporting Requirement for Residential Real Estate Closings

By: **Jonathan B. Wilson** | Partner at Taylor English Duma, LLP
| Co-Founder & CEO of FinCEN Report Company, LLC



A new requirement, taking effect December 1, 2025, is going to disrupt how residential real estate attorneys conduct closings in non-financed transactions. FinCEN – the Financial Crimes Enforcement Network of the U.S. Treasury – recently announced a new rule (to be published at 31 CFR 1031.320) that will require closing attorneys and title companies to file transparency reports in connection with many residential real estate closings. 89 Fed. R. 70258.

The Rationale for Transparency Reporting: Criminals sometimes use non-financed transfers of residential real estate to launder money. Sometimes, they launder money by holding residential real estate in the name of a legal entity or trust, and then transferring the real estate to a second anonymous corporate entity. Cash exchanged in the transaction – where there is no traditional financing – enables the illicit actor to make illicit funds appear like legitimate profit on the transaction. FinCEN has determined that transfers where there is both a lack of traditional financing and where the transferee is a legal entity or trust are have higher risk of money laundering because corporate anonymity hides the true interests of the beneficial owners. FinCEN’s purpose behind its new Real Estate Rule is to reduce money laundering through non-financed residential real estate transactions.

Overview: The Real Estate Rule requires “reporting persons” performing closing or settlement functions in reportable transfers of residential real property to file a “Real Estate Report” or “RER” with FinCEN. The RER will need to include information about the parties, the property and the beneficial owners of any corporate transferee or trust transferee.

What is a Reportable Transfer of Residential Real Property? A transfer is reportable if: (1) the property is residential real property; (2) the transfer is non-financed; (3) the property is transferred to a legal entity or trust, and (4) an exemption does not apply.

The reporting person must file a report regardless of the value of the property. Even transfers that are gifts are subject to the rule. No report is required, however, if the transfers is made directly to an individual.

What Counts as Residential Real Property? The Real Estate Rule only applies to residential real property located in the United States. This includes single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings containing many such units, as well as entire apartment buildings designed for occupancy by one to four families. The rule will also cover transfers of land where the transferee intends to build a structure designed for occupancy by one to four families. Furthermore, a transfer of property may be reportable even if the property is mixed use, such as a single-family residence that is located above a commercial enterprise.

What Counts as a Non-Financed Transfer? Only non-financed transfers are reportable. The Real Estate Rule defines “non-financed” as a transaction where there is no extension of credit to a transferee that is both (1) secured by the transferred property and (2) extended by a financial institution subject to an AML program and Suspicious Activity Report (SAR) obligation. (Most banks and traditional mortgage lenders are subject to AML and SAR obligations under the Bank Secrecy Act.) **Transfers that are financed only by a lender without an obligation to maintain an AML program and file SARs, such as a non-bank private lender, are treated as non-financed transfers.**

What is a Transferee Entity and a Transferee Trust? A transfer of residential real property must be reported if at least one of the new owners of residential real property is a “transferee entity” or “transferee trust.” These terms include limited liability companies, corporations, partnerships, and trusts. Both domestic and foreign entities and trusts are covered by the Real Estate Rule. The Real Estate Rule includes some definitional exemptions for highly regulated types of legal entities and trusts that are less likely to be used by illicit actors.

What Transactions are Exempt? The following transfers are exempt from the Real Estate Rule:

1. a transfer of an easement;
2. a transfer resulting from the death of an individual, whether pursuant to the terms of a decedent’s will or the terms of a trust, the operation of law, or by contractual provision;
3. a transfer incident to divorce or dissolution of a

- marriage or civil union;
- 4. a transfer to a bankruptcy estate;
- 5. a transfer supervised by a court in the United States;
- 6. a transfer made for no consideration by an individual, either alone or with their spouse, to a trust of which that individual, their spouse, or both of them, are the settlor or grantor;
- 7. a transfer to a qualified intermediary for purposes of a like-kind exchange under Section 1031 of the Internal Revenue Code; and
- 8. a transfer for which there is no reporting person.

Determination of Reporting Persons: The Real Estate Rule will apply to settlement agents, title insurance agents, escrow agents, and attorneys. Each reportable transfer must have only one reporting person.

The Real Estate Rule allows the professionals involved in the closing to decide amongst themselves who will be the reporting person by entering into a “designation agreement.” If those professionals do not enter into a designation agreement, the Real Estate Rule contains a cascading set of obligations that will impose the reporting duty on one of them. The reporting cascade lists seven different functions that a real estate professional may perform in a transfer of residential real property. The reporting person for any transfer will be the professional that performed a function that appears highest on the list. For example, the first function on the list is the professional listed as the agent on the closing or settlement statement. If no such professional is involved in the transfer, then the reporting obligation applies to any professional that performed the second function on the list (*i.e.*, the professional that prepared the closing or settlement statement), and so on down the list. The Real Estate Rule, however, allows the professionals to agree among themselves who will act as the reporting person through a designation agreement.

Required Information: If the Real Estate Rule applies to a transfer, the reporting person must file a report with FinCEN that contains the following information about the reportable transfer:

- The reporting person;
- The legal entity (transferee entity) or trust (transferee trust) receiving ownership of the property;

- The beneficial owners of the transferee entity or transferee trust;
- Certain individuals signing documents on behalf of the transferee entity or transferee trust during the reportable transfer;
- The transferor (*e.g.*, the seller);
- The residential real property being transferred; and
- Total consideration and certain information about any payments made.

Importantly, the reporting person will need to determine who are the beneficial owners of the transferee entity or transferee trust. The Real Estate Rule incorporates method of determining “beneficial ownership” provided in FinCEN’s regulations under the Corporate Transparency Act. 31 CFR 1010.380. The Real Estate Rule will allow the reporting person to rely on information provided by others. But the reporting person can rely on others only if the reporting person does not have knowledge of facts that would reasonably call into question the reliability of the information.

Filing the Report and Keeping Records: The reporting person will need to file the real estate transparency report by the later of either (1) the final day of the month following the month in which the reportable transfer occurred, or (2) 30 calendar days after the date of closing. The reporting person will not need to keep a copy of the report. But the reporting person will need to retain for five years a copy of any certification, signed by the transferee or a transferee’s representative, certifying that the transferee’s beneficial ownership information, as well as a copy of any designation agreement signed. Other parties to the designation agreement will also need to keep copies of it.

When These Changes Take Effect: The Real Estate Rule takes effect December 1, 2025. By that time, attorneys, real estate agents and title companies will need to develop new procedures to managing their obligations under the Real Estate Rule. The reporting party will need a system to collect the information required for the real estate report. The reporting system will need to retain the requisite information, including the designation agreement, for at least the five-year period required by the Real Estate Rule.

While the December 1, 2025 deadline might feel like a distant concern, implementing changes to customary procedures and obtaining the software systems required will take time, coordination and training. Real estate attorneys, title agents

and others involved in real estate closings will need to plan accordingly for the coming year.

The author recently presented on this topic at the GRECAA luncheon held October 9, 2024, and invites readers to visit www.fincenreport.com for additional information and updates regarding the Real Estate Rule.

Common Resources for Real Estate Practitioners

*By: Aimee Latourette | Partner at Schulten Ward
Turner & Weiss, LLP*



We've all been there. A client asks a question that you feel like you should know the answer to, but you're drawing a blank. You're reviewing a title and your gut-check says something just seems ... off about that deed. Or the agent mentions a piece of information that makes you realize there is a "situation" with this deal. You say you'll look into it and get back to them. Now what? We all know how to use WestLaw, Lexis Nexis or FastCase to do legal research. But when the question is more nuanced, a matter of local custom or practice, or just something you want a second opinion on, where do you get these answers from? Below is a list of five resources that you may want to consider.

1) A mentor or other attorney in your network. In law school, we are taught that we must be self-reliant, which is true to a degree. But don't underestimate the benefit of collaborating with another real estate attorney to get another perspective. One of the benefits of working in a multi-attorney firm is the ability to ask questions of other attorneys. If you're a solo practitioner, this can also be accomplished by finding and keeping in touch with a mentor. Another attorney can bring in their own knowledge, experience and area of expertise to bear to help you see pitfalls or solutions that you may have been overlooking before. Further, if they agree with your approach, the confirmation that you're analyzing the issues correctly and completely can help assuage your nerves before you have to put yourself out there by giving legal advice.

2) The Real Property ListServ. In addition to the attorneys you know in person, the Real Property Section has an e-mail listserv available to members. This is an e-mail group comprised only of Real Property section members, meaning all members are Georgia-barred attorneys. Attorneys of all experience levels and practice niches pose questions and offer their perspectives, including sage and practical advice from veteran practitioners, useful opinions on matters from a litigation perspective, business or specialist referrals, and getting help to deal with the unique frustrations that arise in our industry. It is an excellent resource for solo practitioners or when you need some perspectives from practice areas that members of your firm may not have.

3) Your title underwriter. Many closing attorneys will also act as agents for one or more regional or national title insurance companies. Your agency agreement outlines the standards that you must follow as an agent. While there are definitely times you must get permission or approval from your underwriter, don't be afraid to ask for guidance or advice when it's not required but you want some comfort about the insurability. Keep in mind that title insurance companies are in the business of creating an insurable title (governed by the insurance contract), which may be different from truly clearing title pursuant to Georgia law, and that different underwriters may have different standards about what constitutes insurable title.

4) Title Standards. The Real Property Section has promulgated a written set of Title Standards, adopted by the State Bar of Georgia, which clarifies what does and does not constitute impairments to marketability in title examinations. While the title standards are not binding authority, they are persuasive authority and regularly given deference by the title companies and courts with respect to what is and is not within the scope of a properly conducted title examination title companies, and on technical matters regarding what does and does not constitute a cloud on title.

5) Pindar's Real Estate Law (with Forms). Hailed by many as the Georgia real property "bible", this incredibly comprehensive secondary source is an easy-to-use reference guide, chock full of pertinent case notes and statutory references, as well as many basic title practice forms. The 7th Edition comes in a three-volume bound set (which looks great on your bookcase), or it can

be accessed online through WestLaw or LexusNexus subscriptions. So the next time you're scratching your head at the newest novel issue that has been thrown at you, try out one or more of these resources.

Links:

Join the ListServ [here](#)
[The Title Standards](#)

Call to Action

1. The Real Property Law Section wants to hear from you! Please submit your substantive articles or editorials for publication in the Section newsletter. Submissions may be sent to GARplscommittee@gmail.com.

2. We are always looking for new speakers or topics of interest from our members. Please reach out to any of our Executive Committee leaders or members to nominate yourself or others to speak at a future CLE or to suggest a topic relevant to our Section. We are also accepting articles or items of interest from our membership throughout the year.

Don't miss a beat - follow us on social media!

