



REAL PROPERTY LAW SECTION

A publication of the Real Property Law Section of the State Bar of Georgia – Spring 2024 Newsletter



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Letter from the Chair

By: Amanda Calloway, RPLS Chair 2023-2024



Happy Spring!

I want to fill you all in on what your Executive Committee has been up to these past few months.

In November, under the great leadership of Paula Rothenberger and Kyle J. Levstek, the

RPLS facilitated an excellent six-hour CLE focused on Commercial Real Estate which included an intensive discussion and interactive session on survey analysis. Following the Commercial Seminar, we also hosted a dinner to honor our 2023 Georgia law student scholarship recipients with several distinguished members of the Section including our past Pindar Award winners and previous Section Chairs. Similarly, the Residential Real Estate subcommittee has been hard at work planning for the Residential Real Estate Seminar which was held on January 25th at the State Bar Headquarters Conference Center. Tamara Brooks and Kirsten Howard, the Residential subcommittee co-chairs, put together an excellent lineup of speakers. In furtherance of our efforts to connect with the Young Lawyers Division, we also hosted a panel discussion with the YLD to discuss practicing real estate law during a slow economic cycle. This panel was held as part of the State Bar Midyear Meeting and included three fantastic panelists: Cate Hoskins, Chad Henderson, and Peter Lublin, each of whom offered their unique perspectives on practice during previous economic downturns as well as some excellent advice and practice pointers to the younger real estate attorneys in the room. To round out our robust CLE offerings, the annual Title Standards Seminar was bifurcated into two 3-hour sessions (as opposed to the traditional single 6 hour session) so that attendance would not require a whole day away from the office. The first session of the two-part series included breakfast and 3 hours of presentations on February 13th while the second session on February 27th included a 3 hour afternoon session followed by a happy hour for networking. The Title Standards Committee co-chairs, Allie Jett and Joe Wilburn, did an excellent job with the program this year! And for anyone wanting to pick up a free hour of

professionalism credit and network with your fellow members of the Bar, we partnered with the Eminent Domain Section to present an hour of Professionalism with Matt Mashburn and a happy hour mixer at the Atlanta offices of Parker Poe.

I hope that these various programs enabled many of you to fulfill your CLE requirements ahead of the March 31st deadline.

Aside from our extensive CLE efforts, your Executive Committee has also been working to track new case law that is pertinent to real estate practice, identify and pursue pro bono opportunities in our community, and find new and creative content to grow our sections' social media presence. With our state legislature now in session, our legislative subcommittee has been monitoring real estate related bills and providing our section members with helpful summaries and highlights of bills which could impact our practice as real estate attorneys. While we closely monitor all real estate related pending legislation, please do keep in mind that as a section of the State Bar of Georgia, we are guided by the requirements imposed by the U.S. Supreme Court arising out of the Court's decision in *Keller v. State Bar of California*, and as such, we are not permitted to formally take a position on pending legislation without express permission of the State Bar. Our hope is that the information provided by our committee is helpful so that you all may reach out to your legislative representatives directly with your comments and support for or against any of these bills.

It's hard to believe that in a couple of months we will be in Charleston, South Carolina for this year's annual Real Property Law Institute! Thank you to everyone who submitted nominations for this year's Pindar Award recipient, which will be awarded on the first day of the Institute. Also thank you to the section members who applied for the 3 pro bono practitioner scholarships to the Institute this year. Under the excellent guidance of Cate Hoskins and Beth Jones, our Pro Bono subcommittee co-chairs, the pro bono scholarship program is a success for the second year in a row. I am so pleased to see this new initiative take root in our section, and I look forward to its success for many years to come. Our section, particularly our 2024 RPLI Chair, Stuart Gordan, has been hard at work planning for another excellent Institute this year. While I know many of you were on top of booking

your accommodations, I have heard from several section members who, like me, did not book fast enough to get a room at the Francis Marion Hotel. A second hotel room block has been secured at a very close by Marriott property, and we are also working to provide other alternative accommodations within walking distance of the meeting venue. Please look for further information regarding hotel accommodations on the listserv and in your email inboxes. Should you have any questions regarding the upcoming RPLI, please reach out to Stuart Gordon or myself via email. I hope that you will consider joining us in Charleston in May for what I'm certain will be a wonderful event!

About the Section

The 2023-24 Committee is led by Chair: Amanda Calloway, Chair- Elect: Stuart Gordon, and Secretary/Treasurer: Tenise C. Chung, who are assisted by Immediate Past Chair: Hilary Fentress.

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. Below are the current subcommittees, along with a description of their main purpose and current leadership. Serving on a sub-committee is a great way to keep apprised of issues facing the State Bar. Please contact the Chair(s) of any subcommittee if interested in donating your time and talent to the Section.

Standing Committees:

Bylaws- Chair: Stuart Gordon

This Committee reviews and updates the Real Property Law Section bylaws as needed.

Legislative- Co-Chairs: Rob Brannen and Mark Robinson

This Committee is charged with monitoring pending state legislation that might affect the practice of real estate law. They work closely with the State Bar's legislative counsel, Christine Butcher Hayes, to identify pending legislation that the State Bar may need to take a position on and participates, when permitted under the Keller rule, in the State Bar's lobbying efforts. Current efforts are following the Remote Online Notary Bill

and a bill modifying the Lis Pendens statute, but may include additional items that arise during the legislative session.

Real Property Law Seminar- Chair: Stuart Gordon

Assist in co-planning the Real Property Institute held in May, including planning the location, topics, social events and obtaining speakers.

Title Standards- Co-Chairs: Allie Jett and Joe Wilburn

This Committee has two functions: putting on the annual Title Standards CLE and updated/maintaining the written Title Standards.

Special Committees:

Commercial Real Estate- Co-Chairs: Kyle Levstek and Paula Rothenberger

This Committee focuses primarily on issues involving commercial practitioners and is tasked with planning the annual Commercial Real Estate Seminar.

Communication- Chair: Kelsea Laun

This Committee gathers content and produces communications to the section membership regarding both the Executive Committee's activities and issues that affect the practice of real estate. Additionally, this committee updates the section website and maintains the listserv.

Ethics and Professionalism- Co-Chairs: Matthew Totten and Jennifer Rentenbach

This Committee has a broad focus on ethics and professionalism issues affecting real estate practitioners. They also monitor potential issues involving the unauthorized practice of law and work with the State Bar to obtain Formal Advisory Opinions from the Supreme Court when appropriate.

Litigation- Chair: Larry Evans

This Committee follows and reports on pending and final litigation decisions of interest to our Section.

Pro Bono- Co-Chairs: Cate Hoskins and Beth Jones

This Committee coordinates responses to requests for assistance on real estate matters in the local community and plans pro-bono activities and opportunities for the Section.

Awards and Membership- Chair: Thua Barlay

This Committee promotes the growth of section

membership and recognition of outstanding current and future members. In addition to collecting nominees for the annual Pindar Award, this Committee solicits applicants and awards scholarships to deserving law students in our local law schools who show an aptitude and commitment to practicing real estate in Georgia upon graduation.

Residential Real Estate- Co-Chairs: Tamara Brooks and Kirsten Howard

In addition to its involvement with other Section activities and acting as a liaison with other real estate groups, this committee is charged with planning the annual Residential Real Estate Seminar.

Upcoming Events

- **Joint 1-Hour Professionalism CLE and Mixer with the Eminent Domain Section**

When: March 13, 2024 from 4 – 6 p.m.

Where: Parker Poe

1075 Peachtree Street N.E.,

Suite 1500

Atlanta, GA 30309

What: Professionalism Hour CLE with *Matt Mashburn* followed by a Happy Hour Mixer

- **2024 Real Property Law Institute**

When: May 16-18, 2024

Where: Francis Marion Hotel

387 King Street

Charleston, SC 29403

What: Annual CLE event with breakout sessions focusing on commercial and residential real estate.



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If you are looking for a peer or are interested in being a peer volunteer, visit www.GeorgiaLHL.org for more information.

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2024

REAL PROPERTY LAW INSTITUTE

Navigating Our Future

Francis Marion Hotel

Registration Link:

<http://tinyurl.com/2c7zv3m9>

Real Property Section Member Pricing:

\$400

Register Now!

Thursday

Joint Session

MAY

16

Friday

Breakout Sessions

Commercial Real Estate

Residential Real Estate

MAY

17

Saturday

Joint Session

MAY

18



NAVIGATING OUR FUTURE



CERTIFID

May 16-18
Charleston, SC

PRESENTING PARTNER

CertifID, a wire fraud prevention software that helps protect you and your clients, is our Presenting Partner for the 2024 Real Property Law Institute

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**2024 REAL PROPERTY
LAW INSTITUTE**

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NAVIGATING OUR FUTURE



OLD REPUBLIC TITLE

May 16-18
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LAW INSTITUTE**

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LAW INSTITUTE**

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NAVIGATING OUR FUTURE

Recent Events

Real Property Law Section's Residential Law Seminar

Real Property Law Section's Residential Law Seminar Members of the section recently convened for the annual residential law seminar. The event was well-attended speakers included the distinguished George A. Pindar Award Winner, T. Matthew Mashburn, as well as a lively underwriting panel and a discussion of the hot-button issue of FIRPTA reporting and compliance. The co-chairs of the Residential Section, Tamara Brooks (Agents National Title Insurance) and Kirsten Howard (Goggans Stutzman Hudson Wilson & Mize LLP) led the seminar which provided attendees with 6 hours of CLE credit and the opportunity to engage with the speakers.

Speakers included:

- *T. Matthew Mashburn*: Partner, Aldridge Pite, LLP
- *Katherine B. Oates*: Partner, Weissman PC
- *Ethan Purvis*: Marketing Director, FIRPTA Solutions
- *Charles Spraggins*: Spraggins Law Firm, LLC
- *Leonard R. Gray, Jr.*: Senior Underwriting Counsel, Commercial, First American Title Insurance Company
- *Patrick D. Hagler*: Southeast Regional Counsel, Alliant National Title Insurance Company
- *James J. LaRotonda, Jr.*: Vice President and Georgia Underwriting Counsel, Old Republic National Title Insurance Company
- *Kelsea Laun*: Vice President and Southeast Regional Underwriting Counsel, Doma Title Insurance, Inc.



Program co-chairs, Tamara Brooks of Agents National Title and Kirsten Howard of Goggans Stutzman Hudson Wilson & Mize LLP



Katherine Oates, Partner, Weissman PC



Charles Spraggins, Spraggins Law Firm, LLC



Underwriting counsel panel:

- Leonard R. Gray, Jr., First American Title Insurance Company
- Patrick D. Hagler, Alliant National Title Insurance Company
- James J. LaRotonda, Jr., Old Republic National Title Insurance Company
- Kelsea Laun, Doma Title Insurance, Inc.

Real Property Law Section's Commercial Law Seminar

The Real Property Law Section organized a dynamic and interactive seminar on November 8th. The workshop was headlined by two distinguished George A. Pindar Award Winners, T. Matthew Mashburn (2022) and Leonard R. Gray, Jr. (2023), and covered the basics of Mechanic's Lien Underwriting, the standards of professionalism, and discovering the Record Room at the courthouse.

The afternoon session was a hands-on workshop that provided participants with an overview of how to draft legal descriptions, focusing on the mechanics of metes and bounds to accurately describe land boundaries. The session also included exploring various tracts of land containing numerous special exceptions and easements.

The Co-Chairs of the Commercial Section, Paula Rothenberger (Counsel, Balch and Bingham, LLP) and Kyle J. Levstek (Managing Partner, Calloway Title and Escrow, LLC) led the seminar along with surveyor and crowd favorite Mark Chastain (Chastain and Associates, PC.), which not only provided registrants with 6 hours of CLE credit, but also generated revenue that will reduce registration fees for "dirt" lawyers at the remaining 2023-2024 Real Property Law Section events.

Feedback from attendees was positive and included some of the following, "The best part was that I felt that every section was relevant to my actual job, and that rarely happens at a title seminar...", "I especially enjoyed Mark Chastain's presentation, his historical knowledge, and the interactive survey review.", and "very interesting and informative!"

Speakers included:

- Paula Rothenberger: Counsel, Balch and Bingham, LLP
- Donna Massey: Senior Title Examiner, Calloway Title and Escrow, LLC
- T. Matthew Mashburn: Partner, Aldridge Pite, LLP
- Leonard R. Gray, Jr: Senior Underwriting Counsel, First American Title Insurance Company
- Mark Chastain: President, Chastain and Associates, PC.



Program chair, Kyle Levstek of Calloway Title & Escrow adding color to the discussions of the day and introducing the event speakers.



Attendees intently working through the survey workshop led by Mark Chastain



Mark Chastain, President of Chastain & Associates leading a commercial survey workshop.



Donna Massey, Senior Title Examiner, Calloway Title & Escrow, sharing her experience and expertise from the depths of the record room.



Matt Mashburn, Partner, Aldridge Pite, LLP, leading a discussion on the standards of professionalism

Real Property Law Section's Title Standards Seminar - Part I

The first session of the 2024 Title Standards Seminar was a well-attended success. Host Allie Jett of the Jett Law Group organized a series of presentations by industry professionals who spoke on timely subjects including decedents estates, tax sale titles, and changes to the recording and savings statutes. Feedback from attendees was resoundingly positive, and we look forward to seeing everyone for Part II on February 27th.

Speakers included:

- *Veronica McClendon*, McClendon Law and Consulting, LLC
- *Doug McKillip*, McKillip Law Firm LLC
- *T. Matthew Mashburn*, Partner, Aldridge Pite, LLP



Allie Jett, Jett Law Group



Veronica McClendon, McClendon Law and Counseling, LLC



T. Matthew Mashburn, Partner, Aldridge Pite, LLP



David Klein, Partner, Rountree Leitman Klein & Geer, LLC



Doug McKillip, McKillip Law Firm LLC



Jennifer Guerra, Member, Stites & Harbison, PLLC

Real Property Law Section's Title Standards Seminar - Part II

Session II of the 2024 Title Standards Seminar series held on February 27 reflected a continued fervor for our state title standards. Allie Jett of the Jett Law Group hosted a series of presentations by industry professionals who educated attendees on matters including Forms of Title Litigation, Ethics in the Real Estate Practice, and Developments in Brokers Liens and Related Updates. Attendees and speakers enjoyed an evening of cocktails and networking immediately following the event.

Speakers included:

- David Klein
- Jennifer Guerra
- Ned Blumenthal



Ned Blumenthal, Partner, Weissman

Close the Transaction, and Nothing More – Ethically Avoiding Non-Client Claims Against You

By, Matthew F. Totten
The Totten Firm

A transactional attorney, including a residential real estate closing attorney, often faces a rush of inquiries from numerous parties as a transaction creeps toward closing. From the loan officer to the Realtors, as well as the buyers and sellers themselves, every party in the closing transaction has a lot (fiscally and personally) at stake in the real property closing. The Court of Appeals recently addressed – and reminded – those transactional attorneys of the ethical duties and obligations in closing such a transaction.

In Simmons v. Flint, Connolly & Walker, 893 S.E.2d 873 (Ga. Ct. App., Oct. 17, 2023), the Georgia Court of Appeals addressed a bit of a potential ethical quagmire for the unwary closing attorney. Notably, the plaintiff was not the party to the closing, but instead a conservator for the seller who subsequently raised in the lawsuit – then discarded – claims that the seller lacked the mental capacity to convey the underlying property. The Court of Appeals instead addressed remaining claims against the closing firm and attorney for an asserted breach of duty to ensure the seller conveyed the property that was intended to be conveyed – namely in the drafting of documents subsequently executed. The transaction was a non-lender closing.

In upholding the trial court’s finding that the closing attorney owed no legal duty to the seller, the Court reminded transactional attorneys that a legal duty may arise not only from an express attorney-client engagement, but also “may be implied from the conduct of the parties.” Simmons at 876. As a cautious reminder, “under certain circumstances, professionals

owe a duty of reasonable care to parties who are not their clients” and that a closing attorney “may be liable to someone who is not his client for voluntary undertakings performed negligently.” Id. at 877.

However, the Court of Appeals found that a prior decision proved decisive in addressing the ethical question presented – namely that the closing attorney owed no duty of care to the seller. See Driebe v. Cox, 203 Ga. App. 8 (1992). While a closing attorney “who gratuitously offered to act for a non-client subjected himself to liability for misfeasance”, a closing attorney within their normal practice does not give rise to such a claim. Simmons at 877-78 (citing Driebe). In Driebe, the seller “knew that the attorney was hired by the buyer to close the transaction and that the attorney was not representing the seller’s interests at the closing,” the closing attorney “made no gratuitous promise to the seller,” the attorney “had no reason to believe that the seller would be relying on him to tell the seller what property he owned,” and the seller “had no reason to rely on the attorney or believe that the attorney would be representing his interests at the closing.” Simmons at 878 (citing Driebe).

In summary, a closing attorney’s drafting of a legal description for a warranty deed – or other actions required to close the transaction for their client – are not ‘voluntary undertakings’ which would impose a duty of care to a party who is not the attorney’s client. Simmons at 878. If one stays within their respective lane of solely undertaking actions required to close the transaction for your client, the Court of Appeals is clear that no voluntary undertaking – which would create potential liability to a third party/non-client – would otherwise arise.

Practice pointers for a closing attorney – (1) define, in writing, who is (and is not) your client. Review any disclosures you may have the parties at closing sign to include an express acknowledgement re: non-client status and affirm that they did not rely on any representations of the closing attorney in conveying or purchasing the property; (2) have a documented process – as the Simmons Court highlighted the closing attorney used – to confirm whether a party has mental capacity to participate in the closing transaction if in doubt; (3) don’t volunteer – or make representations – surrounding things outside of what is required to close a property transaction for your client.

What's New with the Corporate Transparency Act?

*By: Gordon Rago
Marketing Communications Manager
Parker Poe*

With the new year comes new federal regulations. Effective January 1, many companies operating in the U.S. face new requirements to gather and report certain information to the Department of Treasury's Financial Crimes Enforcement Network (FinCEN). The information to be reported includes personal identifying information (PII) of the entities' "beneficial owners" (those individuals who have direct or indirect substantial ownership or control positions with the entities).

The new federal reporting requirements are mandated by the Corporate Transparency Act (CTA), which was passed by Congress in 2021 to deter the use of U.S.-based entities in money laundering and other financial crimes. The CTA sets forth a number of narrowly drawn exemptions, including for entities that meet the criteria for "large companies," entities that are already subject to reporting and regulatory oversight (such as banks, public companies and tax exempt entities), and entities that are wholly owned subsidiaries of exempt entities. Also, because the reporting requirements generally apply only to entities created by a filing with a secretary of state or equivalent, general partnerships, sole proprietorships, and some trusts are not subject to the CTA.

Navigating certain aspects of the CTA can be complex, including figuring out whether your company is exempt and, if not, which individuals are considered "beneficial owners" of the company. Consider seeking assistance from outside advisors.

There's also a time element to consider. Non-exempt companies in existence prior to 2024 have until December 31, 2024 to file what the agency calls beneficial ownership information (BOI) reports. Non-exempt entities created after January 1, 2024, have 90 days (30 days for entities created after 2024) from the date of creation to file.

The BOI reports don't have to be submitted every year but must be updated within 30 days of a change, such as the addition of a beneficial owner or a different residential address for an existing beneficial owner.

Parker Poe's CTA Task Force is prepared to advise companies to ensure they are staying compliant with the new act. The team is comprised of attorneys and professionals across a range of practices, including real estate and commercial development, banking, health care, and tax. Alonzo Llorens, a corporate partner, represents the task force in Georgia.

FinCEN has issued several helpful bulletins and guides, including the Small Entity Compliance Guide. You will also find helpful information from Parker Poe. Our firm has issued client alerts on the topic over the last two years.

One major takeaway: Preparation is critical. We generally advise companies to set up ongoing CTA record keeping and compliance processes, including for forming entities in the future, to ensure that the new entity will have access to the information needed to timely file any required reports.

For more information, please contact our task force leaders Al Guarnieri, Skip Smart, or Alonzo.

State Bar of Georgia Real Property Law Section's Litigation Subcommittee - January 2024 Update

Hartwell Railroad Company et al. v. Hartwell First United Methodist Church, Inc., No. A23A1021, 2023 WL 7101212 (Ga. Ct. App. October 27, 2023)

o General Overview: A railroad spur track constructed in 1913 sits on a disputed 10-foot strip of land adjacent to a church parcel. The spur was in use in 1990 when the Great Walton Railroad Company ("Walton") acquired the railroad through a quit claim deed that failed to include a full description or depiction of the spur. In 2002, the church acquired a roughly half-acre parcel of land immediately north of the mainline of the railroad.

A dispute arose as to ownership of the land underlying the spur and, in 2016, the church filed a Petition for Declaratory Judgment (the “Petition”) that the church holds fee simple interest in the disputed property and for Injunctive Relief preventing Walton from entering and/or conducting construction or other operations on the disputed property. In a separate proceeding before the Surface Transportation Board (“STB”) (a federal agency that is the successor to the Interstate Commerce Department), Walton argued that the STB has exclusive jurisdiction to authorize the removal of a federally regulated rail line from the interstate rail system – the STB held the matter in abeyance, however, finding that the spur was considered “ancillary track” not requiring STB approval before removal and that the principal issue of ownership of the disputed property was one for the state courts to determine. After a final hearing in August 2022, the trial court found in favor of the church stating that the church is fee simple owner of the disputed property by virtue of deed and prescriptive title by adverse possession. The trial court further found that Walton never held fee simple title to the disputed property and rejected Walton’s arguments for a prescriptive easement due to Walton’s removal of rails and cessation of all use in 2008. Walton’s continued occupation of the disputed property was determined to be unlawful trespass and the trial court enjoined Walton from said trespass and ordered Walton to remove any rail lines then on the property.

o **Holding:** The Court of Appeals affirmed in part and vacated in part the trial court’s decision. Finding that the church owns fee simple title to the disputed property, the Court explained that, in the event of inconsistencies in the identification of land, descriptions of artificial boundaries and natural, visible, and ascertained objects are superior to descriptions of courses and distances. Therefore, “because the deeds in the chain of title for the disputed property call for the railroad right of way as the boundary line, and the spur resides outside the right of way, the church’s lot necessarily includes the property underlying the spur.” The Court further found that license agreements between the church and Walton providing that the church would not claim any right, title or interest in the disputed property were immaterial because Walton never had an interest in the land underlying the spur track. In vacating the permanent injunction requiring removal of the track, the Court held that the injunction was preempted by

federal law and that the STB must determine whether abandonment of the track is appropriate now that the matter of ownership of the underlying track is settled.

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.

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.

3. Have news or accomplishments you would like to share? Members are invited to submit a short blurb highlighting a recent accomplishment or event for publication in the next edition of the newsletter.

Please email your submission to garplscommittee@gmail.com.

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

