REAL PROPERTY
LAW SECTION

A publication of the Real Property Law Section of the State Bar of Georgia – 2nd Quarter 2024 Newsletter

Inside this Issue

Letter from the Immediate Past Chair

By: Amanda Calloway, RPLS Chair 2023-2024

Hello RPLS Members,

I hope that everyone has enjoyed the summer and is gearing up for a productive fall. As for your executive committee, we have enjoyed a short summer break following a very successful RPLI in Charleston back in May and are now gearing up to kick off a new session this fall, under the leadership of the 2024-2025 section chair, Stuart Gordan. It has been my great pleasure to serve as the 2023-2024 Real Property Law Section Chair and I am very proud of all that was accomplished last year. I am excited to pass the chair position on to Stuart and believe that he will lead our section in another year of excellent education, networking, and advocacy for the real property attorneys of Georgia. In preparation for the new session, the section leadership recently gathered for a strategic planning meeting during which we discussed the goals and potential challenges for RPLS the coming year. We are excited to continue our efforts to connect with younger real estate attorneys, bring a variety of real estate centered CLE and networking opportunities to our members, increase our communication to membership through a variety of platforms, and keep section members informed of the issues affecting the practice of real property law in our state. As we gear up for the coming 2024-2025 session, I would like to encourage any section members who wish to get more involved in the committee to reach out to Stuart or myself to join a subcommittee this year. Finally, I would like to thank everyone who supported me and assisted with the various events and projects that I undertook as Chair this past year. I'm looking forward to another fantastic year for the RPLS and hope to see at one (or several) of our upcoming events this year!

Please follow our social media accounts on Instagram (realpropertylawstatebargeorgia); Facebook (State Bar

of Georgia – Real Property Law Section); LinkedIn (Real Property Law – State Bar of Georgia); and check out our new website www.garealpropertylaw.com to stay in the know on section news and events throughout the year.

About the Section

Special thanks to our outgoing 2023-24 Chair, Amanda Calloway, for her excellent service to the Section: 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.

Real Property Law Section of the State Bar of Georgia Exemplary Student Award

Each year, the Real Property Law Section Executive Board awards a handful of Institute scholarships to law students throughout the state who have been recognized by their professors as exemplary students with an interest in forging careers in the real estate industry. The scholarship includes 2024 Real Property Law Institute registration fee, three nights hotel accommodations at the conference hotel, and a small travel stipend.

We congratulate the 2024 scholarship winners:

Elena Gage Rogers
University of Georgia
School of Law

Joy Smith
John Marshall
School of Law

Charlie Hulett,
Georgia State
School of Law

Aniket Pai,
Emory
School of Law

Katie Anderson,
Mercer
School of Law

Upcoming Events

- **Joint Networking Event with the Southeast Land Title Association**
  What: Join us for an evening of virtual golf, appetizers, cocktails, and mingling!
  When: August 15, 2024
  from 6 p.m. - 8:30p.m.
  Where: Good Game Restaurant and Bar, 875 Battery Ave., Suite 700, Atlanta, GA 30339.
  Cost: $25 pp (includes parking validation)
  Register Today: www.SLTAOnline.net/events

- **Joint 3-Hour CLE and Mixer with the Atlanta Bar**
  When: September 12, 2024
  from 2:00 p.m. - 6:30 p.m.
  Where: **Offices of Taylor English Duma LLP**
  What: 3-hour CLE providing an introduction to Commercial and Residential Real Estate practice areas, focusing on Title, Survey and Closing. The CLE event will be followed by a networking happy hour.

- **2025 Real Property Law Institute**
  When: May 8-10, 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)

Pindar Award

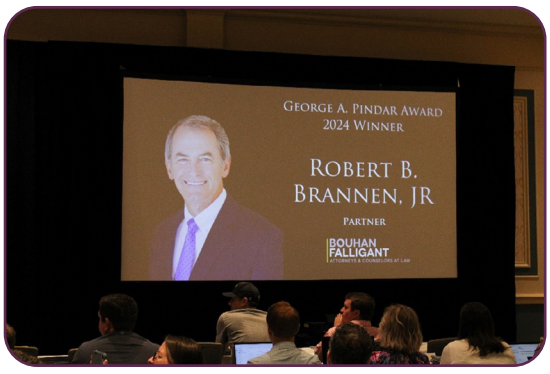
Started in 1990, the George A. Pindar Award is granted each year by the Real Property Law Section of the State Bar of Georgia to a member of the section whose lifetime contribution has been significant to the real estate bar. The main objective of the award is to honor a member who unselfishly gives of themself for the benefit of the bar, who has demonstrated a lifetime of the highest quality of legal service, ethics, and professionalism throughout their career, and who serves as a role model to those who come after them and are a credit to the profession. The Executive Committee determines annually if the award shall be granted and votes to give the award to a person or persons whom the committee thinks represents the ethics and ideals of George A. Pindar.

Thua Barlay (Left), Rob Brannen (Center), Stuart Gordan (Right)

This year, we are pleased to celebrate this year's recipient of the Pindar Award, Rob Brannen, a real estate partner at Bouhan Falligant LLP. Rob was named one of the Best Lawyers in America 2021, 2022, 2023 and 2024. He has served as chairman of our section's Executive Committee, worked extensively for our Ethics and Legislative Committees.

Rob participated in the drafting of an approved formal advisory opinion on witness-only closings, the drafting of the Residential Real Estate Closing Procedures Standards, the drafting of the Trust Accounting Handbook for Georgia Real Estate Closing Attorneys, and various legislative initiatives. He currently serves on a task force appointed by the president of the State Bar of Georgia to address the ethical responsibilities of Georgia lawyers.

Rob's former law partner, Danny Falligant, spoke at the award ceremony, stating: "I've had the privilege of practicing law with Rob for the past 32 years." "I've had the opportunity to see the quality of his character and his ability to solve difficult, legal issues. In fact, in practicing law with Rob, I have become a far better lawyer because of things I have learned from him. Rob is a great lawyer, a wonderful person, a loyal partner, and a



devoted friend. Congratulations, Rob. You're a true leader and a role model to the lawyers of Georgia and you show that true success comes in serving others."

Thank you for all of your great work, Rob! Congratulations on this well-deserved award.

Recent Events

Real Property Law Institute

The 2024 Real Property Law Institute took place May 16-18, 2024, at the Francis Marion Hotel in Charleston, SC, the reigning No. 1 City in the U.S. as awarded by Travel + Leisure magazine. An annual event sponsored by the Real Property Law Section, the Institute provides Section members with continuing legal education hours and opportunities to socialize and meet colleagues and industry partners.

The Institute is a 3-day event, with Day 1 being one joint session, Day 2 having separate break-out sessions for Residential and Commercial topics, and then Day 3 back in one, combined session. The 2024 Institute's theme was Navigating Our Future, and the individual sessions provided attendees with critical information for practicing law in the coming years. There were returning, fan-favorite sessions such as the Judicial Update presented by Carol Clark, Esq., and Cases Since Last RPLI That You'll Know by One Name This Year presented by T. Matthew Mashburn, Esq. There also were sessions focused on new or trending topics, such as CIFUS and Laws Restricting Who May Own Property, Build to Rent Communities, Marijuana Minefields and At the Junction of Artificial Intelligence and Legal Professionalism. A full year of CLE hours were available at the Institute, including required hours for trial practice, ethics and professionalism.

During the Institute, the Executive Committee of the Section awarded the 2024 George A. Pindar Award to Robert Brannen, Jr., Esq. The Award is presented to a member of the Section whose lifetime contribution has been significant to the real estate Bar, who has unselfishly given of him or herself to the benefit of the Bar, and who represents the ethics and ideals of George A. Pindar. Rob is a very deserving award recipient, and we congratulate him.

Social activities during the Institute included a family-friendly tour and scavenge hunt at the Charleston Museum, the oldest museum in the U.S., a NASCAR-themed 5k around Marion Square to continue the tradition of the annual Feet for McFee 5K Fun Run/Walk, and the annual Raiford Memorial Golf Tournament that took place at Patriots Point Golf Links.

An important part of the Institute is the collaboration and involvement with industry partners, many of whom are lawyers, companies and vendors. We are thankful to these partners, as all available sponsorship tables sold out.

We couldn't have been happier with the 2024 Institute and are looking forward to 2025 when we return to a beach-side location at Amelia Island.

Joey and Deanie Strength ready for a day in Charleston!

Russell Gaines, Calloway Title and Escrow together with his family enjoying the History Museum.

From the Membership

Look at that property! Is it a house? Is it a car? No, it's a mobile home! – Understanding Mobile Home Transactions

Sometimes it feels like you need superpowers to properly handle a mobile home transaction! It is often difficult to determine the status of the mobile home and whether it is part of the property. The question becomes what is the *legal* status of the mobile home? Is it a vehicle (personal property)? A home (real property)? Most importantly, does anything need to be done to transfer or convert it as part of the transaction?

Given the ongoing housing inventory shortage facing our country, HUD and other agencies have predicted an increase in mobile home purchases so Doma agents will likely see more transactions involving mobile homes. It is important to understand the framework of what a mobile home is (and is not), how to determine its' legal status, and how to transfer or convert the mobile home while meeting lender requirements.

What is a mobile home?

A mobile home is a manufactured home built according to the construction and safety standards set by HUD. The mobile home is built offsite in a manufacturing plant and then later transported to the land where it is to be located. The terms mobile home and manufactured home are mostly interchangeable, but a *modular* home is entirely different. Modular homes are preconstructed in a facility but completed at the home site, which means it passes with title to the land without conversion or separate transfer.

How is a mobile home like a vehicle?

Just like your personal car, mobile homes are issued vehicle identification numbers (VINs). The VIN is on the data plate on the interior of the mobile home and commonly inside a cabinet or closet. There is also a HUD certification label required to be placed on the exterior of the mobile home. Both the HUD label and VIN are unique to each mobile home.

Most mobile homes are also issued a Certificate of Title (COT) that serves the same as a car title. The COT is registered with Georgia Revenue Commissioner (Commissioner) and tracked through the Department of Revenue – Motor Vehicle Division (MVD). However, some mobile homes are never officially titled with the MVD and only have a Manufacturer's Certificate of Origin (MCO). The MCO is the "birth certificate" of the mobile home and shows the original manufacturer information from when the mobile home was first built.

How is a mobile home like a house?

Practically speaking, the mobile home was probably meant to be permanently attached to the land and pass with the real property like a traditional "stick built" home. However, intent is usually not enough by itself. Still, it is important to determine if the mobile home has had its axles, wheels, etc., removed and that it has been placed on a permanent foundation. This may also include being connected to utilities. The permanent attachment to the land may *physically* affix the mobile home to the land, but it may remain a vehicle (personal property) until legally converted to real property.

Converting a Mobile Home to Real Property

In Georgia, a mobile home will constitute personal property until converted to real property under the Motor Vehicle Certificate of Title Act (the "Act"). Under the Act, a mobile home can be converted to real property with the following:

1) Mobile must be permanently affixed to the real property;
2) One or more persons with an ownership interest in the mobile home also has an ownership interest in the land; *and*
3) The owner(s) of the mobile home and any security interest holders must execute and file a Certificate of Permanent Location in the real property records of the county where the land is located **and** with the Commissioner.

The owner should receive their COT within 30 days after purchase from the dealer (new) or seller (used). However, the COT will be sent to a security interest holder until their lien is properly satisfied and released. You may need to submit a Form MV-20 (Request for

Vehicle Information) to obtain missing information for the mobile home, especially if the owner cannot locate their COT.

Once all the necessary information and documents have been assembled, you can proceed with completing and submitting the required forms to the county tag office. The main form necessary for completing the conversion is the T-234 – Manufactured Home Certificate of Permanent Location. There is another version of the form (T-234A) that can be used for mobile home that were sold after July 1, 2006. The T-234A will require the MCO to be attached to the form in lieu of the COT.

The mobile home will legally be real property that passes with title to the land when:

1) The Certificate of Permanent Location is recorded by the Clerk of Superior Court in the real property records;
2) A certified copy of the Certificate of Permanent Location is filed with the Commissioner;
3) The COT is surrendered to the Commissioner; *and*
4) The Clerk of Superior Court provides a copy of the Certificate of Permanent Location to the tax assessor so the mobile home is taxed as real property.

All of the necessary forms can be found online, including a limited power of attorney (Form T-8) that may be useful to aid owners with the conversion process. These can be found on the DOR site at:

https://dor.georgia.gov/documents/forms/type/motor-vehicles

Mobile Home Taxes: Personal Property vs. Real Property

To complete the conversion process, the mobile home needs to be taxed as real property. Some tax authorities assign a personal property parcel number to the mobile home that will need to be retired so there will not be any further personal property assessments. The goal is for there to be one real property tax parcel for the combination of the mobile home and the land. The tax authority will need to be notified to update the tax records to show the mobile home as real property. Additionally, any personal property taxes on the mobile home must be paid as part of the conversion process.

How is a mobile home insured under the title insurance policy?

Title insurance policies only insure the land, so a mobile home that is not properly converted will not be included in the coverage. Most lenders will require the conversion process be completed and will request an ALTA 7 endorsement that shows the mobile home is included with the insured land.

However, if you know there is a mobile home that has not been converted, then the mobile home will need to be shown as an exception in the commitment and policy. The conversion process can be completed as part of the transaction to remove the exception.

Alternatives to Conversion

One alternative is for the seller to transfer the COT to the purchaser separately from the conveyance of the land. This option functions the same as purchasing a vehicle where the seller signs over the COT to the purchaser and should be reflected in a bill of sale.

Another alternative solution is for the purchaser to take the required steps to convert the mobile home post-closing. This will require the mobile home to remain an exception in the policy, but an endorsement can be issued once the conversion process is completed. This may be helpful if crunched for time with the closing, but both options will depend on lender requirements (if any).

Tips and Other Helpful Resources:

All mobile homes built after 1976 are required to have a HUD label. The Institute of Building Technology and Safety (IBTS) is a non-profit organization that is responsible for the tracking of HUD labels. IBTS offers services for locating missing HUD labels and provides Label Verification Letters (for a fee) to verify the HUD label and VIN. This can be very helpful when working with the MVD and filling out required forms and affidavits.

Fannie Mae also has a guide called "Titling Requirements for Manufactured Homes" that has a summary for the conversion process in every state. This is another great resource for state specific guidance on completing the conversion process. The Fannie Mae guide can be found at the link below:

https://singlefamily.fanniemae.com/media/18186/display

Final Thoughts

You don't have to be Superman to handle a mobile home transaction! Mobile homes do present additional steps and involve more work, but you now have the basics under your belt. We recommend working closely with your underwriting counsel as you work through transactions involving mobile homes. There are additional resources available online and you can also contact the local county tag office for assistance as well.

Ryan Martinez
Doma Title Insurance, Inc.

Staying Between the Buoys – Revisiting Keller v. State Bar of CA

The 1990 U.S. Supreme Court case, Keller v. State Bar of California, is significant in relation to the recent challenges faced by mandatory state bars because it first established the legal framework for the use of compulsory bar dues to fund activities related to lawyer regulation and the improvement of legal services. Particularly, Keller serves as a foundation for understanding the permissible scope of advocacy and communication by mandatory state bars relating to legislative speech, inclusive of political and ideological causes. Keller, in analogizing state bars to union activities, limits use of bar fees "when such expenditures are not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services." Keller at 496 U.S. 9-17. As acknowledged by the Supreme Court, precisely where the line falls "as professional advisors to those ultimately charged with the regulation of the legal profession, on the one hand, and those activities having political or ideological coloration which are not reasonably related to the advancement of [the legal profession]… will not always be easy to discern." Id. at 16. As Keller openly acknowledges not being a bright-line test and "not always eas[ily] discern[ed]," mandatory bar associations are naturally cautious in undertaking speech may be construed as political or ideological, and otherwise barred from using mandatory state bar fees per Keller.

However, the recent changes in the composition of the Supreme Court suggest that Keller could be under attack, or at least subject to additional scrutiny. *See, e.g.*, Janus v. AFSCME, 138 S. Ct. 2448 (2018) (holding that unions could not collect mandatory 'fair share' fees to cover the costs of collective bargaining). In fact, Justices Thomas and Gorsuch have questioned whether Keller remains good law in light of Janus, which overturned the common underlying case with Keller, Abood v. Detroit BoE. *See* Jarchow v. State Bar of Wis., No. 19-831, petition for cert. denied (U.S. June 1, 2020) (No. 19-831) ("Our decision to overrule Abood [in Janus] casts significant doubt on Keller… If the rule in Keller is to survive, it would have to be on the basis of new reasoning that is consistent with Janus."(J. Thomas and J. Gorsuch, *dissenting*).

Resultingly, there are continued attacks on mandatory bar associations in light of the open question posed by Justices Thomas and Gorsuch in their 2020 dissent in Jarchow. *See, e.g.*, "The post-Janus world: a look at recent court challenges to mandatory bars" (American Bar Ass'n, Vo. 47, No. 6, July 22, 2022) (highlighting challenges in Washington State, North Dakota, Wisconsin, Louisiana, Oregon, Michigan, Oklahoma, Texas, and Utah).

The ongoing legal challenges against Keller and open Supreme Court invitation to challenge Keller's holding serve as extreme caution for any mandatory state bar association, including the State Bar of Georgia, from crossing the proverbial gray line of Keller-protected mandatory bar association speech "as professional advisors to… the regulation of the legal profession" versus "activities having political or ideological coloration."

The heightened caution and scrutiny of mandatory bar

association speech, even under a Keller framework, post-Janus requires extreme caution by leadership of a state bar association or a state bar association section in trying to discern if even speech advocating for the legal profession remains protected today.

Matthew F. Totten
The Totten Firm

2024 Georgia Legislative Session Update

The legislative subcommittee of the Real Estate Section monitored a number of bills relating to real estate in the 2024 legislative session. Of those that were passed by the legislature and signed into law by the governor, the legislative subcommittee highlights the following for your consideration:

ACT 375 fka SB 496 - [Relating to Historic Tax Credits]

Extends the sunset date for the tax credits for the rehabilitation of historic structures to December 31, 2029, expands the criteria for historic homes to qualify for such credits, and extends provisions related to automatic appeals and the sunset date for the revitalization zone tax credit to December 31, 2032.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/67017

ACT 379 fka HB 581 – [Relating to Revenue and Taxation, so as to Provide Requirements for Ad Valorem Property Tax Bills].

Modifies and provides definitions, provides for minimum mandatory reappraisal of parcels, gives county boards of tax assessors the right to appeal concerning sales ratio studies under certain conditions, and provides a statewide adjusted base year ad valorem homestead exemption and procedures for counties to opt out of the statewide exemption at the local level among other modifications to Title 48 of the Official Code of Georgia. Notably, this law revises the limitation on increasing property valuations established through appeals or agreements such that it is only applicable if the taxpayer's property receives a reduction in value. Taxpayers no longer will receive the benefit of the limitation on increases if there is no change to a property's value. This law is effective as of January 1, 2025.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/64811

ACT 388 fka HB 220 – [Relating to Condominium and Homeowners Associations].

Authorizes condominium and homeowners associations to choose any remedy available under their governing documents to cure violations, without having to first pursue self- help (but in some cases requiring prior notice). It also limits the ability of an association to suspend voting rights and gives owners a right to call an annual meeting of the association in certain circumstances. This law appears to reverse the requirements of Deerlake Homeowners Association, Inc. v. Brown, 361 Ga. App. 860 (2021), which had required the association in that case to pursue self-help before exercising other remedies. This law is effective as of July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/63973

ACT 390 fka HB 300 – [Relating to Solar Power Facility Agreements; Leases].

Requires certain provisions in solar power facility agreements relative to the responsibilities of grantees to decommission certain solar power equipment, and to provide for remedies and financial assurances for required decommissioning activities. It lists provisions that must be included in a solar power facility agreement regarding the grantee's restoration of the property upon termination of the agreement. This law applies to solar power facility agreements executed or renewed on or after July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/64138

ACT 392 fka HB 404 – Safe at Home Act.

Requires that residential rental properties be fit for human habitation, limits security deposits to the equivalent of two months' rent, and specifies that the definition of utilities includes cooling, in addition to heat, light, and water services. It also provides a right to cure of three business days to allow tenants to pay past due rent before a landlord can file an eviction. It applies to lease agreements that are entered into or renewed after July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/64363

ACT 476 fka HB 279 - [Relating to Property Insurance Discounts for Certain Residential or Commercial Properties].

Amends laws relating to property insurance, to provide for an insurance premium discount or rate reduction. This law applies to property owners who build new property or retrofit existing property to better resist tornadoes, hurricanes, or other catastrophic windstorm events. It requires insurers to provide a discount or rate reduction no later than March 1, 2025. To claim these adjustments, the owner of insurable property must maintain sufficient certification and construction records. This law is effective as of July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/64081

ACT 483 fka HB 1017 – Georgia Squatter Reform Act.

Modifies criminal trespass laws in Georgia and provides an expedited process to remove trespassers who occupy property without authority. The bill presents two avenues for prompt relief: 1) the issuance of a citation giving the occupant a short time to prove that they have the legal right to be present on the property and 2) a quick process following receipt of a counteraffidavit to have a non-jury court hearing and access to prompt ejectment through the added use of off duty sworn officers. When issued with a citation, the occupant has three business days to show a properly executed lease, rental agreement, or proof of rental payments. If such evidence is proffered, a hearing shall be set within seven days. A non-meritorious defense will lead to a writ of possession and removal as soon as practical, along with the fair market value rent for the duration of the illegal occupancy along with any other monetary relief as determined by the Court, and a potential fine of $1,000 and up to one year in jail or both. Submission of a fraudulent lease could also lead to the filing of a felony charge for filing a false document. This law is effective as of April 24, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66263

ACT 484 fka HB 1203 – [Relating to Dispossessory Proceedings].

The law is a companion law to Act 483 and modifies the dispossessory process in Georgia to allow landlords to enlist off-duty sheriffs, constables, or marshals to execute writs of possession if the official authorities are unable to do so within 30 days of the landlord's initial request. Additionally, the bill mandates that sheriffs, constables, and marshals maintain lists of authorized off-duty personnel in their respective jurisdictions to facilitate this process efficiently. Furthermore, the bill outlines the responsibilities and liabilities of landlords and tenants in dispossessory proceedings for tenants who are delinquent in rent. If a judgment is against the tenant, they are held accountable for rents due and any other claims related to the dispute. On the other hand, if the judgment favors the tenant, they have the right to remain on the premises, and the landlord becomes liable for damages caused by wrongful conduct. The bill also addresses the distribution of funds paid into court and the authorization for the removal of tenants or their personal property from the premises through a writ of possession. This law is effective as of April 24, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66825

ACT 496 fka SB 420 - [Relating to Ownership of Land by Certain Foreign Persons; Transfer-on-Death Deeds.]

Prohibits the acquisition of a possessory interest in agricultural land or land within a ten- mile radius of any military base, military installation, or military airport by certain foreign persons and entities (including

governments and agents of foreign governments that are designated as a foreign adversary by the U.S. Secretary of Commerce (currently China, Cuba, Iran, North Korea, and Russia) and entities that are domiciled or 25% owned by entities that are domiciled in such countries) and provides for time limits for such prohibited persons and entities to dispose of such interests. The bill does not apply to residential property and provides some exceptions for foreign persons who were physically present in Georgia for stated periods of time prior to acquiring the possessory interest. It also obligates brokers to advise prospective buyers or sellers of the requirements and limitations of the bill, limits rights to restitution for a transaction that is voided, and gives the legal counsel for the county or municipality, the Attorney General, and any person that was a party to the transaction to file an action to void the conveyance and have the interest revert to the previous owner, and establishes criminal penalties for violations.

This law also creates transfer-on-death deeds in Georgia, in a statutory form, by which a grantor may transfer an interest in real property to one or more designated grantee beneficiaries, to be effective upon the death of the grantor. Further, it provides the process for a grantee beneficiary to accept the transfer by executing an affidavit with certain information and a copy of the owner's death certificate, and recording the affidavit and documents with the clerk of superior court of the county where the real property is located. If the grantor's death occurs after July 1, 2024, and the affidavit and documents are not recorded within nine months of the death of the grantor, the interest under the transfer- on-death deed will revert to the grantor. There is no such time limit in cases where a grantor dies before July 1, 2024. A transfer-on-death deed may be revoked by a grantor prior to the grantor's death by recording a document revoking the conveyance proposed in the transfer-on-death deed (with such revocation requiring attestation by an officer as provided in Code Section 44-2-15 and by two other witnesses). The signature, consent, or agreement of or notice to the designated grantee beneficiary or beneficiaries is not required. A subsequent transfer-on-death deed beneficiary designation will revoke all prior designations. A transfer-on-death deed may not be revoked by the provision of a will. The bill also provides provisions regarding priority, vesting of joint interests, and treatment of the grantor as the absolute owner with regard to creditors and purchasers, prior to death, notwithstanding a transfer-on-death deed. This law is effective as of July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66460

ACT 549 fka HB 1292 - [Relating to Recording; Notary Publics; Unsolicited Offers; Penalties for Fraudulent Instruments].

Part I of the law requires "self-filers" (persons who are not insurance agents, attorneys, certain bank, credit union, or mortgage lender agents, loan servicer, public official, licensed surveyor, or other certain licensed persons) to provide copies of personal

identification information to the clerk prior to recording certain documents, including deeds, mortgages, liens, plats, or tax executions, in the public records. It also requires clerks to maintain the personal identification information and to make it available to others under certain circumstances. After January 1, 2025, self-filers may only file documents using electronic filing. The bill also requires notary publics to confirm the identity of signers by personal knowledge or by review of certain personal identification information and to maintain a register of any self-filers and certain personal identification information obtained from the self-filers, and to be trained on these requirements upon issuance of the notary public certificate or upon renewal. Part I is effective as of January 1, 2025.

Part II of the law amends the Fair Business Practices Act to require additional disclaimers on unsolicited offers for real property when the offer is less than the value of the previous year's assessed value. It also provides for the recovery of attorney fees in certain quiet title actions where the defendant fraudulently created an instrument that is cancelled in the quiet title, and for other damages when an individual has knowingly filed, entered, or recorded, or caused to filed, entered, or recorded, a false or forged deed or other instrument purporting to convey or encumber an interest in real property. Part II is effective as of May 2, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/67096

ACT 573 fka HB 663 – No Patient Left Alone Act.

Modifies rules relating to the regulation and construction of hospitals and other health care facilities. As it relates to real estate, it grants patients who are admitted to a hospital or long-term care facility the right to have a designated essential caregiver who shall be allowed to be physically present at all times while the patient is in the hospital or long- term care facility, subject to certain rules. This law is effective as of July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/65043

ACT 577 fka HB 934 - [Relating to Self-Service Storage Facilities].

Modifies laws relating to Self-Storage Facilities, to provide for the enforcement of unsigned rental agreements under certain circumstances, to provide for the execution and delivery agreement electronically, and to provide for the vacating of and removal of personal property from self-storage service facilities by occupants under certain circumstances. Notably, the law also establishes a form of written rental agreement for use in self-storage transactions. This law is effective as of July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66070

ACT 584 fka SB 508 - [Relating to Protection of Personal Information of State and Federal Judges, Justices, and their Spouses; Recording].

Provides for a mechanism for the Administrative Office of the Courts to obtain information of judges, justices, and their spouses, and to give notice to each state or local government entity that possesses personally identifiable information about such protected persons to restrict the information from publicly available content and public posting or display unless the protected person consents. This law is effective as of July 1, 2025.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/67099

ACT 594 fka HB 1073 – [Relating to Alcoholic Beverages; Zoning; Video Surveillance Equipment].

Provides for Sunday sales of alcoholic beverages for consumption on premises in certain special entertainment districts, repeals additional zoning hearing and notice provisions regarding halfway houses, drug rehabilitation centers, or other facilities for treatment of drug dependency, and prohibits local governments from requiring the placement of video surveillance equipment at locations where the retail sale of automotive gasoline occurs. This law is effective as of May 6, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66465

ACT 595 fka HB 1146 – [Relating to Water Permits for Private Companies]

Requires the Georgia Department of Natural Resources to issue water permits to private companies where no public service can be provided within a period of 18 months. This law is effective as of May 6, 2024. It sunsets on January 1, 2029.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66705

ACT 597 fka HB 1172 – [Relating to Hunting and Fishing and Water Rights].

Amends O.C.G.A. Section 44-8-5, relating to rights of adjoining landowners in navigable streams, to remove references to the public trust doctrine and to provide that members of the public have the right to use all navigable streams for passage for hunting and fishing. This law is effective as of July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66762

ACT 600 fka HB 1240 – Uniform Commercial Code Modernization Act of 2024.

Amends the Uniform Commercial Code in Georgia in order to maintain uniformity with the recommendations of the National Conference of Commissioners of Uniform Laws. Among other things, it establishes

commercial law for transactions involving digital assets, amends sections relating to controllable electronic records, adds an article pertaining to transitional provisions, makes other conforming amendments, and provides that nothing in the act is to be construed to support or implement a national digital currency. This law is effective as of July 1, 2024.

The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66939

ACT 614 fka SB 417 - [Relating to among other things, notice of accidents involving certain equipment]

Addresses a number of topics. As it relates to real estate, it amends O.C.G.A. Section 8-2-106 relating to the reporting of accidents involving elevators, dumbwaiters, escalators, manlifts, and moving walks, and the removal from service of such equipment involved in an accident, to require the owner or lessee of such property to file a report to the enforcement authority with all documentation of certain accidents by the end of the next business day after the accident.
The current version of this law is available at this link - https://www.legis.ga.gov/legislation/66437

In this summary the legislative subcommittee of the Real Estate Section has attempted to include any law that touches on real estate or the practice of real estate law with statewide application. However, this determination is subjective and may be over inclusive in some respects, and under inclusive in others. Also, this summary does not include many local acts and resolutions that were signed into law related to city charters, homestead exemptions, property conveyances, and other local concerns. If you are aware of any laws passed in 2024 relating to real estate that should be highlighted to the section, please send a note to jstrength@huntermaclean.com.

A link to all the bills passed by the legislature and signed by the governor in 2024 follows: https://gov.georgia.gov/executive-action/legislation/signed-legislation/2024.

State Bar of Georgia Real Property Law Committee Litigation Subcommittee May - June 2024 Update

Tucker et al. v. Brannen Lake East, No. A23A1265, 370 Ga. App. 445 (January 29, 2024)

- *General Overview*: On January 31, 2022, Brannen Lake East, LLC (BLE) purchased most, but not all, of the property surrounding a lake located in Bulloch County, Georgia known as Brannen Lake. On May 7, 2015, John Tucker and Burney Marsh (Tucker and Marsh) purchased "Lot 6" on Brannen Lake (the "Property") from BLE's predecessors in interest. The warranty deed conveying the Property included a legal description that referenced a 1993 plat depicting the lake as being contiguous with the Property; neither the deed nor the referenced plat contained restrictions on access or use of the lake. On June 24, 2022, arguing that said deed (and the plat referenced therein) lacks necessary language granting an easement for access to and use of the lake and that a 1987 deed in Tucker and Marsh's chain of title expressly incorporates covenants restricting Tucker and Marsh's use of the lake, BLE sought a declaratory judgment in Bulloch Superior Court granting BLE the right to prohibit Tucker and Marsh from access and use of the lake. The Superior Court issued an order in favor of BLE, finding that Tucker and Marsh's deed only provided an implied license subject to revocation. Tucker and Marsh appealed. The sole issue on appeal was whether the 2015 deed incorporating the 1993 plat established an easement for use of the lake by express grant.
- *Holding*: The appellate court reversed the lower court's ruling. Finding that Georgia law has long held that "when a developer 'conveys lots with reference to a subdivision plat, the grantees may receive easements in certain features – mostly streets and parks – that are designated on the plat,'" that the Supreme Court of Georgia has

previously held that lakes are often equated to parks, and that "designating these features on a subdivision plat conveys an intent to grant an easement to lot owners who buy with reference to the plat", the appellate court held that the 2015 deed to Tucker and Marsh conveyed an express grant of easement for access to and use of the lake. Further, the appellate court found that the covenants restricting use of the lake referenced in the 1987 deed in Tucker and Marsh's chain of title were not applicable to Lot 6 because the referenced covenants only expressly applied to Lot 21 and a portion of Lot 22 and "restriction[s] on use of land 'must be clearly established, not only as to the restrictions, but also as to the land restricted."

Bell et al. v. Cross, No. A23A1772, 2024 WL 829607 (Ga. Ct. App. February 28, 2024)

- *General Overview:* Lessee Deborah Cross ("Cross") entered a real estate lease with an option to buy agreement with lessors Gregory and Brenda Bell (the "Bells"). On December 18, 2018, six days before the expiration of the option term, Cross mailed a letter to the Bells stating her intention to purchase the property. The letter proposed the parties meet between December 2018, and April 2019, "to complete the proper documents to transfer ownership." The closing did not take place, but Cross remained in the property and the parties exchanged text messages after the expiration of the option term attempting to arrange for an appraisal so that the mortgage company could "determine what options they can provide on the house." When the Bells failed to pay the difference between the rental payment and the increased monthly mortgage payment after the expiration of the option term, the mortgage company sent a default notice. Cross paid the delinquent amount owed in order to prevent a foreclosure sale. Additionally, Cross made improvements to the property including a new roof and new windows. Cross further reiterated her desire to exercise the option to purchase the property by a letter from her counsel that included a Purchase Agreement. The letter requested the Bells sign and return the Purchase Agreement by November 22, 2020 and advised of Cross's intention to sue if they failed to do so. As a result of the Bells' failure to return the signed Purchase Agreement, Cross filed suit seeking specific performance as well as damages for breach of contract and quantum meruit. The Bells filed a counterclaim seeking declaratory judgment that Cross failed to properly and timely exercise the option and for possession of the property. Both parties filed motions for summary judgment. The trial court denied the Bells' motion for summary judgment and granted partial summary judgment to Cross on her claim for specific performance. The trial court held that because the language of the purchase options agreement relating to the date of the closing was ambiguous, Cross "shall be allowed to purchase the subject property from the Bells at the price minus the applicable deductions in the Lease Option Agreement" and ordered the Bells to close the transaction before July 21, 2023. The order held that "all other matters concerning Cross' request for damages were denied as not ripe for summary judgment." The Bells appealed the trial court's order arguing that, because Cross's notice letter did not strictly adhere to the terms of the purchase option agreement, it did not constitute a valid acceptance.

Holding: The Court of Appeals vacated the trial court's decision, holding that a jury question existed as to whether the Bells waived strict compliance with the notice provisions contained in the purchase option agreement. Factual questions existed because the Bells had actual notice of Cross' intent to exercise the option to purchase, did not inform her of her failure to strictly comply with the terms of the option prior to the expiration of the option term, and allowed her to invest in the property under the premise that she would be its ultimate owner. Further, there was a jury question as to whether the Bells waived compliance with a written modification requirement through their course of conduct after the expiration of the lease purchase agreement. The Court remanded for further proceedings consistent with the opinion.

Edwards v. Dixon, 370 Ga. App. 715, 899 S.E.2d 249 (2024*)*

- *General Overview*: Defendants David and Sheryl Dixon (the "Dixons") were the owners and residents of a property referred to by the parties as "Shinbone." A larger, adjacent piece of property was owned by Glenn Family, LLC, of which Sheryl Dixon served as chief manager. It is referred to by the parties as "Glenn Acres." Plaintiffs Edwards and Aldridge offered to purchase both the Glenn Acres property and the Shinbone property. Edwards and Aldridge were not interested in purchasing the Glenn Acres property without the Shinbone property. The parties executed the following written agreements: (1) a purchase and sale agreement for the Glenn Acres property; (2) an option agreement for the Shinbone property; and (3) a purchase and sale agreement for the Shinbone property. Both the option agreement and the Shinbone purchase and sale agreement stated that they were "[s]ubject to the simultaneous execution" of the Glenn Acres purchase and sale agreement." The Shinbone purchase and sale agreement also stated that it would "become binding upon the parties only when the Buyer exercises the Buyer's option to purchase under the Option Agreement entered into by the parties simultaneously with the execution of the [Shinbone] Purchase & Sale Agreement." And the option agreement expressly incorporated by reference the terms and conditions of the Shinbone purchase and sale agreement. The Edwards' and Aldridge's closed on the Glenn Acres property, and timely exercised the option to purchase the Shinbone property. Subsequently, the Dixons informed Edwards and Aldridge that they would "not proceed with the proposed sale" of the Shinbone property because they considered the option agreement to be unenforceable for lack of consideration. The option agreement stated that the Dixons granted Edwards and Aldridge the option to purchase the property "FOR AND IN CONSIDERATION of the sum of One Thousand U. S. Dollars ($1,000)." It is undisputed that Edwards and Aldridge did not actually pay the Dixons $1,000 when the parties executed the option agreement. Edward and Aldridge filed suit seeking specific performance of the option agreement. The trial court held that the option agreement was void for lack of consideration and granted summary judgment in favor of the Dixons. Edward and Aldridge appealed.
- *Holding*: The Court of Appeals reversed. The Court held the option agreement was enforceable as a matter of law because "Georgia courts have long recognized a rule that when a contract recites a dollar amount as consideration, it creates an obligation to pay that is itself sufficient consideration for the contract, whether or not the amount is actually paid." Under this rule, the option agreement's recital of $1,000 as consideration constituted an implied promise by Edwards and Aldridge, and the promise itself was adequate consideration.

College Park Business and Industrial Authority v. College Park Mob, LLC, No. A23A1332 (Ga. Ct. App. March 13, 2024)

- *General Overview*: In December 2020, College Park Business and Industrial Development Authority (BIDA) entered into a Real Property Purchase and Sale Agreement ("Original PSA") with a third-party whereby BIDA agreed to acquire, where necessary, and sell four tracts of land (the "Property") and offer a right of first refusal on a fifth parcel (the "Additional Property"). The Original PSA contemplated the construction of a development by the purchaser, but the exact plans for said development were not initially included. In October 2021, plans for the development intended for the site were added to the Original PSA, as amended, as an exhibit (the "Development Plans"). In December 2021, the original purchaser's rights under the Original PSA, as amended, were assigned to College Park MOB, LLC (the "Purchaser"). Closing was initially set for January 9, 2022, but, by mutual agreement, the parties agreed to delay closing and executed a "reinstatement" agreement which, by its terms, supplanted the Original PSA (the "January 2022 PSA"). The January 2022 PSA included a merger clause providing that the January 2022

PSA was the "sole and entire agreement of the Parties, supersed[ing] all prior written or oral communications relating the subject matter hereof." Importantly, the January 2022 PSA removed the Development Plans as an exhibit from the agreement of the parties. Leading up to closing, Purchaser performed as required under the January 2022 PSA, but BIDA provided a deed as to the Property restricting the proposed development to "the construction of a 27,000 to 40,000 sq. ft. medical office building" and a right of first refusal as to the Additional Property conditioned upon BIDA ever acquiring the property. Purchaser took issue with the restrictions and conditions contained within BIDA's proposed deliverables and BIDA failed to make any revisions or to further participate in closing.

Purchaser filed suit in March 2022 alleging BIDA's breach of the January 2022 PSA and seeking specific performance. BIDA answered and asserted counterclaims alleging that Purchaser's rejection of BIDA's proposed deed and right of first refusal was an anticipatory repudiation of the January 2022 PSA and therefore a breach. In proceedings with the trial court, BIDA argued that the submission of the Development Plans by Purchaser's predecessor was an acceptance of the later deed restrictions because the specifications contained in the Development Plans matched the specifications contained in the deed restrictions. Further, BIDA argued that the parties intended the right of first refusal as to the Additional Property to be conditioned upon the City of College Park actually conveying the property to BIDA. The trial court granted summary judgment of specific performance for Purchaser, concluding that BIDA breached the January 2022 PSA by failing to provide a proper warranty deed, by failing to provide the right of first refusal contemplated by the agreement, by refusing to prepare the necessary closing documents, and by failing to execute the closing documents or attend closing. BIDA appealed the trial court decision arguing, in four different enumerations, that summary judgment was inappropriate in this case.

- *Holding*: The appellate court reversed, in part, and upheld, in part, the lower court's ruling. Finding, first, that Georgia appellate courts have long held that specific performance of a contract for the sale of land requires the plaintiff to prove the value of the subject property, and, because the record does not show that Purchaser met this burden, summary judgment granting specific performance should not have been granted in favor of Purchaser in this case. As to each of the remaining claims raised by BIDA, however, the Court upheld the trial court's ruling. In those claims, BIDA argued that the trial court ignored evidence showing that BIDA did not default under the January 2022 PSA and that evidence of mutual mistake precluded summary judgment. As to the first part, the Court found that BIDA failed to show actual error by the trial court regarding its review of the evidence available. As to the second part, the Court found that the moving party asserting mutual mistake must show that the mistake was not the result of the moving party's own negligence and that any reformation of the subject agreement must not prejudice the other party – as such, the Court found that BIDA did not sufficiently demonstrate that the defense of mutual mistake should preclude summary judgment in this case. Notably, in a footnote, the Court deems BIDA's argument as to Purchaser's alleged repudiation of the January 2022 PSA waived because BIDA's briefing of that issue lacked any meaningful argument or citation of authority.

Farmer v. Farmer, No. A23A1302 (Ga. Ct. App. March 15, 2024)

- *General Overview:* This case involves the enforceability of an oral promise to convey a life estate, an alternate claim for unjust enrichment, and a derivative claim for attorney fees. The original owner of the property at issue was Rose Mary Farmer ("R. Farmer"). The property consisted of 3 acres including a residence that was part of a larger 17.62-acre tract of land. R. Farmer obtained sole title to the entire 17.62-acre tract in 1983 pursuant to the will of her husband, Pete Farmer. The Farmers had two children, Terrell Farmer and Appellant

Mary Ann Farmer. Mary Ann Farmer lived at the residence until 1972. During the subsequent years, R. Farmer repeatedly asked Mary Ann Farmer to return home, but Mary Ann Farmer refused until early summer of 1995 when R. Farmer could no longer live alone due to health issues. In June of 1995, R. Farmer advised her children that she was giving Terrell the 17.62 acre-tract, but she and Mary Ann Farmer would "have the house and… the surroundings" for the rest of their lives. She did not elaborate on what she meant by the "surroundings," but Mary Ann Farmer interpreted that to mean the yard, which included grass, trees, and a garden. In August of 1995, R. Farmer conveyed the entire 17.62-acre tract to Terrell Farmer by warranty deed but did not reserve the promised life estate in the deed. Regardless, Terrell Farmer honored his mother's promise even after she went into a nursing home and subsequently died. After R. Farmer's death, Mary Ann Farmer continued to live in the residence. In 2015, Terrell Farmer conveyed the entire 17.62-acre tract to his son, Appellee Kim "Bo" Farmer ("Bo Farmer"). The verbal life estate was honored until Terrell Farmer died in 2020, at which point Bo Farmer began the process of evicting his aunt. Mary Ann Farmer then filed a complaint seeking specific performance of the oral promise of the life estate in the "home place and its premises-three (3) acres as generally described in the Last Will and Testament" of R. Farmer or in the alternative, damages in the amount of $46,000.00 for the improvements she made and attorney fees. Bo Farmer moved for partial summary judgment and the trial court granted the motion finding that the exemption to the Statute of Frauds set forth in O.C.G.A. §23-2-132 was unavailable to Mary Ann Farmer because she could not show "entry into possession pursuant to the gift" since she already lived on the property before the promise of the life estate was made. The trial court also found that the house and its surroundings were not adequately described. Mary Ann Farmer then appealed.

Holding: The Court of Appeals reversed the trial court's order, holding that it construed the requirements of O.C.G.A. §23-2-132 too narrowly. Pursuant to the statute, the party seeking specific performance must show "the promise to give, a meritorious consideration, an entry by him into possession in pursuance of the gift, and that on faith thereof he made valuable improvements." The Court of Appeals disagreed with the trial court's narrow interpretation finding that Mary Ann Farmer's continued possession of the property was on reliance of her mother's promise of a life estate. Further, the Court held that there was a sufficient description of the property in Pete and R. Farmer's respective wills along with Mary Ann Farmer's use of the property over two decades to conclude there is an issue of fact as to the identification of the land involved. Lastly, the Court held that there was evidence to infer Bo Farmer allowed his aunt to improve the property under a belief that she had a legal claim thus creating a genuine issue of material fact as to whether he was on notice of the repairs and improvements. The case was remanded for further proceedings in accordance with the opinion.

Brownphil, LLC v. Cudjoe, 371 Ga. App. 126, 899 S.E.2d 761 (2024)

- *General Overview*: Earnest and Louise McClendon were the owners of a vacant lot in Macon, Georgia (the "Property"). In 1985, the McClendons conveyed the Property to Grier Construction Company by warranty deed. Grier Construction was not registered as a corporation with the Georgia Secretary of State, nor was the business registered with Bibb County. In 1997, Freddie Grier, owner of Grier Construction, conveyed the Property to his grandson, Peter Cudjoe, who recorded the deed in 2003. The McClendons died in 1992. In 2019, Brownphil, LLC ostensibly purchased the Property from the McClendons' estate administrator and recorded a quitclaim deed in the county deed records. However, starting in 1997, and acting under the belief that he owned the property that had been deeded to him by his grandfather, Cudjoe began paying the property taxes and maintaining the Property. In 2020, Brownphil filed a petition to quiet title and argued that the deed from the McClendons to Grier Construction did not convey title because it was conveyed to a nonexistent company. The trial court appointed a special master who concluded that title to the Property remained with the McLendons, and

the McClendons' interest was subsequently conveyed to Brownphil, LLC. The special master also concluded that Cudjoe had not acquired title by prescription because his possession was not obvious, apparent, nor notorious to others and because occasional mowing and the payment of taxes on the Property did not constitute actual possession as required to enable title to ripen by prescription into fee simple title. The trial court ultimately rejected the special master's findings and found that Cudjoe had acquired prescriptive title to the Property. Accordingly, the trial court granted summary judgment in favor of Cudjoe and denied Brownphil's motion for summary judgment. Brownphil appealed.

- *Holding*: The Court of Appeals affirmed the trial court's ruling. The Court of Appeals held that the deed was sufficient to bestow on Cudjoe color of title which could ripen into complete title by his possession of it for at least seven years. The Court further held that, even if Cudjoe's maintenance of the Property and payment of property taxes were not sufficient to establish actual possession, possession of a recorded deed has been held to be sufficient as not only "notice to the world of the possessor's claim of title, but also the element of notoriety essential to its being adverse." (internal citations and punctuation omitted). "[T]he uncontroverted evidence showed that possession by Cudjoe under the 1997 claim of title, which was recorded in 2003, lasted significantly more than 7 years, was open and notorious, exclusive, adverse, peaceable, and was not tainted by fraud. Cudjoe's claim of title therefore ripened into prescriptive title under O.C.G.A. § 44-5-161 as a matter of law."

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.

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