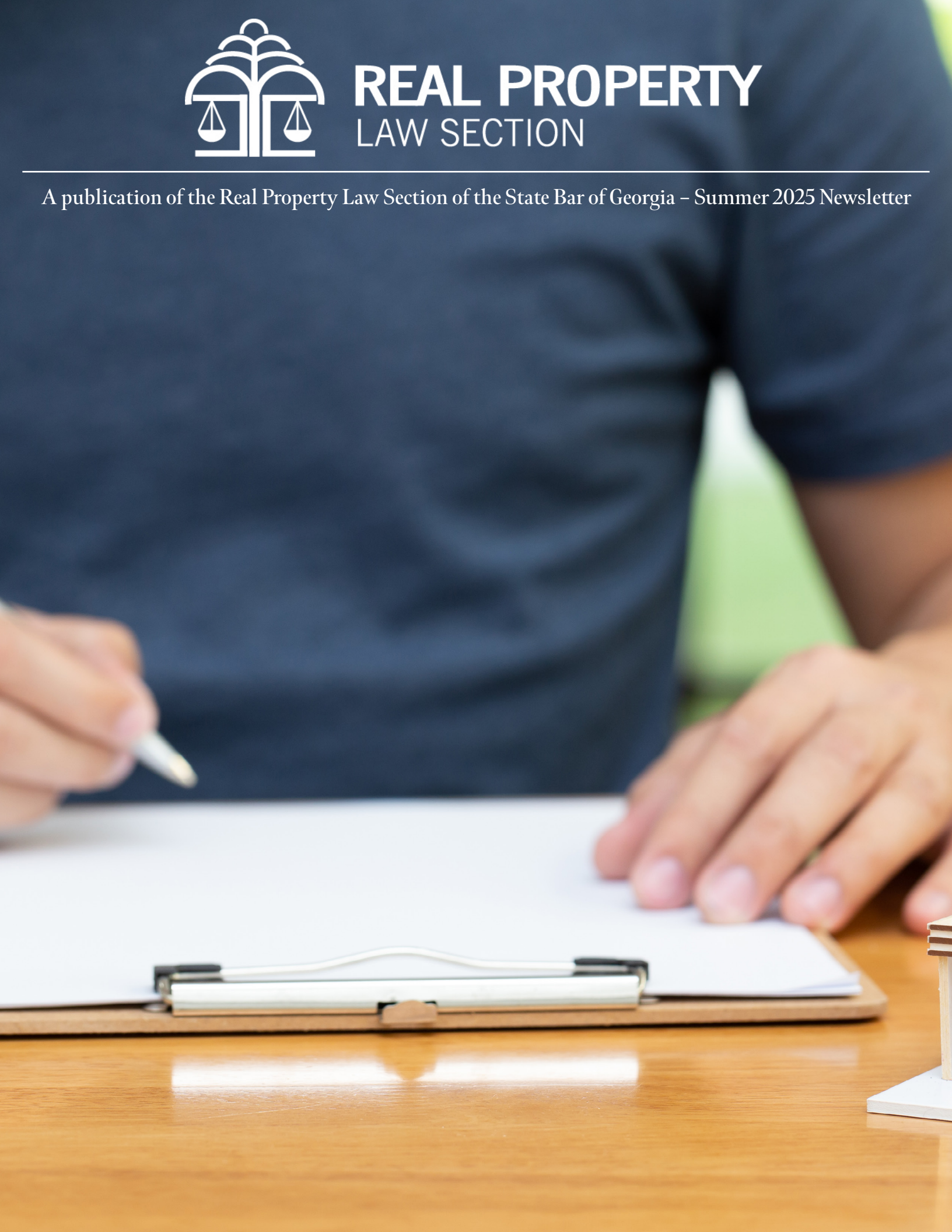




REAL PROPERTY LAW SECTION

A publication of the Real Property Law Section of the State Bar of Georgia – Summer 2025 Newsletter



Inside this Issue

Letter from the Immediate Past Chair...	2
About the Section.....	2
Upcoming Events.....	3
Litigation Subcommittee - Summer 2025 Update.....	4
Recents Events.....	7
Awards and Recognition.....	9
Pro Bono Committee Update.....	11
Member Article: A Deed Alone is Not Enough.....	12
Call to Action.....	13

Letter from the Immediate Past Chair

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



Every once in a while Jimmy Kimmel has a bit he runs on his late night talkshow of a compilation of various local tv station personalities expressing amazement at where we are on the calendar. One after another, there are videos of anchors and reporters saying to each other, “can you believe it is June 1, where has the year gone?”, or “I can’t believe summer is over!” Over and over again, from local affiliate stations in Florida, Arizona, Iowa, etc ... all expressing the same sentiment.

I’m guessing all of us who watch have the same response: it is both funny to hear others say it, and at the same time we know we are thinking the same thing to ourselves!

And so here we are today, and I have to say ... where has the time gone? Can you believe it already is September 2025?

It seems like yesterday when I attended my first RPLS summer planning retreat in Savannah, and looking back, I had no idea what would be in store for me over the next 9 years. Serving on the RPLS Executive Committee has been very rewarding, both in terms of meeting many wonderful attorneys from around the state, as well as helping lead the Section. This is my last year on the Executive Committee, and I definitely will miss it once I am gone.

Be assured, that there are a lot of attorneys smarter than me who will lead the Section. The real estate practice area constantly is changing – sometimes evolving – and I am confident that the members of our Section’s Executive Committee are prepared for whatever comes next.

I look forward to seeing everyone at one of the many seminars and events the RPLS has scheduled for this coming year. And always remember, anyone, any member of the Section, is welcome to volunteer to serve on any of our sub-committees.

Thank you!

About the Section

The 2025-26 Committee is led by Chair: Tenise Chung, Chair-Elect: Beth Jones, and Secretary/Treasurer: Thua Barlay, who will be assisted by Immediate Past Chair: Stuart Gordan.

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. 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.

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.

Standing Committees:

Legislative: Matthew Totten

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: Beth Jones

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: Aimee Latourette and Kirsten Howard

This Committee has two main 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 currently scheduled for November 17, 2022.

Communications- 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- Chair: Katherine Oates

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: Jennifer Rentenbach and Ellen Smith

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.

Recognition: Crystal Baker

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

• Title Examination Town Hall

When: October 29, 2025

11:30 AM – 1:30 PM

Where: Villa Christina

4000 Summit Blvd.

Atlanta, GA 30319-1448

What: Lunch-and-learn co-hosted together with the Southeast Land Title Association. Discussion topics to include Groundfloor Holdings GA, LLC case, Improving Clerk Communication, and Preservation of Public Records.

• **Networking Happy Hour**

When: October 29, 2025
6:00 PM – 8:30 PM

Where: Pour Taproom: Midtown
1180 Peachtree Street NE,
Atlanta, GA 30309

What: Unwind and continue the discussions from the day's town hall lunch-and-learn together with members of the Atlanta Bar Association.

• **Commercial Real Estate Seminar**

When: November 13, 2025
8:30 AM – 3:30 PM

Where: State Bar of Georgia
104 Marietta Street NW
Atlanta, GA 30303

What: Annual seminar focusing on topics of interest in commercial real estate. Agenda and speakers TBA.

• **Residential Real Estate Seminar**

When: January 21, 2026

Where: State Bar of Georgia
104 Marietta Street NW
Atlanta, GA 30303

What: Annual seminar focusing on topics of interest in residential real estate. Agenda and speakers TBA.

• **Title Standards Seminar**

When: TBD

Where: State Bar of Georgia
104 Marietta Street NW
Atlanta, GA 30303

What: Annual seminar focusing on the Georgia Title Standards. Details TBA.

• **2026 Real Property Law Institute**

When: May 7 – 9, 2026

Where: Sawgrass Marriott Golf Resort and Spa
(room block not yet available)
Ponte Vedra Beach, FL

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

Litigation Subcommittee - Summer 2025 Update

Szikla v. 2505 S. Main Street, LLC, No. A25A0247 (June 17, 2025)

- o *General Overview:* In July 2022, Alexander Szilka (the “Buyer”) signed a commercial purchase and sale agreement to purchase a shopping center in Moultrie, Georgia. The Seller signed and returned the agreement on August 1, 2022. The agreement included a financing contingency allowing that the Buyer obtain financing at 70% or above of the purchase price with a maximum interest rate of 5.5%, and if Buyer was unable to obtain such financing within 60 days, he could terminate the agreement without penalty by written notice to the 2505 S. Main Street, LLC (the “Seller”). The agreement specified that the “Binding Agreement Date” would be the date when a party who accepted an offer delivered notice of that acceptance to the other party in accordance with the agreement’s notice provisions. On September 30, 2022, the Buyer emailed the Seller’s agent about his failed financing efforts but requested an extension to continue seeking financing. In mid-November 2022, the Buyer sent notice of his intent to exercise the financing contingency based on his inability to obtain financing and requested a refund of the earnest money. The Seller terminated the contract, claiming the Buyer was in default for

failing to terminate within the financing contingency period. The earnest money holder filed an interpleader action, and both parties filed cross-claims. The trial court granted summary judgment to the Seller, determining the Binding Agreement Date was July 28, 2022, and finding the Buyer's September 30 notice was untimely. The Buyer appealed.

- o Holding:* On appeal, the Buyer argued that genuine issues of material fact existed regarding when he delivered the signed agreement to the Seller, which was necessary to determine the Binding Agreement Date. The Court of Appeals reversed the trial court's decision, holding that:

(1) Genuine issues of material fact existed as to when the Buyer delivered the signed agreement to the Seller, as required to determine the agreement's binding date, precluding summary judgment. The Court explained that while the evidence showed the Buyer signed the agreement on July 28, 2022, the agreement was not binding until notice of that acceptance was delivered to the Seller in accordance with the agreement's notice provisions. The Court emphasized that the agreement clearly provided that the Binding Agreement Date "shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement."

(2) In the absence of any evidence regarding when notice was delivered, the trial court erred in granting summary judgment on both the Seller's breach of contract claim and the Buyer's cross-claims, including derivative claims for attorneys fees. The Court applied the standard that summary judgment is

proper only when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law, with all doubts resolved against the movant. The Court rejected the Seller's assertion that the Buyer waived this argument by failing to raise it in the trial court, noting that on appellate review of a granted summary judgment, the non-moving party may assert that the movant failed to meet its evidentiary burden of proving a prima facie case, even if not expressly raised in the trial court. The Court also rejected the Seller's contention that the Buyer's failure to dispute that the contract was signed "on or about" July 28, 2022 constituted an admission that this date was the Binding Agreement Date.

Toll Brothers, Inc. v. Larkabit Partnership, L.P., No. A25A0028, A25A0029 (Ga. Ct. App. June 2, 2025)

- o General Overview:* This case involves a dispute over property owned by Larkabit Partnership, L.P., Elizabeth R. Rees, and Winship Rees, in his individual capacity and in his capacity as trustee of the Thomas Frithjoff Rees Revocable Trust (collectively, "Larkabit"). The evidence showed that Larkabit and Toll Brothers, Inc. ("Toll") executed a document titled "Agreement of Sale" ("Agreement") that described property to be sold as "all but +/-20 (for a total of approximately 114 acres) acres of that certain parcel of land that is approximately 134 acres" located in Gwinnett County. The parties agreed to complete an Exhibit B within 60 days of the effective date of the Agreement that would identify the property to be sold through a series of closings, among other terms. Exhibit B was to be signed by the parties and become an amendment to the Agreement. It is undisputed that Exhibit B was never signed. It is further undisputed that some smaller portions of the property at issue belonged to Elizabeth Rees and Winship Rees as trustee, but Larkabit Partnership, L.P.

was the only party to the Agreement and Elizabeth Rees signed only as a witness. The Agreement also stated Toll would pay Larkabit initial deposits upon receipt of rezoning approval. Toll began the rezoning process and paid deposits totaling \$145,000.00 to Larkabit. Thereafter, Larkabit sent a notice to Toll advising it was “ready, willing and able to close,” but Toll must first cure certain events of default. Ultimately, Larkabit failed to show up at the closing and Toll filed suit alleging breach of contract, fraud, fraud in the inducement, negligent misrepresentation, promissory estoppel, unjust enrichment and attorney’s fees. Larkabit filed a motion for summary judgment on all of Toll’s claims and Toll moved for summary judgment on its breach of contract claim. The trial court granted summary judgment in favor of Larkabit on Toll’s breach of contract, fraud, fraud in the inducement, and negligent misrepresentation claims, but denied summary judgment for Larkabit on Toll’s claims for promissory estoppel, unjust enrichment and attorney’s fees. Thereafter, Toll and Larkabit filed appeals. In Case No. A25A0028, Toll contends the trial court erred by granting summary judgment in favor of Larkabit on its breach of contract claim, fraud and negligent misrepresentation claims. In Case No. A25A0029 Larkabit cross-appealed and claimed that the trial court erred by denying summary judgment on Toll’s claims for promissory estoppel, unjust enrichment, and attorney fees.

- o *Holding:* In Case No. A29A0028, the Court of Appeals affirmed the trial court’s grant of summary judgment to Larkabit on the breach of contract claim holding that there was no evidence of anything more than an agreement to agree. Further, the Court of Appeals affirmed summary judgment in favor of Larkabit on Toll’s fraud claim because the alleged fraudulent statement was nothing more than a representation as to

future acts. Lastly, the Court of Appeals affirmed summary judgment in favor of Larkabit on the fraud in the inducement and negligent misrepresentation claims because Toll was aware that Larkabit was not the sole owner of the property and failed to exercise due diligence.

In case no. A29A0029, the Court of Appeals reversed the trial court’s denial of summary judgment to Larkabit on Toll’s promissory estoppel claim holding that Toll failed to show reasonable reliance on Larkabit’s promise to convey the property to Toll in exchange for the purchase price. Further, on the unjust enrichment claim, the Court of Appeals found the trial Court correctly denied Larkabit’s motion for summary judgment because the evidence showed Toll paid certain deposits to Larkabit which were to be credited against the purchase price at the first closing thus raising a factual issue whether Larkabit was unjustly enriched at Toll’s expense. Since the unjust enrichment claim survived, the trial court correctly denied summary judgment in favor of Larkabit on Toll’s claims for attorney’s fees under O.C.G.A §13-6-11. The case was remanded for further proceedings in accordance with the opinion.

VanDolah v. Webb, 375 Ga. App. 638 (2025)

- o *General Overview:* In February 2022, Darryl and Katrinka Webb filed a declaratory judgment action against Kathryn and John VanDolah to assert a right to an express easement which crossed the VanDolahs’ property. The Webbs purchased three lots in the Hidden Valley Subdivision, located in Gilmer County, Georgia. The survey plat of the subdivision listed Tom Colwell and Darren Rowan as the owners and developers of the Hidden Valley Subdivision. Colwell and Rowan conveyed the property to Hidden Valley Estates, LLC, who then conveyed the property to William Lee Holt, Jr.

with reference to the Hidden Valley Subdivision plat. Originally, the Hidden Valley Estates plat indicated parallel lines crossing into the Big Creek Highlands subdivision.

Big Creek Highlands is an adjacent subdivision where the VanDolahs purchased a lot. In a survey plat of Big Creek Highlands, Colwell and Rowan were listed as the “owner/developer 24 hour contact” and identified as the developers on the developer ticket. When the survey plat was recorded, Big Creek Properties, Inc. owned the VanDolahs’ lot. Importantly, Colwell and Rowan never appeared individually on the chain of title for the VanDolahs’ lot. The Webbs sought to enforce an express easement that crossed over the VanDolahs’ lot, which the trial court granted, and the Court of Appeals reversed.

Holding: When evaluating a chain of title involving a corporate entity, shareholders, officers, directors, or employees, such entities are distinct from the legal entity itself, even if those individuals are the sole shareholders of a corporation.

Here, Hidden Valley Estates, LLC did not own the VanDolahs’ property so as to validate the plat indicating an express easement on their lot. Even though the Hidden Valley Estates plat indicated the easement, Hidden Valley did not own the property upon which the easement was located. Therefore, Hidden Valley had no authority to create an easement over the VanDolahs’ property in Big Creek Highlands.

Furthermore, the court distinguished between individual entities and corporate entities when evaluating the ownership of property. Colwell and Rowan may have been listed as developers of the subdivision, but they did not appear individually on the chain of title. The court added that even if Colwell and

Rowan were individual shareholders in Big Creek Properties, LLC, the corporate entity is distinct from developers in their individual capacities. Therefore, the developers’ connections to both Big Creek Highlands and Hidden Valley Estates did not validate the disputed express easement that crossed both lots.

Recent Events

• 2025 Real Property Law Institute

The 2025 Real Property Law Institute took place May 8-10 in Amelia Island, a fan favorite destination for the Real Property Section. This year the Institute’s theme was “Shifting the Sands- Shoreline strategies for an Evolving Landscape” and focused on providing attendees with fresh topics affecting the modern practitioner. A full year of CLE hours were offered at the Institute, including the required house for Trial Practice, Ethics and Professionalism. The Institute was opened by our annual Kickoff Party on Wednesday night, featuring cocktails, live music, and an opportunity to socialize with colleagues and industry partners who support our section.

Thursday’s joint session commenced with the beloved Judicial Update from Carol Clark, followed by an informative title underwriting panel, cyber security and malpractice discussions. Following the session, attendees enjoyed the beautiful hotel grounds, beachside, and the golfers of the section participated in the Raiford Memorial Golf Tournament.

Following Friday morning’s Feet for McFee 5K Fun Run and Walk, attendees had their choice of topics from two breakout sessions. The residential session included mobile homes, hot topics in lending law, evictions, transfer on death deeds, and a primer for identifying and protecting vulnerable parties in real estate transactions. On the commercial side, attendees enjoyed learning about abandoned streets and alleyways, alternative energy, sports related mixed-use developments, and the capital stack structure for commercial deals. The afternoon activities included a family-friendly Ecology Tour of Amelia Island.

On Saturday, the section donned our Hawaiian shirts honoring Bill Dodson and Danny Bailey. The session included the Section’s Annual Meeting, followed

by title and escrow tips, legislative update, excess proceeds disbursement, professionalism, and the always entertaining Cases You Will Know by One Name presentation by Matt Mashburn. We concluded the Institute with a family friendly Sun, Sand & Games Beach party at the hotel beachfront.

During the Institute, the Executive Committee awarded the 2025 George A. Pindar award to J. Michael Brannon, Esq. This Award is presented annually to a member of the section whose lifetime contribution has been significant to the real property section and the Bar. Mike's partner Camille Brannon spoke on his unselfish contributions to the section

and unwavering professionalism. We congratulate Mike on this award and thank him for his continuing contributions to the Section.

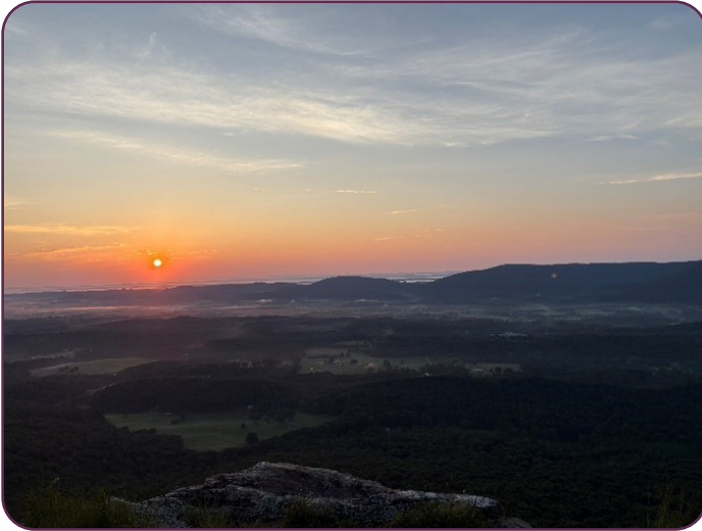
The 2025 Institute was a smashing success, thanks in large part to our sponsors and industry partners. We are thankful for their continued support and collaboration to make the Institute possible. We are also grateful to the speakers, ICLE partners, and our section members, for offering their time and talents to put the Institute together. We are now looking ahead to the 2026 Institute being held May 7-9 at the Sawgrass Marriott Hotel Golf Resort and Spa in Ponte Vedre Beach. We hope to see you there!

Photos from RPLI 2025



- **2025-26 Executive Board Retreat and Planning Meeting**

The Real Property Law Section Executive Committee met August 15-17, 2025, to focus their intent and plan for the new year.



Awards and Recognition

- **Spotlight: The George A. Pindar Award**



The Real Property Law Section was proud to present the 2025 George A. Pindar Award to J. Michael Campbell at this year's Real Property Law Institute. The award, named for the late Professor George A. Pindar, honors a

member of our Section whose lifetime contributions to the real estate bar have been both significant and selfless. Presented by Danny Falligant, this year's recognition celebrated Mr. Campbell's decades of dedicated service, his commitment to excellence in real property law, and his ongoing mentorship of fellow practitioners. The Section extends its gratitude to Mr. Campbell for embodying the values and ideals that the Pindar Award represents.

- **Recognizing Our 2024–2025 Scholarship Winners**

Each year, the Section awards scholarships to outstanding Georgia law students with a demonstrated interest in real property law. At our annual Awards Dinner and school ceremonies, we recognized this year's recipients:



Brooke E. Ranieri –
*University of Georgia
School of Law*



Brantley Swindell –
*Mercer University School
of Law*

• **Recipient of the Real Property Law Section's Prestigious Award**



Yajaira Vanegas –
*Atlanta's John Marshall
Law School*



Charlie Hulett



Keira Waites – *Georgia
State University School
of Law*



Kyndall Smith – *Emory
University School of Law*

In May of 2024, I was grateful to be awarded the Real Property Law Section's prestigious student award in my final semester of law school. What I didn't realize at the time is the award also came with an opportunity to attend RPLI the following year. I was very excited to attend to learn practical aspects of law I hadn't yet been exposed to. I also couldn't wait to have some beach time, in between sessions of course. What I did not anticipate is the warmth and community of attorneys from across the state of Georgia. I had great conversations, met phenomenal professionals from a variety of backgrounds, and made new friends who I now speak to regularly. Law school teaches you that knowledge is important, but attending RPLI taught me that having the camaraderie of colleagues proves just as valuable, especially when those colleagues are clad in Hawaiian shirts. I look forward to many more years of attendance.

Each recipient received a \$2,000 scholarship in recognition of their academic achievement and commitment to the future of real property practice. The Section is proud to support these outstanding students as they pursue careers in real estate law.

Pro Bono Committee Update

In 2025, donations totaling \$15,000 were approved for five non-profit organizations throughout the state. These funds were donated to support Georgia families in various real property related matters, including landlord/tenant issues, foreclosure prevention assistance, tangled title and heirs property issues, home purchase & ownership education, and preserving property rights through estate planning. The non-profit organizations receiving the donations are:

Atlanta Legal Aid Society, Inc.

Atlanta Volunteer Lawyers Foundation

Georgia Heirs Property Law Center

Middle Georgia Justice

Pro Bono Partnership of Atlanta

Each of these organizations would also welcome pro bono volunteer assistance from our membership. Information about volunteer opportunities is below:

The **Atlanta Legal Aid Society** offers a variety of pro bono opportunities, ranging from limited, brief service to full case representation. Please contact **Kate Gaffney** at kmgaffney@atlantalegalaid.org if interested in volunteering or learning more about Legal Aid's estate planning project, property tax appeal project, homestead exemption clinic, probate and family law clinics and other opportunities. Pro bono makes a significant difference in addressing the civil justice gap and serving low-income clients in our communities.

Atlanta Volunteer Lawyers Foundation (AVLF):

Volunteers can find a list of opportunities, and sign-up, here: <https://golden.avlf.org/>. AVLF provides extensive assistance to all its volunteers. Ways to get involved include:

Landlord-Tenant Cases: Review summaries and accept a case as your schedule allows: app.joinpaladin.com/avlf/opportunities

Eviction Defense Cases: Attend a virtual Eviction Defense training. Then receive occasional requests as cases are available, or sign up to be "on call" for a month. Accept or decline as your schedule allows.

Housing Phone Bank: (virtual) Speak with Fulton County tenants with pending evictions or

ongoing conditions issues. Many of these tenants seek only simple advice and consultations. Calls can be made from anywhere.

Housing Court Assistance Center: (in-person) HCAC is a walk-in advice clinic located in the Fulton County Courthouse for tenants whose landlords are taking them to court. With the help of an AVLF staff attorney, volunteers meet with tenants to explain their rights under Georgia law.

Saturday Lawyer Clinic: (virtual or in-person) This program assists low-income Atlanta tenants with landlord-tenant disputes.

The **Georgia Heirs Property Law Center** (www.gaheirsproperty.org) is a not-for-profit law firm that helps low- to moderate-income heirs property owners, nonprofits, and municipalities remediate fractured title, increase equity, and transfer wealth to the next generation. The total tax-appraised value of probable heirs property in Georgia is more than \$47 billion. To learn more, contact the organization at **(706) 424-7557** or info@gaheirsproperty.org.

Middle Georgia Justice would appreciate the opportunity to partner with volunteer Section members who would be willing to provide pro bono legal consultations to organization staff attorneys when they encounter complex real property law issues in their cases (for example, within the broader context of probate and family law cases). More information can be found at www.mgajustice.org and by contacting **Amy Griffith Dever, Executive Director**, at amy@mgajustice.org, to discuss how to volunteer.

Pro Bono Partnership of Atlanta matches nonprofit clients with experienced corporate attorneys who help get them to the next level. From contracts to corporate governance, to intellectual property and employment, PBPA attorneys assist nonprofits with their business law needs. Information about opportunities can be found here: <https://pbpatl.org/for-attorneys/> PBPA staff attorneys prescreen every client and coordinate the kick-off of each matter. Most projects take 10-15 hours over a couple of months. PBPA provides model documents and when requested, co-counsel assistance to volunteer attorneys.

Member Article: A Deed Alone Is Not Enough

A Deed Alone Is Not Enough: Georgia Supreme Court Clarifies Limits on Adverse Possession

By Brian S. Goldberg
Shareholder, Buchalter PC (Atlanta, GA)



In a decision that refines the contours of Georgia’s law on prescriptive title, the Georgia Supreme Court held that a recorded deed—standing alone—is not sufficient to establish adverse possession under color of title. In *Brownphil, LLC v. Cudjoe*, 915 S.E.2d 860 (Ga. 2025), the Court vacated a Court of Appeals decision and clarified that even when a claimant has a deed, they must also demonstrate actual possession of the land to meet the statutory requirements for acquiring title by prescription.

The Dispute

The case involved an undeveloped lot in Bibb County with two competing claimants:

- Brownphil, LLC asserted ownership through a deed supported by a continuous chain of title.
- Peter Cudjoe, the appellee, conceded his deed lacked a valid chain but argued that he had acquired title through adverse possession under color of title pursuant to O.C.G.A. § 44-5-164.

Cudjoe claimed that his recorded deed, combined with his longstanding claim of ownership, was sufficient to satisfy the legal requirements of constructive possession. The trial court agreed and granted him summary judgment. The Georgia Court of Appeals affirmed.

The Supreme Court’s Reversal

On certiorari, the Georgia Supreme Court reversed. Writing for a unanimous Court, Justice Verda Colvin stated:

“A recorded deed, by itself, cannot satisfy both the notice and land-possession requirements of adverse possession under color of title.” (*Brownphil*, 915 S.E.2d at 861.)

While the Court acknowledged that a recorded deed provides notice to the world of a party’s claim, it made clear that the deed alone does not establish possession—an essential element of prescriptive title.

Clarifying Possession Under the Statute

Georgia’s statutory scheme distinguishes between actual and constructive possession:

Actual possession, under O.C.G.A. § 44-5-165, is evidenced by “enclosure, cultivation, or any use and occupation ... so notorious as to attract the attention of every adverse claimant and so exclusive as to prevent actual occupation by another.”

Constructive possession, per O.C.G.A. § 44-5-166, extends only when a person with color of title is in actual possession of some portion of the land. Without that physical possession, constructive possession cannot attach.

In *Brownphil*, Cudjoe failed to establish that he had actually possessed any portion of the property. Yet, the lower courts mistakenly concluded that the mere recordation of his deed was sufficient to establish constructive possession.

Key Takeaway: A Deed Is Not a Substitute for Dominion

The Court highlighted a crucial difference: while a deed may give “color of title,” it does not substitute for the physical dominion or control necessary to establish adverse possession. To acquire title under O.C.G.A. § 44-5-164, the claimant must combine written evidence of title with *actual* possession for at least seven years.

This interpretation aligns with precedent, including *Sewell v. Sprayberry*, 186 Ga. 1 (1938), and *Turner v. Neisler*, 141 Ga. 27 (1913), which required both color of title and actual possession.

To hold otherwise, the Court explained, would paradoxically allow a defective deed—insufficient to establish ownership—to ripen into ownership merely through the passage of time, without any physical acts of possession. “This cannot be,” the Court concluded. (*Brownphil*, 915 S.E.2d at 864.).

Practical Implications for Practitioners

This decision carries important implications for real estate litigators and transactional counsel alike:

- Quiet title actions, boundary, and title disputes: A claimant asserting adverse possession must support their claim with evidence of physical use or control, not just a deed. Recorded instruments are important, but they must be paired with tangible acts on the ground.
- Client counseling: Clients mistakenly relying on flawed deeds for adverse possession should be advised that mere recordation does not shield them from competing claims unless they actively use or occupy the property.

Conclusion

The Supreme Court’s ruling in *Brownphil v. Cudjoe* reinforces a fundamental tenet of Georgia property law: prescriptive title cannot be claimed from paper alone. Possession—real, visible, and exclusive—remains the bedrock of any prescriptive title claim. In the world of adverse possession, it is not enough to record a deed—you must act on it.

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.



Georgia Lawyers Helping Lawyers (LHL) is a confidential peer-to-peer program that provides colleagues who are suffering from stress, depression, addiction or other personal issues in their lives, with a fellow Bar member to be there, listen and help.

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

**GEORGIA
LAWYERS
HELPING
LAWYERS**

