



REAL PROPERTY

LAW SECTION

A publication of the Real Property Law Section of the State Bar of Georgia – 4th Quarter 2024 Newsletter



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Letter from the Chair

By: Stuart Gordan, RPLS Chair 2024-2025



I hope everyone had a great holiday season and New Year's, and is staying warm in this unseasonably cold stretch of weather. As we turn to the 2nd half of the 2024-2025 Bar year, we want to highlight our Section sub-committees so that anyone who wants to can plan to volunteer in 2025-2026. 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 subcommittee 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.

RPLS Sub-committees:

1. Commercial Real Estate (*Kyle Levstek* and *Paula Rothenberger*, co-chairs)

Plans the annual seminar in November of each year, and is able to tackle items that specifically relate to commercial real estate.

2. Communications (*Kelsea Laun*, chair)

Gathers content and produces communications to the Section membership. Works with our vendor to manage the Section's social media accounts, as well as publishes the Section newsletter.

3. Ethics and Professionalism (*Katherine Oates*, chair)

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.

4. Legislative and Governmental Affairs (*Matthew Totten*, chair)

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 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.

5. Litigation (*Larry Evans*, chair)

Follows and reports on pending and final appellate decisions that impact real estate law and are of interest to the Section.

6. Pro Bono Initiatives (*Jennifer Rentenbach* and *Ellen Smith*, co-chairs)

Coordinates responses to requests for assistance on real estate matters and develops pro bono initiatives for the Section.

7. Recognition (*Thua Barlay*, chair)

Promotes the growth of the Section membership and recognition of outstanding current and future members. This sub-committee coordinates the annual law school scholarships awarded to deserving law school students attending Georgia-based law schools who show an aptitude and commitment to practicing real estate

law in Georgia upon their graduation. Also collects nominations for the annual Pindar Award, and organizes the annual section report to the State Bar.

8. Residential Real Estate (*Tamara Brooks* and *Kirsten Howard*, co-chairs)

Plans the annual residential real estate seminar, and is able to tackle items that specifically relate to residential real estate practice.

9. RPLI (*Tenise Chung*, chair)

Plans the annual Real Property Law Institute set for each May, which includes planning the location, topics social events and obtaining speakers.

10. Title Standards (*Allie Jett* and *Aimee Latourette*, co-chairs)

Develops new or amended title standards, and plans an annual seminar.

Serving on a sub-committee is a great way to get involved in the Section. The time commitment varies by sub-committee, but typically is an nominal amount per month. Please reach out to me, the sub-committee chairs or any member of the Executive Committee if you are interested in serving next year.

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

One initiative that the Executive Committee has tried to advance over the past couple of years is our presence on and involvement in social media. I personally am not active on social media so I certainly can't fault others who aren't as well, but if you are someone who is active then please follow and support the Section's accounts on [Instagram here](#), [Facebook here](#), and [LinkedIn here](#).

I am looking forward to a great year, and hopefully will see many of you at one or more of our events!

Upcoming Events

❖ Real Property Law Section | Title Standards Seminar - Part I

When: Tuesday, February 11, 2025
from 9 a.m. - 12 p.m.

Where: Virtual via Zoom

What: 3-Hour CLE, including 1 hour of Ethics CLE credit

Real Property Law Section | Title Standards Seminar - Part II

When: Tuesday, February 25, 2025
from 2 p.m. - 6 p.m.

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

What: 3-Hour CLE followed by a networking reception

❖ 2025 Real Property Law Institute

When: May 8-10, 2025 *with a welcome reception on May 7th

Where: Omni, Amelia Island Plantation
39 Beach Lagoon Rd,
Fernandina Beach, FL 32034

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).



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Recent Events

2024 Commercial Real Estate Seminar

On November 14, 2024, over 125 veteran attorneys, young lawyers, paralegals, and legal assistants headed to the auditorium at the State Bar of Georgia for the Commercial Real Estate Seminar. This year's seminar was developed based on a need articulated on the Real Estate Listserv, to grow the skillset of the real estate professional with regard to survey review and the drafting of legal descriptions. Kyle J. Levstek, Paula Rothenberger, Leonard R. Gray Jr., and Mark Chastain prepared and presented 6 credit hours' worth of fantastic material and developed this dream into a Title and Survey Workshop where attendees reviewed surveys, drafted legal descriptions, read record and survey legal descriptions, and underwrote endorsements. Attendees loved the hands-on materials and were fully engaged during this informative and stimulating day of survey-focused CLE.



Leonard R. Gray, Jr: Senior Underwriting Counsel, First American Title Insurance Company introducing the event speakers.

Program chair: Kyle Levstek of Calloway Title & Escrow sharing survey review tips and strategies.



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



Attendees working through survey issues as part of the workshop:



From the Membership

Nonresident Aliens and Prohibited Ownership: O.C.G.A. § 2-1-7 and its Impacts on Real Estate Transactions

By: Jed S. Beardsley and Mayank Srivastava

On April 30, 2024, Georgia Governor Brian Kemp signed Georgia Senate Bill 420 into law, which took effect on July 1st, 2024. The bill prohibits ownership by foreign adversaries of certain sensitive lands, and the provisions of the bill will have a significant impact on real estate practitioners in ways not facially evident.

Georgia's implementation of these ownership restrictions follows a trend of similar legislation aiming to restrict property ownership by foreign entities in the Southeast region, including in states like Alabama, Florida, South Carolina, Mississippi, and Tennessee. However, it is important to note that the legislation varies enough from state to state that anyone involved in real estate in Georgia will want to be aware of the particulars of the Georgia statute. Additionally, the legislation is new enough that some forms and real estate practices have not been updated to incorporate the implications of this statute.

Everyone involved in a real estate transaction, from the buyers/sellers and brokers to the attorneys involved, will have to perform several new due diligence tasks to ensure their transactions do not fall under the breadth of the legislation, or else risk penalties including jailtime, fines, and a reversal of the transaction.

This new law is codified in O.C.G.A. § 2-1-7 (2023) and forbids certain “nonresident aliens” from acquiring or holding a non-residential possessory interest in certain agricultural land and land within a 10-mile radius of any military base, military installation, or military airport. The bill also provides requirements for nonresident aliens currently possessing or coming into possession of such property to dispose of such property within certain time limits.

Pursuant to the bill, there are three key changes to make to your due diligence procedures:

first, identification of the buyer or current owner's status; second, the use of the land in question; and finally, use of surrounding land.

Status of the Intended or Current Owner

An analysis of the status of the intended or current owner requires an understanding of who is covered under the bill. The statute defines nonresident alien as follows:

(A)(i) Any natural person described in subsection (a) of Code Section 1-2-11 who is not a United States citizen or legal resident, is an agent of a foreign government designated as a foreign adversary under the United States Secretary of Commerce pursuant to 15 C.F.R. Section 7.4, and:

(I) Has been physically absent from the United States for more than six months out of the most recent 12 months preceding the acquisition of a possessory interest described in this code section; or

(II) Has been physically absent from Georgia for more than two months out of the most recent 12 months preceding the acquisition of a possessory interest described in this Code section.

(B) a corporation, partnership, limited partnership, trustee, or other business entity that is:

(i) Domiciled in a country whose government is designated as a foreign adversary by the United States Secretary of Commerce pursuant to 15 C.F.R. Section 7.4; or

(ii) Domiciled within the United States, but the ownership of at least 25 percent of which is composed of any corporation, partnership, limited partnership, trustee, or other business entity that is domiciled in a country whose government is designated as a foreign adversary by the United States Secretary of Commerce pursuant to 15 C.F.R. Section 7.4; provided, however, that this subparagraph shall not include a corporation, partnership, limited partnership, trustee, or other business entity leasing land from its

owner and using such land for agricultural research and development or experimental purposes, including testing, developing, or producing crop production inputs, including, but not limited to, seeds, plants, pesticides, soil amendments, biologicals, and fertilizers, for sale or resale to farmers; or

(C) A foreign government designated as a foreign adversary by the United States Secretary of Commerce pursuant to 15 C.F.R. Section 7.4.

The Secretary of Commerce has identified the following nations as foreign adversaries: China

(including the Hong Kong Special Administrative Region), Cuba, Iran, North Korea, Russia, and

Venezuela (specifically, the Maduro Regime). *15 C.F.R. Section 7.4 (Recodified in 15 CFR Section 791.4)*. When inquiring into the status of potential buyers or current owners, similarly helpful is the statute's definition of "agent of a foreign government":

(A) Any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign government or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, and who directly or through any other person:

(i) Engages within the United States in political activities for or in the interests of such foreign government;

(ii) Acts within the United States as a public relations counsel, publicity agent, information service employee, or political consultant for or in the interests of such foreign government;

(iii) Within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interests of such foreign government; or

(vi) Within the United States represents the interests of such foreign government

before any agency or official of the government of the United States; and (B) Any person who agrees, consents, assumes, or purports to act as, or who is or holds himself or herself out to be, whether or not pursuant to a contractual relationship, a person described in subparagraph (A) of this paragraph. If your client qualifies as a nonresident alien under the above provisions, then it is time to move on in your analysis, to examining the use of land.

Use of Land

If a potential buyer or current owner could fall under the statutory definition of nonresident alien, then the analysis continues with a determination on the use of the property.

The statute as enacted includes land not typically considered “agricultural.” Under O.C.G.A. § 2-1-7(a) (2), the definition of agricultural land includes “any land *capable of use* in the production of agricultural crops, timber, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or other horticultural products, but does not include any land zoned by a local government unit for a use other than and nonconforming with agricultural use.” O.C.G.A. § 2-1-7(a)(2), *emphasis added*.

Of note here is the reliance on zoning – the only land fully exempt from this statute is land zoned by a local government for a use other than and nonconforming with agricultural use. As such, if land currently is not but could be used for agricultural purposes, it is within the scope of this legislation, regardless of its zoning class. These provisions introduce requirements for those involved in land matters to verify, and even monitor, the use of the land.

Also notable is the exception carved out of the definition of “agricultural land” found in O.C.G.A. § 2-1-7 (a)(3) (B)(ii) – a business entity *leasing* land from an owner and focusing on *agricultural research and development* is exempt from the “agricultural land” designation. For more specific information, see the quoted statute above.

Use of Land within a 10-mile Radius

Even if the property in question does not qualify as “agricultural land,” the analysis requires another step – an examination of the land within a 10-mile radius of

the property. Typical title work does not identify whether land is within ten miles of military installations or not. A surveyor could certainly make this determination, and so possibly could an environmental engineer. Thus, real estate practitioners will need to update their due diligence procedures to research not only the subject property, but also surrounding properties.

The Department of Defense, through the third-party Military INSTALLATIONS, provides

a list of military bases installations in Georgia [here](#): However, we suggest you also perform your own research to verify the information provided is comprehensive.

Exceptions

If your client qualifies as a nonresident alien, and the land in question falls within the scope of the statute, your client may nonetheless be able to possess the property temporarily if they acquired the property by devise or inheritance, as security for indebtedness, in the collection of debts, or by any procedure for enforcement of a lien or claim thereon. O.C.G.A. § 2-1-7 (c)(1)(A).

If your nonresident alien client acquired the property through collection of debts or enforcement of a lien or claim, their possessory interest must be disposed of within two years after acquiring the interest. O.C.G.A. § 2-1-7 (c)(1)(B). If your client instead acquired such interest by devise or inheritance, their possessory interest must be disposed of within one year after acquiring the interest. O.C.G.A. § 2-1-7 (c)(1)(C). If they are a current owner of qualifying property as of June 30, 2024, they have until June 30, 2027 to dispose of their possessory interest. O.C.G.A. § 2-1-7 (c)(2).

A nonresident alien may avoid disposing of said property if they, within the time required for disposal, terminate their nonresident status. O.C.G.A. § 2-1-7 (d). However, the legislation as enacted does not specify a procedure for proving or confirming such a change in status.

Brokers

The statute imposes a duty on brokers to timely disclose to their clients and potential clients the requirements and limitations of this Code section. O.C.G.A. § 2-1-7 (e). Brokers should carefully verify the foreign status of potential purchasers when the real estate would be subject to this law. Brokerage relationship agreements



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(such as listing agreements) should be updated to disclose this statute, to identify whether the property is covered, and if so, point out the restrictions on nonresident alien buyers. issues, you will have this affidavit to point to as evidence of your efforts

Penalties

An individual who intentionally violates the provisions of this section will be guilty of a felony, punished by a fine of not more than \$15,000.00, and faces imprisonment of at least one year but not more than two years. *O.C.G.A. § 2-1-7 (g)*. Additionally, if the transaction is voided due to a violation, the foreign entity or person is barred from claiming restitution of the purchase price or other loss from any party. Claims for enforcement to reverse the transaction may be brought by legal counsel of the government in which the land is situated, by the Attorney General, by any party to the transaction (not a nonresident alien), or by a subsequent holder of such interest. *O.C.G.A. § 2-1-7 (f)*.

As a result, all transactions must be scrutinized and vetted to ensure they do not run afoul of this statute. The lack of restitution for nonresident aliens facing a voided conveyance also carries title insurance implications, as it may lead to potential future claims and increased risk if the Georgia form policy is not updated to exclude such a claim.

The Affidavit

We have included an Affidavit of Non-Applicability of Restriction on Foreign Ownership Entity as Exhibit A to this article. If there is any possibility this statute could apply to a transaction, the purchaser should execute such a form. We suggest reviewing this affidavit with your client and explaining the provisions of the statute to ensure that you are covered for any transactions you may carry out with your client. In case of any future

Exhibit A AFFIDAVIT OF NON-APPLICABILITY OF RESTRICTION ON FOREIGN OWNERSHIP ENTITY

State of _____, County of _____
Personally appeared before me, the undersigned authority, _____ (“Affiant”), who being first duly sworn, deposes and says on oath and under penalty of perjury as follows:

1. That (s)he is of legal age, has personal knowledge of the facts herein stated, is familiar with the operation and ownership of _____ (the “Entity”) and with the use of [property/location] _____ of the Property (as defined below).

2. That Affiant is duly authorized to make this affidavit (the “Affidavit”) on behalf of the Entity.

3. That this affidavit pertains to those certain tracts or parcels of real property located in _____ County, Georgia and being more particularly described on Exhibit “A” attached hereto, and improvement(s) (if any) thereon (collectively, the “Property”), which Property is the subject of a title commitment or preliminary title report bearing the file number _____ (the “Commitment”).

4. That to the best of Affiant’s knowledge, the following statements are true and correct:

a. That the Entity is aware of restrictions on certain foreign ownership of agricultural land and land within a 10-mile radius of any military base, military installation, or military airport as provided in *O.C.G.A. § 2-1-7*.

b. Affiant, in the regular course of Affiant’s

duties, would have knowledge of the facts asserted in this Affidavit or, to the extent that Affiant does not, has made inquiry of such persons within the Entity who would have knowledge of the facts giving rise to these assertions.

c. The Entity is not prohibited from acquiring the Property by the provisions of O.C.G.A. § 2-1-7.

5. That this affidavit is given for the benefit of _____ Title Insurance Company (“Company”), and its issuing agent _____ (“Agent”), and that Company and Agent are entitled to rely on the facts herein stated in connection with the issuance of one or more title insurance policies pertaining to the Property.

6. That the Entity has not and will not, from and after the effective date of the Commitment through and including the date and time of the recording of documents necessary to effectuate the transaction evidenced by the Commitment, cause or permit to arise any matter contrary to any statement made herein.

Dated: _____
Sworn to and subscribed before me this
____ day of _____, 202__

Notary
My Commission Expires:
[NOTORIAL SEAL]

Affiant:

Not individually, but solely as _____ of _____
Print Name: _____



Jed S. Beardsley
Partner at Fox Rothschild LLP



Mayank Srivastava
Associate at Fox Rothschild LLP

From the Legislative Chair

The Real Property Law Section is generally aware of multiple parties intending to introduce/back legislation relating to new forms of notarization surrounding closings, such as RON (Remote Online Notarization), RIN (Remote Ink Notarization – a rough parallel to the COVID closing practices we witnessed under the Governor’s emergency orders/Supreme Court orders), and IPEN (in-person electronic notarization – e.g. iPad execution of closing documents at a closing attorney’s office). There are differing views between members of the Bar regarding the importance and utility of each potential new legislation surrounding notarization practices. Additionally, as we saw last legislative session, some parties have expressed interest in adding UPL-related components within notarization legislation.

However, please remember that in light of Keller v. State Bar of California, the RPLS as a Bar entity itself is unable to take a formal position on any of the proposed notarization legislation since the topic is not one that is germane to the interest in regulating the legal profession or related to improving the quality of legal services. While the RPLS cannot take a position on one version of legislation over another, certainly we encourage each of the Section’s members to individually advocate with their legislators regarding any proposed notarization legislation as they would with any other legislation. The RPLS will continue to monitor legislation as it arises and update the Section in a manner similar to the past.

Call to Action

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

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

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





REAL PROPERTY LAW SECTION 2025 INSTITUTE

SHIFTING THE SANDS; SHORELINE STRATEGIES FOR AN EVOLVING LANDSCAPE



SAVE THE DATE!

DATES

Commence: May 8th, 2025 @ 8:15 AM

Adjourn: May 10th, 2025 @ 12:45 PM

LOCATION

Omni Amelia Island Resort
39 Beach Lagoon Road
Fernandina Beach, FL 32034

ITINERARY

Day 1: Joint Session

Day 2: Concurrent Sessions

- Commercial & Residential

Day 3: Joint Session

QUESTIONS

Registration: icleregistration@gabar.org

Partnership & Events: kevinmc@titlelaw.com

Room Block & Registration to open in February 2025

404.527.7700

@realpropertylawstatebargorgia

FEATURED EVENTS



KICKOFF PARTY

WEDNESDAY MAY 7TH @ 6:00 PM



RAIFORD MEMORIAL GOLF TOURNAMENT

THURSDAY MAY 8TH @ 2:00 PM



FEAT FOR MCFEE 5K FUN RUN

FRIDAY MAY 9TH @ 6:30 AM



FAMILY ACTIVITY (TBD)

FRIDAY MAY 9TH @ 2:00 PM



SUNRISE YOGA

SATURDAY MAY 10TH @ 6:30 AM



BEACH ACTIVITIES (FAMILY FRIENDLY)

SATURDAY MAY 10TH @ 2:00 PM

INSTITUTE OF CONTINUING LEGAL EDUCATION



12 CLE HOURS



1 ETHICS HOUR



1 PROFESSIONALISM HOUR



2 TRIAL PRACTICE HOURS