

Fundamentals of Georgia Real Estate Law

Mara A. Mooney

CLAYTON STATE UNIVERSITY

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2010
Mara A. Mooney
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Mooney, Mara A.

Fundamentals of Georgia real estate law / Mara A. Mooney.

p. cm.

ISBN 978-1-59460-688-5 (alk. paper)

1. Real property--Georgia. 2. Vendors and purchasers--Georgia. I. Title.

KFG112.M66 2010

346.75804'3--dc22

2009046282

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Summary of Contents

Contents	vii
Table of Exhibits	xi
Preface	xiii
Acknowledgments	xv
Part I • The Legal Environment of Real Property	
Chapter 1 • Overview of Real Property Law	3
Chapter 2 • Ownership of Real Property	9
Chapter 3 • Concurrent Ownership of Real Property	21
Chapter 4 • Encumbrances on Real Property	33
Chapter 5 • Land Use Regulation	49
Part II • Practical Applications of Real Estate Law	
Chapter 6 • Purchase and Sale Agreements	59
Chapter 7 • Lease Agreements	85
Chapter 8 • Deeds of Conveyance	99
Chapter 9 • Title Insurance	117
Chapter 10 • Legal Descriptions	161
Chapter 11 • Business Entities	169
Chapter 12 • Essentials of Real Estate Lending	181
Part III • Anatomy of a Purchase and Sale Transaction	
Chapter 13 • Navigating the Journey to Closing	257
Chapter 14 • Settlement Statements	265
Chapter 15 • Real Estate Closings	297
Appendix A • O.C.G.A. Citations	321
Appendix B • Ethical Rules for Attorneys	353
Appendix C • Title Insurance Stories	355
Glossary	361
Index	379

Contents

Table of Exhibits	xi
Preface	xiii
Acknowledgments	xv
Part I • The Legal Environment of Real Property	
Chapter 1 • Overview of Real Property Law	3
1.1 Introduction to Real Property	3
1.2 Categories of Real Property	4
1.3 Personal Property and Fixtures	4
1.4 Scope and Organization of Book	5
1.4 Chapter Review	6
Chapter 2 • Ownership of Real Property	9
2.1 Introduction	9
2.2 Types of Estates in Land	10
2.3 Methods of Transferring Title to Real Property	14
2.4 Chapter Review	17
Chapter 3 • Concurrent Ownership of Real Property	21
3.1 Definition of Concurrent Ownership	21
3.2 Tenants in Common	21
3.3 Joint Tenants with the Right of Survivorship	22
3.4 Tenancy by the Entirety	25
3.5 Marital Property and Community Property	26
3.6 Chapter Review	26
3.7 Practical Exercise—Legal Analysis of Concurrent Ownership	27
Chapter 4 • Encumbrances on Real Property	33
4.1 Introduction	33
4.2 Encumbrances Affecting the Use of Real Property	33
4.3 Liens	39
4.4 Chapter Review	43
Chapter 5 • Land Use Regulation	49
5.1 Introduction	49
5.2 Building Codes	49
5.3 Environmental Regulations	49
5.4 Subdivision of Land	50

5.5 Zoning Regulations	50
5.6 Chapter Review	52
5.7 Practical Exercise—Legal Analysis of Zoning Regulations	53
Part II • Practical Applications of Real Estate Law	
Chapter 6 • Purchase and Sale Agreements	59
6.1 Introduction	59
6.2 Requirements of a Valid Contract	59
6.3 Purchase and Sale Agreements (“PSAs”)	62
6.4 Provisions of a Typical Residential PSA	63
6.5 Termination of Real Estate Contracts	68
6.6 Remedies for Breach of Contract	68
6.7 Option Contracts and Lease-Purchase Agreements	70
6.8 Chapter Review	71
Chapter 7 • Lease Agreements	85
7.1 Introduction	85
7.2 Residential Lease Agreements	86
7.3 Provisions of a Typical Residential Lease Agreement	86
7.4 Implied Duties	89
7.5 Remedies for Breach of Lease Agreement	90
7.6 Termination of Lease Agreements	91
7.7 Chapter Review	92
Chapter 8 • Deeds of Conveyance	99
8.1 Introduction	99
8.2 General Warranty Deeds	99
8.3 Limited Warranty Deeds	103
8.4 Quitclaim Deeds	103
8.5 Other Types of Deeds	104
8.6 Transfer Tax	104
8.7 Recording Deeds in the Public Records	105
8.8 Correcting Deed Errors	105
8.9 Recording Statutes	106
8.10 Chapter Review	109
8.11 Practical Exercises	110
Chapter 9 • Title Insurance	117
9.1 Introduction to Title Insurance	117
9.2 Title Examinations	117
9.3 Title Examination Process	118
9.4 Conducting a Title Examination	119
9.5 Title Report	123
9.6 Commitments for Title Insurance	124
9.7 Components of a Commitment for Title Insurance	124
9.8 Title Insurance Policies	127
9.9 Transferability of Title Insurance Policies	130

9.10	Filing a Title Insurance Claim	130
9.11	Interplay Between Deed Covenants and Title Insurance	131
9.12	Chapter Review	131
9.13	Practical Exercises	133
Chapter 10	• Legal Descriptions	161
10.1	Introduction	161
10.2	Short Legal Descriptions	161
10.3	Metes and Bounds Legal Descriptions	162
10.4	Government Rectangular Survey Legal Descriptions	164
10.5	Chapter Review	165
10.6	Practical Exercise	165
Chapter 11	• Business Entities	169
11.1	Introduction	169
11.2	Types of Business Entities	169
11.3	Existence and Good Standing	171
11.4	Authority to Bind Entity	172
11.5	Business Entities Checklist	172
11.6	Signature Blocks	173
11.7	Chapter Review	175
11.8	Practical Exercises	176
Chapter 12	• Essentials of Real Estate Lending	181
12.1	Introduction	181
12.2	Regulation of Residential Lending	181
12.3	Loan Documents	182
12.4	Mortgage Insurance	186
12.5	Other Types of Loans Secured by Real Property	187
12.6	Recordation and Taxation of Security Deeds	189
12.7	Default and Foreclosure	190
12.8	Mortgage Fraud	192
12.9	Chapter Review	193
Part III • Anatomy of a Purchase and Sale Transaction		
Chapter 13	• Navigating the Journey to Closing	257
13.1	Introduction	257
13.2	Working with Real Estate Brokers	257
13.3	Inspecting the Property	260
13.4	Obtaining a Loan	261
13.5	Chapter Review	262
Chapter 14	• Settlement Statements	265
14.1	Introduction	265
14.2	Basic Information: Parts A–I	266
14.3	Net Amount Due or Owed Parties	267
14.4	Settlement Charges—Part L	268
14.5	Summary of Borrower’s Transaction—Part J	274

14.6 Summary of Seller's Transaction—Part K	277
14.7 Recap of HUD-1 Preparation	280
14.8 Real Estate Tax Prorations	281
14.9 Real Estate Tax Problems	282
14.10 Tax Prorations on the HUD-1	283
14.11 Other Prorations	284
14.12 Government Taxes	285
14.13 Recording Fees	286
14.14 Chapter Review	286
14.15 Practical Exercises	287
Chapter 15 • Real Estate Closings	297
15.1 Introduction	297
15.2 Ethical Considerations Applicable to Closing Attorneys	297
15.3 Stages of a Real Estate Transaction	302
15.4 Documents Typically Executed at a Residential Closing	306
15.5 Chapter Review	310
Appendix A • O.C.G.A. Citations	321
Appendix B • Ethical Rules for Attorneys	353
Appendix C • Title Insurance Stories	355
Glossary	361
Index	379

Table of Exhibits

Chapter 2 • Ownership of Real Property	9
Exhibit 2-1 <i>Steinichen v. Stancil</i>	19
Chapter 3 • Concurrent Ownership of Real Property	21
Exhibit 3-1 <i>Biggers v. Crook</i>	29
Chapter 4 • Encumbrances on Real Property	33
Exhibit 4-1 Storm Water Drainage and Utility Easement	45
Exhibit 4-2 Reciprocal Easement Agreement	46
Chapter 5 • Land Use Regulation	49
Exhibit 5-1 Zoning Regulations Excerpt	54
Chapter 6 • Purchase and Sale Agreements	59
Exhibit 6-1 Georgia Association of Realtors Form Contract for the Purchase and Sale of Existing Construction	73
Exhibit 6-2 Purchase and Sale Agreement	80
Chapter 7 • Lease Agreements	85
Exhibit 7-1 Sample Residential Lease	94
Exhibit 7-2 Sample Demand for Possession	98
Chapter 8 • Deeds of Conveyance	99
Exhibit 8-1 Warranty Deed	111
Exhibit 8-2 Limited Warranty Deed	112
Exhibit 8-3 Quickclaim Deed	113
Exhibit 8-4 Locate the Deed Errors	114
Exhibit 8-5 Recording Statutes Worksheet	115
Chapter 9 • Title Insurance	117
Exhibit 9-1 Grantee Index	137
Exhibit 9-2 Grantor Index	138
Exhibit 9-3 Commitment for Title Insurance	139
Exhibit 9-4 Twenty-One Reasons for Title Insurance	146
Exhibit 9-5 Owner's Policy of Title Insurance	147
Exhibit 9-6 Loan Policy of Title Insurance	150
Exhibit 9-7 Commitment for Title Insurance	158

Chapter 10 • Legal Descriptions	161
Exhibit 10-1 Survey, Land Lot 107	166
Exhibit 10-2 Practical Exercise	167
Exhibit 10-3 Survey, Land Lot 108	168
Chapter 11 • Business Entities	169
Exhibit 11-1 Business Entities Worksheet	177
Exhibit 11-2 Signature Blocks Worksheet	179
Chapter 12 • Essentials of Real Estate Lending	181
Exhibit 12-1 Good Faith Estimate	195
Exhibit 12-2 Truth-in-Lending Statement	198
Exhibit 12-3 Explanation of Truth-in-Lending Terms	199
Exhibit 12-4 Fixed Rate Promissory Note	200
Exhibit 12-5 Georgia Security Deed	204
Georgia Waiver of Borrower's Rights	220
Exhibit 12-6 Maryland Deed of Trust	222
Exhibit 12-7 Pennsylvania Mortgage	238
Chapter 14 • Settlement Statements	265
Exhibit 14-1 HUD-1 Settlement Statement	289
Exhibit 14-2 Acknowledgment and Receipt of HUD-1 Settlement Statement	292
Exhibit 14-3 HUD-1A for Refinance	294
Chapter 15 • Real Estate Closings	297
Exhibit 15-1 <i>In re UPL Advisory Opinion 2003-2</i>	312
Exhibit 15-2 Closing Information Sheet	314
Exhibit 15-3 <i>In re Zaleon</i>	316
Exhibit 15-4 Sample Power of Attorney	318
Exhibit 15-5 Seller's Affidavit	319

Preface

After over a decade of teaching real estate law to undergraduate students, and enjoying every minute of it, I always look forward to our first class meeting. It is in this meeting that I sense a certain level of apprehension in some students regarding their interest, or lack thereof, in the subject matter at hand. They think it will be boring. They think it will be tedious. They think it will be irrelevant to their future careers. And who can blame them? After all, real estate law is rarely depicted in gripping courtroom dramas or in the latest mystery novels. The study of real estate law can be admittedly dry at times. And yet, real estate is essential to our very existence; it is where we sleep and work and play. It is this dichotomy that presents us with the challenges and excitement of teaching and learning about real estate law.

The goal of this book is to present real estate terms and concepts in a manner that keeps students engaged in studying the material. You will find a thorough discussion of legal principles, bolstered by practical applications and references to cases and statutes. Since real estate is governed primarily by state and local law, many instructors in our state are forced to supplement their generic real estate textbooks with Georgia law and Georgia-specific handouts. This textbook does the job for you. It also serves as a handy one-stop reference for essential real estate concepts.

The chapters in this book are organized in a logical flow and utilize examples, chapter reviews with key terms and review questions, and an extensive list of exhibits and practical exercises to reinforce the material. This book also contains a comprehensive glossary of terms, a compilation of relevant state statutory provisions and an examination of legal ethics as applied to the practice of real estate law.

An instructor's manual supplements this book, with model course syllabi, chapter outlines, a test bank with answer key, additional sample documents, website links, and suggested assignments and class projects.

To all of you, instructors and students, I wish you a rewarding and fun semester in your study of real estate law.

Acknowledgments

Many people and organizations contributed to the creation of this book. Thank you to Lawyers Title Insurance Corporation, especially Kathy Stewart, Office Manager and Underwriter for Lawyers Title, and David Baum, Senior Vice President and Regional Manager of the Fidelity family of title insurance companies; the Georgia Association of Realtors® Forms Committee; the Reporter of Decisions for the Georgia Supreme Court; Survey Concepts, Inc.; The Law Office of Gayle Camp Keener, P.C.; Matthew Cornick and Geronda Carter for their insightful publishing suggestions; Sherry Richardson for her business organizations expertise; Beth Hall and Kelly Miller at Carolina Academic Press for their ongoing support of this project; Sandi Towers-Romero, author of *The Essentials of Florida Real Estate Law*, Elizabeth Sennett, and Joan Bass for their extremely helpful reviews of my manuscript; and every Georgia real estate attorney's best friend, *Pindar's Georgia Real Estate Law and Procedure*, by Daniel F. Hinkel. I would also like to thank my close friends and family members, especially Daven and Amy DeMeyer, for their enthusiasm for this project, and my mom, Carol Szutowicz, for her moral support and for inspiring in her children a love of reading and writing at an early age. Last, but certainly not least, I am most grateful to my husband, Kenneth Mooney, who fueled my energy to complete this project with his invaluable editorial feedback and tireless encouragement.

All publications of the American Land Title Association®, including ALTA® Policy Forms, Endorsements, and Related Documents are copyrighted and are reprinted herein by specific permission from: American Land Title Association® (ALTA®), 1828 L. Street, N.W. Suite 705, Washington, DC 20036, phone: 202-296-3671, e-mail: service@alta.org, web: <http://www.alta.org>.