



**REAL PROPERTY**  
LAW SECTION

**ANNUAL REPORT**

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# YEAR IN REVIEW

## From the Chair

*“This year, we have focused upon reaching our “highest point” by doing a few things best, with perfection, and the most success” - Kent A. Altom - Section Chair*



For the past year, the leadership of the Real Property Law Section has focused on achieving its “acme.” In business, the acronym “ACME” stands for “A Company Manufacturing Everything,” however, “acme” is a late 16th century Greek word that literally means “highest point.” Today, “acme” is more commonly understood to be “the point at which someone or something is best, perfect, or most successful.” This year, 2021-2022, the RPLS leaders have not attempted to be and do “everything” as the acronym “ACME” suggests; instead, we have focused upon reaching our “acme”—our “highest point”—by doing a few things best, with perfection, and the most success.

This year, our priority has been to return value to the members of our Real Property Law Section. Change for the sake of change is never a good reason to change. Therefore, our guiding principle has not been to change anything we do, but to enhance everything we do. Acme is more likely to be achieved when we focus on doing less but doing it better. Whether it be our “best in class” continuing legal education seminars, a meaningful and robust legislative agenda or bold pro bono initiatives, we have focused on continuing to do the good things we have always done with a laser focus upon “returning value,” realizing when we do that, and others take notice, we will achieve our “acme.”

At our annual planning meeting in August 2022, I challenged each Executive Committee member to do one thing: Identify and focus on one way our Section could do better to reach its “acme.” Examples include: (1) reconstituting our “Website/Listserv” and “Newsletter” subcommittees as our “Communication” subcommittee, led by co-chairs David Klein and

Tenise Chung, to ensure that our Website/Listserv are being utilized as a greater means by which we communicate with our RPLS members and to enhance (modernize) the ways we communicate with our RPLS members via email blasts and social media rather than a traditional mailed newsletter, and (2) reconstituting our "Awards and Scholarships" and "Membership" subcommittees as our "Recognition" subcommittee, led by Thua G. Barlay, to come up with ways to (i) grow our RPLS membership, (ii) improve the "value" we are providing our RPLS members, and (iii) bring recognition to the Real Property Law Section for all of the "good work" it does for others, not merely to its efforts to recognize others (the annual Pindar Award recipient and Law School Student Scholarship recipients).

It has been a very productive year for the Real Property Law Section, which is the largest Section of the State Bar of Georgia (3,188 members as of April 24, 2022, more than 50% larger than the Bar's second largest Section). Our legislative efforts achieved a win on every front: For example, we preserved the integrity of the State of Georgia's official recordation system of real estate documents by keeping Remote Online Notary from becoming law without the necessary fraud safeguards. While not being a proponent or opponent of the proposed legislation itself because our diverse Section membership represents each side of the debate, we stood on the side of the public and the State's record-keeping. We found new ways to enhance the delivery of our continuing legal education seminars: Our 2021 Real Property Law Institute, in its 43rd year, moved virtual—a six-hour virtual seminar that drew more than 670 attendees, which is twice the number that attended the destination RPLI's in recent years. Additionally, we utilized a low-cost, two-hour virtual format to deliver CLE credits to our Section membership and other Bar members.

**Kent E. Altom**  
Chair

# SUB-COMMITTEES

## Real Property Law Institute

Sub-committee Chairs: Kent E. Altom (2021) and Hilary H. Fentress (2022)



The Executive Committee of the Real Property Law Section implements many CLE courses for our members throughout the year. The largest of these is our seminar in May of each year - Real Property Law Institute (RPLI). Like all the

other sections we have not had an in-person seminar in two years due to the pandemic and planning a seminar with COVID restrictions still in place was quite a learning experience.

Our 2021 RPLI consisted of 10 hours of CLE credit in three virtual sessions.

For our 2022 RPLI, planning began in October of 2021 including securing 23 speakers over three days with a residential and commercial break out for a total of 12 hours CLE credit including 2 trial practice, 1 professionalism and 1 ethics. We also secured 26 sponsors, planned a 5k run, golf tournament, turtle talk, opening reception, speaker reception, yearly meeting, and an executive committee lunch meeting. As this is being written, registration is open, and an agenda is being approved for distribution. We are very excited to hold this event in person again and look forward to updating you next year on the success of the seminar.

## By-Laws

Sub-committee Chair: Hilary H. Fentress

This year our committee received the updated model by-laws from the State Bar. After a review of our last adopted by-laws, we decided to do a full update of our section's by-laws. We updated phrasing to match that of the model by-laws and updated many of the sections to exclude old language or include new language. The revised by-laws will be up for vote at our May meeting to take effect once approved.

## Commercial Real Estate

Sub-committee Co-Chairs: Kyle J. Levstek and Paula Rothenberger

On November 11, 2021, the section presented the Annual Commercial Real Estate Seminar at the State Bar of Georgia Bar Center. It was an action-packed day of information, dynamic speakers, and was hosted by the lively Kyle J. Levstek of Calloway Title and Escrow, LLC and witty Paula C. Rothenberger of Balch & Bingham. Mark S. Robinson of ORNTIC opened the day with a fantastic presentation on the history and status of Remote Online Notary in our state and across the country. Matthew W. Johnson with Georgia Business Insurance followed with a detailed presentation on Insurance in Legal Planning. After a break, Jack Young III outlined the current status of Data Security and some cybersecurity horror stories. The always entertaining Mark Chastain with Chastain & Associates thrilled both the viewers in the room and virtually with his take on Commercial Surveys. After a tasty box lunch, the humorous Matt Mashburn with Aldridge Pite LLP exhibited an informative and stimulating presentation on Professionalism in Commercial Real Estate Practice. Commercial Endorsements were then the topic of discussion in a fabulous and timely presentation by Hilary Fentress with CTIC. The day culminated with an all-star underwriting panel featuring J. Michael Dugan of NTINY, Leonard Gray of FATIC, Patrick Hagler of ANTIC, and Brian Pierce of STGC in which they answered questions from the crowd as well as provided topical perspectives on underwriting in our commercial market. Feedback on the seminar was positive and all who attended whether virtually or in person appreciated its value were entertained.

The subcommittee's biggest project for the 2021-2022 year has been the planning and presentation of a 6-hour continuing legal education seminar focused on various commercial real estate topics. The seminar was very well received by the section and provided an opportunity for the commercial practitioners in our section to come together virtually and in person for day of learning as well as discussion of matters specifically affecting the commercial real estate practitioner. Following the seminar, this subcommittee also planned and executed a dinner at the Capital City Club to honor our commercial seminar speakers, our Real Property Law Section past Pindar Aware recipients, and our law Scholle scholarship winners for 2021. Throughout the duration of the year, this subcommittee provides a voice on the Real Property Law Section Committee to share the perspective of the commercial practitioner on pending legislation, new litigation, and other topics which are discussed and addressed by the larger Real Property Section Executive Committee during the year.

We enlisted sponsors for each of the seminar in order to offset the costs to attendees. Each attendee paid only ten dollars per CLE credit.

## Communication

Sub-committee Chair: Tenise C. Chung

Our section has tried to move communication with section members into the 21<sup>st</sup> Century by getting rid of the outdated paper newsletters and replaced with more frequent email blasts containing more timely information dissemination.

## Legislative and Governmental Relations

Sub-committee Co-Chairs: Amy Huskins, Rob Brannen, and Mark Robinson

During this past Legislative Session, the Legislative Subcommittee of the Real Property Law Section of the State Bar of Georgia (“RPLS” or “Section”) worked with literally hundreds of lawyers, bankers, contractors, realtors, and title company representatives, as well as representatives of many interest groups, including the Mortgage Bankers Association of Georgia, Georgia Bankers Association, American Land Title Association, Southeast Land Title Association, Georgia Association of Realtors, Community Bankers Association, AARP, Georgia Home Builders Association, and several sections of the State Bar of Georgia, including the Fiduciary Law Section, Family Law Section, Business Law Section, and the Construction Law Section. Our discussions and direct involvement with requests to amend several bills from their initial drafts included several pieces of proposed legislation that affect the practice of law as well as the citizens of Georgia, including:

1. House Bill 974-the “Mandatory E-Filing Bill.” This bill was sponsored at the request of the GSCCCA but was changed as a direct result of discussions by members of the RPLS with many legislators including those on the House Judiciary Committee and the Senate Judiciary Committee. Due to restrictions placed on the Bar, these discussions were on a personal basis and not officially on behalf of the Bar itself, The RPLS heard from a tremendous number of lawyers and other groups throughout the State regarding this bill. The bill was amended to provide that the Clerks of Superior Court must offer e-filing of

real estate documents but not require e-filing. This was a major relief not only to many lawyers throughout the State, including real estate lawyers construction lawyers, health care lawyers, fiduciary lawyers, and eldercare lawyers, but also to other groups that would have been materially adversely affected by the bill in its original format. In addition to private discussions, our members testified in front of both the House Judiciary Committee and the Senate Judiciary Committee, and we were successful in having the original bill amended to offer e-filing but not require e-filing. One of the major arguments against mandatory e-filing was that no other State requires e-filing because of the potential constitutional issues that would have arisen if the bill had continued to forbid the recordation of paper real estate documents, which constitutional issues include the Fifth Amendment's rights to property, access to courts, restraint against alienation and creation of a separate class. House Bill 974 in its amended format is awaiting signature from Governor Kemp.

2. House Bill 334—the “Remote Online Notary Bill.” This bill, initially pre-filed in 2019, was tabled for the Legislative Session 2022, as it did not advance out of Conference Committee. The Board of Governors in 2020 authorized the Real Property Law Section to represent the Bar in connection with confirmation that the bill would include fraud protections previously promulgated by the American Land Title Association and the Mortgage Bankers Association's national legislative conferences. At the end of the 2021 Legislative Session, the bill was placed in Conference Committee, and there were attempts to potentially remove some of the mandated fraud protections from the then current version of the bill. Due to the restrictions on the Bar from the Keller Rule, the Real Property Law Section could not take an official position as to the stance taken by certain residential real estate lawyers of the Bar who have lobbied for the past two years for a real estate document carve out from the bill. The Legislative Subcommittee of the RPLS strongly believes that this bill will resurface for the 2023 session, and thus we will continue to insist upon full fraud protections to remain in the bill, if and when passed. The Legislative Subcommittee and many members of the Section have spent countless volunteer hours from 2019 to the present on this bill.
3. House Bill 554—the “Lis Pendens Bill.” This bill, initially filed in the 2021 session and carried over to the 2022 session, did not pass as of April 4, 2022. The Legislative Subcommittee of the RPLS believes that this bill will be re-introduced for the 2023 session. Members of the RPLS spent hundreds of hours in discussions with interested parties, the bill's sponsors, and other legislators regarding amendments to the bill that

would make the bill palatable to both litigators and real estate lawyers throughout the State. Several RPLS members (not officially on behalf of the Bar, but in their individual capacities) testified to the House and Senate Judiciary Committees in the 2021 session and also in the 2022 session.

4. New Proposed Legislation---Constructive Notice Legislation to correct Georgia's recording statutes. The 11th Circuit Court of Appeals on April 7, 2022 issued a landmark decision regarding the requirements for recordation of a real estate document involving real estate located in the State of Georgia. The majority decision issued by Judge Grant openly directs that the General Assembly "fix" some loopholes in the current recording statutes. Members of the RPLS are already in ongoing discussions with potential stake holders about this proposed legislation and will continue to do so throughout the year before the 2023 session.

## Litigation

Sub-committee Co-Chairs: Bret Channess and Larry Evans

The sub-committee continued to inform its members on past and/or pending litigation that involves our area of law. Some of the more important cases include:

- Pingora Loan Servicing, LLC v. Scarver (In re Lindstrom), \_\_\_F.4th \_\_\_, No. 20-13615, 2022 WL 1041192 (11th Cir. April 7, 2022) - Holding: The remedial statute, O.C.G.A. § 44-2-18, only allows a deed to be recorded "upon the affidavit of a subscribing witness." The Court concluded that a "subscribing witness" can only be one who already signed the deed by attesting to its execution.
- Tuggle v. Ameris Bank, \_\_\_ Ga. App. \_\_\_, \_\_\_ S.E.2d \_\_\_, No. A22A0256, 2022 WL 1024687 (Ga. Ct. App. April 6, 2022) - Holding: In an issue of first impression in Georgia, the Court of Appeals held that "Love and Affection" does not constitute "reasonably equivalent value" under Georgia's UFTA.
- Griggs v. Miller, \_\_\_ Ga. App. \_\_\_, \_\_\_ S.E.2d \_\_\_, No. A21A1366, 2022 WL 679971 (Ga. Ct. App. March 8, 2022) - Holding: The court first concluded that the dragnet clause did not show any intent to create a perpetual security interest, and distinguished it from other cases where the court had found a dragnet clause did so such a thing. It noted that those cases involved HELOC agreements where the borrower can obtain more draws from the same account over time and must take affirmative steps to have the security

deed cancelled even if the debt is paid down to zero. Next, the court held that the reversion statute is not a statute of limitations and therefore not subject to any tolling.

- Moxie Capital, LLC v. Delmont 21, LLC, \_\_\_ Ga. App. \_\_\_, \_\_\_ S.E.2d \_\_\_, No. A21A1574, 2022 WL 335864 (Ga. Ct. App. Feb. 4, 2022) - Holding: Only cash or a certified check is lawful tender to redeem a property from a tax sale purchaser. The court noted that a personal check is simply a promise to pay, and not a tender of money.

## Recognition

Sub-committee Chair: Thua G. Barlay

We revamped this sub-committee this year to also focus on ensure that bar members understand the good works that our section does. The sub-committee worked on compiling this report to the State Bar.

In addition, we continued recognizing individuals for great work focused on real property law:

Pindar Award: The George A. Pindar Award is granted by our section 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 him or herself for the benefit of the bar. The Executive Committee determined annually if the award shall be granted and will vote to give the award to a person or persons whom the committee thinks represents the ethics and ideals of George A. Pindar. For the 2021, the awardee was Vanessa E. Goggans. Vanessa is a Partner with Goggans, Stutzman, Hudson, Wilson & Mize LLP. She is a former chair of our section and practices in the areas of residential real estate and finance, representing builders, developers, homebuyers, homeowners and lenders in all phases of residential real estate development and sales. She is an active member of the Atlanta real estate community and a frequent speaker on topics regarding CFPB compliance, the Real Estate Settlement Procedures Act (RESPA), ethical issues facing real estate practitioners, new trends in the title insurance industry and practical tips for real estate brokers and closing attorneys.

Scholarships: For the 2021-22 year, the section awarded scholarships to students from several Georgia law schools. At our annual awards dinner, the section recognized these students. The awarded students were Rebecca Arrington (Emory University School of Law), Victoria Bethel (Mercer University School of Law, Meredith Elkin (Georgia State College of Law) and Jeffery Hendricks (not pictured) (University of Georgia School of Law).



## Residential Real Estate

Sub-committee Chair: Stuart Gordon

The Residential Sub-Committee typically hosts an annual Residential Seminar to provide CLE hours to members of the State Bar. The last in-person Residential Seminar was in January 2020, with the January 2021 moving to a one-day virtual seminar. Due to the unknown with COVID in the winter of 2021, we planned for another virtual seminar for 2022. This year, though, we successfully held 3 separate 2-hour sessions spread out over 5 weeks: January 13, 2022, February 3, 2022, and February 17, 2022. This allowed a variety of dates and times for members to access CLE content. The number of attendees jumped from 172 on January 13, 2022, to 214 on February 3, 2022, and 241 on February 17, 2022. The topics presented were varied, from a deep-dive into how and where money flows-in for the mortgage industry, to a presentation from an FBI Special Agent with the FBI Computer Intrusion Squad. Here is the schedule of speakers and titles:

- Jack Keeler, Vice President Sales, Flagstar Bank: Tour de Mortgage Finance
- Kenneth Stroud, Esq., Associate State Counsel, CATIC: Bankruptcies on Title: Avoiding Pitfalls and Getting to the Closing Table
- Chad Hunt, Supervisory Special Agent, FBI Computer Intrusion Squad: Cyber - An Enterprise Risk: Best Practices and Lessons Learned
- Jonathan S. R. Anderson, Esq., Vice President and Chief Underwriting Counsel and Tucker Dulong, Esq.: Associate Massachusetts State Counsel, CATIC: 2021 ALTA forms: key changes and additions

- Jane Bond, Esq., Florida Litigation Managing Partner, McCalla Raymer Leibert Pierce, LLC: eNotes and Foreclosure of eNotes
- Allie Jett, Esq., Attorney at Law, Jett Law Group: Process and Substance of a Quiet Title Action

As with our commercial real estate seminar, we also enlisted sponsors for this seminar with each attendee paying only ten dollars per CLE credit.

## **Title Standards**

Sub-committee Chair: Allie Jett

We did a full day CLE in November that was hybrid in person and virtual. I didn't get any email with stats from ICLE, but my recollection was that we had close to 100 attendees. Our other area of concern is the maintenance and update of the published title standards. We anticipate passing an amendment to the survey section at the May annual section meeting.