

9-1-1989

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Recommended Citation

A. Stafford, *PROPERTY Title Registration: Amend Provisions*, 6 GA. ST. U. L. REV. (1989).

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PROPERTY

Title Registration: Amend Provisions

CODE SECTIONS: O.C.G.A. §§ 44-2-140 (amended), 44-2-141 (amended), 44-2-144(c) (new), 44-2-160 (amended), 44-2-167 (amended)

BILL NUMBER: HB 210

ACT NUMBER: 466

SUMMARY: The Act amends the title registration requirements allowing title to registered land to be acquired by adverse possession, and by treating registered land as unregistered for purposes of recording and transfer.

EFFECTIVE DATE: April 3, 1989

History

In 1917, the Georgia General Assembly passed the Land Registration Act,¹ which regulates land titles registration. Under this Act, an owner of land may petition² the “superior court of the county in which the land”³ is located for a decree of registration.⁴ All others with an interest in the property must be named as defendants in the action,⁵ and must receive notice of the action.⁶ The court then considers the evidence in the case submitted by the parties, and the preliminary report submitted by the court-appointed examiner⁷ and, if it finds title to the land to be in any of the parties to the action, the court issues a decree declaring that person entitled to register the land.⁸ The decree has the effect of divesting the interests of all others claiming ownership of the land.⁹

1. 1917 Ga. Laws 108.

2. 1917 Ga. Laws 108, § 5 (formerly found at O.C.G.A. § 44-2-62 (1981)). The petition may be filed by anyone claiming to own an estate in fee simple, or by that person’s legal representative. *Id.*

3. 1917 Ga. Laws 108, § 2 (formerly found at O.C.G.A. § 44-2-60 (1981)).

4. 1917 Ga. Laws 108, § 26 (formerly found at O.C.G.A. § 44-2-82 (1981)).

5. 1917 Ga. Laws 108, § 9 (formerly found at O.C.G.A. § 44-2-66 (1981)).

6. 1982 Ga. Laws 3, § 44 (formerly found at O.C.G.A. § 44-2-67(a)(3) (1981)).

7. 1917 Ga. Laws 108, § 26 (formerly found at O.C.G.A. § 44-2-82 (1981)). The court is required to appoint an examiner for the case, who is required to prepare a preliminary report on the state of the title in question for consideration by the judge. 1982 Ga. Laws 3, § 44 (formerly found at O.C.G.A. § 44-2-101 (1981)).

8. 1917 Ga. Laws 108, § 26 (formerly found at O.C.G.A. § 44-2-82 (1981)). The person entitled to the decree may then have the title registered in the “register of decrees of title” book by the clerk of the superior court. *Id.* at § 28 (formerly found at O.C.G.A. § 44-2-120(b) (1981)).

9. 1917 Ga. Laws 108, § 27 (formerly found at O.C.G.A. § 44-2-83 (1981)).

The purpose of the Land Registration Act, according to one of its drafters, was

to afford a simple, certain, practical method by which every interested person, the owner of the land and every one dealing with him, may know at any given time just who owns a particular piece of land, and subject to what conditions, limitations, encumbrances or claims; and also incidentally to furnish a means by which the title to the land may be handled with greater ease and facility in commercial transactions than exist under other systems of evidencing title.¹⁰

The Land Registration Act, however, did not accomplish these purposes.¹¹ It was used mainly as a method of quieting title to land¹² until the passage of the Quiet Title Act of 1966.¹³

The Land Registration Act has been amended eight times since its initial passage.¹⁴ The first amendment, in 1931, established a seven-year waiting period for tax titles.¹⁵ This amendment was repealed in 1939.¹⁶ In 1943, the Act was amended to allow service by summons instead of requiring delivery of a copy of the petition, to provide for jurisdiction in rem by the sheriff's seizure of the land.¹⁷ An amendment passed in 1945 permitted notaries public, as well as superior court clerks, to acknowledge service.¹⁸ The 1952 Act provided that land was free from further registration, unless the decree provided otherwise.¹⁹ In 1963, the Legislature repealed the requirement that a court order be obtained for transfers between husbands and wives,²⁰ and the 1964 Act gave each defendant the right to obtain a copy of the petition.²¹ HB 210 represents the eighth change to the Act.

HB 210 was introduced to combat a problem that arose after the passage of the 1952 Act.²² The 1952 Act freed land registered on or

10. A. POWELL, LAND REGISTRATION § 4 (1917). Judge Arthur G. Powell headed the committee that recommended the Act to the Georgia General Assembly. *See id.* at iii-iv; G. PINDAR, GEORGIA REAL ESTATE LAW AND PROCEDURE, (3d ed. 1986).

11. *See* G. PINDAR, *supra* note 10, at § 24-1.

12. O.C.G.A. § 23-3-61 (1981). According to Pindar, "[u]se of the original Land Registration Act has declined rapidly during recent years in Georgia. The 1966 Quiet Title Act has virtually superseded it as a process for rendering titles marketable." G. PINDAR, *supra* note 10, at § 24-1.

13. O.C.G.A. § 23-3-61 (1981).

14. *See infra* text accompanying notes 15-21.

15. 1931 Ga. Laws 190.

16. 1939 Ga. Laws 341.

17. 1943 Ga. Laws 326, § 1 (formerly found at O.C.G.A. § 44-2-67(a)(3), (b) (1981)).

18. 1945 Ga. Laws 140, § 2 (formerly found at O.C.G.A. § 44-2-70 (1981)).

19. 1952 Ga. Laws 164, § 1 (formerly found at O.C.G.A. § 44-2-144(b) (1981)).

20. 1963 Ga. Laws 524.

21. 1964 Ga. Laws 170, § 1 (formerly found at O.C.G.A. § 44-2-67(c) (1981)).

22. Telephone interview with Representative James Pannell, House District No. 122 (Sept. 1, 1989) [hereinafter Pannell Interview].

after February 15, 1952, from further registration requirements.²³ As a result, land registered before February 15, 1952, was still required to be registered to effectuate any transfer of the land; however, land registered after that date did not have to be registered to be transferred.²⁴

The purpose of HB 210 was to free all land registered before February 15, 1952, from all requirements of further registration, unless otherwise provided for in the deed.²⁵ The bill was introduced on January 13, 1989,²⁶ and passed both houses without amendment.²⁷

HB 210

The Act amends and repeals a number of sections of the Land Registration Act. The Act repeals section 44-2-139, which declared that “a decree of registration and the entry of a certificate of title” was an agreement running with the land, and that the land must remain registered land thereafter.²⁸ The Act also abolishes the restrictions which provided that registered land could not be acquired by prescription or adverse possession.²⁹ As a result, title to land can now “be acquired by prescription or adverse possession.”³⁰

The Act provides that the last owner registered on the title register, or his “representatives, heirs, or assigns” may transfer land simply by recording the transfer; no further registration is required for the transfer to be effective.³¹ In addition, “the certificate of title and owner’s certificate” that are registered at the last transfer provide conclusive evidence of subsequent title.³² Transfer of the land by the last registered owner or his representative vests title in the transferee or his “heirs, successors, and assigns,” regardless of whether the title was re-registered at the time of transfer.³³ Any “outstanding lien, exception, encumbrance, trust, or limitation” to which the land is subject, and which is shown on the title register, is not affected by the failure to re-register the title.³⁴

23. 1952 Ga. Laws 164 § 1 (formerly found at O.C.G.A. § 44-2-144(b) (1981)). Before the 1952 amendment, once title registration was accomplished, all transfers of land had to be registered to be effective. *Id.*

24. *Id.*

25. *Id.*

26. Final Composite Status Sheet, Mar. 15, 1989.

27. *Id.*

28. 1917 Ga. Laws 108, § 64 (formerly found at O.C.G.A. § 44-2-139 (1981)).

29. 1917 Ga. Laws 108, § 66 (formerly found at O.C.G.A. § 44-2-140 (1981)).

30. O.C.G.A. § 44-2-140 (Supp. 1989).

31. O.C.G.A. § 44-2-141 (Supp. 1989).

32. O.C.G.A. § 44-2-144(c) (Supp. 1989).

33. *Id.*

34. *Id.*

The Act removes several procedural requirements for transfer of registered land.³⁵ In their place, the Act provides simply that “[d]eeds conveying title to all registered estates . . . be recorded in the same manner as deeds conveying title to unregistered lands”³⁶

The requirement that the owner present his title certificate to the superior court clerk along with all other documents to be registered, before the clerk may register it, is deleted.³⁷ In its place is substituted a provision that unrecorded transfers of title to registered land are valid, and are governed by the Recording Act.³⁸ The superior court clerk may note information about transfers on the title register, “and that the land is no longer required to be transferred on . . . [the title] register,” if requested to do so.³⁹

The Act deletes the provision that treated registered land as personalty in the event of the death of the registered owner of the land.⁴⁰ Finally, the Act deletes the procedural requirements for registering instruments not required to be registered, which provided that the person desiring to enter the information present the instrument along with an owner’s certificate of title to the superior court clerk, who must note the information on the title register and on the owner’s certificate.⁴¹

A. Stafford

35. Compare O.C.G.A. § 44-2-160 (Supp. 1989) with 1982 Ga. Laws 3, § 44. The old law required that the owner attach a form of transfer to the owner’s certificate of title, which contained all information about the transfer if it were unusual, such as a transfer of land in trust; and further required that the clerk record the transfer, cancel the old owner’s certificate, and issue a new one. 1982 Ga. Laws 3, § 44.

36. O.C.G.A. § 44-2-160 (Supp. 1989).

37. O.C.G.A. § 44-2-167 (Supp. 1989).

38. *Id.*

39. O.C.G.A. § 44-2-160 (Supp. 1989).

40. 1917 Ga. Laws 108, § 42 (formerly found at O.C.G.A. § 44-2-168 (1981)).

41. 1982 Ga. Laws 3, § 44 (formerly found at O.C.G.A. § 44-2-251 (1981)).