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PROPERTY Acquisition and Loss of Property: Allow Automatic Renewal of Covenants Running With the Land

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PROPERTY

Acquisition and Loss of Property: Allow Automatic Renewal for Covenants Running with the Land

CODE SECTION: O.C.G.A. § 44-5-60 (new)
BILL NUMBER: HB 556
ACT NUMBER: 443
SUMMARY: The Act provides that covenants which run with the land shall be automatically renewed every twenty years unless fifty-one percent of the landowners affected terminate the covenant.
EFFECTIVE DATE: July 1, 1993

History

Prior to the enactment of this Act, the law provided that covenants running with the land could be extended beyond their twenty year limit if two-thirds of the record owners executed a document which provided a legal description of the area affected by the covenant along with a description of the covenant and the names of all the record owners of plots so affected.¹ Along with this document was to be submitted an affidavit of an attorney indicating the attorney had conducted a title search verifying the names of the record owners.² This requirement, however, was burdensome and expensive and thus a major reason for prompting the change in the law.³ Additionally, under the prior law, the burden to act was on the party seeking to extend the covenant. The Act changes this and places the burden to act on those who wish to terminate such covenants.⁴ In essence, the Act changes what required affirmative action to extend a covenant every twenty years to an automatic renewal for covenants running with the land unless they are terminated.⁵

HB 556

The bill as originally introduced simply deleted the requirement of section 44-5-60(d)(2) that an attorney provide an affidavit that he or she searched the land records, and instead merely required that the

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1. 1991 Ga. Laws. 334 (formerly found at O.C.G.A. § 44-5-60(d) (1991)).
 2. *Id.*
 3. Telephone Interview with Rep. Curtis Jenkins, House District No. 110, (Apr. 21, 1993) [hereinafter Jenkins Interview].
 4. *Id.*
 5. O.C.G.A. § 44-5-60(b) (Supp. 1993).

attorney state he verified the names of the record owners.⁶ This would avoid the need for a title search and reduce the cost involved in continuing a covenant.⁷ However, the House floor offered a significantly different substitute which was subsequently passed.⁸

The former law provided that a covenant running with the land could be continued beyond the twenty year limit with each continuation lasting twenty years.⁹ The Act changed this so that such covenants will automatically be renewed beyond the twenty year limit imposed in section 44-5-60(b).¹⁰ Additionally, there is no limit on the number of times each covenant can be renewed.¹¹

The Act then struck section 44-5-60(d)(2) which described the requirements for continuing a covenant.¹² The Act provides that to terminate a covenant, fifty-one percent of the persons owning plots affected by a covenant must execute a document with a legal description of the land, list all the record owners of plots affected by the covenant, and provide a description of the covenant.¹³

While former law required two-thirds of record owners to execute such a document, the Act requires only fifty-one percent of such persons execute a document.¹⁴ This decrease in number has two purposes. First, in large subdivisions with thousands of plots it is impractical and difficult to attempt to gather two-thirds of the owners together. Fifty-one percent was thought to be a more feasible figure.¹⁵ Second, land use changes over time.¹⁶ Thus, while an area many years ago may have been primarily residential, over time the surrounding areas may have grown largely commercial. The fifty-one percent requirement recognizes that there are legitimate and necessary instances where covenants need to be removed because time had rendered them obsolete.¹⁷

The Act abolished any need for attorney involvement.¹⁸ Thus, rather than requiring an attorney to submit an affidavit stating he has verified the names of all the record owners listed on the document, the Act provides that when a person owning the plot signs the document describing the property, he is also verifying that he is the record

6. HB 556, as introduced, 1993 Ga. Gen. Assem.

7. Jenkins Interview, *supra* note 3.

8. O.C.G.A. § 44-5-60(d)(1)-(2) (Supp. 1993).

9. 1991 Ga. Laws 334 (formerly found at O.C.G.A. § 44-5-60(d)(1) (1991)).

10. O.C.G.A. § 44-5-60(b) (Supp. 1993).

11. *Id.* § 44-5-60(d)(1) (Supp. 1993).

12. 1991 Ga. Laws. 334 (formerly found at O.C.G.A. § 44-5-60(d)(2) (1991)).

13. O.C.G.A. § 44-5-60(d)(2) (Supp. 1993).

14. O.C.G.A. § 44-5-60(d)(2) (Supp. 1993).

15. Jenkins Interview, *supra* note 3.

16. *Id.*

17. *Id.*

18. *Id.*

owner.¹⁹ This was done to eliminate the often prohibitive cost and burden of having an attorney conduct a title search.²⁰ Finally, the document must be recorded in the "office of the clerk of the superior court of the county where the land is located no sooner than but within two years prior to the expiration of the initial twenty year period or any subsequent twenty year period."²¹

Thus, the Act not only provides for an automatic renewal for covenants running with the land, but also shifts the burden from those who desire to extend covenants to those who seek to terminate them.²²

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19. O.C.G.A. § 44-5-60(d)(2) (Supp. 1993).

20. Jenkins Interview, *supra* note 3.

21. O.C.G.A. § 44-5-60(d)(2) (Supp. 1993).

22. *Id.*