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PROPERTY Mortgages, Conveyances to Secure Debts, and Liens: Provide for Shortened Reversionary Period for Secured Property; Provide for Notice to Prospective Purchaser of Potential Nuisances by Grantor, Owner or Agent of Property on or Near Agricultural or Forestry Property

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PROPERTY

***Mortgages, Conveyances to Secure Debt, and Liens:
Provide for Shortened Reversionary Period for Secured
Property; Provide for Notice to Prospective Purchaser
of Potential Nuisances by Grantor, Owner, or Agent of
Property on or Near Agricultural or Forestry Property***

CODE SECTIONS: O.C.G.A. §§ 44-1-17 (new), 44-14-80
(amended)
BILL NUMBER: HB 194
ACT NUMBER: 488
GEORGIA LAWS: 1995 Ga. Laws 1198
SUMMARY: The Act reduces the reversionary period for
secured property from twenty to seven
years. The expiration period remains at
twenty years when the parties have
expressly indicated in the conveyance an
intent to create a perpetual or indefinite
security interest, unless the term of the
debt exceeds twenty years. In addition, the
Act requires notice of acceptable land uses
and potential nuisances to purchasers of
property zoned or adjacent to agricultural
or forestry land.¹

1. O.C.G.A. § 44-1-17, former HB 793, was added to the Act during the Senate Special Judiciary Committee meeting on March 17, 1995, at the request of Rep. Roy E. Barnes, House District No. 33. Although it pertains to property, it has no relation to § 44-14-80 and is beyond the scope of this *Peach Sheet*[™]. However, a brief explanation follows. This new section provides that it shall be a buyer's or grantee's responsibility to determine whether the property to be leased or purchased is within, partially within, or adjacent to land approved by the county for agricultural or silvicultural use. O.C.G.A. § 44-1-17 (Supp. 1995). "Silvicultural" is a term of art used in the forestry industry pertaining to and describing land used for forestry purposes. Telephone Interview with Rep. Roy E. Barnes, House District No. 33 (Apr. 24, 1995) [hereinafter Barnes Interview I]. The section also requires that the grantor give notice to the prospective purchaser or lessee of such land use, if known to the grantor, and provides the appropriate notification language required. O.C.G.A. § 44-1-17 (Supp. 1995). It includes warnings that the land's approved uses may include activities which cause

EFFECTIVE DATE: July 1, 1995

History

Prior to 1994, Code section 44-14-80(a) allowed the title of secured real property to revert back to the grantor² at the expiration of twenty years from the maturity date of the debt instrument or last installment, as fixed in the recorded conveyance, or if not recorded, as stated in the conveyance.³ If the maturity date or last installment date was not fixed, such as in a demand note, then reversion occurred twenty years from the date the conveyance was recorded, and if not recorded, from the date on the actual document.⁴ When there was no maturity date stated and no date on the conveyance, reversion to the grantor occurred upon the expiration of twenty years from the date the conveyance was recorded or delivered.⁵ Foreclosure actions that began prior to reversion, however, prevented the reversion if the foreclosure was completed without delay.⁶

In 1994, the Georgia General Assembly passed an amendment to Code section 44-14-80(a) that reduced the reversionary period from twenty to seven years.⁷ The General Assembly also divided subsection (a) into three subparts for clarity.⁸ Subpart (1) required the statutory period to run from the maturity date of the debt instrument or last installment as recorded or fixed in

discomfort and inconveniences, such as twenty-four hour use of heavy machinery, spraying of pesticides, smells, noise, dust, smoke, and storage of manure. *Id.* There is, however, no cause of action created by this legislation. *Id.* Rep. Barnes stated that the right to farm is no good if a homebuyer can enjoin a farm or forestry operation. Rep. Roy E. Barnes, Remarks at the Meeting of the Special Senate Judiciary Committee (Mar. 8, 1995) (notes available in Georgia State University College of Law Library). In the Senate Special Judiciary Committee, Rep. Barnes stated that this notice provision, although not perfect, improves the current situation. *Id.*

2. 1953 Ga. Laws 313 (formerly found at O.C.G.A. § 44-14-80(a) (1982)). The term "grantor" in this article also refers to grantor's "heirs, personal representatives, successors, and assigns." *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. 1994 Ga. Laws 1943 (formerly found at O.C.G.A. § 44-14-80(a) (Supp. 1994)).

8. *Id.*

the conveyance, or if not recorded, as stated in the conveyance.⁹ When the maturity date or last installment was not stated or fixed, subpart (2) began the statutory period from the date of the conveyance as stated in the record, or if not recorded, as stated in the conveyance.¹⁰ Subpart (3) applied only when the above two conditions did not exist.¹¹ The seven year expiration period under subpart (3) began from the date the conveyance was recorded, or if not recorded, from the date the conveyance was delivered.¹²

The other major change made to this section in 1994 was the addition of a paragraph to subpart (2), which provided that when (1) the conveyance did not state a maturity date for the secured obligation, and (2) the parties, by affirmative statement in the conveyance, indicated an intent to establish a perpetual or indefinite security interest in the real property, the reversion to the grantor occurred at the expiration of twenty years from the date of the conveyance as stated in the record, or if not recorded, in the conveyance.¹³ This language was added to allow lenders the flexibility of forebearing on the debts of their customers without automatically losing their priority position at the end of seven years.¹⁴ The Act also intends to permit lenders to make future advances served by a first lien pursuant to a security deed originally recorded years earlier in connection with a different loan.

The Title Underwriters of Georgia were the primary force behind the 1994 amendment.¹⁵ The purpose of the amendment was to reduce title insurance company exposure by eliminating

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Telephone Interview with former Rep. John Hammond, House District No. 32 (Apr. 25, 1995) [hereinafter Hammond Interview]. This language was added to the original bill after Rep. Hammond, a member of the Banks and Banking Committee, solicited input from various officers of financial institutions, who expressed the need to deal flexibly with their customers in regard to any outstanding debts. *Id.*

15. Telephone Interview with Paul R. Shlanta, Attorney with Rowe, Foltz, & Martin, P.C. and member of the Legal Advisory Subcommittee of the Bank Counsel Section of the Georgia Bankers Association (Apr. 27, 1995) [hereinafter Shlanta Interview].

deeds to secure debt from title records when the deeds to secure debt were significantly older than the obligations they originally secured.¹⁶

The situation that provided the impetus behind the 1994 amendment involved a security deed that had been paid off several years before but still showed up on the title of the owner's property.¹⁷ The owner attempted to transfer the property, but was confronted with a cloud on the title for the amount of the security deed.¹⁸ Although the debt had been paid off years before, eighteen months remained on the twenty-year reversionary period established under Code section 44-14-80, and the owner was unable to locate the creditor in order to obtain a release.¹⁹ Such situations are not unusual given the long statutory period, the increasing mobility of society, and a changing financial climate in which banks often merge or go out of business.²⁰

One alternative was to file an action to quiet title.²¹ However, the cost of bringing that action was almost as much as the original debt.²² Another alternative was to have a title company issue a policy insuring the amount of the debt.²³ However, title companies were reluctant to assume this kind of risk, especially with a large debt.²⁴

After consulting with other real estate attorneys, former Representative John Hammond proposed the 1994 amendment to Code section 44-14-80.²⁵ The automatic seven-year reversionary period was intended to reflect the current financial climate.²⁶

16. Memorandum from Paul R. Shlanta, Attorney, to Joe Brannen and Sanders Griffith, Georgia Bankers Association (Nov. 30, 1994) [hereinafter Shlanta Memo] (available in Georgia State University College of Law Library).

17. Hammond Interview, *supra* note 14. Former Rep. Hammond was the attorney for the owner in this case. Hammond Interview, *supra* note 14.

18. Hammond Interview, *supra* note 14.

19. Hammond Interview, *supra* note 14; 1982 Ga. Laws 3 (formerly found at O.C.G.A. § 44-14-80(a) (1982)).

20. Hammond Interview, *supra* note 14.

21. Hammond Interview, *supra* note 14.

22. Hammond Interview, *supra* note 14.

23. Hammond Interview, *supra* note 14. In the case of Hammond's client, this is exactly what happened. Hammond Interview, *supra* note 14.

24. Hammond Interview, *supra* note 14.

25. Hammond Interview, *supra* note 14.

26. Hammond Interview, *supra* note 14.

The mobility of society had created “endless clouds on title” because property owners often could not find the holder of the security instrument to obtain a release.²⁷

These clouds on title have a substantial impact on many property owners’ lives.²⁸ Without clear title, many people are unable to transfer or sell their property.²⁹ In addition, if a property owner attempts to borrow additional funds and secure them with the property, many banks will refuse because of the existing lien on the property, which has priority over any new debts in the event of foreclosure.³⁰ If the bank lends additional funds, it will typically charge a higher rate of interest because its note will be subordinate to the original debt, increasing the risk of default.³¹

The reduction of the reversionary period was not arbitrary. Former Representative Hammond opted for a seven-year period to be consistent with existing law providing a seven-year statute of limitations period in which to enforce an outstanding judgment.³² Like the enforcement of a judgment, if the creditor has not attempted to collect the debt within seven years from the date it becomes due, the creditor loses the right to collect and the property interest automatically reverts back to the property owner.³³

After the enactment of the 1994 amendment, many Georgia banks were advised to add the “affirmative intent to create a perpetual security interest” language to their form deeds to secure debt.³⁴ This recommendation concerned the Georgia Bankers Association and Representative Roy E. Barnes, a member of the Georgia Bank Council.³⁵

The 1994 legislation created an ambiguity.³⁶ If a security instrument stated a maturity date in addition to the “affirmative

27. Hammond Interview, *supra* note 14.

28. Barnes Interview I, *supra* note 1.

29. Barnes Interview I, *supra* note 1.

30. Barnes Interview I, *supra* note 1.

31. Hammond Interview, *supra* note 14.

32. Hammond Interview, *supra* note 14; *see also* 1965 Ga. Laws 272 (codified at O.C.G.A. § 9-12-60 (1993)) (requiring that any action to enforce a judgment occur within seven years from the date of the judgment).

33. Hammond Interview, *supra* note 14.

34. Shlanta Interview, *supra* note 15.

35. Barnes Interview I, *supra* note 1.

36. Barnes Interview I, *supra* note 1.

intent language," a debtor might argue that the bank never intended to actually collect its debt at the stated maturity date.³⁷ In addition, the 1994 amendment was silent as to the effect of "affirmative intent language" in a deed to secure debt that stated the maturity date of the secured obligation. Thus, a conflict could arise as to whether the reversionary period was twenty or seven years.³⁸

Although the 1994 changes addressed situations in which the security instrument did not have a fixed maturity date or an affirmative intent to create a perpetual security interest, it did not cover such situations in which the conveyance included both a statement providing an affirmative intention to create a perpetual security interest and an expressed maturity date.³⁹ Representative Barnes and the Georgia Bankers Association sought to clarify this potential conflict in the 1995 legislative session.⁴⁰

HB 194

As originally introduced, HB 194 included language similar to the 1994 amendment. The legislation proposed that title would revert at the expiration of twenty years from the date of the recorded conveyance, or if not recorded, the date in the conveyance, if, by affirmative statement in the record of conveyance, the parties indicated an intent to establish an indefinite or perpetual security lien against the real property.⁴¹ Additionally, this new language applied to instruments with an express maturity date, thus extending the reversionary period to twenty years in this situation as well.⁴²

The House Judiciary Committee substitute amended this language by providing that when the conveyance states a

37. Telephone Interview with Joseph Brannen, President of the Georgia Bankers Association (Apr. 27, 1995) [hereinafter Brannen Interview]; Shlanta Interview, *supra* note 15; Barnes Interview I, *supra* note 1.

38. Brannen Interview, *supra* note 37; Shlanta Interview, *supra* note 15; Barnes Interview I, *supra* note 1.

39. 1994 Ga. Laws 1943 (formerly found at O.C.G.A. § 44-14-80(a) (Supp. 1994)); see *supra* notes 36-38 and accompanying text.

40. Telephone Interview with Rep. Roy E. Barnes, House District No. 33 (Apr. 27, 1995) [hereinafter Barnes Interview II].

41. HB 194, as introduced, 1995 Ga. Gen. Assem.

42. *Id.*

maturity date for the secured obligation and the parties affirmatively indicate an intent to create an indefinite or perpetual security interest in the real property, title reverts back to the grantor at the later of: (1) seven years from the maturity date or the last installment as stated or fixed in the record, or if not recorded, the date of the conveyance; or (2) twenty years from the record date of the conveyance, or if not recorded, in the conveyance.⁴³ This language was changed to take into account debt instruments with maturity dates of twenty years or longer.⁴⁴ Otherwise, the security interest could terminate before the debt came due. The House passed this committee substitute and sent it to the Senate where it was adopted.⁴⁵

The Effective Date

The Act is intended to apply retroactively.⁴⁶ However, Representative Barnes added language to the Senate version providing that “[n]othing in this code section shall be construed, interpreted, or enforced in a manner which impairs any contract rights under currently existing instruments conveying real property to secure a debt or debts,” which remains in the bill as passed.⁴⁷

Representative Barnes believes that no conflict exists between the intent to apply the Act retroactively and the language in the Act stating that existing contract rights shall not be impaired.⁴⁸

43. HB 194 (HCS), 1995 Ga. Gen. Assem.

44. Shlanta Interview, *supra* note 15. Mr. Shlanta drafted this language, recognizing that the bill, as originally introduced, would have caused deeds that secured notes with maturities of more than twenty years to revert prior to the maturity of the secured indebtedness. Shlanta Interview, *supra* note 15.

45. O.C.G.A. § 44-14-80 (Supp. 1995).

46. 1995 Ga. Laws 1198, 1995 Ga. Gen. Assem. This can be seen in the language, “Section 2 of this Act shall be applicable and effective with respect to all such conveyances even though they may be dated prior to July 1, 1995.” *Id.* This section of the Act was not codified. *See also* Memorandum from Paul R. Shlanta, Attorney, to Joseph Brannen, Georgia Bankers Association (Mar. 31, 1995) (available in Georgia State University College of Law Library). It is not clear whether the 1995 amendment to O.C.G.A. § 44-14-80 applies retroactively or prospectively. Shlanta Interview, *supra* note 15.

47. O.C.G.A. § 44-14-80(f) (Supp. 1995).

48. Barnes Interview II, *supra* note 40.

Representative Barnes views the “impairs any contract rights” language as asking the court to honor existing agreements if the conveyance is explicit and unambiguous with regard to maturity dates.⁴⁹ Representative Barnes states that the Act applies retroactively only if there is an ambiguity in the conveyance with regard to the reversionary period.⁵⁰

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49. Barnes Interview II, *supra* note 40.

50. Barnes Interview II, *supra* note 40.