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JUDICIAL SALES Advertisement: Require that Properties Subject to Judicial Sale Be Listed and Advertised by Legal Description

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JUDICIAL SALES

Advertisement: Require that Properties Subject to Judicial Sale Be Listed and Advertised by Legal Description

CODE SECTION:	O.C.G.A. § 9-13-140 (amended)
BILL NUMBER:	HB 1406
ACT NUMBER:	578
GEORGIA LAWS:	1998 Ga. Laws 213
SUMMARY:	The Act changes the advertising requirements for real property listed for judicial sale. The Act requires that judicial sale notices advertising the availability of real property include the legal description of the property. The Act also provides that judicial sale notices may include the street address of the property.
EFFECTIVE DATE:	July 1, 1998

History

Under prior law, judicial sale advertisements described real property based on the street address of the property.¹ As 9-1-1 emergency service became available in many Georgia counties, local governments began renaming streets and renumbering street addresses.² When street names and address numbers were changed without notifying lenders, problems arose with foreclosure and judicial sale proceedings because the security interest documents contained flawed information.³ The result could be as serious as foreclosures getting thrown out of court due to minor discrepancies in street addresses.⁴

Listing property by street address also created problems when property owners obtained a loan to build a guest house or carriage house on the same property as the main house, and then secured the

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1. See 1995 Ga. Laws 931 (formerly found at O.C.G.A. § 9-13-140 (1995)).
 2. See Telephone Interview with Rep. Mack Crawford, House District No. 129 (May 1, 1998) [hereinafter Crawford Interview]; Telephone Interview with Mo Thrash, Political Legislative Assistant for the Mortgage Bankers Association (May 6, 1998) [hereinafter Thrash Interview].
 3. See Crawford Interview, *supra* note 2; Thrash Interview, *supra* note 2.
 4. See Thrash Interview, *supra* note 2.

loan with the guest or carriage house.⁵ In some cases, lenders identified the security interest in the guest or carriage house by use of the same street address as the main residence.⁶ This situation could have created confusion when either the guest or carriage house became subject to foreclosure and judicial sale, and a prospective purchaser mistakenly believed that the judicial sale involved the main house.⁷

Similarly, a security interest holder might also foreclose on the wrong real property.⁸ For example, a situation might arise where two different properties have the same street address, due to a local street address change, and the property subject to the foreclosure is not the property that is actually foreclosed upon.⁹ This created a situation in which the wrong property was offered for sale after foreclosure because the lender's loan was secured by a property at the wrong street address.¹⁰ Thus, attorneys alleged that the lenders misrepresented the property because the property that secured the loan was not the property subject to the loan financing.¹¹

When a security interest holder sought to foreclose on real property under the previous law, the foreclosure could be invalidated unless the security document contained the correct street address.¹² The defense bar relied on incorrect street addresses to argue that the lending institution holding the security interest neglected to perfect its security interest in the real property and, thus, asked courts to dismiss foreclosure claims because of the imperfection.¹³ As a result, security interest holders spent thousands of dollars defending the incorrect street addresses in foreclosure proceedings.¹⁴ The bill was introduced to remedy these foreclosure proceeding issues by requiring property involved in a judicial sale to be listed using a legal description and by

5. See Crawford Interview, *supra* note 2.

6. See *id.*

7. See *id.*

8. See *id.*

9. See *id.*

10. See *id.*

11. See *id.*

12. See Telephone Interview with Rep. Larry Smith, House District No. 109 (Apr. 30, 1998) [hereinafter Smith Interview].

13. See *id.*; Interview with Sen. Billy Ray, Senate District No. 48 (July 10, 1998); Crawford Interview, *supra* note 2; Thrash Interview, *supra* note 2.

14. See Crawford Interview, *supra* note 2.

providing that an incorrect street address description will not invalidate the foreclosure documents.¹⁵

The Act

The Act amends Code section 9-13-140(a) by requiring that the advertisement of real property subject to judicial sale “include the legal description of the real property” rather than the exclusive requirement of a street address.¹⁶ Prior to the Act, the law required the “sheriff, coroner, or other officer” to publish judicial sale advertisements in the local paper for four weeks prior to conducting the sale.¹⁷ Previous law mandated that the advertisement notice for judicial sales include information that gave “a full and complete description of the property to be sold.”¹⁸ Additionally, the law required that the advertisement include the “street address” when the advertisement related to any real property available through judicial sale.¹⁹

To remedy the confusion over the street address requirement, the Georgia General Assembly considered two relatively similar versions of HB 1406. The bill, as introduced, amended the law by deleting unnecessary wording and by replacing the words “street address” with the words “legal description.”²⁰ However, HB 1406 was amended on the floor of the House.²¹ The floor amendment added the following language to modify the requirement of advertising by legal description: “may include the street address of such real property, if available, but provided that no foreclosure shall be invalidated by the failure to include a street address or by the insertion of an erroneous street address.”²²

As modified by the floor amendment, the Act amends the existing law by making three changes. First, the Act deletes the words

15. *See id.*; Smith Interview, *supra* note 12.

16. O.C.G.A. § 9-13-140(a) (Supp. 1998).

17. 1995 Ga. Laws 931 (formerly found at O.C.G.A. § 9-13-140 (1995)).

18. *Id.*

19. *Id.*

20. HB 1406, as introduced, 1998 Ga. Gen. Assem.; *see* BLACK’S LAW DICTIONARY 893 (6th ed. 1990). A legal description is a “description of real property by government survey, metes and bounds, or lot number of a recorded plat including a description of any portion thereof subject to an easement or reservation, if any. Such must be complete enough that a particular parcel of land can be located and identified.” *Id.*

21. *See* HB 1406 (HFA), 1998 Ga. Gen. Assem.

22. *Id.*

“addition, in” from the law.²³ This change does not alter the meaning of the law because it only deletes unnecessary wording.²⁴ Second, the Act replaces the words “street address” with the words “legal description.”²⁵ Therefore, a legal description is required for property subject to judicial sale rather than a street address. Finally, the Act allows that when the legal description is included in the advertisement, a street address may also be included in the advertisement.²⁶ The House unanimously approved the bill.²⁷ The Senate passed the bill by a vote of 38 to 16.²⁸ Governor Miller signed the Act into law on March 27, 1998.²⁹

Conclusion

In summary, the Act requires that an advertisement notice for the judicial sale of real property subject to foreclosure include a legal description.³⁰ It also allows for the inclusion of the street address but provides that an incorrect or omitted street address will not invalidate the security document.³¹ Representative Crawford said that the Georgia General Assembly advanced no “hidden agenda” with this bill; rather, the purpose of the Act is to remedy a problem in foreclosure.³² The Act allows foreclosure proceedings related to real properties that are identified by the correct legal description to go forward with or without the street address.³³ The law now requires lenders to use the real property’s legal description in advertisements.³⁴ Since lenders already pay advertisement costs, they must bear any extra burden of paying the local legal organ to list the real property available in a judicial sale by legal description.³⁵

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23. See O.C.G.A. § 9-13-140(a) (Supp. 1998).

24. See *id.* The language that previously read “[i]n addition, in the case of real property” now reads simply, “[i]n the case of real property.” Compare 1995 Ga. Laws 931 (formerly found at O.C.G.A. § 9-13-140(a) (1995)), with O.C.G.A. § 9-13-140(a) (Supp. 1998).

25. See O.C.G.A. § 9-13-140(a) (Supp. 1998).

26. See *id.*

27. See Georgia House of Representatives Voting Record, HB 1406 (Feb. 9, 1998).

28. See Georgia Senate Voting Record, HB 1406 (Feb. 24, 1998).

29. See 1998 Ga. Laws 213 (codified at O.C.G.A. § 9-13-140 (Supp. 1998)).

30. See O.C.G.A. § 9-13-140(a) (Supp. 1998).

31. See *id.*

32. Crawford Interview, *supra* note 2.

33. See Smith Interview, *supra* note 12.

34. See Thrash Interview, *supra* note 2.

35. See *id.*