

10-1-1995

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John K. Rezac

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Recommended Citation

John K. Rezac, *PROPERTY Regulation of Specialized Land Transactions: Revise Georgia Land Sales Act; Remove Georgia Real Estate Commission as Administrator*, 12 GA. ST. U. L. REV. (1995).

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PROPERTY

***Regulation of Specialized Land Transactions:
Revise Georgia Land Sales Act; Remove Georgia
Real Estate Commission as Administrator***

CODE SECTIONS: O.C.G.A. §§ 44-3-1 to -4 (amended), -4.1 (repealed), -5 to -8 (amended), -8.1 (repealed), -9 to -13 (amended), -13.1 to -13.3, -14 to -19 (repealed)

BILL NUMBER: HB 621

ACT NUMBER: 446

GEORGIA LAWS: 1995 Ga. Laws 993

SUMMARY: The Act removes the Georgia Real Estate Commission (Commission) as administrator of the Georgia Land Sales Act (GLSA) and repeals the provisions relating to fees and expenses, enforcement and sanctioning authority, and immunity of the Commission. The Act vests enforcement of the GLSA in the Attorney General or the district attorney. The Act repeals certain registration requirements of the GLSA, provides for mandatory use of property reports in sales of subdivided land, and requires subdividers to keep business records. Furthermore, the Act changes the provisions of the GLSA pertaining to venue and repeals provisions pertaining to hearings and judicial review, cease and desist orders, and consent to service as it relates to actions by the Commission.

EFFECTIVE DATE: July 1, 1995

History

The Georgia Land Sales Act (GLSA) was originally enacted in 1972.¹ The GLSA regulates the sale and marketing of subdivided

1. 1972 Ga. Laws 638.

land.² Under the prior law, subdividers were required to file registration statements with the Georgia Real Estate Commission (Commission) before selling or marketing subdivided land.³ Subdividers were required to include in the registration statement certain information including: (1) specific information about their business;⁴ (2) the amount of acreage, number of lots, parcels, or tracts, and name of the nearest incorporated town to the subdivided land;⁵ (3) existing taxes affecting the subdivided land;⁶ (4) all loans that had been approved or disapproved for the subdivision;⁷ and (5) contemplated provisions for police and fire protection, as well as garbage collection, for the subdivision.⁸

Subdividers were also required to submit certain documentation such as legal descriptions of the land, proof of the conveyance of the land to the subdivider, all liens and deed restrictions, and statements by the subdividers of additional material facts of which the Commission should be aware prior to approval of subdivider's applications.⁹ Subdividers were further required to prepare and file a property report intended to provide material information about the land and warn potential purchasers of their rights of rescission.¹⁰

Under the prior law, the Commission had the authority to: administer the GLSA; employ investigators, examiners, and other necessary employees; and enact rules for the enforcement of the GLSA.¹¹ The Commission had the discretion to make public and private investigations, to determine violations of the GLSA, to inspect and reinspect subdivisions, and to require applicants to submit engineers' reports on hazards within the subdivisions.¹² When conducting investigations, the Commission could issue subpoenas or request that the applicable superior court issue subpoenas if the Commission's subpoenas were ignored.¹³

2. 1990 Ga. Laws 606 (formerly found at O.C.G.A. § 44-3-3 (1991)).

3. *Id.*

4. *Id.* (formerly found at O.C.G.A. § 44-3-3(2)(A) (1991)).

5. *Id.* (formerly found at O.C.G.A. § 44-3-3(2)(B) (1991)).

6. *Id.* (formerly found at O.C.G.A. § 44-3-3(2)(F) (1991)).

7. *Id.* (formerly found at O.C.G.A. § 44-3-3(2)(H) (1991)).

8. *Id.* (formerly found at O.C.G.A. § 44-3-3(2)(I) (1991)).

9. *Id.* (formerly found at O.C.G.A. § 44-3-3(3) (1991)).

10. *Id.* (formerly found at O.C.G.A. § 44-3-3(4) (1991)).

11. *Id.* (formerly found at O.C.G.A. § 44-3-6 (1991)).

12. *Id.* (formerly found at O.C.G.A. § 44-3-7 (1991)).

13. *Id.*

Additionally, the Commission could conduct hearings upon its own motions.¹⁴ The GLSA authorized the Commission to deny applications as well as reprimand, suspend, penalize, and revoke the registration of subdivisions for reasons such as the developers' lack of a "reputation for honesty, trustworthiness, integrity, and competence."¹⁵ Finally, the Commission could apply to the superior court to enjoin conduct prohibited by the GLSA.¹⁶

HB 621

The Commission initially proposed changes to the GLSA in September 1994.¹⁷ HB 621 embodied these changes and incorporated additional changes in response to written comments and suggestions received by the Commission at a public meeting in December 1994.¹⁸ The purpose of the Act is to remove the Commission as administrator of the GLSA, eliminate the requirement of registration of subdivisions prior to selling lots, and provide for enforcement of the Act through private and criminal actions.¹⁹

The Act may be cited as the "Georgia Land Sales Act."²⁰ Definitions pertaining to the Commission and the Commissioner have been deleted,²¹ and a new definition of "conspicuous

14. *Id.*

15. *Id.* (formerly found at O.C.G.A. § 44-3-8.1(1) (1991)).

16. *Id.* (formerly found at O.C.G.A. § 44-3-9 (1991)).

17. Georgia Real Estate Commission Synopsis of HB 621 Substitute (Feb. 16, 1995) (available in Georgia State University College of Law Library).

18. *Id.*

19. *Id.*

20. O.C.G.A. § 44-3-1 (Supp. 1995).

21. Compare 1971 Ga. Laws 856 (formerly found at O.C.G.A. § 44-3-2 (1982)) with O.C.G.A. § 44-3-2 (Supp. 1995). These changes were necessary because the Commission would no longer be the administrator of the GLSA. Telephone Interview with Charles Clark, Georgia Real Estate Commission, (Apr. 10, 1995) [hereinafter Clark Interview]; Telephone Interview with Maggie Edwards, Georgia Real Estate Commission (July 14, 1995) [hereinafter Edwards Interview]. Both Rep. Alan T. Powell, House District No. 23 and Rep. Jimmy Skipper, House District No. 137, agreed that the Georgia Real Estate Commission was most knowledgeable about the bill. Telephone Interview with Rep. Alan T. Powell, House District No. 23 (Apr. 9, 1995); Telephone Interview with Rep. Jimmy Skipper, House District No. 137 (Apr. 10, 1995).

statement" has been added.²² In general, references to the Commission and to registering with the Commission have been deleted.²³

The previous requirement that all subdividers file a registration statement with the Commission has been replaced by a similar requirement that subdividers provide each prospective purchaser with a property report (report).²⁴ The information required in the report is substantially the same as that required under the prior law.²⁵ The report must include the subdivider's name, address, form and date of organization, and sales personnel, and must include the location of the subdivider's records.²⁶ The report also must provide information about: (1) total acreage of lots in the subdivision;²⁷ (2) title;²⁸ (3) future improvements;²⁹ (4) zoning requirements and taxes;³⁰ (5) sums to be paid by purchasers in addition to the purchase price;³¹ (6) approval or denial of financing for the subdivision;³² (7) governmental authorities that will provide police protection, fire

22. O.C.G.A. § 44-3-2(5) (Supp. 1995) (" 'Conspicuous statement' means a statement in boldface and conspicuous type which shall be a type size of at least ten points. Such statement shall always be shown larger than all other nonconspicuous statements in the body of the document in which it is required.").

23. Compare 1971 Ga. Laws 856 (formerly found at O.C.G.A. § 44-3-2 (1982)) with O.C.G.A. § 44-3-3 (Supp. 1995).

24. Compare 1990 Ga. Laws 606 (formerly found at O.C.G.A. § 44-3-3 (1991)) with O.C.G.A. § 44-3-3(a)(1) (Supp. 1995). Under the prior law, the Commission had authority to waive certain requirements upon a case-by-case determination that the information was not needed for the public interest or the protection of purchasers. 1990 Ga. Laws 606 (formerly found at O.C.G.A. § 44-3-3(1) (1991)). The Act does not provide for such waiver. See O.C.G.A. § 44-3-3 (Supp. 1995). Further, the prior law required subdividers to provide a performance bond, letter of credit, or certified financial statements to the Commission when applying for registration. 1990 Ga. Laws 606 (formerly found at O.C.G.A. § 44-3-3(3)(P) (1991)). The Act provides no such requirement. See O.C.G.A. § 44-3-3 (Supp. 1995).

25. Compare 1990 Ga. Laws 606 (formerly found at O.C.G.A. § 44-3-3(4) (1991)) with O.C.G.A. § 44-3-3(a)(1) (Supp. 1995).

26. O.C.G.A. § 44-3-3(a)(1)(A) (Supp. 1995).

27. *Id.* § 44-3-3(a)(1)(B).

28. *Id.* § 44-3-3(a)(1)(C).

29. *Id.* § 44-3-3(a)(1)(D).

30. *Id.* § 44-3-3(a)(1)(E)-(F).

31. *Id.* § 44-3-3(a)(1)(G).

32. *Id.* § 44-3-3(a)(1)(H).

protection, and sanitation services;³³ (8) name of the person who prepared the registration statement;³⁴ (9) intended use of the property;³⁵ and (10) estimated costs, completion schedule, and responsible parties for the construction and maintenance of the subdivision.³⁶

The Act enhances the disclosure requirements for a report. The front page of the report must contain conspicuous statements informing purchasers of the right of rescission and the subdivider's obligation to provide the report; it must also advise purchasers to seek legal advice in regard to the purchase of property.³⁷ Under the Act, subdividers must provide purchasers documentation including: (1) a legal description of the land; (2) instruments creating liens and other encumbrances or title defects; (3) deed restrictions; (4) the proposed purchase agreement; (5) the deed to be used in the transaction; (6) governmental approvals of sewage disposal facilities; (7) a copy of the plat; (8) a phased development schedule for promised improvements; and (9) statements of any additional material facts of which the purchaser should be aware.³⁸ Subdividers are required to make purchasers aware of material changes regarding the land and to update the report when material changes occur.³⁹

The Act prohibits the use of the report by a subdivider for advertising purposes, except when the report is used in its entirety, and prohibits underscoring or otherwise emphasizing portions of the report, except to bring risks or warnings to the purchaser's attention.⁴⁰ The Act requires that any blanket encumbrance on a subdivision contain either an acknowledgment by the holder that it is subordinated to the rights of purchasers of the lots or a provision for the subdivider to secure a release as

33. *Id.* § 44-3-3(a)(1)(I).

34. *Id.* § 44-3-3(a)(1)(J). The term "registration statement" erroneously was carried forward from the previous version of the GLSA and should instead read "property report." Edwards Interview, *supra* note 21. This error and other minor items should be corrected through subsequent amendments. Edwards Interview, *supra* note 21.

35. O.C.G.A. § 44-3-3(a)(1)(K) (Supp. 1995).

36. *Id.* § 44-3-3(a)(1)(L).

37. *Id.* § 44-3-3(a)(1)(M)-(O).

38. *Id.* § 44-3-3(a)(2).

39. *Id.* § 44-3-3(b), (c).

40. *Id.* § 44-3-3(d).

each lot is sold.⁴¹ In addition, the Act requires subdividers to maintain all instruments used in the sale of parcels, to make these instruments available for inspection by purchasers for three years, and to inform purchasers of any change affecting the location of these instruments.⁴²

Consistent with the GLSA's purpose of protecting purchasers, the Act requires a subdivider to provide each prospective purchaser with a copy of the report "prior to the execution of any binding contract or agreement for the sale of any lot or parcel in a subdivision."⁴³ A purchaser who does not receive a copy of the report at least forty-eight hours prior to executing such a contract may rescind the contract within seven days from the date of the execution of the contract, excluding Sundays and holidays.⁴⁴ The subdivider must receive a signed receipt of the report in duplicate from the purchaser and keep the receipts on file for three years.⁴⁵ The Act provides for specific language in the receipts outlining the purchaser's right of rescission and the notice the purchaser must provide to exercise that right.⁴⁶

The Act requires that the sales contract clearly state the legal description of the lot or parcel, the price and terms of the contract, and provisions for delivery of a warranty deed to the purchaser within 180 days of the execution of the contract or the

41. *Id.* § 44-3-3(e).

42. *Id.* § 44-3-3(f). In the interest of consistency, many of the record-keeping and compliance requirements under the Act mirror requirements under the prior law, with the exception that the Commission will no longer oversee compliance. Edwards Interview, *supra* note 21.

43. O.C.G.A. § 44-3-3(g)(1) (Supp. 1995).

44. *Id.*

45. *Id.* If the report is never provided, the purchaser shall have additional rights of recovery under O.C.G.A. § 44-3-8. *Id.*

46. *Id.* § 44-3-3(g)(2).

I hereby acknowledge that I have received the property report of (insert name of subdivision) on (insert date) at (time). If I receive the property report less than 48 hours prior to signing any contract or agreement, I understand that my right to cancel that contract or agreement is midnight of the seventh day, Sundays and holidays excepted, following the signing of such contract or agreement. I understand that I must notify the developer or the developer's agent in writing within the cancellation period of my intent to cancel by sending notice by certified mail, return receipt requested, to (insert name and address of developer or developer's agent). Notice will be effective on the date that it is mailed.

Id.

completion of dwelling units if the contract is for such a dwelling unit.⁴⁷ Every developer is obligated to make changes to the report necessary to assure its truthfulness and to amend the report as additional subdivided land is offered for sale.⁴⁸ The Act retains the same exceptions to the GLSA requirements as provided in the prior law.⁴⁹ The Act prohibits a subdivider from representing that any governmental body has in any way passed judgment on the accuracy and truthfulness of the report, the merits of the land, or the transaction between the subdivider and purchasers.⁵⁰

Finally, the Act authorizes the district attorney and the Attorney General to enforce the Act by applying to “any court of competent jurisdiction in this state”⁵¹ for an injunction restraining the subdivider or its agents, employees, partners, officers, and directors from engaging in conduct prohibited by the GLSA or for the appointment of a receiver or auditor.⁵²

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47. *Id.* § 44-3-3(h).

48. *Id.* § 44-3-3(i)-(j).

49. *Compare id.* § 44-3-4 with 1990 Ga. Laws 606 (formerly found at O.C.G.A. § 44-3-4 (1991)).

50. O.C.G.A. § 44-3-5(b) (Supp. 1995).

51. *Id.* § 44-3-6(a).

52. *Id.*