Who am I?

HELLO MY NAME IS
Anne Marie Bishop

What Do You Expect?

History

1776 – 2.5 Million  
2010 – 309.6 Million
Legally speaking...

Remember to always listen and seek the advise of your own legal advisor for your government.

Legally Speaking...

• Three levels of government
  • Federal, State and Local

• Different types of law including:
  • Constitutional Provisions, Statutes, Regulations, Court Decisions
### Legally Speaking: Constitution

<table>
<thead>
<tr>
<th>Level</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>United States Constitution</td>
</tr>
<tr>
<td>State</td>
<td>Georgia Constitution</td>
</tr>
<tr>
<td>Local</td>
<td>City Charter or Local Laws for Counties and Combined Governments</td>
</tr>
</tbody>
</table>
How is the Constitution created?

Legally Speaking . . .

- Three Levels of Government
  - Federal
  - State
  - Local (City, County and Unified Governments)
Constitution

Three Branches of Government

- **Legislative**
  - Makes laws
  - Approves presidential appointments
  - Two senators from each state
  - The number of representatives is based on population

- **Executive**
  - Signs laws
  - Vetoes laws
  - Appoints people
  - Appoints federal judges
  - Elected every four years

- **Judicial**
  - Interprets laws are constitutional
  - Appointed by the president
  - There are 9 justices
  - Can overturn rules by other judges

Three Levels of Government

- **Federal**
  - Constitution
  - Statutes
  - Regulations
  - Court Decisions

- **State**
  - Constitution
  - Statutes
  - Regulations
  - Court Decisions

- **County/City**
  - City: Municipal Charter
  - County: Local Laws
  - Ordinances
  - Court Decisions
Hierarchy of Laws

Legislative Branch

Legislative Acts

Statutes

Laws

Legislative Branch

- Federal: Congress
- State: General Assembly
- Local:
  - City Council
  - County Commission
  - Body created for Unified Government
# Hierarchy of Legislative Acts

<table>
<thead>
<tr>
<th>Level</th>
<th>Acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>Statutes also called the United States Code</td>
</tr>
<tr>
<td>State</td>
<td>Statutes also called the Official Code of Georgia</td>
</tr>
<tr>
<td>Local</td>
<td>Ordinances have an official name designated in the jurisdiction’s codified code</td>
</tr>
</tbody>
</table>

## Executive Branch

The branch of government that suggests laws or enforces the laws made by Congress.

### Executive Branch

- **Federal**
  - President
  - Vice President
  - Secretary of State
  - Members of Cabinet
  - Agencies
- **State**
  - Governor
  - Lieutenant Governor
  - Certain state-wide elected officials
  - Agencies
- **Local**
  - Mayor or Commission Chairman
  - Mayor Pro-Tem or Commission Vice-Chairman
  - Commission or Council
  - Certain elected officials
  - Departments
Hierarchy of Executive Actions

<table>
<thead>
<tr>
<th>Hierarchy</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal</strong></td>
<td>Executive Orders, Regulations, Budget, Etc.</td>
</tr>
<tr>
<td><strong>State</strong></td>
<td>Executive Orders, Regulations, Budget, Etc.</td>
</tr>
<tr>
<td><strong>Local</strong></td>
<td>Resolutions, Motions, Policies, Budget, Etc.</td>
</tr>
</tbody>
</table>

Judicial Branch

<table>
<thead>
<tr>
<th>Hierarchy</th>
<th>Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal</strong></td>
<td>U.S. Supreme Court</td>
</tr>
<tr>
<td></td>
<td>U.S. Court of Appeals (Circuits)</td>
</tr>
<tr>
<td></td>
<td>U.S. District Courts</td>
</tr>
<tr>
<td></td>
<td>U.S. Magistrate Courts</td>
</tr>
<tr>
<td></td>
<td>Other Specialty Courts</td>
</tr>
<tr>
<td><strong>State/Local</strong></td>
<td>Georgia Supreme Court</td>
</tr>
<tr>
<td></td>
<td>Georgia Court of Appeals</td>
</tr>
<tr>
<td></td>
<td>Superior Court</td>
</tr>
<tr>
<td></td>
<td>State Court</td>
</tr>
<tr>
<td></td>
<td>Magistrate Court</td>
</tr>
<tr>
<td></td>
<td>Juvenile Court</td>
</tr>
<tr>
<td></td>
<td>Probate Court</td>
</tr>
<tr>
<td></td>
<td>Municipal Court</td>
</tr>
</tbody>
</table>
**Hierarchy of Courts**

<table>
<thead>
<tr>
<th>Federal</th>
<th>State/Local</th>
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<tbody>
<tr>
<td>U.S. Supreme Court</td>
<td>Georgia Supreme Court</td>
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<tr>
<td>U.S. Court of Appeals (Circuits)</td>
<td>Georgia Court of Appeals</td>
</tr>
<tr>
<td>U.S. District Courts</td>
<td>Superior or other trial court</td>
</tr>
<tr>
<td>U.S. Magistrate Courts</td>
<td>Magistrate or Municipal Court</td>
</tr>
</tbody>
</table>

**Hierarchy of Laws**

- *Which laws control city or county ordinances?*
  - *Federal?*
  - *State?*

**Constitutional Law As It Relates to Code Enforcement**
Constitutional Law

U.S. Constitution

• Due process
  • Procedural
  • Substantive
• Eminent domain
• Equal protection

• Unreasonable search and seizure
• Right against self-incrimination
• Double jeopardy

U.S. Constitution: Procedural Due Process

A person cannot be deprived of life, liberty, and property without due process of law, which includes fair procedure with adequate safeguards.

• Notice, hearing, right to confrontation, right to examine witnesses, etc.

• Interest balancing tests help determine type of hearing required, i.e., administrative hearing, trial. Interests balanced include private interest at stake, likelihood of an error, and government interests.
**U.S. Constitution: Substantive Due Process**

Legislation enacted by a government must bear a right relationship to a legitimate governmental function.

- If a fundamental right is infringed, the government action must be narrowly tailored to serve a compelling government interest.
- If not a fundamental right and person complaining is not of a suspect class, then the government action is judged by the rational basis test. Any plausible or arguable reason that supports an ordinance will satisfy the test.

**U.S. Constitution: Eminent Domain**

Property cannot be taken without just compensation through the government's power of eminent domain.

- Taking can be complete or such that a balancing test is used to determine if taking has occurred.

**U.S. Constitution: Equal Protection**

No discriminatory enforcement or government action can occur based upon race, sex, and arbitrary application.

- Statutes cannot discriminate on their face.
- Although neutrally applied, statutes cannot result in disparate impact on a suspect class.
- Statutes cannot be applied in a discriminatory fashion.
U.S. Constitution: Unreasonable Search and Seizures

Unreasonable searches and seizures of property are prohibited.

- Warrant required for search and seizure.
- Common exceptions to warrant requirement:
  - plain view
  - exigent circumstances
  - consent

U.S. Constitution: Right Against Self-Incrimination

No one shall be compelled to be a witness against himself in a criminal proceeding.

- Only applies to criminal proceedings.
- Miranda warnings not required until arrest.
- Person can remain silent and government has to prove case.

U.S. Constitution: Double Jeopardy

No one shall be placed in jeopardy for the same criminal offense more than once.

- Person cannot be tried for same crime more than once.
Georgia Constitution

• Similar provisions to United States Constitution.

• Also has “Home Rule” provisions.
  • “Home Rule” restricts what Counties can do as well as provides powers to Counties
  • Municipal “Home Rule” is contained in statutes

Making Your Case Within The Legal Parameters

Legal Parameters

• Constitutional Law
• Statutes
• Regulations
Legal Parameters

• Let’s also add:

  • Intergovernmental Agreements
  • Preemption

There are different statutes that apply to cities as opposed to counties in Georgia.
Legal Parameters

Arrest powers

No arrest occurs on a citation with the exception of ordinances for violations of these County Ordinances:

- Public drunkenness
- Loitering
- Disorderly conduct
- Arrested on a citation for an ordinance violation only as provided by law by a P.O.S.T. Certified Officer

Legal Parameters

Arrest Powers

- Arrests do occur on bench warrants if defendant has failed to show for court.

Legal Parameters

Jurisdiction

- Municipal boundaries
- Intergovernmental agreements
Legal Parameters

Evidence

• Searches and seizures

• Statements

• Physical evidence

Legal Parameters of Investigation: Search and Seizure

• Unreasonable searches and seizures of property are prohibited.

• Search Warrant required unless facts clearly meet exception to rule requiring warrant.

Common exceptions to warrant requirement:

• Consent

• Plain View

• Exigent Circumstances
Legal Parameters of Investigation: Search and Seizure

• Consent
  • Voluntary consent is always best, but get it in writing and put it on video tape.
  • Consent should be from owner, but, if rented, from person renting.

Legal Parameters of Investigation: Search and Seizure

Plain View

• Somewhere that you can be legally
  • Roadway
  • Neighbor’s house

Concluding that the presence of an open container violated a Savannah city ordinance, the officer approached Oldfield and his companion to issue a citation. “Once properly inside the vehicle, the officer was permitted to confiscate other suspected contraband that he saw in plain view. The officer testified that, based on his training and experience, he concluded that several items visible in the truck—the glass pipe, rolled $20 bill, and residue-laden frisbee—were drug-related objects. Under these circumstances, seizure of the items was appropriate.

Suspected Noise Ordinance violation authorized officer’s stop of vehicle whereupon officer noticed odor of marijuana.
Legal Parameters of Investigation: Search and Seizure

Exigent Circumstances


Legal Parameters of Investigation: Search and Seizure

• Is a search warrant needed?
  • O.C.G.A. § 17-5-21 (Grounds for search warrants)
  • Only P.O.S.T. certified officer can obtain warrant, execute it and make return.
• Search Warrant always recommended for going in a house.

Legal Parameters of Investigation: Search and Seizure

• Ordinance provisions authorizing search cannot violate this Constitutional Amendment.

• An open and abandoned structure can be entered if it appears owner is not purposefully keeping people out, but, again search warrant is best.
Legal Parameters of Investigation: Search and Seizure

Will an Inspection Warrant suffice?

- When evidence will not be used in a criminal action.
  (evidence only used for a civil proceeding)
- "An administrative search into the cause of a recent fire does not give fire officials license to roam freely through the fire victim's private residence.
- Inspections warrants are for "inspections" not designed to uncover evidence of a crime.

<table>
<thead>
<tr>
<th>Statute</th>
<th>Department</th>
<th>Applicability</th>
</tr>
</thead>
<tbody>
<tr>
<td>O.C.G.A. § 16-13-45</td>
<td>State Board of Pharmacy</td>
<td>Controlled Premises under Georgia Controlled Substances Act</td>
</tr>
<tr>
<td>O.C.G.A. § 16-13-46</td>
<td>State Board of Pharmacy</td>
<td>Controlled Premises under Georgia Controlled Substances Act</td>
</tr>
<tr>
<td>O.C.G.A. § 27-4-263</td>
<td>Department of Natural Resources</td>
<td>Production or sale of domestic fish</td>
</tr>
<tr>
<td>O.C.G.A. § 31-2-13</td>
<td>Department of Community Health</td>
<td>(1) any law administered by the commissioner (2) Rules or regulations made pursuant to this title or (3) Rules or regulations made pursuant to any other law administered by the commissioner</td>
</tr>
<tr>
<td>O.C.G.A. § 37-1-70</td>
<td>Department of Mental Health and Developmental Disabilities</td>
<td>Any business or facility where the public health, sanitation, or contagious disease is involved, or where the public health, sanitation, or contagious disease is likely to be spread</td>
</tr>
<tr>
<td>O.C.G.A. § 49-2-20</td>
<td>Georgia State Police</td>
<td>Used to inspect vehicles being used in violation of this part concerning atmospheric emissions</td>
</tr>
<tr>
<td>O.C.G.A. § 49-2-23</td>
<td>Department of Human Services</td>
<td>Residential Child Care Licensing</td>
</tr>
</tbody>
</table>
Legal Parameters of Investigation:
Subpoena Duces Tecum

- Requires entity or person served upon to produce documents
  O.C.G.A. § 9-11-34.
- Does not override privileges
  O.C.G.A. § 24-5-501, et. seq. (spousal, attorney/client, grand juror, minister, psychiatrist, psychologist, etc.)
  O.C.G.A. § 24-9-10, et. seq. (medical, library and veterinary information)

Legal Parameters of Investigation:
Statements

No one shall be compelled to be a witness against himself in a criminal proceeding.
- Only applies to criminal proceedings.
- Miranda warnings not required until arrest.
- Person can remain silent and government has to prove case.
- Make sure statement is documented well, whether it is oral, written or taped.

Legal Parameters of Investigation:
Statements

Does a code Enforcement Officer have to give Miranda warnings?
Does a code Enforcement Officer have to give Miranda Warnings when issuing a citation without an arrest?
Should a Code Enforcement Officer ever have to give Miranda warnings?
Legal Parameters: Remedies

What is the goal?

• Criminal Citation
• Nuisance proceeding
• Injunction
• Civil Penalties
• Commission or Council Action

Criminal Citation
Citation: Criminal

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Criminal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td>Magistrate Court for County; Municipal Court for City Unless Intergovernmental Agreement or local legislation provide otherwise</td>
</tr>
<tr>
<td>Service</td>
<td>Personal Service</td>
</tr>
<tr>
<td>Burden of Proof</td>
<td>Beyond a Reasonable Doubt</td>
</tr>
<tr>
<td>Document Filed to start action</td>
<td>Usually written on a Uniform Traffic Citation, but can be written on a specialized form other than an Uniform Traffic Citation</td>
</tr>
<tr>
<td>Violation</td>
<td>Any ordinance violation unless ordinances provide otherwise</td>
</tr>
<tr>
<td>Parties</td>
<td>Offender such as owner, corporation officer or tenant depending upon facts</td>
</tr>
<tr>
<td>Judgment</td>
<td>Sentence with fine and imprisonment and conditions of suspended sentence or probation that encourage action</td>
</tr>
</tbody>
</table>

Citation: Criminal

- **Sentencing Options**
  - Fine
  - Jail time
  - Combination of fine and jail time
  - Suspension of part or all of jail and/or fine on conditions

Citation: Criminal

- **Sentencing Considerations**
  - “Standard fine”
  - Compliance
  - Criminal history
  - Ordinance violation history
  - Defendant’s cooperation and attitude
  - Controls needed over defendant
Citation: Criminal

Procedures

- Personally serve citation on accused
- What if defendant is out of your jurisdiction?
  - O.C.G.A. § 36-5-26
  - Set up appointments to have person come to your jurisdiction
  - Send citation to be served from your sheriff's office to the
  sheriff's office where defendant resides
- Citation should be legible
- Citation given to Defendant should be a copy, not the
  original
- Original citation is filed with the Court

Which court?

- Magistrate Court for all county ordinance violations
  - Intergovernmental agreements
- Municipal Court for all city ordinance violations
  - If a Municipal Court has not been created, then file in State
    Court
  - If a Municipal Court has not been created, then file in Superior
    Court if a State Court has not been created.
  - Intergovernmental Agreements
- Local Code Enforcement Board (O.C.G.A. § 36-74-1, et. seq.)

Sentencing

- Maximum
  - County (O.C.G.A. § 15-10-60)
    - $1000.00 Fine
    - 60 days in jail
    - 6 months probation
    - Conditions stay in effect for one year, or, if multiple
      citations, as many years as there are citations if the
      sentences are consecutive
  - City (O.C.G.A. §§ 36-32-1 and 36-35-6)
    - $1000 fine
    - 6 months in jail
    - Unless otherwise limited by city charter
Civil Penalties

Type of Case
Civil

Court
Magistrate Court for County, Municipal Court for City
Unless Intergovernmental Agreement or local legislation provide otherwise

Service
Specified in Ordinance

Burden of Proof
Preponderence of the Evidence

Document Filed to start action
Usually written on a Uniform Traffic Citation, but can be written on a specialized form other than an Uniform Traffic Citation

Violation
Any ordinance violation allowed to be addressed by law through a civil penalty

Parties
Offender such as owner, corporation officer or tenant depending upon facts

Judgment
Monetary Penalty

Citation: Civil Penalties

- Allowed by ordinance
- Prime examples:
  - Stormwater management ordinances through MNGWPD
  - Off-road vehicles:
    - § 40-7-6. Enforcement And Penalties
      - All peace officers shall enforce the provisions of this chapter. Any person who violates any provision of this chapter shall not thereby be guilty of a criminal act but shall be subject to a civil penalty of not less than $25.00.
Nuisance Abatement

Citation: Nuisance Abatement

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Civil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td>Magistrate Court for County, Municipal Court for City Unless Intergovernmental Agreement or local legislation provide otherwise</td>
</tr>
<tr>
<td>Service</td>
<td>Specified in Ordinance</td>
</tr>
<tr>
<td>Burden of Proof</td>
<td>Preponderence of the Evidence</td>
</tr>
<tr>
<td>Document Filed to start action</td>
<td>Legal pleadings best drafted by attorney or on form pre-approved by attorney</td>
</tr>
<tr>
<td>Violation</td>
<td>As specified in nuisance ordinance</td>
</tr>
<tr>
<td>Parties</td>
<td>Property, but parties at interest must be served including deed holder, security interest, lien holder, purchaser at tax sale, etc.</td>
</tr>
<tr>
<td>Judgment</td>
<td>Requirement that violation be corrected within set period of time and, if not, then government can correct, file lien and have tax commissioner sale property to satisfy the lien</td>
</tr>
</tbody>
</table>

Nuisance Abatement

• State law nuisance

• International Property Maintenance
Nuisance Abatement

• O.C.G.A. § 41-2-1, et. seq.
  Powers of counties and municipalities to repair, close, or demolish unfit buildings or structures and eliminate health hazards on private property
  • Specific Procedures to be followed
  • Court can order clean up by someone other than owner
  • Cost of repair can be assessed against property
  • Started by special pleading to court

Nuisance Abatement

• International Property Maintenance
  • Both procedural and substantive provisions
  • Be sure due process needs are met if following International Property Maintenance
  • Can combine both State Law Nuisance and International Property Maintenance by using State Law Nuisance for Procedure and International Property Maintenance for Substantive Law (code violation).

Injunction

STOP
### Citation: Injunction

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Civil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td>Superior Court</td>
</tr>
<tr>
<td>Service</td>
<td>Specified in State Law for Civil Proceedings</td>
</tr>
<tr>
<td>Burden of Proof</td>
<td>Preponderence of the Evidence</td>
</tr>
<tr>
<td>Document Filed to start action</td>
<td>Legal pleadings best drafted by attorney or on form pre-approved by attorney</td>
</tr>
<tr>
<td>Violation</td>
<td>Ordinance Violation</td>
</tr>
<tr>
<td>Parties</td>
<td>Offender such as owner, corporation officer or tenant depending upon facts</td>
</tr>
<tr>
<td>Judgment</td>
<td>Court Order requiring party to stop</td>
</tr>
</tbody>
</table>

### Civil/Council Action

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Civil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td>Proceeding before Council or Commission</td>
</tr>
<tr>
<td>Service</td>
<td>Specified in Ordinances</td>
</tr>
<tr>
<td>Burden of Proof</td>
<td>Preponderence of the Evidence unless otherwise specified</td>
</tr>
<tr>
<td>Document Filed to start action</td>
<td>Legal pleadings best drafted by attorney or on form pre-approved by attorney</td>
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</tr>
<tr>
<td>Judgment</td>
<td>Council or Commission Action as authorized by Ordinance</td>
</tr>
</tbody>
</table>
General Legal Information

Corporations

- Officers as per Secretary of State’s web site
- Name as per Secretary of State’s web site
- Service
  O.C.G.A. § 17-7-92

- Cannot be sentenced to jail

- Are subject to ordinance violations in the county in which they occur
General Legal Information

Cash Bond

- Order entered by court in counties or ordinances passed in cities to approve procedure. O.C.G.A. § 15-10-63.1. O.C.G.A. § 36-32-4. Accused should be told how to post cash bond if citation is eligible.
- Cash Bond eligibility should be noted on citation

General Legal Information

Open Records

O.C.G.A. § 50-18-70 – Exemptions

O.C.G.A. § 50-18-72 provides

(a) Public disclosure shall not be required for records that are:

(3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation.

General Legal Information

OFFICIAL OATH

STATE OF GEORGIA, ________ COUNTY

I, ____________________, do solemnly swear or affirm:

That I will support the Constitution of the United States of America and of the State of Georgia;
That I will in all respects observe the provisions of the laws of the United States, the State of Georgia and ________ County, Georgia including all special laws applicable to ________ County, Georgia as well as the ordinances thereof;
That I will well and truly perform the duties of my position with ________ County, Georgia including the authority to issue citations under the Official Code of ________ County, Georgia;
That I will to the utmost of my skill and ability, endeavor to promote the interest and property of ________ County, Georgia without fear, favor or affection;
That I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;
That I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I am by the laws of the State of Georgia prohibited from holding;
That I am otherwise qualified to hold my position with ________ County, Georgia, according to the Constitution and laws of Georgia, and
That I am neither a member of the Communist Party nor a citizen of the State of Georgia and being an employee of ________ County, Georgia and the recipient of public funds for services rendered as such employee, I am not a member of the Communist Party;
So help me God.
§ 48-4-40. Time to Redeem Real Property.

Whenever any real property is sold under or by virtue of an execution issued for the collection of state, county, municipal, or school taxes, or for special assessments, the defendant in it, or any person having any right, title, or interest in or lien upon such property may redeem the property from the sale by the payment of the amount required for redemption, as fixed and provided in Code Section 48-4-42:

(1) At any time within 12 months from the date of the sale; and

(2) At any time after the sale until the right to redeem is foreclosed by the giving of the notice provided for in Code Section 48-4-46.
When property has been redeemed, the effect of the redemption shall be to put the title conveyed by the tax sale back into the defendant in fee simple, subject to all liens existing at the time of the tax sale. If the redemption has been made by any creditor of the defendant or by any person having any interest in the property, the amount expended by the creditor or person interested shall constitute a first lien on the property and, if the quitclaim deed provided for in Code Section 48-4-44 is recorded as required by law, shall be paid prior to any other claims upon the property.
§ 48-4-48 Ripening of tax deed title

(b) [Omitted portions] A title under a tax deed properly executed on or after July 1, 1996, of a valid and legal sale shall ripen by prescription after a period of four years from the recordation of that deed in the land records in the county in which said land is located.

(c) A tax deed which has ripened by prescription pursuant to any provision of this Code section shall convey, when the defendant in it, is not laboring under any legal disability, a fee simple title to the property described in that deed, and that title shall vest absolutely in the grantee in the deed or in the grantee's heirs or assigns. In the event the defendant in it is laboring under any legal disability, the prescriptive term specified in this Code section shall begin from the time the disabilities are removed or abated.

(d) Notice of foreclosure of the right to redeem property sold at a tax sale shall not be required to have been provided in order for the title to such property to have ripened under subsection (a) or (b) of this Code section.

§ 48-4-75. Legislative Findings.

The General Assembly finds that the nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of such taxes, that the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization, that significant tax delinquency creates barriers to marketability of the property, and that nonjudicial tax foreclosure procedures are inefficient, lengthy, and commonly result in title to real property which is neither marketable nor insurable. In addition, the General Assembly finds that tax delinquency in many instances results in properties which present health and safety hazards to the public. Consequently, the General Assembly further finds that the alternative to nonjudicial tax foreclosure procedures authorized by this article is an effective means of eliminating health and safety hazards by putting certain tax delinquent properties back on the tax rolls and into productive use.

48-4-76. Counties and Municipalities Authorized to Proceed with Judicial in Rem Tax Foreclosures.

(a) In addition to any other rights and remedies provided under state law for the enforcement of tax liens by the State of Georgia and its counties and municipalities, such governmental entities may proceed with judicial in rem tax foreclosures for delinquent taxes in accordance with the provisions of this article by enactment of an ordinance or resolution of the governing authority of the county in which the property is located which ordinance or resolution shall be sufficient authority for use of the provisions of this article by such county and all municipalities within such county as to its respective taxes.

(b) The rights and remedies set forth in this article are available solely to the governmental entities authorized by law to collect ad valorem taxes and shall not extend to any transferee of tax executions or tax liens.
General Legal Information

§ 48-4-75. Procedure.

(a) After an ad valorem tax lien, based upon a digest approved in accordance with the law, has become payable and is past due and thereby delinquent, a tax commissioner or other tax collector, as appropriate, may identify those properties on which to commence a tax foreclosure in accordance with this article. The tax commissioner or other tax collector, as appropriate, shall not commence tax foreclosure in accordance with this article for a period of 12 months following the date upon which the taxes initially became delinquent.

Once enforcement proceedings have commenced in accordance with the provisions of this article, the enforcement proceedings may be amended to include any and all ad valorem taxes which become delinquent subsequent to the date of the initial ad valorem tax lien that was the original basis for the enforcement proceedings.

(b) The tax commissioner or other tax collector, as appropriate, shall file a petition with the superior court of the county in which the property is located, which petition shall have form and content substantially identical to that form as provided in subsection (g) of this Code section.

When the subject property is located in more than one taxing jurisdiction, the entity filing the petition shall identify in the petition only those portions of such property lying within the jurisdiction of the taxing authority of the petitioner.

General Legal Information

§ 48-4-77. Hearing; Order of Superior Court.

(a) The petitioner shall request that a judicial hearing on the petition occur not earlier than 30 days following the filing of the petition. At such hearing any interested party shall have the right to be heard and to contest the delinquency of the taxes or the adequacy of the proceedings. If the superior court determines that the information set forth in the petition is accurate, the court shall render its judgment and order that:

(Omitted Portions)

(3) The property as described in the petition be sold in accordance with the provisions of this article; and

(4) The sale shall become final and binding 60 days after the date of the sale in accordance with Code Section 48-4-81.

(Omitted Portions)

General Legal Information

§ 48-4-80. Redemption prior to sale.

(a) At any point prior to the moment of the sale, any interested party may redeem the property from the sale by payment of the redemption amount. Payment shall be made to the petitioner. Following receipt of such payment, the petitioner shall file for dismissal of the proceedings.

(b) In the event of such payment by the owner of the subject property, the proceedings shall be dismissed and the rights and interests of all interested parties shall remain unaffected.

(c) In the event of such payment by any interested party other than the owner, the party accompanying such payment shall possess a lien on the property for the full amount of such payment, which lien shall have the same priority as the lien for the delinquent taxes. Such lienholder shall have the right to enforce such lien as permitted to the holder of any lien under existing law. Such lienholder shall not otherwise succeed to the rights of the petitioner as described in this article.
General Legal Information

§ 48-4-81. Sale of property; Redemption by Owner; Form of Tax Deed.

(a) Following the hearing and order of the superior court in accordance with Code Section 48-4-79, a sale of the property shall be advertised and conducted on the date, time, place, and manner which are required by law of sheriffs' sales. Such sale shall not occur earlier than 45 days following the date of issuance of such order of the superior court.

(c) From and after the moment of the sale, the sale shall be final and binding, subject only to the right of the owner of the property to redeem the property from the sale upon payment into the superior court of the full amount of the minimum bid price of the sale. Such right of redemption of the owner shall exist for a period of 60 days from and after the date of the sale and shall be in accordance with the following provisions:

(3) This right of redemption shall automatically terminate and expire upon failure to redeem in accordance with the provisions of this subsection within the 60 day period following the date of the sale.

(4) If the property is not redeemed by the owner in accordance with subsection (c) of this Code section, then within 90 days following the date of the sale, the petitioner shall cause to be executed on behalf of the petitioner and delivered to the foreclosure sale purchaser a deed for the property in substantially the form set forth in subsection (g) of this Code section, together with such real estate transfer tax declaration forms as may be required by law.

(e) Within 90 days following the date of the sale, the petitioner shall file a report of the sale with the superior court, which report shall identify whether a sale took place, the foreclosure sale price, and the identity of the purchaser.

General Legal Information

§ 48-4-81. (Continued)

(Omitted portions)

General Legal Information

§ 48-4-7. Authority to put purchasers in possession of land sold.

The officer selling property at a tax sale shall have the authority to put purchasers in possession of land sold under tax liens, as in other cases.
§ 9-13-175. Duty of sheriff to place purchaser or real estate in possession; persons sheriff may dispossess.

When any sheriff or other officer sells any real estate or present interest in land by virtue of and under any execution or otherwise, it shall be his duty, upon application, to place the purchaser or his agent or attorney in possession of the real estate. For this end, the officer may dispossess the defendant, his heirs, his tenants, or his lessees, vendees, or assignees since the judgment. However, he may not dispossess other persons claiming under an independent title.
General Legal Information

• Abandoned refrigerators, containers with snap locks, or cars that cannot be easily opened (O.C.G.A. § 16-11-100)

• Junk (O.C.G.A. § 43-22-1, et. seq.)

• Junkyard (O.C.G.A. § 32-6-240, et. Seq.)

• Used car “dealer” (O.C.G.A. § 43-47-1, et. seq.)

• Signs (O.C.G.A. § 32-6-50, et. Seq.)

General Legal Information

• Recording conversations (O.C.G.A. § 16-11-62)

• Abandoned wells (O.C.G.A. § 44-1-14)

• Cash Bonds

• www.municode.com

General Legal Information

GICH
Georgia Initiative for Community Housing

GENERAL LEGAL INFORMATION

COUNTY VS. CITY STATUTORY SCHEME

<table>
<thead>
<tr>
<th>STATUTE</th>
<th>SUBJECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>O.C.G.A. § 15-10-60</td>
<td>Trials of violations of county ordinances and ordinances of state authorities; punishment; authorization to suspend service of sentence imposed</td>
</tr>
<tr>
<td>O.C.G.A. § 15-10-61</td>
<td>No jury trials in Magistrate Court</td>
</tr>
<tr>
<td>O.C.G.A. § 15-10-62</td>
<td>Prosecutions for violations of county ordinances or of ordinances of state authorities upon citation or upon accusation; requirement of personal service on person</td>
</tr>
<tr>
<td>O.C.G.A. § 15-10-63</td>
<td>Cash bonds for the personal appearance in court of person charged with violation of ordinance</td>
</tr>
<tr>
<td>O.C.G.A. § 15-10-63.1</td>
<td>Authorization to provide that ordinance violations may be tried upon citations with or without prosecuting attorney present prior to trial</td>
</tr>
<tr>
<td>O.C.G.A. § 15-10-64</td>
<td>Immediate issue of execution upon suspended fine, daily fine of amount to be taken out of sums sent to defendant by court for contempt of the violation of ordinance</td>
</tr>
<tr>
<td>O.C.G.A. § 15-10-65</td>
<td>Review of convictions to be by certiorari to superior court</td>
</tr>
<tr>
<td>O.C.G.A. § 15-10-66</td>
<td>Prosecuting attorney for violations of county ordinances; prosecuting attorney for violations of state authority ordinances</td>
</tr>
</tbody>
</table>

Case Law

- Appellate cases
- Cases you may have pending in appellate courts?

General Legal Information

Open Records

Open records applies to computer records and paper records:

- E-mail
- Memos
- Letters
- Computer documents
THE
LEGAL ASPECTS OF CODE ENFORCEMENT

GEORGIA ASSOCIATION OF CODE ENFORCEMENT

SPRING 2019