Table of Contents

CHAPTER 1. THE NATURE OF REAL ESTATE SECURITY

§ 1:1 Foreclosure generally
§ 1:2 English antecedents
§ 1:3 The first century of Georgia law: Mortgages as liens
§ 1:4 The transition period: 1850–1872
§ 1:5 The second century of Georgia law: The security deed
§ 1:6 Mortgage substitutes
§ 1:7 Public emergency orders and the COVID-19 pandemic

CHAPTER 2. THE INDEBTEDNESS

§ 2:1 Consideration
§ 2:2 Interest
§ 2:3 Future advance and open-ended clauses
§ 2:4 Liability on the note
§ 2:5 Loan assumptions
§ 2:6 Guarantees
§ 2:7 Statute of limitations
§ 2:8 Mortgage origination
§ 2:9 Intangible recording tax
§ 2:10 Real estate transfer tax
§ 2:11 "High cost" home loans

CHAPTER 3. SECURITY FOR THE DEBT

§ 3:1 The nature of collateral
§ 3:2 Mixed collateral
§ 3:3 Assignment of rents
§ 3:4 Variations
§ 3:5 Subordination agreements
§ 3:6 Attornment and nondisturbance agreements
§ 3:7 The security deed and the promissory note together

CHAPTER 4. PRE-FORECLOSURE RIGHTS AND REMEDIES

§ 4:1 Default
§ 4:2 Acceleration and reinstatement
§ 4:3 Receiverships
§ 4:4 Ejectment
§ 4:5 Eminent domain and casualty loss

CHAPTER 5. TRANSFERABILITY

§ 5:1 Due-on-sale clauses
§ 5:2 Uniform Voidable Transactions Act
§ 5:3 Transfers of the promissory note and security instrument
§ 5:4 Mortgage Electronic Registration Systems (MERS)

CHAPTER 6. SATISFACTION OF THE DEBT

§ 6:1 Deed in lieu of foreclosure
§ 6:2 Prepayment prohibitions and premiums
§ 6:3 Attorney's fees
§ 6:4 Cancellation of record

CHAPTER 7. JUDICIAL FORECLOSURE

§ 7:1 Judicial foreclosure generally
§ 7:2 Necessary and proper parties
§ 7:3 Omitted junior lienors

CHAPTER 8. POWER OF SALE FORECLOSURE

§ 8:1 The nature of power of sale foreclosure
§ 8:2 Constitutional questions
§ 8:3 Notice
§ 8:4 Federal restrictions on initiation of foreclosures and conduct of sale
§ 8:5 Date, time, and place of sale; advertisements
§ 8:6 Conduct of sale; sales price
§ 8:7 Foreclosure sale purchaser
§ 8:8 Distribution of sale proceeds
§ 8:9 Effect of sale
§ 8:10 Deed under power of sale

CHAPTER 9. WRONGFUL FORECLOSURE

§ 9:1 Overview
§ 9:2 Basis for wrongful foreclosure claim
§ 9:3 Wrongful attempted foreclosure
§ 9:4 Setting aside a foreclosure—Procedure and forum
§ 9:5 —Tender
§ 9:6 —Third party purchasers
§ 9:7 Injunctive relief before or after a sale
§ 9:8 Damages for wrongful foreclosure
§ 9:9 —Causation

§ 9:10 —Emotional distress
§ 9:11 —Punitive damages
§ 9:12 Statutes of limitations
§ 9:13 Venue

CHAPTER 10. CONFIRMATION PROCEEDINGS AND DEFICIENCY ACTIONS

§ 10:1 The proceeding in general
§ 10:2 Parties and procedure
§ 10:3 Evidence of true market value and regularity
§ 10:4 Separate actions
§ 10:5 Denial of confirmation and resale

CHAPTER 11. IMPACT OF FORECLOSURE ON THIRD PARTIES

§ 11:1 Foreclosing a senior lien—Impact on junior liens
§ 11:2 Foreclosing a junior lien—Impact on senior liens
§ 11:3 Foreclosure—Impact on leases
§ 11:4 Marshaling and contribution
§ 11:5 Foreclosures and property owner and condominium association assessments

CHAPTER 12. TAX LIENS AND TAX SALES

§ 12:1 The nature of the property tax
§ 12:2 Lien of property taxes
§ 12:3 Constitutional requirements
§ 12:4 Dual approaches in Georgia
§ 12:5 The nonjudicial procedure: tax executions
§ 12:6 The nonjudicial procedure: tax sales
§ 12:7 The nonjudicial procedure: redemptions
§ 12:8 Judicial tax foreclosures
§ 12:9 Sales of tax liens

CHAPTER 13. BANKRUPTCY

§ 13:1 Bankruptcy and real estate foreclosure
§ 13:2 Avoidance of security
§ 13:3 Automatic stay
§ 13:4 Issues in Chapter 7 proceedings
§ 13:5 Cure of default and loan modification
§ 13:6 Voidable preferences
§ 13:7 Fraudulent transfers
§ 13:8 Rents
§ 13:9 Leases

CHAPTER 14. FEDERAL INVOLVEMENT IN REAL ESTATE FINANCE

§ 14:1 In general
§ 14:2 Direct regulation
§ 14:3 Regulatory intervention and state law
§ 14:4 Hazardous waste liability
§ 14:5 Servicemembers Civil Relief Act
§ 14:6 Secured lenders and drug-related forfeitures

CHAPTER 15. CONSTITUTIONAL QUESTIONS

§ 15:1 Preemption and federal common law
§ 15:2 Due process and state action
§ 15:3 The evolving requirements of due process

CHAPTER 16. FORMS

§ 16:1 Single family note (FNMA/FHLMC multistate fixed rate note Form 3200)
§ 16:2 Deed to secure debt (FNMA/FHLMC—Georgia, Form 3011)
§ 16:3 Multifamily note
§ 16:4 Multifamily deed to secure debt
§ 16:5 Deed in lieu of foreclosure
§ 16:6 Deed in lieu of foreclosure (another form)
§ 16:7 Notice of sale
§ 16:8 Deed under power of sale
§ 16:9 Qualified written request and request for information regarding owner of the mortgage loan
§ 16:10 Qualified written request and notice of error regarding failure to honor loan modification and dual tracking violations

APPENDIX

Appendix A. Statutory Materials

Table of Laws and Rules

Table of Cases

Index