



# ATLANTA BAR ASSOCIATION

LAWYERS WHO SERVE  
Real Estate Section

## The Real Estate Lawyer

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Section

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### Message from the Editor

Joseph Farrell, Quirk & Quirk LLC

*Nobody wants to read about the honest lawyer down the street who does real estate loans and wills. If you want to sell books, you have to write about the interesting lawyers -*

*the guys who steal all the money and take off. That's the fun stuff.*

~John Grisham

"Dirt." That's what someone called the Atlanta Bar Association Real Estate Bocce Ball team. I liked it—it was better than "Real Estate," our official name. It also takes into account the dirt Bocce Ball court at Empire State South. If you know the dirt court, you have a better chance of winning. Margaret Atwood probably did not have bocce ball in mind when she said, "In spring, at the end of the day, you should smell like dirt." But bocce ball is such fun and embodies what the section is trying to accomplish: find a place to get away from the cares of law, get dirty, and get to know some other attorneys in a fun venue. Good call Kevin Rys, Section Chair!

Apart from his immediate decision to embrace bocce ball, Real Estate Section Chair, Kevin Rys, hit another home run when he invited Bill Dodson, Amanda Callaway, and Leonard Gray to speak at the breakfast meeting for the Dirt Section on March 2, 2017. The title of the talk, New Title Problems Arising with Inner City Redevelopment, does no justice to how exciting Bill, Amanda, and Leonard made the talk. If you have ever seen a masterful teacher read a good book to young children, you have an idea about what it is like to hear Bill Dodson speak. Bill regaled his listeners with stories and factoids from his vast experience, and the audience listened with mouths agape, utterly quiet except for the loud explosions of laughter when Bill told a joke.

Amanda Callaway from Callaway Title and Escrow kept pace with Bill, telling, for example, a story about how the basement of one famous downtown building goes beyond the surface boundaries and what kind of title problems that can create. Leonard Gray of First American Title moderated this fascinating talk.

As the year winds down, Jonathan Neville—Mr. Energy—will present a breakfast presentation on commercial leases in May. Jonathan has also given presentations at the ICLE presentation for the state bar real estate section and will do so again this year at the meeting in Sandestin, Florida next month (Don't Let the Tail Wag the Dog: Keeping the

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### 2016/2017 Section Board of Directors

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### The Section Thanks its Annual Sponsors

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Lease from Upsetting Corporate Lawyers). Jonathan is a partner at the Law Firm of Arnall Golden Gregory, LLC. The final event for the Rys Regime will be the end-of-term celebration at Maggiano's in Buckhead, a heavily attended event. Stay tuned to make sure you attend!

The Real Estate Section's sponsors are Bennett Thrasher, Bull Realty, Inc., and First American Title Insurance Company. We are grateful for their support and encourage our section members to utilize their services.

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The Real Estate Section's Board includes Chair Kevin Rys, Vice Chair/Chair-Elect Katharine Dyott, Secretary Joseph Farrell, Treasurer Christopher Collier, Immediate Past Chair Cory Thompson, and Members at Large Michael E. Leavey, Jonathan Neville, Chris Troutman, and Chuck Van Horn.

*Joseph Farrell is a partner at Quirk & Quirk. Joe helps individuals in a broad variety of real estate litigation disputes including landlord/tenant disputes, contract disputes, arbitrations involving real estate, property rights, etc. In addition to this area, over the years, he has helped many, many financial institutions with commercial collection accounts including commercial workouts and forbearance agreements, suits on notes, confirmations of foreclosure sales, etc. He also helps small- to medium-sized businesses in business disputes.*



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## **Georgia's New Expansion of [or Answer to] an Old Question: Using Eminent Domain for Redevelopment in a Post-Kelo World**

by Elizabeth R. Story, *Pursley Friese Torgrimson, LLP*



In 2006, Georgia passed the Landowner's Bill of Rights and Private Property Protection Act as a reaction to the infamous United States Supreme Court decision, *Kelo v. City of New London*, and Georgia's own "mini-Kelo" decision, *City of Stockbridge v. Meeks*. The Act stated that economic development was not a "public use" that would justify the use of eminent domain. This legislation was mirrored in most states, as public backlash against the *Kelo* decision showed that the American public wanted the ability of government entities to take private property to be restricted to a narrow interpretation of "public use." Georgia's initiative was approved by 83% of voters, who agreed that the government should not have the right to condemn property for non-public use, i.e. economic development projects.

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## **The Heron Lake II Apartments Decision: Impacting the Taxation of Low Income Housing Properties in Georgia**

by Sara C. Sorenson, *G. Roger Land & Associates*



Federal and state low income housing tax credit (LIHTC) programs exist to incentivize development of affordable housing projects by awarding tax credits to the property owner for a period of years during which property is subject to rent and use restrictions. LIHTC advocates argue that, in addition to the tax credits, local property tax relief is necessary to support the continued development of affordable housing. A recent Georgia Supreme Court decision, however, is complicating efforts to provide property tax relief

to LIHTC property owners in Georgia.

Under Georgia law, real property taxation is based on the value of its existing use. Valuing LIHTC properties can be complicated. Tax assessors and LIHTC property owners often disagree about the taxability, value, and weight of various factors (including rent restrictions, operating costs, and tax credits) on the overall valuation. Further, the Georgia Constitution requires that taxation of properties of the same class must be uniform. GA. CONST. Art. VII, Sec. I, Par. III(a). The Georgia Constitution permits preferential assessments for some classes of real property, including forest land and agricultural land, but makes no exceptions as to LIHTC properties.

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## Bocce Ball Real Estate Section "Dirt" Team



(Left to Right) **Front:** Joe Farrell, Elizabeth Shortridge, Katharine Dyott, Elizabeth Story; **Rear:** Scott Dixon; **Missing:** Kevin Rys, Kevin Wood