



For the Record

By

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Why Clerks of Superior Court are Official Custodians of Georgia's Land Records

Georgia's system of state and local government evolved from a long and rigorous series of historical events that occurred in Europe hundreds of years ago when tyrants ruled absolutely and subjected those they ruled to conditions that can only be described as despicable, inhuman, and insane. They had absolute power, were absolutely corrupt, and maintained their power by force. Under their command, property rights were limited to only what a person could possess, protect, and continue to maintain control through might. There were no other property rights, per se.

King John of England ruled from 1199 through 1216. He held his kingdom in check through force of arms and basically did whatever he wanted, however and whenever he wanted. He rewarded his friends and exterminated his enemies. If he wanted your property, he took it. If he didn't like you, you were put to death. His greatest weakness was that he liked war. In order to pay for those wars, he taxed his subjects mercilessly until, after they had enough, barons of England forced him in 1215 to sign the *Magna Carta* ("the Great Charter"), which laid the foundation for an English system of property rights and due process. Having due process required establishment of systems for ensuring justice and enforcement of judicial orders and decrees. Just as importantly, it required written records and recordkeeping. The only persons other than nobility at time who could read and write well enough to keep court records were the clergy, who were then referred to as "clerics", a term which was later Anglicized as "clerks". Clerks became the stewards of records necessary for ensuring due process.

Before the *Magna Carta* was ratified by King John, the only evidence a person had that he or she owned land was actual possession (which probably gave rise to the adage that "possession is 9/10ths of the law") but, in time, the method for conveying ownership changed. Initially, a rudimentary process was established whereby the one in possession of land, upon agreeing to sell, would go onto the land with the buyer and witnesses and have a conveyance ceremony. The seller would walk the property to be conveyed or simply point it out to the buyer in front of the witnesses. Then the seller would orally declare how ownership was being conveyed to the buyer, either in "fee simple", as a "life estate", or otherwise. The buyer would pay the seller the purchase price (in coinage of the realm) and, upon the seller placing a clump of dirt in the hand of the buyer, the transaction was a done deal.

This system was inherently flawed because, over time, witnesses died or forgot details about the transaction. So, eventually, as more people learned to read and write, written documents granting ownership to land were established and became a fundamental element of the “granting” ceremony. Written grant deeds provided tangible evidence of the possession ceremony and provided a permanent record of what was conveyed and to whom. Land was described therein and the instrument of conveyance was signed by the person conveying the property (the “grantor”) and sworn to or subscribed in writing by witnesses. The grant deeds were filed at the Royal Court at Westminster under the watchful eye of the clerk of the court.

The grant deed provided physical proof of ownership. The only way that a person’s rights of ownership of the property could be taken away was if he or she legally and willingly conveyed the property to someone else or through a legal procedure that guaranteed due process. The clerk became the custodian and protector of the grand deeds that served as proof of ownership and protected individual’s rights under such due process. Having ownership meant that landowners could use the land as they saw fit, sell it, lease it, bequeath it to their heirs, or pledge it as collateral for loans to buy seed, livestock, a barn or any other purpose they chose.

Having a written record helped prevent secret, clandestine, and illegal conveyances whereby others could steal a person’s property from them. Due process eliminated taking of land by force of arms except as a last resort and only upon a determination by a court of law that such taking is legally justified.

Almost five hundred years later after King George II ascended to the throne in England, James Oglethorpe, an aristocrat and soldier, launched a national campaign to reform England’s prison system after his friend, Robert Castell, an architect, who was jailed in London’s Fleet Prison because of his debts, was thrown into a cell with a prisoner who had smallpox, contracted the disease, and died. Oglethorpe saw firsthand the horrible conditions, abuses, and extortion prisoners faced. He also was alarmed that so many British citizens faced jail for no other reason than indebtedness. This led Oglethorpe and several colleagues who served with him on Parliament’s jails committee to draw up a plan for establishment of a new British colony in America just south of South Carolina to give England’s “worthy poor” an opportunity to be transformed into farmers, merchants, and artisans and landowners who would work their own.

In 1732, the king approved the Corporate Charter of Georgia (bearing the king’s name) of which the group’s members became “trustees”. The new charter was different than that of British colonies. First, it provided for a corporation in the hands of trustees for a period of only 21 years, during which time the trustees would govern the new colony. It required registration of all land grants. So, even before Georgia was a colony and Oglethorpe arrived with the first wave of British colonists, land registrars (clerks) were its first official, designated officers. The job was so important that the registrar reported directly to the trustees.

The first court was established in Savannah soon after Oglethorpe’s arrival, although the charter barred “the pest and scourge of mankind called ‘lawyers’ from the colony. Historically, the court was

ineffective and its decision routinely ignored, with appeal of its decision made directly to the trustees. Then, when Georgia became a royal colony in 1752, George II appointed a royal governor, who also functioned as judge of probate and vice admiral. The registrar of deeds (who also served as clerk of the court) purportedly reported directly to the royal governor.

After the Declaration of Independence in 1776, Georgia adopted a constitution that established a system of superior courts in each county, with no provision for a higher court to which appeals of superior court could be made. The constitution provided for a judge of superior court, a clerk of superior court, and a sheriff. The judge served in a circuit but each county had a clerk of superior court and a sheriff, the latter who was required to enforce state laws, execute orders of the court, and to serve as custodian of the jail. There were no other state officials provided for, so the state was essentially run by superior court judges, sheriffs, and clerks of superior court.

The Clerk of Superior Court in Georgia has been an elected county constitutional officer since 1989. The primary reason for electing a clerk of superior court is to provide for the clerk's independence so that the clerk, and the clerk alone, is legally empowered to protect and permanently preserve the records over which he or she is custodian. Since the clerk is only accountable and responsible to those who elect him or her and not to another court or governmental official who appoints him or her, the clerk is free to concentrate his or her energies on performance of his statutory duties and has the duty to resist any undue external pressure from anyone to alter or destroy court or land records.

Currently, there are over four million separate tracts of land in Georgia, excluding lands held by the state, churches, or public utility companies, amounting to property values of approximately one trillion dollars. Evidence of all privately and publicly held property, from small lots to skyscrapers, is entrusted entirely to the custodianship of clerks of superior court.

The clerk is required by law to permanently archive all land records, including deeds, liens, and plats. Those records are "public records" and may be viewed or copied by anyone as a means for providing to the world written evidence of ownership, security interests, and property boundaries.

In 1985, I became one of the first clerks of superior court in the nation to automate the land records and have since been working diligently to electronically re-create Liberty County land records from 1789 through 1984. Currently, land records dating back to 1965 may be accessed and copied online on the Georgia Superior Court Clerks' Cooperative Authority's website at www.gsccca.org.

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