

First Tuesday Foreclosure Advantage: Distressed Property in Georgia

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As one of only 23 states where a lender can foreclose on real property without going through the court system, Georgia is an active nonjudicial foreclosure state and fertile ground for distressed acquisitions. Georgia's fast timelines, unique statutory quirks, and title sensitivities reward disciplined preparation. This note sets forth the legal landscape and concrete strategies to source and de-risk distressed real estate acquisitions in Georgia.

The Legal Landscape: How Distress Transacts in Georgia

Georgia relies on deeds to secure debt with a power of sale, allowing lenders to foreclose without filing suit (see O.C.G.A. § 44-14-162 et seq.). Sales occur on the first Tuesday of the month after four consecutive weeks of newspaper notice in the county's legal organ and proper borrower notice (see O.C.G.A. §§ 9-13-140, 9-13-141; 44-14-162.2). Payment terms are typically cash-equivalent at the sale, so bidders should arrive with multiple cashier's checks to assemble the exact price. The process moves quickly, creating both timing risk and opportunity for prepared bidders.

Foreclosure in Georgia extinguishes junior liens in order of priority if parties are properly noticed, but it does not wipe senior encumbrances (see O.C.G.A. § 44-14-162 et seq.). Excess sale proceeds, if any, are available to junior lienholders and the borrower, which can trigger post-sale claims administration (see O.C.G.A. § 9-13-170). Title quality turns on statutory compliance, so serious buyers review the notice file, publication affidavits, and the foreclosure deed.

Georgia's confirmation statute adds a dimension often overlooked by bidders. If a lender wants to pursue a deficiency after a nonjudicial foreclosure, it must obtain court confirmation of the sale within a short window and demonstrate that the property brought its true market value (see O.C.G.A. § 44-14-161). Confirmation fights do not cloud the buyer's title, but they can produce litigation hovering around the asset. Understanding whether the foreclosing lender plans to seek confirmation can help anticipate post-sale friction and inform communications strategies with the borrower and any guarantors.

Bankruptcy is a recurring overlay. The automatic stay halts foreclosure upon filing, and any sale after the petition date is void absent relief from stay (see 11 U.S.C. § 362). Section 363 sales remain a powerful channel for "free and clear" conveyances (see 11 U.S.C. § 363(f)), with court orders that can reduce title risk, but they demand a different kind of bid readiness, including qualified deposits, bid procedures, and comfort with bankruptcy court timelines.

Deal Paths: Courthouse, REO, Notes, and Tax Deeds

Courthouse-step acquisitions in Georgia favor bidders who have pre-cleared their diligence and logistics. Sales are cash-equivalent, requiring certified funds and the ability to close quickly. The foreclosing lender can credit bid; third-party bidders must plan around the credit bid ceiling and assess whether the opening bid implies residual junior liens or taxes that survive the sale. Post-sale, buyers should promptly record the deed under power and

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move to secure the property, address insurance, and deliver statutory possession notices to occupants. If occupants hold over, plan for a dispossessory proceeding to obtain a writ of possession (see O.C.G.A. § 44-7-50 et seq.); coordinating this with security and property management reduces downtime and cash leakage.

Alternatively, buying the note and stepping into the lender's position is a favored strategy in Georgia. An assignment of the security deed and endorsement of the note position the investor to foreclose on its own timeline, restructure with the borrower, or convey via deed in lieu with broader releases. Perfecting the position requires possession of the original, properly endorsed promissory note and recordation of the assignment of the security deed (see O.C.G.A. § 44-14-160). Note buyers should underwrite the enforceability of default interest, late fees, and prepayment provisions, as well as model outcomes under both cooperative and contested borrower scenarios.

Georgia-Specific Diligence That Protects Value

Title and lien priority are foundational. Confirm ad valorem taxes, special assessments, and any surviving senior security deeds. Georgia property association liens do not enjoy the super-priority treatment seen in some other states, but they can be material and persistent, especially in condominium contexts (see O.C.G.A. §§ 44-3-109; 44-3-232). Review recorded easements and shared-use agreements; reciprocal easement agreements and outparcel easements can limit redevelopment options or impose cost-sharing obligations that affect future operating income from the property.

Zoning and code compliance are frequent value traps in distressed assets. Verify legal nonconformities, special use approvals, and any outstanding code enforcement or life-safety violations. In conversions and repositionings,

confirm utility capacity, parking ratios, and any overlay districts or design reviews that can delay permits. For incomplete projects, scrutinize permit status, plan approvals, expired inspections, mechanic's lien exposure (see O.C.G.A. § 44-14-361 et seq.), and the feasibility of reinstating or reissuing permits. Where prior approvals are tied to a specific operator or use, evaluate whether a modification or re-entitlement will be required. Environmental diligence is particularly important where ownership turnover was precipitated by abandonment or industrial use.

Tax, Transfer, and Closing Costs to Model Up Front

Georgia imposes a transfer tax on deeds and an intangibles tax on long-term notes at recording (see O.C.G.A. §§ 48-6-1 et seq.; 48-6-61 et seq.). Foreclosure deeds under power do not typically trigger transfer tax, but later resales will. For note purchases, intangibles tax becomes relevant only if the buyer later modifies and re-records the security deed or originates new debt. In tax deed pathways, redemption premiums and quiet title fees are central to returns and should be treated on a core basis rather than incidental expense (see O.C.G.A. §§ 48-4-42; 48-4-45; 23-3-60 et seq.). Also, account for nominal documentary stamps and recording fees by county and any municipal occupancy or inspection requirements that affect turnover timing.

Practical Takeaways

The speed and transparency of Georgia's nonjudicial system create an edge for prepared capital. The best outcomes go to investors who frontload diligence on title, tenants, and entitlements and who can execute across multiple acquisition channels. With disciplined underwriting and process control, Georgia's distressed market can deliver outsized, risk-adjusted returns without betting on procedural mistakes or heroic lease-up assumptions.

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Thompson Hine has a team of experienced real estate and insolvency professionals who regularly assist buyers and investors through the practical pitfalls and legal process of acquiring distressed property in Georgia.

For More Information

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