

# **TOOLS FOR CODE ENFORCEMENT**

**September 11, 2012**

**Presented by:**

**Brandon L. Bowen**

**Jenkins & Bowen, P.C.**

**15 South Public Square**

**Cartersville, Georgia 30120**

**(770) 387-1373**

**BBowen@GA-lawyers.pro**

# Tools for enforcement; Progressive action

1. State minimum standard codes
2. Code enforcement staff
3. Useful ordinance provisions
4. Municipal court
5. Public nuisance law
6. Superior Court actions
7. Unfit Property actions
8. Condemnation



# **State Minimum Standard Codes (Mandatory Codes); with Georgia Amendments**

1. International Building Code (ICC 2006 Ed.)
2. National Electrical Code (NFPA 2008 Ed.)
3. International Fuel Gas Code (ICC 2006 Ed.)
4. International Mechanical Code (ICC 2006 Ed.)
5. International Plumbing Code (ICC 2006 Ed.)
6. International Residential Code for One and Two-family Dwellings (ICC 2006 Ed.)
7. International Energy Conservation Code (ICC 2006 Ed.)
8. International Fire Prevention Code (ICC 2006 Ed.)

O.C.G.A. § 8-2-20, 8-2-25

# **Permissive codes (with Georgia Amendments); may be adopted if desired; notify DCA of adoption**

1. International Existing Building Code (ICC 2006 Ed.)
2. International Property Maintenance Code (ICC 2006 Ed.)

O.C.G.A. § 8-2-25



# ENFORCEMENT OF CODES

Local governments must adopt reasonable administrative procedures in order to enforce them (e.g., hearings, appeals)(O.C.G.A. § 8-2-25(a)).

# Code Enforcement Staff

Can be civilian or peace officer: training on gathering evidence and presenting a case is key.

Issue citations to municipal court. Potentially civil administrative fines.

System to track complaints, citations, and repeat offenders is critical.



# USEFUL ZONING ORDINANCE PROVISIONS

1. Appearance of Property: junk, trash, debris, tall grass and vegetation.
2. Junk, inoperative, untagged vehicles; commercial parking limits (side, rear).
3. Storage, storage containers, vehicles as storage, storage of tires.
4. Residential living: no RVs, no tents, etc.
5. Parking commercial vehicles, RVs
6. Minimum Fines

# Tools against development problems

1. Civil Administrative Fine
2. Stop Work Order
3. Freeze on Inspections



# **BENEFITS OF MAGISTRATE AND MUNICIPAL COURT**

- Quick to get to court
- Speedy court proceedings
- Inexpensive
- Locally responsive (sometimes)

# MUNICIPAL COURTS

- Jurisdiction: Incorporated City Limits
- Punishment : Varies by charter; community service; suspended sentence.
- Municipal court judge: appointed.
- Cannot remove to state court for jury trial on ordinance violation; can remove state law violation.



# MAGISTRATE COURT

Jurisdiction: unincorporated county.

Punishment : \$1,000 or 60 days imprisonment (6 months probation); restitution; community service; suspended sentence.

Chief magistrate: elected.

Can remove to state court for jury trial on ordinance violation.

**Next step:**

## **Superior Court INJUNCTIVE RELIEF and Civil Fines**

Jurisdiction: general.

Punishment : limited only by ordinance;  
community service; suspended sentence.

Superior court judge: elected.

Contempt power: criminal and civil.



# MUNICIPAL COURT VERSUS SUPERIOR COURT

Speed: Municipal

Punishment/Remedy: Superior

Cost: Typically Municipal

Persuasive power: Superior

# ABATEMENT OF PUBLIC NUISANCE

A nuisance is anything that causes hurt, inconvenience, or damage to another

May be nuisance even though otherwise lawful activity

Must affect ordinary, reasonable person

O.C.G.A. §41-1-1



# LAWSUIT TO ABATE PUBLIC NUISANCE

May be filed by district attorney, solicitor-general, city attorney, or county attorney  
O.C.G.A. §41-2-2

Key point: Magistrate and municipal courts have jurisdiction, and power to order abatement. O.C.G.A. § 41-2-5

# UNFIT PROPERTY ORDINANCES:

A city or county may take action against such buildings or structures which “are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with the applicable state minimum standard codes as adopted by ordinance.”

O.C.G.A §41-2-7



# **ADOPTION OF ORDINANCES RELATING TO UNFIT BUILDINGS**

- Can adopt Unfit Property Ordinance O.C.G.A. §41-2-9
- A public officer must be identified to exercise the powers prescribed by ordinance
- Law has detailed notice standards; includes title search

# What is UNFIT FOR USE?

- Determination that building unfit may rest upon some or all of the following conditions:
  - Defects increasing hazards of fire or accidents
  - Lack of adequate ventilation and light or sanitary facilities
  - Dilapidation
  - Disrepair
  - Structural defects
  - Uncleanliness

O.C.G.A. §41-2-10



# STEPS TO UNFIT PROPERTY ENFORCEMENT

- File Complaint
- Notice and hearing
- Order to repair or demolish, or authorize local government to do so; costs of demolition cast as lien against property. O.C.G.A. §41-2-9

# **OTHER ENFORCEMENT issues contributing to quality of life**

1. Health Department: Failing septic systems, surfacing effluent.
2. Animal Control Department: number of animals, humane conditions.
3. Condemnation: in extreme cases.

Multi-department cooperation is key!



# Foreclosure and Vacant Property Registry

OCGA § 44-14-14

Allows local governments to adopt a limited and uniform registration requirement for vacant property.

Preempts other local registration requirements

# Vacant Real Property Defined

- Real property that is intended for habitation, but has not been inhabited for 60 days, has no evidence of utility usage, and is not actively being marketed for sale or rent, or
- Partially constructed without a valid building permit, or
- Is held as a result of foreclosure.
- Excludes multi-family structures where any one unit is being inhabited.



# Foreclosure Registration

- Grantee of the foreclosure deed or deed in lieu of foreclosure and next subsequent transferee must give local government the following information:
  - owner's name, address, phone, fax, e-mail
  - agent's name, address, phone, fax, e-mail
  - vacant property's address
  - transfer date
  - recording info (deed book and page #)

# Foreclosure Registration, cont'd

- Owner has at least 90 days to file.
- If they file the deed with the Clerk of the Superior Court within 60 days, it contains all the required information, and they notify the County and provide the recorded deed and information, no fee.
- Otherwise, fee of no more than \$100.
- Penalties of no more than \$1000 for failing to register



# **OCGA § 44-14-14 is Not Self-Effectuating**

- The local government is required to adopt an ordinance complying with the statute in order to enforce a vacant property registration requirement.
- Requires administrative procedures.