

House Bill 1431 (AS PASSED HOUSE AND SENATE)

By: Representative Fleming of the 79th

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 9-13-80 of the Official Code of Georgia Annotated, relating to executions being cancelled when satisfied and private rights of action, so as to provide specific deadlines and remedies for cancellation of record of fully satisfied judgment executions; to provide for attorney's fees; to provide alternative methods to cancel fully satisfied judgments; to provide for an attorney affidavit; to provide for penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 9-13-80 of the Official Code of Georgia Annotated, relating to executions being cancelled when satisfied and private rights of action, is amended by striking the Code section and inserting in lieu thereof the following:

"9-13-80.

(a) Upon the satisfaction of the entire debt upon which an execution has been issued, the plaintiff in execution or his or her attorney shall timely direct the clerk to cancel the execution and mark the judgment satisfied. Such direction shall be delivered to the clerk not later than 30 days following the date upon which the execution was fully satisfied.

(b)(1) A private right of action shall be granted to a judgment debtor upon the failure of such plaintiff or counsel to comply with the provisions of subsection (a) of this Code section.

(2) Failure to direct cancellation and satisfaction within 60 days after satisfaction of the entire debt shall be prima-facie evidence of untimeliness.

(3) Recovery may be had by way of motion in the action precipitating the judgment and execution or by separate action in any court of competent jurisdiction.

(4) Damages shall be presumed in the amount of \$100.00 and the court may award reasonable attorney's fees. Actual damages may be recovered, but in no event shall

recovery exceed \$500.00; provided, however, the court may also award reasonable attorney's fees.

(c) In order to authorize the clerk of superior court to make an entry of satisfaction with respect to an execution on the general execution docket, there shall be presented for filing on the general execution docket:

(1) A satisfaction upon the original execution or alias execution itself;

(2) A satisfaction as provided in subsection (d) of this Code section; or

(3) A satisfaction as provided in subsection (e) of this Code section.

Any clerk of superior court who cancels of record any execution in the manner authorized in this subsection shall be immune from any civil liability, either in such clerk's official capacity or personally, for so canceling of record such security deed.

(d) Proof of satisfaction of an execution, the original of which has been lost, stolen, or otherwise mislaid, may be made based upon an affidavit executed by the plaintiff in execution or owner or holder of record of such execution and who so swears in such affidavit, which affidavit shall be recorded in the execution docket and shall be in the following form:

County, Georgia

Affidavit for Satisfaction of Execution

The original execution having been lost or destroyed and the indebtedness, penalties, and interest referred to in that certain writ of fi. fa. styled _____ v. _____, dated _____, and of record in General Execution Docket Book _____, Page _____, in the office of the clerk of the Superior Court of _____ County, Georgia, having been satisfied in full and the undersigned being the present owner of such writ of fi. fa. by virtue of being the plaintiff in fi. fa. or the heir, assign, transferee, or devisee of the original plaintiff in fi. fa., the clerk of such superior court is authorized and directed to make an entry of satisfaction with respect to such writ of fi. fa.

In witness whereof, the undersigned has set his or her hand and seal, this _____ day of _____.

(SEAL)

Signature

Signed, sealed, and delivered on the date above shown

Notary Public

(SEAL)

My commission expires:_____.

(e) In the event that a plaintiff in execution or any person that owns or holds an execution has failed to properly transmit a legally sufficient satisfaction or cancellation to authorize and direct the clerk or clerks to cancel the execution of record within 60 days after a written notice mailed to such plaintiff in execution or owner or holder of record by registered or certified mail or statutory overnight delivery, return receipt requested, the clerk or clerks are authorized and directed to cancel the execution upon recording an affidavit by the attorney for the judgment debtor against whom the execution was issued or any attorney who has caused the indebtedness and other obligations under the execution to be paid in full or any attorney who has actual knowledge that the indebtedness has been paid in full. The notice shall be mailed to the plaintiff in execution or owner or holder of record, shall identify the execution, and shall include a recital or explanation of this subsection. The affidavit shall include a recital of actions taken to comply with this subsection. Such affidavit shall include as attachments the following items:

(1) A written verification which was given at the time of payment by the plaintiff in execution or owner or holder of record of the amount necessary to pay off such obligations; and

(2) Any one of the following:

(A) Copies of the front and back of a canceled check to the plaintiff in execution or owner or holder of record showing payment of such obligations;

(B) Confirmation of a wire transfer to the owner or holder of record showing payment of such obligations; or

(C) A bank receipt showing payment to the plaintiff in execution or owner or holder of record of such obligations.

(f) Any person who files an affidavit in accordance with subsection (d) or (e) of this Code section which affidavit is fraudulent shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than three years or by a fine of not less than \$1,000.00 nor more than \$5,000.00, or both."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.