

Senate Bill 585

By: Senators Shafer of the 48th, Moody of the 56th and Balfour of the 9th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, and
 2 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as
 3 to provide for the comprehensive revision of provisions regarding tax executions and
 4 redemption of property; to provide for procedures, conditions, and limitations regarding the
 5 transfer of tax executions; to change certain provisions relating to procedures for sales under
 6 tax levies and executions; to change provisions regarding payment of excess proceeds; to
 7 provide for requirements and procedures with respect to certain tax sales; to change certain
 8 provisions regarding redemption of property; to provide for additional circumstances under
 9 which real estate transfer tax is not due and payable; to change certain provisions relating to
 10 transfer of executions; to provide for related matters; to provide an effective date; to provide
 11 for applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
 15 striking Code Section 9-13-36, relating to transfer of execution upon payment, status of
 16 transferee, and recording necessary to preserve lien, in its entirety and inserting in its place
 17 the following:

18 "9-13-36.

19 (a) Except as otherwise provided for in subsection (b) of this Code section, whenever
 20 ~~Whenever~~ any person other than the person against whom the same has issued pays any
 21 execution, issued without the judgment of a court, under any law, the officer whose duty
 22 it is to enforce the execution, upon the request of the party paying the same, shall transfer
 23 the execution to the party. The transferee shall have the same rights as to enforcing the
 24 execution and priority of payment as might have been exercised or claimed before the
 25 transfer, provided that the transferee shall have the execution entered on the general
 26 execution docket of the superior court of the county in which the same was issued and, if
 27 the person against whom the same was issued resides in a different county, also in the

1 county of such person's residence within 30 days from the transfer; in default thereof the
 2 execution shall lose its lien upon any property which has been transferred bona fide and for
 3 a valuable consideration before the recordation and without notice of the existence of the
 4 execution.

5 (b) This Code section shall not be applicable to tax executions. Tax executions shall be
 6 governed exclusively by Chapters 3 and 4 of Title 48."

7 SECTION 2.

8 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
 9 amended by striking Code Section 48-3-19, which is reserved, and inserting in its place a
 10 new Code Section 48-3-19 to read as follows:

11 "48-3-19.

12 (a) As used in this Code section, the term:

13 (1) 'Delinquent taxpayer' means the person or persons against whom an execution has
 14 been issued or the successor in title to the property for which the execution has been
 15 issued.

16 (2) 'Due diligence' means the performance of a diligent search to ascertain the actual
 17 location of the record owner of the property. The following actions shall satisfy the
 18 diligent search requirements of this Code section: sending notice by first-class mail,
 19 certified mail, or statutory overnight delivery, as required by law. If the notice is returned
 20 undelivered the following actions shall satisfy the diligent search requirements of this
 21 Code section: due diligence shall include checking telephone directories for the county
 22 wherein the property is located; checking the records of the tax commissioner of the
 23 county wherein the property is located; or checking the real estate records of the clerk of
 24 the superior court of the county wherein the property is located.

25 (3) 'Execution' means an execution issued for the collection of any ad valorem taxes,
 26 special assessments, fees, penalties, interest, or collection costs due the state or any
 27 political subdivision thereof.

28 (4) 'Transferee' means a person to whom an execution is transferred.

29 (5) 'Transferor' means the official holding the tax executions and authorized to collect or
 30 transfer such tax executions.

31 (b)(1) Whenever any person other than the person against whom an execution has been
 32 issued pays an execution issued for state, county, or municipal taxes or special
 33 assessments, the officer whose duty is to enforce the execution may transfer the execution
 34 to the party so paying the full value of the execution. No officer whose duty it is to
 35 enforce an execution issued for state, county, or municipal taxes or special assessments
 36 shall be required to make any transfer or transfers of such execution or executions. The

1 transferee shall have the same rights as to enforcing the execution and priority of payment
 2 as might have been exercised or claimed by the tax official. The person to whom the
 3 execution is transferred shall, within 30 days of the transfer, cause the execution to be
 4 entered on the general execution docket of the superior court of the county in which the
 5 execution was issued. In default of the required entry or entries, the execution shall lose
 6 its lien upon any property which has been transferred in good faith and for a valuable
 7 consideration before the entry and without notice of the existence of the execution.

8 (2)(A) It shall be unlawful for any tax official covered by this subsection to pay a tax
 9 execution in order to obtain a transfer of the execution under this Code section. It shall
 10 be unlawful for any employee of a tax official covered by this subsection to pay a tax
 11 execution in order to obtain a transfer of the execution under this Code section. The tax
 12 officials covered by this subsection are:

- 13 (i) County tax receivers, tax collectors, and tax commissioners;
- 14 (ii) Members of county boards of tax assessors;
- 15 (iii) Members of county boards of equalization; and
- 16 (iv) County tax appraisers.

17 (B) Any execution transferred in violation of subparagraph (A) of this paragraph shall
 18 be void and unenforceable by the person obtaining the execution and such person's
 19 successors in interest.

20 (C) Any tax official or employee of a tax official violating subparagraph (A) of this
 21 paragraph shall be guilty of a misdemeanor.

22 (c)(1) Within 60 days following the transfer, the transferee shall notify the delinquent
 23 taxpayer of the transfer of the tax execution by first-class mail. The notice shall
 24 include:

- 25 (A) The name, mailing address, and telephone number for the transferee's business
 26 office;
- 27 (B) The amount necessary to satisfy such execution; and
- 28 (C) Other information as deemed appropriate by the transferee.

29 (2) In the event that any such notice by first-class mail is returned undelivered, the
 30 transferee shall be required to perform due diligence in an effort to obtain the delinquent
 31 taxpayer's correct address or any new owner's correct address and resend the notice by
 32 first-class mail.

33 (d) An execution which has been transferred shall bear interest as specified in Code
 34 Section 48-3-20 on the amount paid for such execution from the date of the transfer. In
 35 addition, the transferee may charge and collect recording fees actually expended in
 36 recording the transferred execution on the general execution docket of any county in which
 37 the transfer is recorded and such other penalties as are provided for in this title.

1 (e)(1) Whenever an execution has been transferred to any transferee, the transferee shall
 2 not be authorized to submit the execution to the appropriate levying officer until 12
 3 months after the date of such transfer or 24 months after the tax giving rise to the
 4 execution was originally due, whichever is earlier. A transferee shall not have the right
 5 to advertise and sell property under a tax execution. Such right shall remain solely with
 6 the appropriate levying official, such as the sheriff or marshal.

7 (2) A transferee with multiple outstanding executions against the same property shall not
 8 be subject to the time period requirements of paragraph (1) of this subsection with respect
 9 to all such executions if at least one of the executions meets such requirements of
 10 paragraph (1) of this subsection.

11 (f) Until the execution is paid in full or satisfied, on or before November 15 of each year
 12 after the calendar year in which the transfer occurred, the transferee shall send notice by
 13 regular mail to the delinquent taxpayer and the record owner of the property advising that
 14 the tax execution is still outstanding. The notice must provide the transferee's most
 15 updated contact information, including mailing address and telephone number.

16 (g) Any transferee that pays the tax official more than two million dollars in any calendar
 17 year for the transfer of executions shall maintain a reasonably accessible office within 50
 18 miles of the courthouse wherein the superior court of the county wherein the transferred
 19 executions were issued is located. Said office shall be open to the public for at least eight
 20 hours per day for five days a week, official state holidays excepted."

21 SECTION 4.

22 Said title is further amended in Code Section 48-4-1, relating to procedures for sales under
 23 tax levies and executions, by striking subsection (a) and inserting in its place a new
 24 subsection (a) to read as follows:

25 "(a)(1) Except as otherwise provided in this title, when a levy is made upon real or
 26 personal property, the property shall be advertised and sold in the same manner as provided
 27 for executions and judicial sales. Except as otherwise provided in this title, the sale of real
 28 or personal property under a tax execution shall be made in the same manner as provided
 29 for judicial sales; provided, however, that in addition to such other notice as may be
 30 required by law, in any sale under a tax execution made pursuant to this chapter, the
 31 defendant shall be given ten days' written notice of such sale by registered or certified mail
 32 or statutory overnight delivery. The notice required by this Code section shall be sent:

33 ~~(1)~~(A) In cases of executions issued by a county officer for ad valorem taxes, to the
 34 defendant's last known address as listed in the records of the tax commissioner of the
 35 county that issued the tax execution; ~~or~~

1 (B) In cases of executions issued by a municipal officer for ad valorem taxes, to the
 2 defendant's last known address as listed in the records of the municipal officer of the
 3 municipality that issued the tax execution; or

4 ~~(2)(C)~~ (C) In cases of executions issued by a state officer, to the defendant's last known
 5 address as listed in the records of the department headed by the issuing officer.

6 (2) A copy of the notice provided for in paragraph (1) of this subsection shall also be sent
 7 by the same tax officer sending the notice to the defendant to the appropriate tax official
 8 of the state, county, or municipality which also has issued an execution with respect to
 9 such property."

10 SECTION 5.

11 Said title is further amended by striking Code Section 48-4-5, relating to payment of excess
 12 proceeds of a tax sale by a tax commissioner or tax collector, and inserting in its place a new
 13 Code Section 48-4-5 to read as follows:

14 "48-4-5.

15 (a) If there is ~~are~~ any excess funds after paying taxes, costs, and all expenses of a sale, ~~the~~
 16 tax commissioner or tax collector may file an interpleader action in superior court for the
 17 payment of the amount of such excess. Such excess shall be distributed by the superior
 18 court to intended parties, including the owner as their interest appears and in the order of
 19 priority in which their interest exists ~~made by the tax commissioner, tax collector, or~~
 20 sheriff, or other officer holding excess funds, the officer selling the property shall give
 21 written notice of such excess funds to the record owner of the property at the time of the
 22 tax sale and to the record owner of each security deed affecting the property and to all other
 23 parties having any recorded equity interest or claim in such property at the time of the tax
 24 sale. Such notice shall be sent by first-class mail within 30 days after the tax sale. The
 25 notice shall contain a description of the land sold, the date sold, the name and address of
 26 the tax sale purchaser, the total sale price, and the amount of excess funds collected and
 27 held by the tax commissioner, tax collector, sheriff, or other officer. The notice shall state
 28 that the excess funds are available for distribution to the owner or owners as their interests
 29 appear in the order of priority in which their interests exist.

30 (b) The tax commissioner, tax collector, sheriff, or other officer may file, when deemed
 31 necessary, an interpleader action in superior court for the payment of the amount of such
 32 excess funds. Such excess funds shall be distributed by the superior court to the intended
 33 parties, including the owner, as their interests appear and in the order of priority in which
 34 their interests exist. The cost of litigation such an interpleader action, including reasonable
 35 attorney's fees, shall be paid from the excess funds upon order of the court.

1 (c) After five years have elapsed from the tax sale date, the tax commissioner, tax
 2 collector, sheriff, or other officer holding excess funds shall pay over to the department any
 3 excess unclaimed funds and for which no action or proceeding is pending in a claim for
 4 payment. Once excess funds are placed in the possession of the department, only a court
 5 order from an interpleader action filed in the county where the tax sale occurred, by the
 6 claimant for the funds, shall serve as justification for release of the funds."

7 **SECTION 6.**

8 Said title is further amended by striking Code Section 48-4-44, relating to quitclaim deeds
 9 by purchaser, and inserting in lieu thereof a new Code Section 48-4-44 to read as follows:
 10 "48-4-44.

11 (a) In all cases where property is redeemed, the purchaser at the tax sale shall make a
 12 quitclaim deed to the defendant in fi. fa., which deed shall recite:

13 (1) The name of the person who has paid the redemption money; and

14 (2) The capacity in which or the claim of right or interest pursuant to which the
 15 redemption money was paid.

16 (b) The recitals required by subsection (a) of this Code section shall be prima-facie
 17 evidence of the facts stated.

18 (c) If the quitclaim deed provided for in subsection (a) of this Code section is presented
 19 to the purchaser at the time such person accepts the amount payable for the redemption in
 20 the form of cash or a certified check, the purchaser shall, at that time, sign the quitclaim
 21 deed if a notary public and an unofficial witness are present to witness such signature.

22 (d) If no quitclaim deed is presented at the time of the redemption or if sufficient witnesses
 23 are not present, it shall be the responsibility of the purchaser to prepare and properly
 24 execute such quitclaim deed as is required by law within seven days from the date of the
 25 redemption.

26 (e) It shall be the responsibility of the purchaser once the quitclaim deed is properly
 27 executed as required in subsection (d) of this Code section to present such deed for
 28 recordation to the clerk of the court within ten days of the redemption. The quitclaim deed
 29 shall be presented for recordation in the county where the tax sale originally occurred. The
 30 purchaser shall pay all recording costs and return the recorded quitclaim deed to the
 31 redeemer."

32 **SECTION 7.**

33 Said title is further amended in Code Section 48-6-2, relating to exemptions from real estate
 34 transfer tax, by adding a new paragraph immediately following paragraph (8) of subsection
 35 (a), to be designated paragraph (8.1), to read as follows:

