

House Bill 340

By: Representatives Kaiser of the 59th, Ashe of the 56th, Hill of the 180th, Sims of the 119th,
Dempsey of the 13th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
2 prohibit sheriffs or deputies thereof from turning out debtors or tenants in certain cases unless
3 certain notice requirements have been met; to change certain provisions relating to sales
4 made on foreclosure under power of sale, manner of advertisement and conduct necessary
5 for validity, and filing; to change certain provisions relating to sales made on foreclosure
6 under power of sale, mailing or delivery of notice to debtor, and procedure; to provide an
7 effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
11 adding a new Code section to read as follows:

12 "44-7-60.

13 No sheriff or deputy thereof shall turn any debtor or tenant out of possession of any
14 residential property pursuant to the demand of a secured creditor exercising a power of sale
15 contained in a mortgage, deed, or other lien contract without proof that the notice or notices
16 specified by Code Section 44-14-162.2 were given at least 30 days prior to the date of
17 eviction."

18 **SECTION 2.**

19 Said title is further amended by revising subsection (a) of Code Section 44-14-162, relating
20 to sales made on foreclosure under power of sale, manner of advertisement and conduct
21 necessary for validity, and filing, as follows:

22 "(a) No sale of real estate under powers contained in mortgages, deeds, or other lien
23 contracts shall be valid unless the sale shall be advertised and conducted at the time and
24 place and in the usual manner of the sheriff's sales in the county in which such real estate
25 or a part thereof is located and unless notice of the sale shall have been given as required

26 by Code Section 44-14-162.2 to the debtor and, if applicable under said Code section, to
 27 an occupant. If the advertisement contains the street address, city, and ZIP Code of the
 28 property, such information shall be clearly set out in bold type. In addition to any other
 29 matter required to be included in the advertisement of the sale, if the property encumbered
 30 by the mortgage, security deed, or lien contract has been transferred or conveyed by the
 31 original debtor to a new owner and an assumption by the new owner of the debt secured
 32 by said mortgage, security deed, or lien contract has been approved in writing by the
 33 secured creditor, then the advertisement should also include a recital of the fact of such
 34 transfer or conveyance and the name of the new owner, as long as information regarding
 35 any such assumption is readily discernable by the foreclosing creditor. Failure to include
 36 such a recital in the advertisement, however, shall not invalidate an otherwise valid
 37 foreclosure sale."

38

SECTION 3.

39 Said title is further amended by revising Code Section 44-14-162.2, relating to sales made
 40 on foreclosure under power of sale, mailing or delivery of notice to debtor, and procedure,
 41 as follows:

42 "44-14-162.2.

43 (a) Notice of the initiation of proceedings to exercise a power of sale in a mortgage,
 44 security deed, or other lien contract shall be given to the debtor by the secured creditor no
 45 later than 30 days before the date of the proposed foreclosure. Such notice shall be in
 46 writing, shall include the name, address, and telephone number of the individual or entity
 47 who shall have full authority to negotiate, amend, and modify all terms of the mortgage
 48 with the debtor, and shall be sent by registered or certified mail or statutory overnight
 49 delivery, return receipt requested, to the property address or to such other address as the
 50 debtor may designate by written notice to the secured creditor; provided, however, that if
 51 the debtor designates an address other than the property address, then, at the same time the
 52 secured creditor sends notice to the debtor, the secured creditor shall send an additional
 53 copy of the notice addressed to 'Occupant' at the property address. ~~The Any~~ notice
 54 required by this Code section shall be deemed given on the official postmark day or day
 55 on which it is received for delivery by a commercial delivery firm. Nothing in this
 56 ~~subsection~~ Code section shall be construed to require a secured creditor to negotiate,
 57 amend, or modify the terms of a mortgage instrument.

58 ~~(b) The notice required by subsection (a) of this Code section shall be given by mailing~~
 59 ~~or delivering to the debtor a copy of the notice of sale to be submitted to the publisher."~~

60 **SECTION 4.**

61 This Act shall become effective upon its approval by the Governor or upon its becoming law
62 without such approval.

63 **SECTION 5.**

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