

Senate Bill 139

By: Senator Hamrick of the 30th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 44-14-32 of the Official Code of Georgia Annotated, relating to the
2 use of parol evidence to prove an apparent deed is a mortgage, so as to delineate the factors
3 to be considered in determining when an instrument of conveyance shall be held to be an
4 equitable mortgage; to provide for related matters; to provide for an effective date; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 44-14-32 of the Official Code of Georgia Annotated, relating to the use of
9 parol evidence to prove an apparent deed is a mortgage, is revised to read as follows:
10 "44-14-32.

11 ~~A deed or bill of sale which is absolute on its face and which is accompanied with possession~~
12 ~~of the property shall not be proved, at the instance of the parties, by parol evidence to be a~~
13 ~~mortgage only unless fraud in its procurement is the issue to be tried. An instrument of~~
14 ~~conveyance which purports on its face to be a deed, or a series of contracts which may~~
15 ~~include a deed of conveyance, a lease, or a right of repurchase, shall be held to be an~~
16 ~~equitable mortgage when the evidence demonstrates that the essential transaction is to~~
17 ~~transfer an interest in real property as security for the performance of an obligation. The~~
18 ~~factors relevant to the determination of whether, at law and in equity, a transaction shall be~~
19 ~~deemed to be an equitable mortgage include, but are not limited to:~~

20 (1) The adequacy of the consideration;

21 (2) The retention of possession by the prior owner;

22 (3) The representation of all parties by legal counsel;

23 (4) The existence of indebtedness that was in default prior to the transaction;

24 (5) The relative size of the debt in default to the fair market value of the property; and

25 (6) The avoidance of the equity of redemption.

26 If a deed that is absolute on its face, or a series of contracts taken collectively, is found to
27 be an equitable mortgage, the rights of the transferee shall be as the holder of a mortgage
28 at law securing only such indebtedness as is judicially determined."

29 **SECTION 2.**

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

32 **SECTION 3.**

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