09 LC 34 2173S

The Senate Banking and Financial Institutions Committee offered the following substitute to SB 141:

## A BILL TO BE ENTITLED AN ACT

1

2

3

4

5

6

7

8

9

10

11

To change provisions relating to foreclosures and deficiency judgements; to amend Code Section 15-6-77 of the Official Code of Georgia Annotated, relating to fees to be collected by clerks of the superior courts, so as to provide for fees for filing documents and other instruments pertaining to a deed under power more than 30 days following the exercise of a power of sale in a mortgage, security deed, or other lien contract; to provide for filing documents when a deficiency judgment is sought; to amend Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to foreclosure on mortgages, so as to provide for recording of documents relating to sales under power and deficiency judgments; to provide for notice of foreclosure; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.** 12 Code Section 15-6-77 of the Official Code of Georgia Annotated, relating to fees to be 13 14 collected by clerks of the superior courts, is amended by adding new subsections to read as 15 follows: 16 "(p) Unless the purchaser cannot file the deed under power due to a legal action having 17 been filed that prevents or delays the filing of the deed under power, additional sums for 18 filing documents and other instruments pertaining to a deed under power more than 30 days 19 following the exercise of a power of sale in a mortgage, security deed, or other lien contract 20 or, in the event a deficiency judgment is sought, more than 30 days following the date of 21 confirmation of the sale, whichever is later, shall be as follows: 22 (1) Filing a deed under power more than 30 days but less than 60 23 days following the exercise of a power of sale in a mortgage, 24 security deed, or other lien contract or, in the event a deficiency 25 judgment is sought, more than 30 days but less than 60 days 26 

09 LC 34 2173S

27	(2) Filing a deed under power more than 60 days but less than 90
28	days following the exercise of a power of sale in a mortgage,
29	security deed, or other lien contract or, in the event a deficiency
30	judgment is sought, more than 60 days but less than 90 days
31	following the date of confirmation of sale, whichever is later
32	(3) Filing a deed under power more than 90 days following the
33	exercise of a power of sale in a mortgage, security deed, or other
34	lien contract or, in the event a deficiency judgment is sought, more
35	than 90 days following the date of confirmation of sale, whichever
36	<u>is later</u>
37	(q) The sums provided for in subsection (p) of this Code section shall be assessed and
38	collected by the clerks of the superior courts and shall be paid monthly:
39	(1) To the governing authority of the county in which such property is located, if such
40	property is located in the unincorporated area of the county, for use in code enforcement,
41	public safety, or community development purposes; or
42	(2) To the governing authority of the municipality in which such property is located, if
43	such property is located within municipal limits, for use in code enforcement, public
44	safety, or community development purposes.
45	Such funds shall be paid in addition to rather than in lieu of any other such funds. The
46	court officer charged with the duty of collecting moneys required by subsection (p) of this
47	Code section shall receive and distribute the funds collected to the appropriate local
48	governing authority by the last day of the month after the month in which the funds are
49	received; provided, however, that the court officer shall be authorized to retain an amount
50	not to exceed 1 percent of such funds for the purposes of defraying the costs of
51	administration. The court officer shall submit a monthly report of the collection and
52	distribution of such funds to the Georgia Superior Court Clerks' Cooperative Authority."
53	SECTION 2.
54	Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to
55	foreclosure on mortgages, is amended by revising Code Section 44-14-160, relating to
56	recording of foreclosure and deed under power and notations of sale in records, as follows:
57	"44-14-160.
58	When the holder of a deed to secure debt or a mortgage forecloses the same and sells the
59	real property thereby secured under the laws of this state governing foreclosures and sales
60	under power and the purchaser thereof presents to the clerk of the superior court his or her
61	deed under power to have the same recorded, the clerk shall write in the margin of the page
62	where the deed to secure debt or mortgage foreclosed upon is recorded the word

09 LC 34 2173S

'foreclosed' and the deed book and page number on which is recorded the deed under power conveying the real property; provided, however, that, in counties where the clerk keeps the records affecting real estate on microfilm, the notation provided for in this Code section shall be made in the same manner in the index or other place where the clerk records transfers and cancellations of deeds to secure debt. Unless the purchaser cannot file the deed under power due to a legal action having been filed that prevents or delays the filing of the deed under power, the purchaser shall present the deed under power to the clerk of the superior court to have the same recorded no later than 30 days following the date of the exercise of a power of sale in a mortgage, security deed, or other lien contract or, in the event a deficiency judgment is sought, 30 days following the date of confirmation of the sale, whichever is later. Failure to record the deed shall result in a late filing penalty pursuant to subsection (p) of Code Section 15-6-77."

75 SECTION 3.

Said article is further amended in Code Section 44-14-162.2, relating to sales made on foreclosures under power of sale, by adding a new subsection to read as follows:

"(c) No later than 30 days before the date of a proposed foreclosure, the secured creditor shall send by regular mail addressed to 'Current Resident' at the address of the property a notice in substantially the following form:

81 <u>'NOTICE</u>

A foreclosure notice on the property located at (insert address) will be published in the legal organ for (insert county) advertising the property located at (insert address) for sale on (insert date).

A foreclosure sale of the property may occur on the date advertised. You may want to consult with an attorney because you could be evicted, even if you are a tenant who has fully paid rent and complied with your lease."

88 SECTION 4.

This Act shall become effective on July 1, 2009.

**SECTION 5.** 

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