

House Bill 129

By: Representatives McKillip of the 115<sup>th</sup>, Lindsey of the 54<sup>th</sup>, Hatfield of the 177<sup>th</sup>, Evans of the 40<sup>th</sup>, and Willard of the 49<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,  
2 relating generally to mortgages, conveyances to secure debt, and liens, so as to prohibit a fee  
3 for a future conveyance of real property except under limited circumstances; to provide for  
4 a definition; 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 Article 1 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating  
9 generally to mortgages, conveyances to secure debt, and liens, is amended by adding a new  
10 Code section to read as follows:

11 "44-14-14.

12 (a) As used in this Code section, the term 'conveyance of real property' shall include a  
13 conveyance or other transfer of an interest or estate in real property.

14 (b) A restriction or covenant running with the land applicable to the conveyance of real  
15 property that requires a transferee or transferor of real property or the transferee's or  
16 transferor's heirs, successors, or assigns to pay a declarant or other person imposing the  
17 restriction or covenant on the property or a third party designated by a transferor or  
18 transferee of the property, or a successor, assignee, or designee of any thereof, a fee in  
19 connection with a future transfer of the property shall be prohibited. A restriction or  
20 covenant running with the land that violates this Code section or a lien purporting to  
21 encumber the land to secure a right under a restriction or covenant running with the land  
22 that violates this Code section shall be void and unenforceable.

23 (c) This Code section shall not apply to a restriction or covenant that requires a fee  
24 associated with the conveyance of property to be paid to:

25 (1) An association formed for the purposes of exercising the powers of the association  
26 of any condominium created pursuant to Article 3 of Chapter 3 of this title, the 'Georgia  
27 Condominium Act';

28 (2) A property owners' association formed for the purposes of exercising the powers of  
29 the property owners' association pursuant to Article 6 of Chapter 3 of this title, the  
30 'Georgia Property Owners' Association Act'; or

31 (3) A property owners' association formed for the purposes of exercising the powers of  
32 an association of property owners that has not been formed pursuant to or which has not  
33 adopted the provisions of Article 6 of Chapter 3 of this title, the 'Georgia Property  
34 Owners' Association Act'; provided, however, that the declaration of covenants and  
35 association governing instruments provide for the assessment and collection of  
36 assessments and fees, on account of transfer or otherwise, and further provide that:

37 (A) All such fees shall be utilized and applied solely for payment of the common  
38 expenses for the operation of the association, including the maintenance, repair,  
39 renovation, restoration, or replacement of any common elements;

40 (B) Any lot owner, mortgagee, or holder of a deed to secure debt to a lot, person  
41 having executed a contract for the purchase of a lot, or lender considering the loan of  
42 funds to be secured by a lot shall be entitled upon request to a statement from the  
43 association or its management agent setting forth the amount of assessments or transfer  
44 fees payable to such association that are past due and unpaid together with late charges  
45 and interest applicable thereto against the lot. Such request shall be in writing, shall be  
46 delivered to the registered office of the association, and shall state an address to which  
47 the statement is to be directed. Failure on the part of the association, within five  
48 business days from the receipt of such request, to mail or otherwise furnish such  
49 statement regarding amounts due and payable shall cause any lien for assessments or  
50 transfer fees payable to such association to be extinguished and be of no further force  
51 or effect as to the title or interest acquired by the purchaser or lender, if any, as the case  
52 may be, and their respective successors and assigns, in the transaction contemplated in  
53 connection with such request. The information specified in such statement shall be  
54 binding upon the association and upon every lot owner. Payment of a fee not exceeding  
55 \$10.00 may be required as a prerequisite to the issuance of such a statement if the  
56 instrument so provides; and

57 (C) All sums lawfully assessed by the association against any lot owner or lot  
58 associated with the transfer or conveyance of title to the lot shall be subordinate to the  
59 following:

60 (i) Liens for ad valorem taxes on the lot;

- 61 (ii) The lien of any first priority mortgage or deed to secure debt covering the lot and  
 62 the lien of any mortgage or deed to secure debt recorded prior to the recording of any  
 63 declaration creating or reserving the right to require payment of a transfer fee; or  
 64 (iii) The lien of any secondary purchase money mortgage or deed to secure debt  
 65 covering the lot, provided that neither the grantee nor any successor grantee on the  
 66 mortgage or deed to secure debt is the seller of the lot.
- 67 (d) Any valid fees imposed by an association described in subsection (c) of this Code  
 68 section in connection with the conveyance of an interest in property shall:
- 69 (1) Be a sum lawfully assessed by the association and, with respect to paragraph (1)  
 70 or (2) of subsection (c) of this Code section, subject to the same lien priority, restrictions,  
 71 limitations, and other provisions of Code Section 44-3-109 or 44-3-232, as applicable;  
 72 (2) No longer be enforceable should the property become no longer subject to, in the  
 73 case of paragraphs (1) and (2) of subsection (c) of this Code section, covenants made  
 74 subject to the 'Georgia Condominium Act' or the 'Georgia Property Owners' Association  
 75 Act,' as applicable, or in the case of paragraph (3) of subsection (c) of this Code section,  
 76 those recorded covenants which are administered by a property owners' association not  
 77 subject to the 'Georgia Property Owners' Association Act'; and  
 78 (3) No longer be a lien on the property four years after they first become due.
- 79 (e) A conveyance of an interest in real property by gift, devise, nonjudicial or judicial  
 80 foreclosure, deed in lieu of foreclosure, court order, or operation of law shall be exempt  
 81 from any permissible fees under this Code section."

82 **SECTION 2.**

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

85 **SECTION 3.**

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