

House Bill 338

By: Representative Bryant of the 160th

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 extensively revise and enact provisions relating to the creation, transfer, modification, and
3 foreclosure of mortgages and deeds to secure debt as well as other documents creating
4 security interests; to provide a short title; to regulate the transfer of security interests; to
5 require recording as condition of foreclosure; to provide for a minimum period of
6 delinquency before foreclosure and other proceedings may be commenced; to provide that
7 creditors must provide owners of residential property with a right to cure and a notice of such
8 right prior to commencing foreclosure proceedings; to provide for notice of initiation of
9 foreclosure proceedings and the contents and manner of delivery of such notice; to prohibit
10 deficiency judgments in certain circumstances and authorize such judgments in certain other
11 circumstances; to limit the authority of nominees to initiate foreclosure proceedings or
12 otherwise act for creditors; to regulate the creation of reverse mortgages and require certain
13 disclosures and counseling in connection with such transactions; to prohibit fraudulent
14 activities in the process of foreclosure and provide for remedies related thereto; to regulate
15 the manner in which mortgages may be modified; to provide for other related matters; to
16 repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 This Act shall be known and may be cited as the Georgia "Neighborhood Stabilization Act"
20 or "NEST Act."

21 **SECTION 2.**

22 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
23 revising Code Section 44-14-64, relating to transfers of deeds to secure debt, as follows:

24 "44-14-64.

25 (a) All transfers of deeds to secure debt shall be in writing; shall be signed by the grantee
26 or, if the deed has been previously transferred, by the last transferee; and shall be witnessed
27 as required for deeds.

28 (b) Transfers of deeds to secure debt may be endorsed upon the original deed or by a
29 separate instrument identifying the transfer and shall be sufficient to transfer the property
30 therein described and the indebtedness therein secured, whether the indebtedness is
31 evidenced by a note or other instrument or is an indebtedness which arises out of the terms
32 or operation of the deed, together with the powers granted without specific mention thereof.

33 (c) Transfer of a deed to secure debt and the indebtedness therein secured may be made
34 in whole or in part; provided, however, that, where the transfer is made in part, that portion
35 of the deed and the indebtedness therein secured to be transferred shall be stated upon a
36 separate instrument and not upon the original deed.

37 ~~(d) A transfer of a deed to secure debt and the indebtedness therein secured in whole or in
38 part in accordance with subsections (a) through (c) of this Code section by a financial
39 institution having deposits insured by an agency of the federal government or a transfer by
40 a lender who regularly purchases or services residential real estate loans aggregating a
41 minimum of \$1 million secured by a first deed to secure debt encumbering real estate
42 improved or to be improved by the construction thereon of one to four family dwelling
43 units, where the transferor retains the right to service or supervise the servicing of the deed
44 or interest therein, need not be recorded if:~~

45 ~~(1) The original deed to secure debt has been recorded;~~

46 ~~(2) An agreement in writing exists on or before the date of the transfer between the
47 transferor and the transferee and sets forth the terms of the transfer and the interests of
48 the parties thereto; and~~

49 ~~(3) Possession of the deed, the instrument of indebtedness, and the instrument of transfer
50 is taken by such new transferee for himself or in his representative capacity or by a
51 representative of such transferee which may include the transferor or any other transferee,
52 provided that the agreement in paragraph (2) of this subsection provides for such party
53 to take possession.~~

54 (d) No later than 30 days after the date on which a deed to secure debt or mortgage loan
55 is sold, partially sold, or otherwise transferred or assigned to a third party, the creditor that
56 is the new owner or assignee of the debt shall notify the mortgagor in writing of such
57 transfer; the identity, address, and telephone number of the new creditor; the date of
58 transfer; and the name of an agent or representative authorized to act on behalf of the new
59 creditor and shall on the face of the assignment include a valid mailing address and legal
60 description of the real property sold, partially sold, or otherwise transferred or assigned.

61 ~~(e) As described in subsection (d) of this Code section, the transfer by a financial~~
62 ~~institution or lender of a deed to secure debt and the indebtedness therein secured in whole~~
63 ~~or in part without recording in accordance with this Code section shall be effective to~~
64 ~~provide the new transferee with priority over all subsequent claims against the deed and the~~
65 ~~indebtedness therein secured to the extent of the interest so transferred, and the priority~~
66 ~~shall not be lessened by the fact that the transfer is not recorded; provided, however, that~~
67 ~~a transfer, satisfaction, cancellation, release, quitclaim deed, or modification executed and~~
68 ~~recorded by the holder of record of the deed to secure debt shall be effective to transfer,~~
69 ~~satisfy, cancel, release, quitclaim, or modify, as the case may be, all interest of the holder~~
70 ~~of record of the deed to secure debt and all interest of all transferees claiming by, through,~~
71 ~~or under the holder of record of the deed to secure debt.~~

72 (e) A grantor, or his or her transferee or duly authorized representative, shall be entitled
73 to receive without charge a payoff balance from the holder of a deed to secure debt on real
74 property by requesting in writing said balance. The grantor's request shall set forth the
75 period of time which the payoff balance should be accurate and shall be mailed to the
76 holder of the deed to secure debt by certified mail or statutory overnight delivery.

77 ~~(f) Where the holder of the right to service or supervise the servicing of the transferred~~
78 ~~deed to secure debt and the indebtedness therein secured is a financial institution or lender~~
79 ~~as described in subsection (d) of this Code section, it shall have the same rights,~~
80 ~~responsibilities, and obligations to act in all matters concerning the servicing,~~
81 ~~administration, and cancellation of the deed and indebtedness as to third parties as if no~~
82 ~~such transfer had taken place.~~

83 (f) The holder of a deed to secure debt or note secured by real property shall provide
84 within 30 days of receiving a written request from the grantor or the grantor's transferee or
85 duly authorized representative, a statement under oath, from a corporate officer of the
86 payoff balance.

87 ~~(g) A transfer of a deed to secure debt shall not be recorded unless it includes the mailing~~
88 ~~address of the last transferee thereof. Failure to comply with this provision shall not be a~~
89 ~~defense to any foreclosure or grounds to set aside any foreclosure of any deed to secure~~
90 ~~debt.~~

91 (g) If the request provided in subsection (e) of this Code section contains information
92 insufficient to allow compliance, the holder of the debt deed shall serve upon the grantor
93 or person by whom the request was made, a statement in writing, stating specifically what
94 additional information is needed, and such compliance shall constitute compliance with this
95 Code section.

96 ~~(h) A grantor or his transferee shall be entitled to receive without charge a payoff balance~~
97 ~~from the holder of a deed to secure debt on real property by requesting in writing said~~
98 ~~balance and providing a self-addressed stamped envelope.~~

99 (h) On or after July 1, 2011, if a deed to secure debt or mortgage has been assigned by the
100 original grantee or mortgagee, the trustee, or any substitute trustee, under any deed to
101 secure debt or mortgage shall not proceed with any sale of the property unless: (1) all
102 assignments of the mortgage have been duly recorded with the land records in the superior
103 court of the county in which the property is located; and (2) the person or persons or entity
104 or entities who assert that they are the holder of the security deed or note with the right to
105 enforce the obligation secured by the deed or mortgage can directly trace their interest
106 through the duly recorded assignments to the original grantee or mortgagee.

107 (i) If all assignments of the security deed or mortgage have not been duly recorded with
108 the land records in the Superior Court of the county in which the property is located, the
109 trustee, or any substitute trustee, may not proceed with the sale of the property conveyed
110 to him by the security deed or mortgage until: (1) the recordation of any assignments
111 necessary to trace the interest of the person who asserts that he is the holder of the
112 obligation secured by the security deed or mortgage to the original grantee or mortgagee
113 or, if an intervening assignment cannot be recorded because the assignee no longer exists,
114 the provision of an affidavit by the party secured to the trustee, or any substitute trustee,
115 attesting under penalty of perjury that the person is the party secured under the deed of
116 trust, and (2) the payment of all fees, taxes, and other costs applicable to the recording of
117 the assignments. The person who asserts that he is the holder of the obligation secured by
118 the security deed or mortgage is solely responsible for paying all such fees, taxes, and other
119 costs.

120 (j) Failure to comply with subsections (a), (d), (e), (h), and (i) of this Code section is a
121 defense to any foreclosure or grounds to set aside any foreclosure of any deed to secure
122 debt.

123 (k) Any creditor who fails to comply with any requirement imposed under this Code
124 section with respect to any person is liable to such person in an amount equal to the sum
125 of:

126 (1) Any actual damage sustained by such person as a result of the failure;

127 (2) In the case of an individual action twice the amount of any finance charge in
128 connection with the transaction; and

129 (3) In the case of an individual action relating to a credit transaction that is secured by
130 real property or a dwelling, not less than \$1,000.00 or greater than \$2,000.00 and the
131 costs of the action, together with a reasonable attorney's fee as determined by the court."

132 **SECTION 3.**

133 Said title is further amended by inserting a new Article 6A of Chapter 14 to read as follows:

134 "Article 6A135 44-14-150.136 (a)(1) As used in this article the term:137 (A) 'Mortgagor' means a borrower of a mortgage loan.138 (B) 'Residential property' means real property located in the State of Georgia having
139 thereon a dwelling house with accommodations for four or less separate households and
140 occupied, in whole or in part, by the mortgagor; provided that the residential property
141 shall be limited to the mortgagor's principal place of residence not to include investment
142 property or property taken in whole or in part as collateral for a commercial loan.143 (2) This Code section shall apply only to residential property.144 (b) Notwithstanding any other law to the contrary, a mortgagee or lender shall neither
145 forward a Right to Cure notice nor initiate foreclosure proceedings until such time as the
146 mortgagor is 120 days late on mortgage payments, subject however to subsection (c) of this
147 Code section.148 (c) Prior to the initiation of proceedings any mortgagor shall have a 45-day Right To Cure
149 a default of a required payment as provided in such residential mortgage or security deed
150 or deed secured by such residential property by payment in full of all amounts that are due
151 without acceleration of the maturity of the unpaid balance of such mortgage. The
152 mortgagee or lender shall, at least 45 days prior to the initiation of foreclosure proceedings,
153 give written notice of the Right to Cure by certified mail or statutory overnight delivery to
154 the mortgagor. The Right to Cure shall be used only once every seven years regardless as
155 to how many mortgagors are listed on the mortgage.156 (d) No person or entity, shall accelerate the maturity of the unpaid balance of a residential
157 mortgage or otherwise enforce any monetary provision of the mortgage note because of the
158 failure to make any payment by any method authorized by any law until at the end of the
159 expiration of the 45-day Right to Cure period.160 (e) The notice of Right to Cure shall provide the mortgagor with the following
161 information:162 (1) A statement informing the mortgagor that the mortgagor has the right to cure the
163 default by paying the sum of money required to cure the default;164 (2) The name, address, and telephone number of a person to whom the payment shall be
165 made;

166 (3) A statement that failure to cure the default shall result in increased costs as the result
167 of the initiation of a foreclosure proceeding and that these costs shall include but are not
168 limited to attorney fees, advertising costs, and other expenses; and

169 (4) The name, address, and telephone number of the person whom the mortgagor can
170 directly contact should the mortgagor disagree with the amount required to cure the
171 default.

172 (f) Notice of the initiation of proceedings to exercise a power of sale in a mortgage,
173 security deed, or other lien contract shall be given to the mortgagor by the secured creditor
174 after the expiration of the period granted the mortgagor under subsections (b) through (d)
175 of this Code section. At the expiration of the Right to Cure period, the mortgagee or lender
176 or mortgage servicer shall provide written notice to the present owner of the property to be
177 sold of the intent of the secured party to foreclose upon the property. The notice shall
178 contain the name, address, and telephone number of the party secured, the trustee, and any
179 employee or department of the mortgage servicer, the party secured, or any agent of the
180 party secured that can be contacted for inquiries regarding alternatives to foreclosure,
181 including loan modifications. The notice shall include the name and license number of the
182 Georgia mortgage lender and mortgage originator if applicable. The notice of intent to
183 foreclose shall be either:

184 (1) Sent by: statutory overnight delivery or by certified mail, postage prepaid, return
185 receipt requested, bearing a postmark from the United States Postal Service, and by
186 first-class mail; or

187 (2) Served personally upon the mortgagor or grantor by a sheriff or deputy sheriff of the
188 county where the mortgagor or grantor is domiciled or at the present owner's last known
189 address as such owner and address appear in the records of the party secured.

190 A copy of the notice of sale to be submitted to the publisher of the legal organ in the county
191 where the property is located for publication shall be tacked to the property.

192 (g) The notice of intent to foreclose shall contain the following: (1) the amount required
193 to cure the default and reinstate the loan, including all past due payments, penalties, and
194 fees; (2) a statement recommending that the mortgagor or grantor seek housing counseling
195 services; (3) the telephone number and the Internet address of nonprofit and government
196 resources available to assist mortgagors and grantors facing foreclosure, as identified by
197 United States Department of Housing and Urban Development; (4) an explanation of the
198 Georgia foreclosure process and time line, as prescribed by the Georgia Department of
199 Banking and Finance; and (5) a loss mitigation application.

200 (h) The notice of intent to foreclose shall also include:

201 (1) Instructions for completing the loss mitigation application, a telephone number to call
202 to confirm receipt of the application, and a description of the eligibility requirements for

203 the loss mitigation programs offered by the secured party that may be applicable to the
204 loan secured by the mortgage or security deed that is the subject of the foreclosure action;
205 (2) An envelope preprinted with the address of the person responsible for conducting loss
206 mitigation analysis on behalf of the secured party for the loan secured by the mortgage
207 or security deed that is the subject of the foreclosure action; and
208 (3) An affidavit stating or a statement under oath stating: (1) The date on which the
209 default occurred and the nature of the default; and (B) if applicable, that a notice of intent
210 to foreclose was sent to the mortgagor or grantor in accordance with this Code section
211 and the date on which the notice was sent.

212 (i) The notice of intent to foreclose shall be accompanied by: (A) the original or a certified
213 copy of the mortgage or security deed; (2) a statement of the debt remaining due and
214 payable supported by an affidavit of the secured party or the agent or attorney of the
215 secured party; (3) a copy of the debt instrument accompanied by an affidavit certifying
216 ownership of the debt instrument; (4) if applicable, the original or a certified copy of the
217 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a
218 substitute trustee; and (5) any parties identified pursuant to paragraph (4) of this subsection
219 that received any assistance pursuant to Title I of the Emergency Economic Stabilization
220 Act of 2008 (12 U.S.C. 5211 et seq.) and the amount of any such assistance received.

221 (j) The notice of intent to foreclose shall be accompanied by a statement of findings as to
222 whether the covered residential mortgage was made and serviced in compliance with the
223 terms of, and regulations under, the following laws: (1) the Truth in Lending Act (15
224 U.S.C. 1601) and Regulation Z of the Board of Governors of the Federal Reserve System
225 under such Act; (2) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) and
226 Regulation B of the Board of Governors of the Federal Reserve System under such Act;
227 (3) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.); (4) The Real Estate
228 Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) and Regulation X of the
229 Secretary of Housing and Urban Development under such Act; and (5) a statement the
230 mortgagor has engaged in a good faith effort to avoid foreclosure by providing a reasonable
231 alternative to foreclosure.

232 (k) The notice of intent to foreclose shall include a statement to the mortgagor that:

233 (1) The mortgagor has the right to cure the default by paying all past due payments,
234 penalties, and fees and reinstate the loan at any time up to one business day before the
235 foreclosure sale occurs; and

236 (2) The secured party or an authorized agent of the secured party shall, on request,
237 provide to the mortgagor or grantor or the mortgagor's or grantor's attorney within a
238 reasonable time the amount necessary to cure the default and reinstate the loan and
239 instructions for delivering the payment.

240 (l) The notice of intent to foreclose shall include the name, address, and local or toll free
 241 telephone number of a person to whom the payment or tender referred to in subsection (k)
 242 of this Code section shall be made and the acceptable manner of tender.

243 (m) Failure to comply with any provision of subsections (a) through (l) of this Code
 244 section is a defense to foreclosure.

245 (n) If a mortgage is refinanced as a result of procedures under subsections (a) through (l)
 246 of this Code section and the mortgagor fails to make the first payment on the new
 247 mortgage loan or fails to make the first three consecutive payments of the new mortgage
 248 loan, the mortgagee does not have to again comply with subsections (a) through (l) of this
 249 Code section and can immediately proceed to foreclose said property.

250 (q) Notwithstanding any other provision in this Code section, nothing contained in this
 251 Code section shall preclude a court from granting equitable relief."

252 **SECTION 4.**

253 Said title is further amended by revising Code Section 44-14-161, relating to deficiency
 254 judgments after sales under power, as follows:

255 "44-14-161.

256 (a) When any real estate is sold on foreclosure, without legal process, and under powers
 257 contained in security deeds, mortgages, or other lien contracts and at the sale the real estate
 258 does not bring the amount of the debt secured by the deed, mortgage, or contract, no action
 259 may be taken to obtain a deficiency judgment ~~unless the person instituting the foreclosure~~
 260 ~~proceedings shall, within 30 days after the sale, report the sale to the judge of the superior~~
 261 ~~court of the county in which the land is located for confirmation and approval and shall~~
 262 ~~obtain an order of confirmation and approval thereon.~~

263 (b) A lender or secured creditor who has conducted a judicial foreclosure on real property
 264 has the right to seek a deficiency judgment only if the sale of the real property did not bring
 265 the amount of the debt secured by the deed.

266 ~~(b) The court shall require evidence to show the true market value of the property sold~~
 267 ~~under the powers and shall not confirm the sale unless it is satisfied that the property so~~
 268 ~~sold brought its true market value on such foreclosure sale.~~

269 ~~(c) The court shall direct that a notice of the hearing shall be given to the debtor at least~~
 270 ~~five days prior thereto, and at the hearing the court shall also pass upon the legality of the~~
 271 ~~notice, advertisement, and regularity of the sale. The court may order a resale of the~~
 272 ~~property for good cause shown."~~

273

SECTION 5.

274 Said title is further amended by revising Code Section 44-14-162.2, relating to notice of
 275 foreclosure to the debtor, as follows:

276 44-14-162.2.

277 ~~(a) Notice of the initiation of proceedings to exercise a power of sale in a mortgage,~~
 278 ~~security deed, or other lien contract shall be given to the debtor by the secured creditor no~~
 279 ~~later than 30 days before the date of the proposed foreclosure. Such notice shall be in~~
 280 ~~writing, shall include the name, address, and telephone number of the individual or entity~~
 281 ~~who shall have full authority to negotiate, amend, and modify all terms of the mortgage~~
 282 ~~with the debtor, and shall be sent by registered or certified mail or statutory overnight~~
 283 ~~delivery, return receipt requested, to the property address or to such other address as the~~
 284 ~~debtor may designate by written notice to the secured creditor. The notice required by this~~
 285 ~~Code section shall be deemed given on the official postmark day or day on which it is~~
 286 ~~received for delivery by a commercial delivery firm. Nothing in this subsection shall be~~
 287 ~~construed to require a secured creditor to negotiate, amend, or modify the terms of a~~
 288 ~~mortgage instrument. Where a notice of Right to Cure is required under Code Section~~
 289 ~~44-14-159, the notice shall be delivered to the mortgagor by the following means: (1) sent~~
 290 ~~by certified mail return receipt requested bearing a postmark from the United State Postal~~
 291 ~~Service and also by first-class mail or statutory overnight delivery; or (2) served personally~~
 292 ~~when delivered by hand upon the mortgagor or grantor by a sheriff or deputy sheriff of the~~
 293 ~~county where the mortgagor domiciled or the present owner's last known address as such~~
 294 ~~owner and address appear in the records of the party secured and tacked to the property.~~

295 ~~(b) The notice required by subsection (a) of this Code section shall be given by mailing~~
 296 ~~or delivering to the debtor a copy of the notice of sale to be submitted to the publisher:~~
 297 ~~Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security~~
 298 ~~deed, or other lien contract shall be given to the debtor by the secured creditor no later than~~
 299 ~~30 days before the date of the proposed foreclosure. The notice of initiation of proceeding~~
 300 ~~to exercise a power of sale shall be delivered to the mortgagor by the following means: (1)~~
 301 ~~sent by certified mail return receipt requested bearing a postmark from the United States~~
 302 ~~Postal Service and also by first-class mail or statutory overnight delivery; or (2) served~~
 303 ~~personally when delivered by hand upon the mortgagor or grantor by a sheriff or deputy~~
 304 ~~sheriff of the county where the mortgagor domiciled or the present owner's last known~~
 305 ~~address as such owner and address appear in the records of the party secured and tacked~~
 306 ~~to the property. The notice required by this subsection shall be deemed delivered to the~~
 307 ~~mortgagor when delivered to the mortgagor or when mailed to the mortgagor at the~~
 308 ~~mortgagor's last known address to the mortgagee or to anyone holding thereunder. The~~
 309 ~~notice shall include a copy of the notice of sale to be submitted to the publisher of the legal~~

310 organ in the county where the property is located for publication and other materials as
 311 required under Code Section 44-14-159 in the case of residential property.

312 (c) Notice sent pursuant to subsections (a) and (b) of this Code section shall provide the
 313 mortgagor with the following information: (1) a statement informing the mortgagor that the
 314 mortgagor has the right to cure the default by paying the sum of money required to cure the
 315 default; (2) the name, address, and telephone number of a person to whom the payment
 316 shall be made; (3) a statement that failure to cure the default shall result in increased costs
 317 as the result of the initiation of a foreclosure proceeding and that these cost shall include
 318 but are not limited to attorney fees, advertising costs, and other expenses; and (4) the name,
 319 address, and telephone number of the person whom the mortgagor can directly contact if
 320 the mortgagor disagrees with the amount required to cure the default.

321 (d) Failure to comply with any provision of this Code section is a defense to foreclosure."

322 **SECTION 6.**

323 Said title is further amended by revising Code Section 44-14-324, relating to assignments of
 324 liens, as follows:

325 "44-14-324.

326 (a) Except as otherwise provided by law, assignments of all liens shall be in writing.
 327 Under an assignment, the assignee shall have all the rights of the assignor as provided by
 328 law.

329 (b) On and after July 1, 2011, if a deed to secure debt or mortgage has been assigned by
 330 the original grantee or mortgagee, the trustee, or any substitute trustee, under any deed to
 331 secure debt or mortgage, shall not proceed with any sale of the property unless: (1) all
 332 assignments of the mortgage have been duly recorded with the land records in the Superior
 333 Court of the county in which the property is located; and (2) the person or persons or entity
 334 or entities who assert that they are the holder of the obligation secured by the deed or
 335 mortgage can directly trace their interest through the duly recorded assignments certified
 336 by the clerk of superior court to the original grantee or mortgagee.

337 (c) If all assignments of the deed of trust or mortgage have not been duly recorded with
 338 the land records in the Superior Court of the county in which the property is located, the
 339 trustee, or any substitute trustee, may proceed with the sale of the property conveyed to him
 340 by the deed of trust or mortgage upon: (1) the recordation of any assignments necessary to
 341 trace the interest of the person who asserts that he is the holder of the obligation secured
 342 by the deed of trust or mortgage to the original grantee or mortgagee or, if an intervening
 343 assignment cannot be recorded because the assignee no longer exists, the provision of an
 344 affidavit by the party secured to the trustee, or any substitute trustee, attesting under
 345 penalty of perjury that the person is the party secured under the deed of trust, and (2) the

346 payment of all fees, taxes, and other costs applicable to the recording of the assignments.
 347 The person who asserts that he is the holder of the obligation secured by the deed of trust
 348 or mortgage is solely responsible for paying all fees, taxes, and other costs required.
 349 (d) A nominee of a grantee, mortgagee, or beneficiary for a security deed or mortgage has
 350 no authority to request that the trustee, or any substitute trustee, proceed with any sale of
 351 the property and the trustee, or any substitute trustee, shall not proceed with any such sale
 352 upon the request of the nominee. As used in this subsection, the term 'nominee' means a
 353 person who is designated in the security deed or mortgage or who is subsequently
 354 designated to act on behalf of the grantee, mortgagee, or beneficiary. The term 'nominee'
 355 does not include an agent or other fiduciary.
 356 (e) All rights that are reserved to the lender in the security deed or mortgage for the right
 357 to appoint a successor trustee or trustees are reserved to the holder of the note and not to
 358 a nominee. A nominee that has no pecuniary interest in the note and cannot prove value
 359 received for the note may not act on behalf of or foreclose on any mortgage."

360 **SECTION 7.**

361 Said title is further amended by adding a new Chapter 17 to read as follows:

362 "CHAPTER 17

363 44-17-1

364 This chapter shall be known and may be cited as the 'Secure Reverse Mortgage Act.'

365 44-17-2

366 As used in this chapter the term 'mortgagor' means an applicant for a reverse mortgage
 367 who: (1) has a gross income of less than 50 percent of the area median income, as
 368 periodically determined by the United States Department of Housing and Urban
 369 Development; (2) is over 62 years of age; (3) possesses assets, excluding a primary
 370 residence, valued at less than \$120,000.00; and (4) is not an agent, trustee, personal
 371 representative, attorney-in-fact, guardian, or conservator signing on behalf of the mortgagor
 372 unless approved by Order of a Court of competent jurisdiction.

373 44-17-3.

374 No mortgagee shall make a reverse mortgage loan pursuant to this chapter to a mortgagor
 375 unless: (1) the actual mortgagor has signed in writing for the reverse mortgage; and (2) at
 376 or before the date of closing of any reverse mortgage loan the mortgagee has received from
 377 an independent organization a certificate in writing verifying that the mortgagor has
 378 received counseling in-person concerning the ramifications and consequences of receiving

379 a reverse mortgage. The independent organization providing counseling cannot be
 380 affiliated with a lender, mortgage banker, servicer, or mortgage broker who offers a reverse
 381 mortgage product. All such independent counselors must be licensed mortgage loan
 382 originators in Georgia and shall be approved by the Georgia Department of Banking for
 383 purposes of such counseling.

384 44-17-4.

385 A reverse mortgage loan closed and otherwise consummated with a borrower who has not
 386 received required counseling by an independent party approved by the Department of
 387 Banking and Finance shall be unenforceable.

388 44-17-5.

389 The Department of Banking and Finance shall adopt regulations to administer and
 390 implement this chapter."

391 **SECTION 8.**

392 Said title is further amended by adding a new Chapter 18 to read as follows:

393 "CHAPTER 18

394 44-18-1.

395 This chapter shall be known and may be cited as the 'Foreclosure Fraud Civil Action Act.'

396 44-18-2.

397 As used in this chapter, the term:

398 (1) 'Residential property' means a one-to-four unit residential family dwelling owned and
 399 occupied in whole or in part by the mortgagor and located within the State of Georgia.

400 (2) 'Person' means a natural person, corporation, partnership, limited liability company,
 401 limited partnership, trust, real estate trust, or any other entity.

402 44-18-3.

403 (a) Any person who: (1) knowingly makes, uses, or causes to be made or used a false,
 404 misleading, or fraudulent record, document, or statement or causes such a record,
 405 document, or statement to be recorded in the real property records of this state; or (2)
 406 knowingly swears or affirms falsely to any matter in support of any foreclosure upon a
 407 residential property under this chapter shall be liable for a civil penalty of \$5,000.00 for
 408 each violation.

409 (b) Any attorney for the county or city in which an alleged violation of this Code section
 410 occurred may bring an action to recover the civil penalty which shall be paid into the local
 411 treasury. A person violating this Code section shall be liable for reasonable attorney fees
 412 and costs of a civil action brought to recover any such penalty.

413 (c) The owner of the residential property subject to foreclosure has a civil cause action
 414 against a person who has violated this Code section and shall be entitled to recover from
 415 such person compensatory damages in the amount of three times the damages incurred by
 416 the owner as a result of the violation in addition to reasonable attorney fees and costs for
 417 said action."

418 **SECTION 9.**

419 Said chapter is further amended by adding a new Chapter 19 to read as follows:

420 "CHAPTER 19

421 44-19-1.

422 This chapter shall be known and may be cited as the 'Mortgage Modification Safe Harbor
 423 Act.'

424 44-19-2.

425 As used in this chapter, the term:

426 (1) 'Loan modification' means a permanent change in one or more of the terms of a
 427 mortgagor's loan. Changes to a mortgage modification include but are not limited to
 428 extending the term of the loan, changing the monthly payments, and changing the interest
 429 rate.

430 (2) 'Mortgage modification' means a process whereby the terms of a mortgage are
 431 modified outside the original terms of the contract agreed to by the lender and borrower.

432 (3) 'Trial modification' means a temporary modification to a mortgagor's loan extended
 433 by the lender or secured party.

434 (4) 'Permanent modification' means a permanent modification to a mortgagor's loan
 435 extended by the lender or secured party.

436 44-19-3.

437 (a) Any creditor, servicer, secured party, or other entity who evaluates or has the authority
 438 to extend a mortgage modification shall:

439 (1) Provide in writing to the mortgagor clear and concise information as to how a
 440 mortgagor can obtain a loan modification and avoid foreclosure;

441 (2) Provide written confirmation of the borrower's submission of the first document in
442 support of a request for a modification within ten business days of receipt. The
443 confirmation will include basic information about the loan modification process and
444 include a clear date stamp identifying receipt of the documents;

445 (3) Identify a single point of contact who will be responsible for processing a borrower's
446 request for a modification and will be the consumer's consistent and primary point of
447 contact; and

448 (4) Provide written notice of any required documents that are missing from the
449 borrower's initial written submission within 30 days of receiving the submission. The
450 notice will list all the specific documents that are missing and describe any deficiencies
451 in the documents included in the borrower's initial submission. Additional documents
452 that may be necessary will be requested in writing within ten days of identifying the need
453 for the documents.

454 (b) Any and all decisions concerning the mortgagor's complete modification requests shall
455 be reviewed and a decision on the mortgagors initial request for a modification within 60
456 days following the borrower's initial request.

457 (c) During any mortgage modification the lender or secured party creditor shall not report
458 any derogatory credit ratings to any credit reporting agency.

459 (d) The mortgagee shall neither commence nor continue a foreclosure during active loan
460 modification negotiations.

461 (e) The creditor, servicer, secured party, or other entity who extends a mortgage
462 modification shall appoint a dedicated relationship manager for each mortgagor seeking
463 modification.

464 (f) All mortgage modifications shall be in writing and filed in the real property records of
465 the county where the real property subject to the modification is located.

466 (g) As long as the mortgagor is in compliance with the terms, covenants, and agreements
467 embodied in the loan modification, there shall no initiation of the foreclosure process.

468 (h) The failure of any lender or secured party creditor to place the terms of a trial
469 modification in writing shall result in the trial modification converting to a permanent
470 modification of the loan terms.

471 (i) All loan modifications shall be sent by certified mail and first class mail to the
472 mortgagor within 15 days of entering into an agreement.

473 40-19-4

474 (a) Should any mortgagee or secured party creditor fail to extend to a mortgagor a
475 mortgage modification, the mortgagee shall deliver to the mortgagor a notice of denial by
476 the following means: (i) sent by certified mail return receipt requested bearing a postmark

477 from the United States Postal Service and by first-class mail; or (2) served personally upon
478 the mortgagor or grantor by a sheriff or deputy sheriff of the county where the mortgagor
479 domiciled or the present owner's last known address as such owner and address appear in
480 the records of the party secured and tacked to the property.

481 (b) If the mortgagee or secured party creditor fails to extend to a mortgagor a modification,
482 the mortgagee shall review the modification request and allow the mortgagor 30 days to
483 raise disputed facts.

484 (c) The notice of denial shall provide the mortgagor with the following information:

485 (1) An affidavit indicating that:

486 (A) The creditor has made a good faith effort to negotiate and agree upon a
487 commercially reasonable alternative to foreclosure;

488 (B) The creditor has considered an assessment of borrower's current circumstances
489 including, without limitation, income, debts, and obligations; and

490 (C) The creditor has calculated the net present value of receiving payments pursuant
491 to a modified mortgage loan as compared to the net recovery following foreclosure
492 using the equations currently utilized and approved by the Federal Deposit Insurance
493 Corporation or the United States Department of Treasury; and

494 (2) A copy of the all numerical values and valuations utilized in reaching the outcome.

495 (d) For purposes of this Code section, the determination as to whether a creditor has made
496 a good faith effort to negotiate and agree upon a commercially reasonable alternative to
497 foreclosure shall be determined by whether the creditor has considered factors including
498 but not limited to: (1) an assessment of the mortgagor's current circumstances, including
499 but not limited to the mortgagor's current income, debts, and obligations; (2) the value of
500 receiving payments pursuant to a modified mortgage loan as compared to the anticipated
501 net recovery following foreclosure; and (3) the interests of the creditor in the event the
502 creditor has received federal or state money.

503 (e) The notice to the mortgagor shall provide the mortgagor with the following options:

504 (1) The mortgagor has the right to sell the property prior to the foreclosure sale and use
505 the proceeds to pay off the loan;

506 (2) The mortgagor has the right to redeem the property by paying the total arrears due,
507 prior to the foreclosure sale; and

508 (3) The mortgagor may have the following additional rights, depending on the terms of
509 the residential mortgage:

510 (A) To transfer the property to a third party subject to the security interest held by the
511 residential mortgage lender and the transferee's right, if any, to cure the default; and

512 (B) To refinance the obligation by obtaining a loan which would fully repay the
513 residential mortgage creditor; and

514 (C) To voluntarily grant a deed to the residential mortgage lender in lieu of
515 foreclosure."

516 **SECTION 10.**

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