

House Bill 445

By: Representatives Welch of the 110th, Lindsey of the 54th, and Evans of the 40th

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 provide for security deposits when residential rental property has been foreclosed upon; to
3 change provisions relating to judgments and writs of possession; to provide for a definition;
4 to provide for rights and remedies of tenants when their rental property has been foreclosed
5 upon; to provide for notices to tenants who reside in property being foreclosed upon; to
6 change provisions relating to sales made on foreclosure under power of sale; to prohibit
7 wrongfully inducing a tenant to vacate property being foreclosed upon; to provide for
8 specified civil damages; to provide for related matters; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in
13 Article 2 of Chapter 7, relating to security deposits, by adding a new Code section to read as
14 follows:

15 "44-7-38.

16 If a tenant in a residential dwelling unit which has been foreclosed upon has paid a security
17 deposit and the foreclosed upon landlord is holding such security deposit, the holder of the
18 landlord's interest in the dwelling unit at the time of the termination of tenancy shall return
19 such security deposit and any accrued interest that is duly owed to the tenant, whether or
20 not such security deposit is transferred with the landlord's interest by law or equity, and
21 regardless of any residential rental agreements between the original landlord and his or her
22 successor in interest. Nothing in this Code section shall be construed to prevent a landlord
23 from making lawful deductions from the security deposit in accordance with this article."

24 **SECTION 2.**

25 Said title is further amended by revising subsection (a) of Code Section 44-7-55, relating to
 26 judgments and writs of possession, as follows:

27 "(a) If, on the trial of the case, the judgment is against the tenant, judgment shall be entered
 28 against the tenant for all rents due and for any other claim relating to the dispute. The court
 29 shall issue a writ of possession, both of execution for the judgment amount and a writ to
 30 be effective at the expiration of seven days after the date such judgment was entered,
 31 except as otherwise provided in Code ~~Section~~ Sections 44-7-55.1 and 44-7-56."

32 **SECTION 3.**

33 Said title is further amended by adding two new Code sections to read as follows:

34 "44-7-55.1.

35 (a) As used in this Code section, the term 'bona fide' means a lease or tenancy when:

36 (1) The tenant is not the mortgagor or grantor or the child, spouse, or parent of the
 37 mortgagor or grantor under the contract;

38 (2) The lease or tenancy was the result of an arm's length transaction; and

39 (3) Rental payment required under the lease or tenancy is not substantially less than fair
 40 market rent for the property, unless the unit's rent is reduced or subsidized due to a
 41 federal, state, or local subsidy.

42 (b) In the case of a foreclosure on any residential property, any immediate successor in
 43 interest in such property who acquires complete title to such property after the foreclosure
 44 sale shall assume the interest subject to:

45 (1) The requirement that any notice to vacate issued to a bona fide tenant be provided to
 46 such tenant at least 90 days prior to the effective date of such notice; and

47 (2) The rights of any bona fide tenant:

48 (A) Under any bona fide lease entered into before the foreclosure sale, which tenant
 49 may elect to continue his or her tenancy in the premises until the end of the remaining
 50 term of the lease, except that a successor in interest may terminate a lease after the date
 51 of sale of the unit to a purchaser who will occupy the unit as a primary residence; in the
 52 case of occupancy by a purchaser who will occupy the unit, such purchaser shall
 53 provide notice to vacate to a bona fide tenant at least 90 days prior to the effective date
 54 of such notice; or

55 (B) Without a lease or with a lease terminable at will under Georgia law, subject to the
 56 receipt by the tenant of the 90 day notice required under paragraph (1) of this
 57 subsection.

58 (c) Any person or entity, or such person's or entity's agent or employee, who terminates
 59 a tenancy in violation of the provisions of this Code section by failing to give the required

60 notice or by prohibiting a tenant from continuing to occupy the premises through the
61 remaining term of a lease shall be liable for damages in the amount of \$3,000.00 per
62 violation, plus an award for reasonable and necessary attorney's fees and litigation costs
63 in addition to actual damages.

64 (d) The relationship of the successor in interest and a bona fide tenant who continues to
65 occupy the premises after foreclosure shall be that of a landlord and tenant for all purposes
66 recognized by Georgia law. Unless a new lease is adopted by both the successor in interest
67 and the bona fide tenant, the terms of the lease governing the relationship between the
68 former landlord and tenant shall remain in effect for the duration of the tenancy.

69 44-7-55.2.

70 (a) No person or entity, or such person's or entity's agent or employee, who has initiated
71 a proceeding to foreclose a mortgage on a residential property, who takes title to a
72 residential property at a foreclosure sale, or who is the mortgagor prior to foreclosure shall
73 make any communication to induce a tenant to vacate the property except through a bona
74 fide monetary offer. An offer shall be considered bona fide if it is a certain and
75 unambiguous offer to induce the tenant to leave made in good faith. Any bona fide offer
76 shall be in writing and shall include a notice of the tenant's rights during foreclosure in the
77 form set forth in subsection (e) of this Code section.

78 (b) No person or entity, or such person's or entity's agent or employee, who has initiated
79 a proceeding to foreclose a mortgage on a residential property, who takes title to a
80 residential property at a foreclosure sale, or who is the mortgagor prior to foreclosure shall,
81 upon acceleration of the debt and continuing through one year after the transfer of title
82 following the foreclosure sale, take any of the following actions to induce a tenant to accept
83 any offer to vacate the property:

84 (1) Mischaracterizing or misrepresenting the rights of the tenant under any federal or
85 state law or municipal ordinance;

86 (2) Implying the tenant is obligated to accept an offer or implying consequences against
87 the tenant for failing to accept an offer; or

88 (3) Discontinuing electricity, heat, or other utilities; failing to maintain the common
89 areas or facilities of the property; or otherwise failing to maintain the premises in a
90 habitable condition.

91 (c) Any person or entity, or that person's or entity's agent or employee, who violates the
92 provisions of this Code section shall be liable for damages in the amount of \$3,000.00 per
93 violation, plus an award for reasonable and necessary attorney's fees and litigation costs
94 in addition to actual damages. Nothing in this subsection shall limit the liability of a
95 person, or a person's agent or employee, who violates any other law or regulation.

96 (d) Any person or entity, or such person's or entity's agent or employee, who makes a
 97 demand for payment of rent on a residential tenant living in property noticed for
 98 foreclosure or sold at foreclosure, when such person or entity is not entitled to such rent,
 99 shall be subject to damages in the amount of three times the rental amount sought plus an
 100 award for reasonable and necessary attorney's fees and litigation costs.

101 (e) The notice to tenants required by subsection (a) of this Code section shall be in the
 102 following form:

103 **NOTICE TO TENANTS**

104 THE PROPERTY WHERE YOU LIVE HAS BEEN OR MAY BE SOLD IN A
 105 FORECLOSURE SALE. WITH LIMITED EXCEPTIONS, GEORGIA LAW
 106 PROTECTS YOUR RIGHT TO REMAIN IN YOUR HOME AFTER A
 107 FORECLOSURE SALE. FORECLOSURE ALONE IS NOT GROUNDS FOR
 108 EVICTON OF A TENANT. YOU ARE PROTECTED FOR AT LEAST 90 DAYS
 109 EVEN IF YOU DO NOT HAVE A LEASE. IF YOU DO HAVE A LEASE, YOU MAY
 110 BE ENTITLED TO REMAIN IN YOUR HOME UNTIL THE END OF THE LEASE
 111 TERM.

112 INDIVIDUALS CAN BE SUBJECT TO CIVIL PENALTIES FOR TRYING TO
 113 FORCE YOU TO LEAVE YOUR HOME IN ANY OTHER MANNER, INCLUDING
 114 SHUTTING OFF UTILITIES OR OTHER VITAL SERVICE OR FAILING TO
 115 MAINTAIN THE PREMISES. YOU MAY, HOWEVER, ACCEPT FINANCIAL
 116 COMPENSATION FOR LEAVING VOLUNTARILY IF THE NEW OWNER OFFERS
 117 SUCH COMPENSATION.

118 IF SOMEONE IS TRYING TO CONVINCEN YOU TO LEAVE AND YOU HAVE ANY
 119 QUESTIONS ABOUT YOUR RIGHTS, CONSULT WITH AN ATTORNEY.

120 IF YOU NEED FURTHER INFORMATION, PLEASE CALL THE GEORGIA
 121 DEPARTMENT OF COMMUNITY AFFAIRS OR VISIT THE DEPARTMENT'S
 122 WEBSITE AT: WWW.DCA.STATE.GA.US."

123 **SECTION 4.**

124 Said title is further amended by revising Code Section 44-14-162, relating to sales made on
 125 foreclosure under power of sale, as follows:

126 "44-14-162.

127 (a) No sale of real estate under powers contained in mortgages, deeds, or other lien
 128 contracts shall be valid unless the sale shall be advertised and conducted at the time and
 129 place and in the usual manner of the sheriff's sales in the county in which such real estate
 130 or a part thereof is located and unless notice of the sale shall have been given as required
 131 by Code Section 44-14-162.2. If the advertisement contains the street address, city, and
 132 ZIP Code of the property, such information shall be clearly set out in bold type. In addition
 133 to any other matter required to be included in the advertisement of the sale, if the property
 134 encumbered by the mortgage, security deed, or lien contract has been transferred or
 135 conveyed by the original debtor to a new owner and an assumption by the new owner of
 136 the debt secured by said mortgage, security deed, or lien contract has been approved in
 137 writing by the secured creditor, then the advertisement should also include a recital of the
 138 fact of such transfer or conveyance and the name of the new owner, as long as information
 139 regarding any such assumption is readily discernable by the foreclosing creditor. Failure
 140 to include such a recital in the advertisement, however, shall not invalidate an otherwise
 141 valid foreclosure sale.

142 (b) The security instrument or assignment thereof vesting the secured creditor with title
 143 to the security instrument shall be filed prior to the time of sale in the office of the clerk of
 144 the superior court of the county in which the real property is located.

145 (c) A person who takes title, as a result of a foreclosure sale, to a residential property
 146 containing one or more dwelling units shall provide notice to all possible tenants in English
 147 by posting a notice no later than ten business days after the foreclosure sale, in accordance
 148 with the provisions of subsection (e) of this Code section. The notice shall be in the
 149 following form:

150 **NOTICE TO TENANTS**

151 THE FORMER OWNER OF THE PROPERTY WHERE YOU CURRENTLY LIVE
 152 [insert property address] NO LONGER OWNS THE PROPERTY AS A RESULT OF
 153 A FORECLOSURE. FROM THE TIME YOU RECEIVE THIS NOTICE AND UNTIL
 154 FURTHER NOTICE, YOU SHOULD PAY RENT IN THE AMOUNT YOU HAVE
 155 BEING PAYING TO YOUR PREVIOUS LANDLORD TO [insert name, address, and
 156 phone number of person to whom rent is due]. PLEASE SEND RENT BY [insert
 157 method of transmission].

158 WITH LIMITED EXCEPTIONS, GEORGIA LAW PROTECTS YOUR RIGHT TO
 159 REMAIN IN YOUR HOME. FORECLOSURE ALONE IS NOT GROUNDS FOR

160 EVICTION OF A TENANT. YOU ARE PROTECTED EVEN IF YOU DO NOT
161 HAVE A LEASE.

162 IF YOU HAVE A LEASE, ARE NOT THE OWNER OF THE RESIDENCE, AND THE
163 LEASE REQUIRES PAYMENT OF RENT THAT AT THE TIME IT WAS ENTERED
164 WAS NOT SUBSTANTIALLY LESS THAN FAIR MARKET RENT FOR THE
165 PROPERTY, YOU MAY BE ENTITLED TO REMAIN IN OCCUPANCY FOR THE
166 REMAINDER OF YOUR LEASE TERM. IF YOU DO NOT HAVE A LEASE, YOU
167 WILL BE ENTITLED TO REMAIN IN YOUR HOME UNTIL 90 DAYS AFTER ANY
168 PERSON OR ENTITY ACQUIRES TITLE TO THE PROPERTY.

169 INDIVIDUALS CAN BE SUBJECT TO CIVIL PENALTIES FOR TRYING TO
170 FORCE YOU TO LEAVE YOUR HOME IN ANY OTHER MANNER, INCLUDING
171 SHUTTING OFF UTILITIES OR OTHER VITAL SERVICE OR FAILING TO
172 MAINTAIN THE PREMISES. YOU MAY, HOWEVER, ACCEPT FINANCIAL
173 COMPENSATION FOR LEAVING VOLUNTARILY IF THE NEW OWNER OFFERS
174 SUCH COMPENSATION.

175 IF SOMEONE IS TRYING TO CONVINCING YOU TO LEAVE YOUR RESIDENCE
176 AND YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, CONSULT WITH
177 AN ATTORNEY.

178 IF YOU NEED FURTHER INFORMATION, PLEASE CALL THE GEORGIA
179 DEPARTMENT OF COMMUNITY AFFAIRS OR VISIT THE DEPARTMENT'S
180 WEBSITE AT: WWW.DCA.STATE.GA.US.'

181 (d) Nonpayment of rent to the successor in interest during the month of a scheduled
182 foreclosure sale shall not be grounds for lease termination or eviction; provided, however,
183 that this shall not excuse a tenant's duty to pay rent owed during the aforementioned period.
184 (e) The notice to tenants in a foreclosed property required by subsection (c) of this Code
185 section shall be in boldface, 14 point type and shall be printed on colored paper, and the
186 title of the notice shall be in boldface, 20 point type. The notice shall be on its own page.
187 The notice shall be delivered to the tenant, by certified mail, return receipt requested, and
188 by first-class mail to the tenant's address at the property if the identity of the tenant is
189 known, and by first-class mail delivered to 'occupant' if the identity of the tenant is not
190 known. For buildings with five or more dwelling units, a legible copy of the notice shall
191 also be posted outside of each entrance to the building. The notice shall be deemed

192 received by any tenants in the subject property three business days after the postmark date
193 on the first-class mail.
194 (f) A tenant shall not be responsible for accrued rental amounts due to the successor in
195 interest after a foreclosure sale involving his or her residential dwelling until such time as
196 he or she has received the statutorily required notice as set forth in subsection (e) of this
197 Code section. Nonpayment of rent by the tenant prior to receipt of such notice shall not be
198 grounds for lease termination or eviction by the successor in interest."

199 **SECTION 5.**

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