

House Bill 1047

By: Representatives Ramsey of the 72nd, Jacobs of the 80th, and Welch of the 110th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 14 of Title 44, relating to foreclosure, so as to provide for a
2 showing of a property's fair market value in order to obtain a judgment on a deed to secure
3 debt or mortgage prior to a foreclosure and sale under power; to provide for fair market value
4 to be used as the opening bid in sales under power when a money judgment has been
5 obtained prior to foreclosure; to provide for related matters; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 7 of Chapter 14 of Title 44, relating to foreclosure, is amended by adding a new Code
10 section to read as follows:

11 "44-14-161.1.

12 When the holder of a deed to secure debt or a mortgage on real property seeks to obtain a
13 money judgment on the same prior to foreclosure and sale under power, the court shall
14 require evidence to show the fair market value of the property to be used by the court in
15 consideration of the issuance of such judgment. The court shall render an opinion as to the
16 fair market value of the property, which may, in the court's discretion, be based solely upon
17 a sworn affidavit from the holder as to the fair market value of the property if no evidence
18 is submitted by the debtor demonstrating a different fair market value. The fair market
19 value of the property as established by the court in accordance with this Code section shall
20 be the opening bid in a sale under power."

21 **SECTION 2.**

22 Said article is further amended by revising Code Section 44-14-180, relating to the manner
23 of foreclosure, as follows:

24 "44-14-180.

25 Mortgages on real estate may be foreclosed in the following manner:

- 26 (1) Any person who applies and who is entitled to foreclose the mortgage shall, by
 27 himself or herself or his or her attorney, petition the superior court of the county wherein
 28 the mortgaged property is located, ~~which~~ and the petition shall contain a statement of the
 29 case, the amount of the petitioner's demand, and a description of the property mortgaged;
- 30 (2) Upon the filing of the petition prior to obtaining a money judgment on a deed to
 31 secure debt or a mortgage on real property, the court shall grant a rule directing that the
 32 principal, the interest, and the costs be paid into court. Upon the filing of the petition
 33 after obtaining a money judgment on a deed to secure debt or a mortgage on real
 34 property, the court shall grant a rule directing that the fair market value of the mortgaged
 35 property, as determined under Code Section 44-14-161.1, be paid into court. The rule
 36 shall be published twice a month for two months or served on the mortgagor or his or her
 37 special agent or attorney at least 30 days prior to the time at which the money is directed
 38 to be paid into the court; and
- 39 (3) Notwithstanding paragraphs (1) and (2) of this Code section, where the land covered
 40 by the mortgage shall consist of a single tract of land divided by a county line or county
 41 lines, the mortgage may be foreclosed on the entire tract in either of the counties in which
 42 part of it is located; but, if the mortgagor shall reside upon the land, the mortgage shall
 43 be foreclosed in the county of his or her residence."

44

SECTION 3.

45 Said article is further amended in Code Section 44-14-187, relating to judgment and sale of
 46 mortgaged property, as follows:

47 "44-14-187.

48 When the mortgagor, after being directed so to do, fails to pay the principal, interest, and
 49 costs as required by Code Section 44-14-230 or the fair market value of the property as
 50 provided for by Code Section 44-14-161.1 and fails to set up and sustain his or her defense
 51 against the foreclosure of the mortgage, the court shall give judgment for the amount which
 52 may be due ~~on the mortgage~~ and shall order the mortgaged property to be sold in the
 53 manner and under the same regulations which govern sheriffs' sales under execution. If a
 54 money judgment has been obtained prior to foreclosure and sale under power, the opening
 55 bid shall be the fair market value of the property as determined under Code Section
 56 44-14-161.1."

57

SECTION 4.

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