

House Bill 917

By: Representatives Strickland of the 111th, Ramsey of the 72nd, Gasaway of the 28th, Welch of the 110th, Braddock of the 19th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia
2 Annotated, relating to foreclosure in general, so as to modify the procedure for confirmation
3 of foreclosure sales; to provide for conditions and limitations; to provide for related matters;
4 to provide for an effective date and applicability; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 SECTION 1.

7 Part 1 of Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
8 relating to foreclosure in general, is amended by revising Code Section 44-14-161, relating
9 to confirmation and approval of foreclosure sales, as follows:

10 "44-14-161.

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

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

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

25 (a) As used in this Code section, the term:

26 (1) 'Arm's length, bona fide sale' means a transaction which has occurred in good faith
 27 without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing
 28 buyer and a willing seller, each acting in his or her own self-interest.

29 (2) 'Debtor' means any person or persons who are liable for repayment of the secured
 30 indebtedness and includes, without limitation, any guarantor or surety of the secured
 31 indebtedness.

32 (3) 'Deficiency' means the difference between the secured indebtedness and the amount
 33 received by the foreclosing creditor at the foreclosure sale.

34 (4) 'Fair market value' means the amount a knowledgeable buyer would pay for the
 35 property and a willing seller would accept for the property at an arm's length, bona fide
 36 sale.

37 (5) 'Foreclosing creditor' means the person instituting a foreclosure proceeding.

38 (6) 'Foreclosure' means the sale of real property without legal process and under the
 39 powers contained in security deeds, mortgages, or other lien contracts as provided in
 40 Code Section 44-14-162, et seq.

41 (7) 'Foreclosure sale' means the sale of real property which occurs as part of the
 42 foreclosure process.

43 (8) 'Secured indebtedness' means the indebtedness secured by security deeds, mortgages,
 44 or other lien contracts.

45 (b)(1) When any real estate is sold by foreclosure at a foreclosure sale, no action shall
 46 be taken against the debtor or debtors to obtain a deficiency judgment unless the
 47 foreclosing creditor within 30 days of the foreclosure sale files a report of the foreclosure
 48 sale with the clerk of the superior court of the county in which the land is located seeking
 49 confirmation and approval of the foreclosure and obtaining an order of confirmation and
 50 approval thereon.

51 (2) The report of the foreclosure sale shall contain the following:

52 (A) The names and last known addresses of the prior owner or owners of the real
 53 property which was foreclosed;

54 (B) The name and last known addresses of the debtor or debtors;

55 (C) The name and address of the foreclosing creditor and the name and address of the
 56 person or foreclosing creditor's counsel who may be contacted or served with notice as
 57 provided in this Code section;

58 (D) A statement explaining the actions taken by the foreclosing creditor to foreclose
 59 the real property and the date and time of the foreclosure sale;

60 (E) The price obtained by the foreclosing creditor at the foreclosure sale;

61 (F) A copy of the security deed, mortgage, or other lien contract which was foreclosed
 62 and the note or other evidence of the secured indebtedness; and

63 (G) A copy of the advertisement and a copy of the notice required by Code Section
64 44-14-162.2.

65 (c) The foreclosing creditor shall cause a copy of the report of the foreclosure sale to be
66 personally served upon the debtor and shall file a certificate of such service with the clerk
67 of the superior court within five days after the report of the foreclosure sale is filed with
68 the clerk.

69 (d) The court shall direct that a written notice of the hearing on confirmation and approval
70 be given to the debtor at least 30 days prior thereto.

71 (e) The debtor shall be a party in interest at the hearing on confirmation and approval and
72 shall be entitled to present evidence in opposition to the evidence presented by the
73 foreclosing creditor.

74 (f) The foreclosing creditor and debtor shall have the right prior to the hearing on
75 confirmation and approval to limited discovery in the discretion of the court with respect
76 to the issues to be proved at such hearing.

77 (g) The court shall not confirm and approve the foreclosure sale unless it finds by a
78 preponderance of the evidence that:

79 (1) The amount obtained by the foreclosing creditor at the foreclosure sale was equal to
80 or greater than the real property's fair market value on the day of the foreclosure sale;

81 (2) The notice was given and the advertisement was published as required by law; and

82 (3) The foreclosure sale was otherwise conducted in the manner prescribed by law.

83 (h) In the event the foreclosing creditor obtains a judgment against any debtor prior to the
84 foreclosure sale, such foreclosing creditor shall notify the judgment debtor within ten days
85 after the foreclosure sale of the intent of such foreclosing creditor to pursue collection of
86 the balance owed on the judgment less the credit for the price brought at the foreclosure
87 sale. Any debtor receiving such notice shall have the right to require confirmation and
88 approval of the foreclosure sale. Such debtor shall exercise such right by notifying the
89 foreclosing creditor in writing of such debtor's desire to require confirmation and approval
90 of the foreclosure sale. Such notice shall be given by the debtor no later than ten days after
91 receipt by the debtor of notice of the foreclosure sale. The failure of the foreclosing
92 creditor to timely give notice to the debtor as provided in this subsection shall be a bar to
93 recovery of the balance owed on the judgment. The failure of the debtor to timely give
94 notice that the debtor requires confirmation and approval of the foreclosure sale shall be
95 a bar to the exercise of such right by the debtor, and the foreclosing creditor shall have no
96 obligation to proceed with a report of the foreclosure sale for confirmation and approval.

97 (i) In the event the debtor shall timely notify the foreclosing creditor that such debtor
98 desires a confirmation and approval of the foreclosure sale, all actions to enforce the
99 judgment obtained against the judgment debtor shall be automatically stayed until such

100 foreclosing creditor shall have obtained confirmation and approval of the foreclosure sale
101 as provided in this Code section; and the foreclosing creditor shall have 30 days after the
102 receipt of such notice to report the foreclosure sale as provided in this Code section.

103 (j) The failure of the foreclosing creditor to obtain confirmation and approval as provided
104 in this Code section shall be a complete bar to recovery of a deficiency judgment against
105 the debtor or the enforceability of any prior judgment for the secured indebtedness obtained
106 against the debtor but shall not otherwise invalidate the foreclosure sale.

107 (k) Notice to the debtor required by this Code section, other than by personal service, and
108 notice to the foreclosing creditor or the foreclosing creditor's counsel shall be made by
109 registered or certified mail or statutory overnight delivery, return receipt requested, to the
110 property address or such other address as the debtor or foreclosing creditor may designate
111 by written notice to the other party. Any such notice shall be deemed given on the official
112 postmark day or day on which it is received for delivery by a commercial delivery firm.

113 (l) No waiver of the provisions of this Code section by the debtor shall be enforceable or
114 valid unless the waiver occurs after the foreclosure of the real property."

115 **SECTION 2.**

116 This Act shall become effective on July 1, 2014, and shall apply to all foreclosure
117 proceedings initiated on or after such date.

118 **SECTION 3.**

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