

The Senate Committee on Judiciary offers the following substitute to HB 322:

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 change and clarify provisions relating to the witnessing requisites of deeds, mortgages, and
3 bills of sale; to provide for the filing of deeds under power within a certain time after a
4 foreclosure sale; to provide for the assessment and collection of a late filing fee; to provide
5 for the remittance of sums collected from such late filing fees; to provide for related matters;
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
10 revising Code Section 44-5-30, relating to the requisites of deed to land, as follows:

11 "44-5-30.

12 Except for documents electronically filed as provided for in Chapter 12 of Title 10 and Part
13 1 of Article 1 of Chapter 2 of this title, a deed to lands shall be an original document, in
14 writing, signed by the maker, ~~and attested by at least two witnesses~~ an officer as provided
15 in Code Section 44-2-15, and attested by one other witness. It shall be delivered to the
16 purchaser or his or her representative and be made on a good or valuable consideration.
17 The consideration of a deed may always be inquired into when the principles of justice
18 require it."

19 **SECTION 2.**

20 Said title is further amended by revising Code Section 44-14-33, relating to attestation or
21 acknowledgment of mortgage, as follows:

22 "44-14-33.

23 In order to admit a mortgage to record, it ~~must be attested by or acknowledged before an~~
24 ~~officer as prescribed for the attestation or acknowledgment of deeds of bargain and sale;~~
25 ~~and, in the case of real property, a mortgage must also be attested or acknowledged by one~~

26 ~~additional witness shall be signed by the maker, attested by an officer as provided in Code~~
 27 ~~Section 44-2-15, and attested by one other witness.~~ In the absence of fraud, if a mortgage
 28 is duly signed, witnessed, filed, recorded, and indexed on the appropriate county land
 29 records, such recordation shall be deemed constructive notice to subsequent bona fide
 30 purchasers."

31 SECTION 3.

32 Said title is further amended by revising Code Section 44-14-34, relating to attestation and
 33 acknowledgment or probation of mortgages executed outside of this state, as follows:

34 "44-14-34.

35 When executed outside this state, mortgages ~~may be attested, acknowledged, or probated~~
 36 ~~in the same manner as deeds of bargain and sale~~ shall be signed by the maker, attested by
 37 an officer as provided in Code Section 44-2-15, and attested by one other witness."

38 SECTION 4.

39 Said title is further amended by revising Code Section 44-14-37, relating to the effect of the
 40 failure to record a mortgage, as follows:

41 "44-14-37.

42 ~~The effect of a failure to record a mortgage shall be the same as the effect of a failure to~~
 43 ~~record a deed of bargain and sale~~ Reserved."

44 SECTION 5.

45 Said title is further amended by revising Code Section 44-14-61, relating to attestation of
 46 deeds to secure debt and bills of sale, generally, as follows:

47 "44-14-61.

48 In order to admit deeds to secure debt or bills of sale to secure debt to record, they shall be
 49 ~~attested or proved in the manner prescribed by law for mortgages~~ signed by the maker,
 50 attested by an officer as provided in Code Section 44-2-15, and attested by one other
 51 witness."

52 SECTION 6.

53 Said title is further amended by revising Code Section 44-14-62, relating to attestation of
 54 deeds to secure debt and bills of sale executed outside of this state, as follows:

55 "44-14-62.

56 When executed ~~out of~~ outside this state, deeds to secure debt and bills of sale ~~may be~~
 57 ~~attested, acknowledged, or probated in the same manner as deeds of bargain and sale~~ to

58 secure debt shall be signed by the maker, attested by an officer as provided in Code Section
 59 44-2-15, and attested by one other witness."

60 **SECTION 7.**

61 Said title is further amended by revising subsection (a) of Code Section 44-14-63, relating
 62 to recording of deeds to secure debt and bills of sale to secure debt, as follows:

63 "(a) Every deed to secure debt shall be recorded in the county where the land conveyed is
 64 located. Every bill of sale to secure debt shall be recorded in the county where the maker,
 65 if a resident of this state, resided at the time of its execution and, if a nonresident, in the
 66 county where the personalty conveyed is located. Deeds to secure debt or bills of sale to
 67 secure debt not recorded shall remain valid against the persons executing them. The effect
 68 of the failure to record deeds and bills of sale shall be the same as the effect of the failure
 69 to record a deed of bargain and sale."

70 **SECTION 8.**

71 Said title is further amended by revising Code Section 44-14-160, relating to recording of
 72 foreclosure sales and deeds under power, as follows:

73 "44-14-160.

74 (a) Within 90 days of a foreclosure sale, all deeds under power shall be ~~recorded~~ filed by
 75 the holder of a deed to secure debt or a mortgage with the clerk of the superior court of the
 76 county or counties in which the foreclosed property is located. The clerk shall ~~write in the~~
 77 ~~margin of the page where~~ record and cross reference the deed under power to the deed to
 78 secure debt or mortgage foreclosed upon is recorded the word 'foreclosed' and the deed
 79 book and page number on which is recorded the deed under power conveying the real
 80 property; provided, however, that, in counties where the clerk keeps the records affecting
 81 real estate on microfilm, the notation provided for in this Code section shall be made in the
 82 same manner in the index or other place where the clerk records transfers and cancellations
 83 of deeds to secure debt. The deed under power shall be indexed pursuant to standards
 84 promulgated by the Georgia Superior Court Clerks' Cooperative Authority.

85 (b) In the event the deed under power is not filed within 30 days after the time period set
 86 forth in subsection (a) of this Code section, the holder shall be required to pay a late filing
 87 penalty of \$500.00 upon filing in addition to the required filing fees provided for in
 88 subsection (f) of Code Section 15-66-77. Such late filing penalty shall be collected by the
 89 clerk of the superior court before filing.

90 (c) The sums collected as a late filing penalty under subsection (b) of this Code section
 91 shall be remitted to the governing authority of the county. If the foreclosed property is
 92 located within a municipality, the governing authority of the county shall remit the late

93 filing penalty for such property to the governing authority of such municipality within 30
94 days of its receipt of the penalty. For each late filing penalty for property located within
95 the corporate limits of a municipality, the governing authority of the county may withhold
96 a 5 percent administrative processing fee from the remittance to such municipality."

97 **SECTION 9.**

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