

House Bill 322 (AS PASSED HOUSE AND SENATE)

By: Representatives Strickland of the 111<sup>th</sup>, Ramsey of the 72<sup>nd</sup>, Mabra of the 63<sup>rd</sup>, Frye of the 118<sup>th</sup>, Jones of the 62<sup>nd</sup>, and others

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 a procedure for claiming certain United States savings bonds; to  
4 provide for the filing of deeds under power within a certain time after a foreclosure sale; to  
5 provide for the assessment and collection of a late filing fee; to provide for the remittance of  
6 sums collected from such late filing fees; to provide for related matters; to repeal conflicting  
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

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

12 "44-5-30.

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

20 style="text-align:center">**SECTION 2.**

21 Said title is further amended by inserting two new Code sections, to read as follows:

22 "44-12-237.

23 (a) Notwithstanding the provisions of subsection (a) of Code Section 44-12-216, United  
24 States savings bonds which are unclaimed property and subject to the provisions of Code  
25 Section 44-12-190, et seq., the 'Disposition of Unclaimed Property Act,' shall escheat to the  
26 State of Georgia three years after becoming unclaimed property and subject to the

27 provisions of Code Section 44-12-190, et seq., and all property rights to such United States  
 28 savings bonds or proceeds from such bonds shall vest solely in the State of Georgia.

29 (b) If, within 180 days after the passage of three years pursuant to subsection (a) of this  
 30 Code section, no claim has been filed in accordance with the provisions of Code Section  
 31 44-12-190, et seq., for such United States savings bonds, the commissioner shall  
 32 commence a civil action in the Superior Court of Fulton County for a determination that  
 33 such United States savings bonds shall escheat to the state. The commissioner may  
 34 postpone the bringing of such action until sufficient United States savings bonds have  
 35 accumulated in the commissioner's custody to justify the expense of such proceedings.

36 (c) If no person shall file a claim or appear at the hearing to substantiate a claim or if the  
 37 court shall determine that a claimant is not entitled to the property claimed, then the court,  
 38 if satisfied by evidence that the commissioner has substantially complied with the laws of  
 39 this state, shall enter a judgment that the subject United States savings bonds have  
 40 escheated to the state.

41 (d) The commissioner shall redeem such United States savings bonds, and the proceeds  
 42 shall be deposited in the state general fund in accordance with the provisions of Code  
 43 Section 44-12-218.

44 44-12-238.

45 Any person making a claim for the United States savings bonds escheated to the state under  
 46 Code Section 44-12-237, or for the proceeds from such bonds, may file a claim in  
 47 accordance with the provisions of Code Section 44-12-190, et seq., the 'Disposition of  
 48 Unclaimed Property Act.' Upon providing sufficient proof of the validity of such person's  
 49 claim, the commissioner may pay such claim in accordance with the provisions of Code  
 50 Section 44-12-190, et seq."

51 **SECTION 3.**

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

54 "44-14-33.

55 In order to admit a mortgage to record, it ~~must be attested by or acknowledged before an~~  
 56 ~~officer as prescribed for the attestation or acknowledgment of deeds of bargain and sale;~~  
 57 ~~and, in the case of real property, a mortgage must also be attested or acknowledged by one~~  
 58 ~~additional witness shall be signed by the maker, attested by an officer as provided in Code~~  
 59 ~~Section 44-2-15, and attested by one other witness. In the absence of fraud, if a mortgage~~  
 60 is duly signed, witnessed, filed, recorded, and indexed on the appropriate county land

61 records, such recordation shall be deemed constructive notice to subsequent bona fide  
62 purchasers."

63 **SECTION 4.**

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

66 "44-14-34.

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

70 **SECTION 5.**

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

73 "44-14-37.

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

76 **SECTION 6.**

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

79 "44-14-61.

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

84 **SECTION 7.**

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

87 "44-14-62.

88 When executed ~~out of~~ outside this state, deeds to secure debt and bills of sale ~~may be~~  
89 ~~attested, acknowledged, or probated in the same manner as deeds of bargain and sale~~ to  
90 secure debt shall be signed by the maker, attested by an officer as provided in Code Section  
91 44-2-15, and attested by one other witness."

92 **SECTION 8.**

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

95 "(a) Every deed to secure debt shall be recorded in the county where the land conveyed is  
 96 located. Every bill of sale to secure debt shall be recorded in the county where the maker,  
 97 if a resident of this state, resided at the time of its execution and, if a nonresident, in the  
 98 county where the personalty conveyed is located. Deeds to secure debt or bills of sale to  
 99 secure debt not recorded shall remain valid against the persons executing them. ~~The effect~~  
 100 ~~of the failure to record deeds and bills of sale shall be the same as the effect of the failure~~  
 101 ~~to record a deed of bargain and sale."~~

102 **SECTION 9.**

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

105 "44-14-160.

106 (a) Within 90 days of a foreclosure sale, all deeds under power shall be recorded filed by  
 107 the holder of a deed to secure debt or a mortgage with the clerk of the superior court of the  
 108 county or counties in which the foreclosed property is located. The clerk shall write in the  
 109 margin of the page where record and cross reference the deed under power to the deed to  
 110 secure debt or mortgage foreclosed upon is recorded the word 'foreclosed' and the deed  
 111 book and page number on which is recorded the deed under power conveying the real  
 112 property; provided, however, that, in counties where the clerk keeps the records affecting  
 113 real estate on microfilm, the notation provided for in this Code section shall be made in the  
 114 same manner in the index or other place where the clerk records transfers and cancellations  
 115 of deeds to secure debt. The deed under power shall be indexed pursuant to standards  
 116 promulgated by the Georgia Superior Court Clerks' Cooperative Authority.

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

122 (c) The sums collected as a late filing penalty under subsection (b) of this Code section  
 123 shall be remitted to the governing authority of the county. If the foreclosed property is  
 124 located within a municipality, the governing authority of the county shall remit the late  
 125 filing penalty for such property to the governing authority of such municipality within 30  
 126 days of its receipt of the penalty. For each late filing penalty for property located within

127 the corporate limits of a municipality, the governing authority of the county may withhold  
128 a 5 percent administrative processing fee from the remittance to such municipality."

129 **SECTION 10.**

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