

House Bill 1016

By: Representatives Kendrick of the 95th and Flournoy of the 74th

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 10 of Title 15, Article 2 of Chapter 7 of Title 16, and Article
2 2 of Chapter 11 of Title 44 of the Official Code of Georgia Annotated, relating to general
3 provisions relative to magistrate courts, criminal trespass and damage to property, and
4 proceedings against intruders, respectively, so as to expand existing remedies regarding the
5 unauthorized possession of real property; to provide for magistrate court jurisdiction over
6 certain related proceedings; to authorize certain third parties to request assistance from law
7 enforcement for the expedient removal of a person in unauthorized possession of real
8 property under certain conditions; to authorize the removal of a person in unauthorized
9 possession based on such request and conditions; to require that any person subject to
10 removal or arrest for the unauthorized possession of real property be given 30 calendar days
11 to present a counteraffidavit prior to any such removal or arrest; to provide for legislative
12 findings and intent; to provide for definitions; to make conforming changes; to provide for
13 an effective date and applicability; to provide for related matters; to repeal conflicting laws;
14 and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Article 1 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to
18 general provisions relative to magistrate courts, is amended in Code Section 15-10-2, relating
19 to general jurisdiction and authority of magistrate to act, by revising paragraph (19) of
20 subsection (a) as follows:

21 "(19) Proceedings against intruders and unlawful squatting as provided in Code Sections
22 44-11-30, 44-11-30.1, 44-11-31, 44-11-32, and 44-11-33."

23 **SECTION 2.**

24 Article 2 of Chapter 7 of Title 16 of the Official Code of Georgia Annotated, relating to
25 criminal trespass and damage to property, is amended in Code Section 16-7-21.1, relating to
26 unlawful squatting, by revising paragraph (2) of subsection (a) as follows:

27 "(2) Any person who commits or is accused of committing the offense of unlawful
28 squatting as provided for in paragraph (1) of this subsection shall receive a citation
29 advising that he or she shall present to the head of the issuing law enforcement agency
30 or its designee, within ~~three business~~ thirty calendar days of receiving the citation for
31 such alleged offense, properly executed documentation that authorizes the person's entry
32 on such land or premises. Such documentation may include a properly executed lease or
33 rental agreement or proof of rental payments."

34 **SECTION 3.**

35 Article 2 of Chapter 11 of Title 44 of the Official Code of Georgia Annotated, relating to
36 proceedings against intruders, is amended by revising Code Section 44-11-30, relating to
37 manner of ejecting intruders, affidavit, ejection by sheriff and other peace officers, and
38 counteraffidavit, as follows:

39 "44-11-30.
40 When any person, either by himself or herself, his or her agent, or his or her attorney in
41 fact, shall take and subscribe an affidavit in writing before any officer authorized to
42 administer an oath setting forth that he or she claims, in good faith, the right of possession
43 to ~~the described land or tenement~~ certain real property and that such ~~land or tenement~~ real
44 property is in the hands of ~~another~~ a named person who does not in good faith claim a right
45 to such possession and yet refuses to abandon ~~the same~~ such real property, it shall be the
46 duty of the sheriff, deputy sheriff, constable, marshal, or other individual certified by the
47 Georgia Peace Officer Standards and Training Council of the county where the ~~land or~~
48 ~~tenement~~ real property is located, upon receiving such affidavit, to exhibit such affidavit
49 to the person described as being in possession of such ~~land or tenement~~ at least three days
50 real property at least 30 calendar days prior to turning such person out of possession unless
51 the person in possession tenders to such sheriff, deputy sheriff, constable, marshal, or other
52 individual certified by the Georgia Peace Officer Standards and Training Council a
53 counteraffidavit stating that he or she claims, in good faith, a legal right to the possession
54 of the ~~land or tenement~~ real property. If no such counteraffidavit is tendered, such ~~Such~~
55 sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia
56 Peace Officer Standards and Training Council shall turn out such person once ~~three days~~
57 30 calendar days have elapsed from the day ~~such~~ the affidavit was exhibited by the sheriff,
58 deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace
59 Officer Standards and Training Council."

60 **SECTION 4.**

61 Said article is further amended by adding a new Code section to read as follows:

62 "44-11-30.1.

63 (a) As used in this Code section:

64 (1) 'Affected owner' means a unit owner or lot owner of affected property.

65 (2) 'Affected property' means real property within a condominium or property owners'
66 development that is in the possession of a person, other than a unit owner or lot owner,
67 who may not have a good faith claim to such possession and yet refuses to abandon such
68 real property.

69 (3) 'Condominium' shall have the same meaning as set forth in Code Section 44-3-71.

70 (4) 'Condominium association' shall have the same meaning as the term 'association' as
71 set forth in Code Section 44-3-71.

72 (5) 'Interested third party' means any unit owner or lot owner of real property within the
73 same condominium or property owners' development as affected property who is not an
74 affected owner.

75 (6) 'Lot owner' shall have the same meaning as set forth in Code Section 44-3-221.

76 (7) 'Property owners' development' shall have the same meaning as set forth in Code
77 Section 44-3-221.

78 (8) 'Property owners' development association' shall have the same meaning as the term
79 'property owners' association' or 'association' as set forth in Code Section 44-3-221.

80 (9) 'Unit owner' shall have the same meaning as set forth in Code Section 44-3-71.

81 (b) The General Assembly finds that the right to exclude others from entering, and to
82 direct the expedient removal of others in unauthorized possession of, real property within
83 a condominium or property owners' development is a substantial property right belonging
84 to both the unit owner or lot owner of the affected property and to any other unit owner or
85 lot owner of real property located within such condominium or property owners'
86 development. The General Assembly further finds that existing remedies regarding the
87 unauthorized possession of real property fail to adequately protect the safety and property
88 rights of such unit owners and lot owners or to sufficiently deter theft, vandalism, and other
89 criminal activity. The intent of this Code section is to support the prompt restoration of
90 possession of real property to the lawful owner and to preserve the safety and property

91 rights of all unit owners and lot owners within a condominium or property owners'
92 development while limiting the opportunity for criminal activity.
93 (c) Any interested third party shall have a right to enjoin the unauthorized possession of
94 any affected property located within such interested third party's condominium or property
95 owners' development in accordance with the procedures set forth in this Code section.
96 (d) Except as otherwise provided in Code Section 44-11-30 and subject to the
97 requirements set forth in subsection (e) of this Code section, when an interested third party,
98 either by himself or herself, his or her agent, or his or her attorney in fact, shall take and
99 subscribe an affidavit in writing before any officer authorized to administer an oath setting
100 forth that such owner claims, in good faith and acting based on reasonable certainty, that
101 certain real property within such interested third party's condominium or property owner's
102 development is in the hands of a named person who does not in good faith claim a right to
103 such possession yet and refuses to abandon such real property, it shall be the duty of the
104 sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia
105 Peace Officer Standards and Training Council of the county where the real property is
106 located, upon receiving such affidavit, to exhibit such affidavit to the person described as
107 being in possession of such real property at least 30 calendar days prior to turning such
108 person out of possession unless the person in possession tenders to such sheriff, deputy
109 sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer
110 Standards and Training Council a counteraffidavit stating that he or she claims, in good
111 faith, a legal right to the possession of the real property. If no such counteraffidavit is
112 tendered, such sheriff, deputy sheriff, constable, marshal, or other individual certified by
113 the Georgia Peace Officer Standards and Training Council shall turn out such person once
114 30 calendar days have elapsed from the day the affidavit was exhibited by the sheriff,
115 deputy sheriff, constable, marshal, or other individual certified by the Georgia Peace
116 Officer Standards and Training Council.

117 (e)(1) Notwithstanding any provision to the contrary in this article, no interested third
118 party, either by himself or herself, his or her agent, or his or her attorney in fact, shall
119 initiate the removal procedure set forth in subsection (d) of this Code section unless he
120 or she has provided at least 30 days' written notice, sent by certified mail or statutory
121 overnight delivery, of his or her intent to initiate such removal procedure to the affected
122 owner at the address or addresses designated by the affected owner to the condominium
123 association or property owners' development association and to any other address or
124 addresses for which the interested third party or the condominium association or property
125 owners' development association might be aware. If the affected owner authorizes the
126 removal procedure or fails to respond to the notice within the 30 day period, the
127 interested third party seeking to initiate the removal procedure set forth in subsection (d)
128 of this Code section shall be authorized to proceed with such removal procedure. If the
129 affected owner denies permission to initiate the removal procedure, the interested third
130 party shall be barred from proceeding with the removal procedure under subsection (d)
131 of this Code section.
132 (2) The interested third party seeking to engage in the removal procedure set forth in
133 subsection (d) of this Code shall work with the condominium association or property
134 owners' development association to provide the notice required under paragraph (1) of
135 this subsection. A condominium association or property owners' development association
136 shall cooperate with an interested third party to provide any notice required under
137 paragraph (1) of this subsection."

138 **SECTION 5.**

139 Said article is further amended by revising Code Section 44-11-31, relating to sheriff and
140 other peace officers competent to administer oath to person in possession, as follows:

141 "44-11-31.
142 The sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia
143 Peace Officer Standards and Training Council shall be a competent officer to administer
144 the oath to the person in possession if he or she desires to tender the counteraffidavit
145 provided for in Code Section 44-11-30 or Code Section 44-11-30.1."

146 **SECTION 6.**

147 Said article is further amended by revising Code Section 44-11-32, relating to procedure on
148 submission of counteraffidavit, trial, nonmeritorious submission, and appeal, as follows:

149 "44-11-32.

150 ~~(1)~~(a) If the party in possession submits a counteraffidavit as provided in Code
151 Section 44-11-30 or Code Section 44-11-30.1, the sheriff, deputy sheriff, constable,
152 marshal, or other individual certified by the Georgia Peace Officer Standards and Training
153 Council shall not turn him or her out of possession but shall leave both parties in their
154 respective positions. In such an event, the sheriff, deputy sheriff, constable, marshal, or
155 other individual certified by the Georgia Peace Officer Standards and Training Council
156 shall return both affidavits to the office of the clerk of the magistrate court of the county
157 in which the land is located for a nonjury trial in accordance with the laws of this state.

158 ~~(2)~~(b) If the party in possession submits any counteraffidavit or other documentation at
159 trial, upon the magistrate's determination that the affidavit is not meritorious based on the
160 preponderance of the evidence, the sheriff, deputy sheriff, constable, marshal, or other
161 individual certified by the Georgia Peace Officer Standards and Training Council shall turn
162 him or her out of possession to occur as soon as practicable pursuant to a writ of
163 possession.

164 ~~(3)~~(c) The court may, as appropriate, award the plaintiff the fair market value rent for the
165 duration of the party's occupancy, and other monetary relief found appropriate by the court.

166 A party shall have the right to appeal the decision of such magistrate court and such

167 decision shall be directly appealable to the Georgia appellate courts and not by de novo
168 review by the superior court."

169 **SECTION 7.**

170 This Act shall become effective on July 1, 2026, and shall apply to all offenses occurring on
171 or after such date.

172 **SECTION 8.**

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