

Senate Bill 182

By: Senators Meyer von Bremen of the 12th, Johnson of the 1st and Dean of the 31st

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AS PASSED

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 41 of the Official Code of Georgia Annotated, relating to the abatement of nuisances, so as to change definitions; to clarify the procedures for imposition and collection of nuisance abatement liens; to clarify procedures relating to the collection of tax liens; to amend Chapter 4 of Title 48 of the Official Code of Georgia Annotated, relating to tax sales, so as to change provisions relating to judicial in rem tax foreclosures; to incorporate changes made to Chapter 2 of Title 41; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 41 of the Official Code of Georgia Annotated, relating to the abatement of nuisances, is amended by striking in its entirety Code Section 41-2-8, relating to definitions, and inserting in lieu thereof the following:

"41-2-8.

As used in Code Section 41-2-7, this Code section, and Code Sections 41-2-9 through 41-2-17, the term:

(1) 'Applicable codes' means (A) any optional housing or abatement standard provided in Chapter 2 of Title 8 as adopted by ordinance or operation of law, or other property maintenance standards as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property; (B) any fire or life safety code as provided for in Chapter 2 of Title 25; and (C) any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in Chapter 2 of Title 8 after October 1, provided that such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.

(2) 'Closing' means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.

(3) 'Drug crime' means an act which is a violation of Article 2 of Chapter 13 of Title 16, known as the 'Georgia Controlled Substances Act.'

(4) 'Dwellings, buildings, or structures' means any building or structure or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outhouses, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. As used in Code Section 41-2-7, this Code section, and Code Sections 41-2-9 through 41-2-17, the term 'dwellings, buildings, or structures' shall not mean or include any farm, any building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage, or processing of crops, livestock, poultry, or other farm products.

(5) 'Governing authority' means the board of commissioners or sole commissioner of a county or the council, board of commissioners, board of aldermen, or other legislative body charged with governing a municipality.

(6) 'Interested party' means:

(A) Owner;

(B) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;

(C) Those parties having filed a notice in accordance with Code Section 48-3-9;

(D) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the county courthouse or by the clerk of the court. 'Interested party' shall not include the holder of the benefit or burden of any easement or right of way whose interest is properly recorded which interest shall remain unaffected; and

(E) Persons in possession of said property and premises.

~~(6)~~(7) 'Municipality' means any incorporated city within this state.

~~(7)~~(8) 'Owner' means the holder of the title in fee simple and every mortgagee of record.

~~(8)~~ 'Parties in interest' means:

~~(A) Persons in possession of said property and premises;~~

~~(B) Persons having of record in the county in which the dwelling, building, or structure is located any vested right, title, or interest in or lien upon such dwelling, building, or structure or the lot, tract, or parcel of real property upon which the structure is situated or upon which the public health hazard or general nuisance exists based upon a 50 year~~

1 ~~title examination conducted in accordance with the title standards of the State Bar of~~
2 ~~Georgia;~~

3 ~~(C) Persons having paid an occupational tax to the governing authority for a location~~
4 ~~or office at the subject building or structure; or~~

5 ~~(D) Persons having filed a property tax return with the governing authority as to the~~
6 ~~subject property, building, or structure.~~

7 (9) 'Public authority' means any member of a governing authority, any housing authority
8 officer, or any officer who is in charge of any department or branch of the government
9 of the municipality, county, or state relating to health, fire, or building regulations or to
10 other activities concerning dwellings, buildings, or structures in the county or
11 municipality.

12 (10) 'Public officer' means the officer or officers who are authorized by Code Section
13 41-2-7, this Code section, and Code Sections 41-2-9 through 41-2-17 and by ordinances
14 adopted under Code Section 41-2-7, this Code section, and Code Sections 41-2-9 through
15 41-2-17 to exercise the powers prescribed by such ordinances or any agent of such officer
16 or officers.

17 (11) 'Repair' means altering or improving a dwelling, building, or structure so as to bring
18 the structure into compliance with the applicable codes in the jurisdiction where the
19 property is located and the cleaning or removal of debris, trash, and other materials
20 present and accumulated which create a health or safety hazard in or about any dwelling,
21 building, or structure.

22 (12) 'Resident' means any person residing in the jurisdiction where the property is
23 located on or after the date on which the alleged nuisance arose."

24 **SECTION 2.**

25 Said chapter is further amended in Code Section 41-2-9, relating to county or municipal
26 ordinances relating to unfit buildings or structures, by striking subsections (a) and (b) and
27 inserting in lieu thereof the following:

28 "(a) In addition to any other remedies or enforcement mechanisms available, upon the
29 adoption of an ordinance finding that dwelling, building, or structure conditions of the
30 character described in Code Section 41-2-7 exist within a county or municipality, the
31 governing body of such county or municipality is authorized to adopt ordinances relating
32 to the dwellings, buildings, or structures within such county or municipality which are unfit
33 for human habitation or commercial, industrial, or business uses and not in compliance
34 with applicable codes, which are vacant and being used in connection with the commission
35 of drug crimes, or which constitute an endangerment to the public health or safety as a

1 result of unsanitary or unsafe conditions. Such ordinances shall include at least the
2 following provisions:

3 (1) That it is the duty of the owner of every dwelling, building, structure, or property
4 within the jurisdiction to construct and maintain such dwelling, building, structure, or
5 property in conformance with applicable codes in force within the jurisdiction, or such
6 ordinances which regulate and prohibit activities on property and which declare it to be
7 a public nuisance to construct or maintain any dwelling, building, structure, or property
8 in violation of such codes or ordinances;

9 (2) That a public officer be designated or appointed to exercise the powers prescribed by
10 the ordinances;

11 (3) That whenever a request is filed with the public officer by a public authority or by
12 at least five residents of the municipality or by five residents of the unincorporated area
13 of the county if the property in question is located in the unincorporated area of the
14 county charging that any dwelling, building, structure, or property is unfit for human
15 habitation or for commercial, industrial, or business use and not in compliance with
16 applicable codes; is vacant and being used in connection with the commission of drug
17 crimes; or constitutes an endangerment to the public health or safety as a result of
18 unsanitary or unsafe conditions, the public officer shall make an investigation or
19 inspection of the specific dwelling, building, structure, or property. If the officer's
20 investigation or inspection identifies that any dwelling, building, structure, or property
21 is unfit for human habitation or for commercial, industrial, or business use and not in
22 compliance with applicable codes; is vacant and being used in connection with the
23 commission of drug crimes; or constitutes an endangerment to the public health or safety
24 as a result of unsanitary or unsafe conditions, the public officer may issue a complaint in
25 rem against the lot, tract, or parcel of real property on which such dwelling, building, or
26 structure is situated or where such public health hazard or general nuisance exists and
27 shall cause summons and a copy of the complaint to be served on the ~~owner and parties~~
28 ~~in interest in~~ interested parties for such dwelling, building, or structure. The complaint
29 shall identify the subject real property by appropriate street address and official tax map
30 reference; identify the ~~owner and parties in interest~~ interested parties; state with
31 particularity the factual basis for the action; and contain a statement of the action sought
32 by the public officer to abate the alleged nuisance. The summons shall notify the ~~owner~~
33 ~~and parties in interest~~ interested parties that a hearing will be held before a court of
34 competent jurisdiction as determined by Code Section 41-2-5, at a date and time certain
35 and at a place within the county or municipality where the property is located. Such
36 hearing shall be held not less than 15 days nor more than 45 days after the filing of said
37 complaint in the proper court. The ~~owner and parties in interest~~ interested parties shall

1 have the right to file an answer to the complaint and to appear in person or by attorney
2 and offer testimony at the time and place fixed for hearing;

3 (4) That if, after such notice and hearing, the court determines that the dwelling,
4 building, or structure in question is unfit for human habitation or is unfit for its current
5 commercial, industrial, or business use and not in compliance with applicable codes; is
6 vacant and being used in connection with the commission of drug crimes; or constitutes
7 an endangerment to the public health or safety as a result of unsanitary or unsafe
8 conditions, the court shall state in writing findings of fact in support of such
9 determination and shall issue and cause to be served upon the ~~owner and any parties in~~
10 ~~interest~~ interested parties that have answered the complaint or appeared at the hearing an
11 order:

12 (A) If the repair, alteration, or improvement of the said dwelling, building, or structure
13 can be made at a reasonable cost in relation to the present value of the dwelling,
14 building, or structure, requiring the owner, within the time specified in the order, to
15 repair, alter, or improve such dwelling, building, or structure so as to bring it into full
16 compliance with the applicable codes relevant to the cited violation and, if applicable,
17 to secure the structure so that it cannot be used in connection with the commission of
18 drug crimes; or

19 (B) If the repair, alteration, or improvement of the said dwelling, building, or structure
20 in order to bring it into full compliance with applicable codes relevant to the cited
21 violations cannot be made at a reasonable cost in relation to the present value of the
22 dwelling, building, or structure, requiring the owner, within the time specified in the
23 order, to demolish and remove such dwelling, building, or structure and all debris from
24 the property.

25 For purposes of this Code section, the court shall make its determination of 'reasonable
26 cost in relation to the present value of the dwelling, building, or structure' without
27 consideration of the value of the land on which the structure is situated; provided,
28 however, that costs of the preparation necessary to repair, alter, or improve a structure
29 may be considered. Income and financial status of the owner shall not be factor in the
30 court's determination. The present value of the structure and the costs of repair,
31 alteration, or improvement may be established by affidavits of real estate appraisers with
32 a Georgia appraiser classification as provided in Chapter 39A of Title 43, qualified
33 building contractors, or qualified building inspectors without actual testimony presented.
34 Costs of repair, alteration, or improvement of the structure shall be the cost necessary to
35 bring the structure into compliance with the applicable codes relevant to the cited
36 violations in force in the jurisdiction;

(5) That, if the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure to be repaired, altered, or improved or to be vacated and closed or demolished. Such abatement action shall commence within 270 days after the expiration of time specified in the order for abatement by the owner. Any time during which such action is prohibited by a court order issued pursuant to Code Section 41-2-13 or any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the 270 days in which such abatement action must commence. The public officer shall cause to be posted on the main entrance of the building, dwelling, or structure a placard with the following words:

"This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with drug crimes or constitutes an endangerment to public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful.';

(6) If the public officer has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. The public officer and governing authority are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials; and

(7) That the amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the county tax commissioner or municipal tax collector or city revenue officer, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.

(b)(1) The lien provided for in paragraph (7) of subsection (a) of this Code section shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure, or demolition in the office of the clerk of superior court in the county where the real property is located and shall relate back to the date of the filing of the lis pendens notice required under subsection ~~(g)~~ (c) of Code Section 41-2-12. The clerk of superior court shall record and index such certified copy of the order in the deed records of the county and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior,

1 and shall continue in force until paid. After filing a certified copy of the order with the
2 clerk of superior court, the public officer shall forward a copy of the order and a final
3 statement of costs to the county tax commissioner.

4 (2) Upon final determination of costs, fees, and expenses incurred in accordance with
5 this chapter, the public officer responsible for enforcement actions in accordance with
6 this chapter shall transmit to the appropriate county tax commissioner or municipal tax
7 collector or city revenue officer a statement of the total amount due and secured by said
8 lien, together with copies of all notices provided to interested parties. The statement of
9 the public officer shall be transmitted within 90 days of completion of the repairs,
10 demolition, or closure. It shall be the duty of the appropriate county tax commissioner
11 to collect the amount of the lien in conjunction with the collection of ad valorem taxes
12 on the property and or municipal tax collector or city revenue officer, who is responsible
13 or whose duties include the collection of municipal taxes, to collect the amount of the lien
14 as if it were a real property ad valorem tax; using all methods available for collecting real
15 property ad valorem taxes, including specifically Chapter 4 of Title 48; provided,
16 however, that the limitation of Code Section 48-4-78 which requires 12 months of
17 delinquency before commencing a tax foreclosure shall not apply. A county tax
18 commissioner shall collect and enforce municipal liens imposed pursuant to this chapter
19 in accordance with Code Section 48-5-359.1. The county tax commissioner or municipal
20 tax collector or city revenue officer shall remit the amount collected to the governing
21 authority of the county or municipality whose ordinance lien is being collected ~~enforced~~.
22 ~~Thirty days after imposition of the lien, the unpaid lien amount shall bear interest and~~
23 ~~penalties in the same amount as applicable to interest and penalties on unpaid real~~
24 ~~property ad valorem taxes.~~

25 ~~(2) Where the remittance is to a municipality, the tax commissioner shall collect and~~
26 ~~retain an amount equal to the cost of administering a lien authorized by this chapter~~
27 ~~unless such costs are waived by resolution of the county governing authority. Any such~~
28 ~~amount collected and retained for administration shall be deposited in the general fund~~
29 ~~of the county to pay the cost of administering the lien.~~

30 (3) Enforcement of liens pursuant to this Code section may be initiated at any time
31 following receipt by the county tax commissioner or municipal tax collector or city
32 revenue officer of the final determination of costs in accordance with this chapter. The
33 unpaid lien amount shall bear interest and penalties from and after the date of final
34 determination of costs in the same amount as applicable to interest and penalties on
35 unpaid real property ad valorem taxes. An enforcement proceeding pursuant to Code
36 Section 48-4-78 for delinquent ad valorem taxes may include all amounts due under this
37 chapter.

(4) The redemption amount in any enforcement proceeding pursuant to this Code section shall be the full amount of the costs as finally determined in accordance with this Code section together with interest, penalties, and costs incurred by the governing authority, county tax commissioner, municipal tax collector, or city revenue officer in the enforcement of such lien. Redemption of property from the lien may be made in accordance with the provisions of Code Sections 48-4-80 and 48-4-81."

SECTION 3.

Said chapter is further amended by striking Code Section 41-2-12, relating to service of complaints or orders upon parties in interest and owners of unfit buildings or structures, in its entirety and inserting in lieu thereof the following:

"41-2-12.

(a) Complaints issued by a public officer pursuant to an ordinance adopted under Code Sections 41-2-7 through 41-2-11, this Code section, and Code Sections 41-2-13 through 41-2-17 shall be served in the following manner. ~~In all cases, a copy of the complaint and summons shall be conspicuously posted on the subject dwelling, building, or structure within three business days of filing of the complaint and at least ten days prior to the date of the hearing. A copy of the complaint and summons shall be served in one of the following ways:~~

~~(1) Personal service upon each owner and party in interest if such parties are residents of the county. Service shall be perfected at least ten days prior to the date of the hearing. Service may be made by the public officer designated by ordinance to abate nuisances or by any law enforcement officer of the county or municipality whose ordinance is being enforced; and a return of service, filed with the clerk of the appropriate court, shall be deemed sufficient proof that service was perfected;~~

~~(2) Pursuant to the provisions of Article 5 of Chapter 4 of Title 48; or~~

~~(3) Statutory overnight delivery.~~

~~(b) If any owner or party in interest is a resident of this state but resides outside of the county, service shall be perfected by certified mail or statutory overnight delivery, return receipt requested, to the most recent address shown in county tax filings and mailed at least 14 days prior to the date of the hearing. At least 14 days prior to the date of the hearing, the public officer shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the complaint shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three business days of filing the complaint and at least 14 days prior to the date of the hearing.~~

1 ~~(c)(b)~~ For interested parties Nonresidents of this state, whose mailing address is known,
2 shall be served by certified mail or statutory overnight delivery, return receipt requested,
3 mailed at least 14 days prior to the date of the hearing. For nonresidents whose mailing
4 address is unknown, a notice stating the date, time, and place of the hearing shall be
5 published in the newspaper in which the sheriff's advertisements appear in such county
6 once a week for two consecutive weeks prior to the hearing.

7 ~~(d)~~ In the event either the owner or any party in interest is a minor, an estate, an
8 incompetent person, or person laboring under disabilities, the guardian or other personal
9 representative of such person shall be served and if such guardian or personal
10 representative resides outside the county or is a nonresident of this state, he or she shall be
11 served as provided for in subsection (c) of this Code section. If such owner or party in
12 interest has no guardian or personal representative, service shall be perfected by serving
13 the judge of the probate court of the county wherein such property is located at least 30
14 days prior to the date of the hearing which judge shall stand in the place of and protect the
15 rights of such minor, estate, or incompetent person or appoint a guardian ad litem for such
16 person.

17 ~~(e)~~ In the event of unknown persons or unborn remaindermen who are likely to have any
18 rights in the property or interest or the proceeds thereof, the judge of the probate court of
19 the county wherein such property or interest is located shall be personally served at least
20 30 days prior to the date of the hearing, and it shall be the duty of the judge of the probate
21 court to stand in the place of and protect the rights of such unknown parties or unborn
22 remaindermen.

23 ~~(f)~~ In the event the whereabouts of any owner or party in interest is unknown and the same
24 cannot be ascertained by the public officer in the exercise of reasonable diligence or if any
25 owner or party in interest cannot, after due diligence, be served as provided in this Code
26 section, the public officer shall make an affidavit to that effect and serve by publication in
27 the manner provided in subsection (c) of this Code section, and such publication shall be
28 sufficient proof that service was perfected.

29 ~~(g)~~(c) A notice of lis pendens shall be filed in the office of the clerk of superior court in
30 the county in which the dwelling, building, or structure is located at the time of filing the
31 complaint in the appropriate court. Such notice shall have the same force and effect as
32 other lis pendens notices provided by law.

33 ~~(h)~~(d) Orders and other filings made subsequent to service of the initial complaint shall be
34 served in the manner provided in this Code section on ~~the owner and any party in interest~~
35 interested party who answers the complaint or appears at the hearing. Any interested party
36 who fails to answer or appear at the hearing shall be deemed to have waived all further
37 notice in the proceedings."

SECTION 4.

Chapter 4 of Title 48 of the Official Code of Georgia Annotated, relating to tax sales, is amended in Code Section 48-4-76, relating to judicial in rem tax foreclosures, by adding a new subsection (d) to read as follows:

"(d) The enforcement proceedings authorized by this article may be initiated by a county, by a municipality, by one acting on behalf of the other pursuant to contract, or by joint action in a single proceeding."

SECTION 5.

Said chapter is further amended in Code Section 48-4-78, relating to identification of tax delinquent properties and commencement of tax foreclosure, by striking subsection (a) and inserting in lieu thereof the following:

"(a) After an ad valorem tax lien, based upon a digest approved in accordance with the law, has become payable and is past due and thereby delinquent, a tax commissioner or other tax collector, as appropriate, may identify those properties on which to commence a tax foreclosure in accordance with this article. The tax commissioner or other tax collector, as appropriate, shall not commence tax foreclosure in accordance with this article for a period of 12 months following the date upon which the taxes initially became delinquent. Once enforcement proceedings have commenced in accordance with the provisions of this article, the enforcement proceedings may be amended to include any and all ad valorem taxes which become delinquent subsequent to the date of the initial ad valorem tax lien that was the original basis for the enforcement proceedings."

SECTION 6.

This Act shall become effective on July 1, 2004.

SECTION 7.

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