SENATE SUSBSTITUTE TO HB 322:

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to change and clarify provisions relating to the witnessing requisites of deeds, mortgages, and bills of sale; to provide a procedure for claiming certain United States savings bonds; to provide for the filing of deeds under power within a certain time after a foreclosure sale; to provide for the assessment and collection of a late filing fee; to provide for the remittance of sums collected from such late filing fees; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"44-5-30.

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

SECTION 2.

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

"44-12-237.

(a) Notwithstanding the provisions of subsection (a) of Code Section 44-12-216, United States savings bonds which are unclaimed property and subject to the provisions of Code Section 44-12-190, et seq., the 'Disposition of Unclaimed Property Act,' shall escheat to the State of Georgia three years after becoming unclaimed property and subject to the provisions of Code Section 44-12-190, et seq., and all property rights to such United States savings bonds or proceeds from such bonds shall vest solely in the State of Georgia.

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

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

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

44-12-238.

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

SECTION 3.

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

″44-14-33.

In order to admit a mortgage to record, it ~~must be attested by or acknowledged before an officer as prescribed for the attestation or acknowledgment of deeds of bargain and sale; and, in the case of real property, a mortgage must also be attested or acknowledged by one additional witness~~ shall be signed by the maker, attested by an officer as provided in Code Section 44-2-15, and attested by one other witness. In the absence of fraud, if a mortgage is duly signed, witnessed, filed, recorded, and indexed on the appropriate county land records, such recordation shall be deemed constructive notice to subsequent bona fide purchasers.″

SECTION 4.

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

″44-14-34.

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

SECTION 5.

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

″44-14-37.

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

SECTION 6.

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

″44-14-61.

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

SECTION 7.

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

″44-14-62.

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

SECTION 8.

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

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

SECTION 9.

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

"44-14-160.

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

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

(c) The sums collected as a late filing penalty under subsection (b) of this Code section shall be remitted to the governing authority of the county. If the foreclosed property is located within a municipality, the governing authority of the county shall remit the late filing penalty for such property to the governing authority of such municipality within 30 days of its receipt of the penalty. For each late filing penalty for property located within the corporate limits of a municipality, the governing authority of the county may withhold a 5 percent administrative processing fee from the remittance to such municipality.″

SECTION 10.

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