

House Bill 381 (COMMITTEE SUBSTITUTE)

By: Representatives Corbett of the 174th, Ealum of the 153rd, LaRiccia of the 169th, Shaw of the 176th, and Watson of the 172nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to
2 landlord and tenant, so as to enact a new article to provide for the classification of abandoned
3 mobile homes as derelict or intact for purposes of disposal or creation of liens; to provide for
4 a short title; to provide for legislative intent; to provide for definitions; to provide for
5 procedure for requesting classification of an abandoned mobile home as intact or derelict;
6 to provide for notice; to provide a right to file a lien on abandoned mobile homes deemed to
7 be intact; to provide the opportunity for a hearing to confirm classification as a derelict
8 abandoned mobile home; to provide for court authority to order the disposal of abandoned
9 mobile homes found to be derelict; to provide a process to foreclose a lien on an abandoned
10 mobile home deemed to be intact; to provide for the public sale of an intact abandoned
11 mobile home; to provide for the disposition of proceeds from such public sale; to provide for
12 a process to obtain certificate of title for mobile homes purchased at public sale; to amend
13 Code Section 15-10-2 of the Official Code of Georgia Annotated, relating to general
14 jurisdiction of magistrate courts, so as to provide for jurisdiction of such courts relative to
15 foreclosure of liens of abandoned mobile homes; to provide for related matters; to repeal
16 conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and
20 tenant, is amended by adding a new article to read as follows:

21 "ARTICLE 6

22 44-7-110.

23 This article shall be known and may be cited as the 'Abandoned Mobile Home Act.'

24 44-7-111.

25 The General Assembly finds that abandoned mobile homes are a nuisance that cause blight
 26 and depress property values. This article is intended to provide counties and municipalities
 27 with the authority to appoint an agent to determine the condition of mobile homes in order
 28 for landowners to remove or restore abandoned mobile homes left on their property. It is
 29 the further purpose of this article to provide landowners with the guidance necessary to
 30 efficiently and properly identify and dispose of abandoned mobile homes in this state while
 31 protecting the rights of any owner, lienholder, or other interested parties by performing a
 32 due diligence search, notification, and hearing process.

33 44-7-112.

34 As used in this article, the term:

35 (1) 'Abandoned mobile home' means a mobile home that has been left vacant by all
 36 tenants for at least 90 days without notice to the landowner and upon which there is
 37 evidence of one or more of the following:

38 (A) Failure to pay rent or fees for 90 days;

39 (B) Removal of most or all personal belongings;

40 (C) Cancellation of insurance;

41 (D) Termination of utility services; or

42 (E) A risk to public health, safety, welfare, or the environment.

43 (2) 'Derelict' means an abandoned mobile home which is in need of extensive repair and
 44 is uninhabitable and unsafe due to the presence of one or more of the following
 45 conditions:

46 (A) Inadequate provisions for ventilation, light, air, or sanitation; or

47 (B) Damage caused by fire, flood, hurricane, tornado, earthquake, storm, or other
 48 natural catastrophe.

49 (3) 'Dispose' means to destroy, recycle, or repurpose for use not as living quarters.

50 (4) 'Intact' means an abandoned mobile home which is in livable condition under
 51 applicable state law and the building and health codes of a local governing authority.

52 (5) 'Landowner' means the owner of real property upon which a mobile home is located.

53 (6) 'Local government agent' means a person appointed by a local governing authority
 54 who is qualified to inspect an abandoned mobile home. Such person shall be able to
 55 demonstrate qualification through performance of at least 12 home inspections in the
 56 previous 12 months. Nothing in this article shall be construed to require a local
 57 governing authority to appoint a local government agent.

58 (7) 'Mobile home' means a manufactured home or a mobile home as such terms are
 59 defined in Code Section 8-2-160.

60 (8) 'Responsible party' means any person with an ownership interest in an abandoned
61 mobile home as evidenced by the last payor of record as identified by a search of deeds
62 or instruments of title, and shall include any holder of a recorded lien or the holder of any
63 type of secured interest in the mobile home or a local government with a claim for unpaid
64 taxes.

65 44-7-113.

66 (a) At the request of a landowner upon which an abandoned mobile home is located, a
67 local government agent shall be authorized to assess the condition of such mobile home.
68 Upon inspection, the local government agent shall classify such abandoned mobile home
69 as either intact or derelict and provide documentation citing such determination to the
70 requesting landowner within 20 days of such request.

71 (b) If a local government agent determines an abandoned mobile home to be intact, a
72 landowner shall have a right to file a lien on such abandoned mobile home in the superior
73 court located where the mobile home is located and in the amount of any unpaid rent as of
74 the date on which such lien is filed and accrued fees. Such lien may be foreclosed pursuant
75 to procedure set forth in Code Section 44-7-115.

76 (c) If a local government agent determines an abandoned mobile home to be derelict, such
77 agent shall post notice of such determination in a conspicuous location on such abandoned
78 mobile home. Such notice shall be in substantially the following form:

79 'You are hereby notified that this mobile home (describe make, model, and color, if
80 known) located at (address or description of location) has been deemed abandoned and
81 derelict. You are entitled to a hearing in magistrate court to contest this determination.
82 If you fail to request a hearing within 90 days or if it is confirmed by a court that this
83 abandoned mobile home is derelict, the owner of the land upon which this mobile home
84 sits shall be entitled to dispose of the mobile home.'

85 (d)(1) Upon receipt of a determination that an abandoned mobile home is derelict by a
86 local government agent, a landowner shall send notice, which notice shall include a
87 listing of all responsible parties and last known addresses, to all responsible parties by
88 registered or certified mail or statutory overnight delivery. Such notice shall contain a
89 description of the abandoned mobile home, including the make of the mobile home, the
90 location of such mobile home, and the fact that such abandoned mobile home has been
91 deemed derelict. Such notice shall further include a statement that such responsible party
92 is entitled to request a hearing in magistrate court within 90 days to contest the
93 determination that such abandoned mobile home is derelict and that failure to request
94 such hearing within 90 days of receipt of such notice shall entitle such landowner to
95 dispose of the derelict mobile home.

96 (2) If no responsible parties of such mobile home can be ascertained, the landowner shall
97 place an advertisement in a newspaper of general circulation in the county where such
98 mobile home is located; if there is no newspaper in such county, shall post such
99 advertisement at the county courthouse in such place where other public notices are
100 posted. Such advertisement shall run in the newspaper once a week for two consecutive
101 weeks or shall remain posted at the courthouse for two consecutive weeks. The
102 advertisement shall contain a description of the mobile home, including the make of the
103 mobile home, the location of such mobile home, and the fact that such mobile home has
104 been deemed derelict. Such advertisement shall further include a statement that such
105 responsible party is entitled to request a hearing in magistrate court within 90 days to
106 contest the determination that such abandoned mobile home is derelict and that failure
107 to request such hearing within 90 days of receipt of such notice shall entitle such
108 landowner to dispose of the derelict mobile home.

109 (e) Neither the local governing authority nor the local government agent shall bear any
110 liability with respect to any lawful actions taken to make a determination that a mobile
111 home is abandoned or derelict.

112 44-7-114.

113 (a) After notice to all other responsible parties and the landowner has been sent, and within
114 90 days of receipt of notice that an abandoned mobile home has been determined to be
115 derelict, a responsible party or landowner shall petition a magistrate court to hold a hearing
116 to confirm or deny such decision of a local government agent. If a petition is filed pursuant
117 to this Code section, a hearing on such issue shall be held within ten days.

118 (b) The court shall hear evidence of the condition of the abandoned mobile home, which
119 may include introduction of a copy of the determination from the local government agent,
120 and whether the notice provisions of this article have been met.

121 (c) If, after a full hearing, the court determines the abandoned mobile home to be derelict,
122 the court shall issue an order finding such mobile home to be derelict and authorizing the
123 landowner to dispose of such derelict mobile home. A landowner issued such order shall
124 dispose of such derelict mobile home within 180 days. Within 30 days of disposal of a
125 derelict mobile home, the landowner shall notify the Department of Revenue and local tag
126 agent of such disposal and such department shall cancel the certificate of title for such
127 derelict mobile home, if such certificate exists.

128 44-7-115.

129 Notwithstanding any conflicting provisions in Code Section 44-14-349, all liens acquired
130 upon an abandoned and intact mobile home under Code Section 44-7-113 shall be
131 foreclosed as follows:

132 (1) Any proceeding to foreclose a lien on an abandoned mobile home determined to be
133 intact by a local government agent must be instituted in the magistrate court of the county
134 where such mobile home is located within one year from the time the lien is recorded;

135 (2) The person desiring to foreclose a lien on an abandoned mobile home determined to
136 be intact by a local government agent shall, by certified or registered mail or statutory
137 overnight delivery, make a demand upon the responsible party in the amount of the lien
138 and for the payment of rent and fees accrued after the filing of the lien; provided that the
139 daily amount of such rent shall not exceed \$3.00. If the responsible party cannot be
140 located, notice shall be published in a newspaper of general circulation for two
141 consecutive weeks;

142 (3)(A) If, within 30 days of delivery to the appropriate address of the written demand
143 required by paragraph (2) of this Code section, the responsible party fails to respond to
144 such demand or refuses to pay, or if the responsible party cannot be ascertained, the
145 landowner may foreclose such lien. The person asserting such lien may move to
146 foreclose by making an affidavit to a magistrate court showing all facts necessary to
147 constitute such lien and the amount claimed to be due. Such affidavit shall aver that the
148 notice requirements of Code Section 44-7-113 have been complied with, and such
149 affidavit shall also aver that a demand for payment has been made and refused or that
150 the identity of the responsible party cannot be ascertained. The landowner shall verify
151 the statement by oath or affirmation with a signature affixed thereto.

152 (B) The fee for filing such affidavit shall be \$5.00 per abandoned mobile home upon
153 which a lien is asserted;

154 (4)(A) Upon the filing of such affidavit, the person asserting such lien shall give the
155 clerk or judge of the court the address, if known, of all responsible parties and the clerk
156 or judge of the court shall serve notice informing such responsible parties of a right to
157 a hearing to determine if reasonable cause exists to believe that a valid debt exists; that
158 such hearing must be petitioned for within 30 days of receipt of such notice; and that,
159 if no petition for such hearing is filed within the time allowed, the lien shall
160 conclusively be deemed a valid one, foreclosure thereof allowed, and a public sale
161 pursuant to Code Section 44-7-116 authorized.

162 (B) Any notice required by this paragraph shall be by certified mail or statutory
163 overnight delivery or, if the responsible party is unknown, by posting such notice at the
164 county courthouse in such place where other public notices are posted;

165 (5) If a petition for a hearing is filed within the time allowed pursuant to paragraph (4)
 166 of this Code section, the magistrate court shall set such a hearing within ten days of filing
 167 of the petition. If, at the hearing, the magistrate court determines there is reasonable
 168 cause to believe that a valid debt exists, then the person asserting the lien shall retain
 169 possession of the mobile home or the court shall obtain possession of the mobile home,
 170 as ordered by the court;

171 (6) Within five days of the hearing, a party defendant must petition the magistrate court
 172 for a full hearing on the validity of the debt if a further determination of the validity of
 173 the debt is desired. If no such petition is filed, the lien for the amount determined
 174 reasonably due shall conclusively be deemed a valid one and foreclosure thereof allowed.
 175 If such a petition is filed, the magistrate court shall set a full hearing thereon within 15
 176 days of the filing of the petition. Upon the filing of such petition by a party defendant,
 177 neither the prosecuting lienholder nor the court may sell the mobile home;

178 (7) If, after a full hearing, the magistrate court finds that a valid debt exists, then the
 179 court shall authorize foreclosure upon and sale of the mobile home subject to the lien to
 180 satisfy the debt if such debt is not otherwise immediately paid;

181 (8) If the magistrate court finds the actions of the person asserting the lien in retaining
 182 possession of the mobile home were not taken in good faith, then the court, in its
 183 discretion, may award damages to the owner and to any party which has been deprived
 184 of the rightful use of the mobile home; and

185 (9) If no petition for a hearing is filed, or if, after a full hearing, the magistrate court
 186 determines that a valid debt exists, the court shall issue an order authorizing the sale of
 187 such mobile home. However, the holder of a security interest in or a lien on the mobile
 188 home, other than the holder of a lien created by Code Section 44-7-113, shall have the
 189 right, in the order of priority of such security interest or lien, to pay the debt and court
 190 costs. If the holder of a security interest or lien does so pay the debt and court costs, such
 191 person shall have the right to possession of the mobile home, and that person's security
 192 interest in or lien on such mobile home shall be increased by the amount so paid. A
 193 magistrate court order shall be issued to this effect, and in this instance there shall not be
 194 a sale of the mobile home.

195 44-7-116.

196 (a)(1) As used in this subsection, the term 'public sale' means a sale:

197 (A) Held at a place reasonably available to persons who might desire to attend and
 198 submit bids;

199 (B) At which those attending shall be given the opportunity to bid on a competitive
 200 basis;

201 (C) At which the sale, if made, shall be made to the highest and best bidder; and
 202 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the
 203 advertising of public sales, of which notice is given by advertisement once a week for
 204 two weeks in the newspaper in which the sheriff's advertisements are published in the
 205 county where the sale is to be held, and which notice shall state the day and hour,
 206 between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the
 207 goods to be sold.

208 (2) Upon order of the magistrate court, the person holding the lien on the abandoned
 209 mobile home shall be authorized to sell such mobile home at public sale.

210 (b) After satisfaction of the lien, the person selling such mobile home shall, not later
 211 than 30 days after the date of such sale, provide the clerk of the court with a copy of the bill
 212 of sale as provided to the purchaser and turn the remaining proceeds of such sale, if any,
 213 over to the clerk of the court. Any person who fails to comply with the requirements of this
 214 subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished
 215 as for a misdemeanor.

216 44-7-117.

217 The clerk of the court shall retain the remaining balance of the proceeds of a sale under
 218 Code Section 44-7-116, after satisfaction of liens, security interests, and debts, for a period
 219 of 12 months; and, if no claim has been filed against such proceeds by the owner of the
 220 abandoned mobile home or any interested party, then the clerk shall pay such remaining
 221 balance into the general fund of the municipality or county that employs the local
 222 government agent making the determination that such mobile home was intact pursuant to
 223 Code Section 44-7-113.

224 44-7-118.

225 The purchaser at a sale as authorized in this article shall receive a certified copy of the
 226 court order authorizing such sale. Any such purchaser may obtain a certificate of title to
 227 such mobile home by filing the required application, paying the required fees, and filing
 228 a certified copy of the order of the court with the Department of Revenue. The Department
 229 of Revenue shall then issue a certificate of title, which shall be free and clear of all liens
 230 and encumbrances."

231 **SECTION 2.**

232 Code Section 15-10-2 of the Official Code of Georgia Annotated, relating to general
 233 jurisdiction of magistrate courts, is amended by revising paragraphs (14) and (15) and adding
 234 a new paragraph to read as follows:

