

The Senate Committee on Judiciary offered the following substitute to HB 1292:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 44 and 45 of the Official Code of Georgia Annotated, relating to property
2 and public officers and employees, respectively, so as to require that real estate documents
3 presented by self-filers be recorded using electronic filing; to require the promulgation of
4 rules and regulations by the Georgia Superior Court Clerks' Cooperative Authority to ensure
5 that persons presenting electronic documents for recording provide identifying information;
6 to require that notaries public keep a journal of each notarial act performed for a self-filer;
7 to provide for education and training requirements of notaries public; to provide for the
8 promulgation of rules and regulations; to amend Titles 10, 23, and 51 of the Official Code
9 of Georgia Annotated, relating to commerce and trade, equity, and torts, respectively, so as
10 to provide protections concerning real estate transactions; to require certain notices be
11 included in certain solicitations regarding the purchase of real property; to provide penalties;
12 to provide remedies for fraudulently recorded deeds or other instruments; to provide for the
13 recovery of costs and attorney's fees in certain quiet title actions; to provide for a civil cause
14 of action for the recording of fraudulent or forged deeds or other instruments; to provide for
15 related matters; to provide for effective dates; to repeal conflicting laws; and for other
16 purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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PART I
SECTION 1-1.

20 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
21 revising Code Section 44-2-2, relating to the duty of clerk to record certain transaction
22 affecting real estate and personal property, priority of recorded instruments, electronic
23 filings, effect of incorrect tax parcel identification number, and effect of recording on rights
24 between parties to instruments, as follows:

25 "44-2-2.

26 (a) As used in this Code section, the term 'self-filer' means any person who is a party to
27 an instrument listed in paragraph (1) of subsection (b) of this Code section who is not:

28 (1) An insurance agent or a representative of an insurance agency licensed to sell title
29 insurance in this state;

30 (2) An attorney licensed to practice law in this state or a representative of an attorney
31 licensed to practice law in this state;

32 (3) Licensed under Chapter 40 of Title 43;

33 (4) An agent of a bank or credit union with federal deposit insurance or an affiliate
34 thereof;

35 (5) An agent of a licensed or exempt mortgage lender pursuant to Article 13 of Chapter 1
36 of Title 7;

37 (6) An agent of a servicer as such term is defined in 12 C.F.R. Section 1024.2;

38 (7) A public official or employee of a federal, state, or local government or a department,
39 agency, board, commission, or authority thereof performing their official duties; or

40 (8) A professional land surveyor licensed under Chapter 15 of Title 43 and in good
41 standing with the Georgia Professional Engineers and Land Surveyors Board.

42 ~~(a)~~(b)(1) The clerk of the superior court shall file, index on a computer program designed
43 for such purpose, and permanently record, in the manner provided constructively in Code

44 Sections 15-6-61 and 15-6-66, the following instruments conveying, transferring,
45 encumbering, or affecting real estate and personal property:

46 (A) Deeds;

47 (B) Mortgages;

48 (C) Liens as provided for by law;

49 (D) Maps or plats relating to real estate in the county; and

50 (E) State tax executions and state tax execution renewals as provided for in Article 2
51 of Chapter 3 of Title 48.

52 (2) As used in this subsection, the term 'liens' shall have the same meaning as described
53 in Code Sections 15-19-14, 44-14-320, and 44-14-602 and shall include all liens provided
54 by state or federal statute.

55 (3) When indexing liens, the clerk shall index the names of parties in the manner
56 provided by such rules and regulations adopted by the Georgia Superior Court Clerks'
57 Cooperative Authority pursuant to the provisions of Code Section 15-6-61 as authorized
58 by Code Section 15-6-97.

59 (4) When indexing maps or plats relating to real estate in the county, the clerk of the
60 superior court shall index the names or titles provided in the caption of the plat.

61 ~~(b)~~(c) Deeds, mortgages, and liens of all kinds which are required by law to be recorded
62 in the office of the clerk of the superior court and which are against the interests of third
63 parties who have acquired a transfer or lien binding the same property and who are acting
64 in good faith and without notice shall take effect only from the time they are filed for
65 record in the clerk's office.

66 ~~(e)~~(d)(1) The clerk of the superior court shall offer electronic filing for the recording of
67 all instruments listed in paragraph (1) of subsection ~~(a)~~(b) of this Code section. On and
68 after January 1, 2025, any instrument listed in paragraph (1) of subsection (b) of this
69 Code section presented to a clerk of superior court for recording by a self-filer shall be
70 submitted using electronic filing.

71 ~~(d)~~(e) The clerk of the superior court shall make available a public computer terminal
72 which provides a filer with access to the Georgia Superior Court Clerks' Cooperative
73 Authority's electronic filing portal.

74 ~~(e)~~(f) The presence of an incorrect tax parcel identification number, or the absence of a tax
75 parcel identification number, on a recorded instrument shall not:

76 (1) Void or render voidable such instrument;

77 (2) Affect the validity, enforceability, or priority of such instrument; or

78 (3) Affect any notice, constructive or otherwise, provided by the recordation of such
79 instrument.

80 ~~(f)~~(g) Nothing in this Code section shall be construed to affect the validity, enforceability,
81 or priority of any deed, mortgage, judgment, or lien of any kind between the parties
82 thereto."

83

SECTION 1-2.

84 Said title is further amended by revising Code Section 44-2-39, relating to the adoption of
85 rules and regulations and standardization, as follows:

86 "44-2-39.

87 (a) The authority shall adopt rules and regulations and any standardized forms necessary
88 to implement this part.

89 (b)(1) The rules and regulations adopted by the authority pursuant to this Code section
90 shall include any rules and regulations necessary to ensure that any individual wanting
91 to submit electronic documents for recording, regardless of whether such individual is
92 acting on his or her own behalf or on behalf of another person and prior to such
93 individual submitting to a clerk of the superior court any electronic documents for
94 recording, provide through the authority's electronic filing portal information sufficient
95 to identify such individual. Such information may include, without limitation, a copy of

96 the individual's driver's license, passport, military identification card, or personal
97 identification card authorized under Code Sections 40-5-100 through 40-5-104.

98 (2) Any information required to be provided by an individual pursuant to the rules and
99 regulations adopted by the authority pursuant to paragraph (1) of this subsection shall be
100 retained by the authority, shall not be subject to Article 4 of Chapter 18 of Title 50, and
101 shall be treated as confidential and released only:

102 (A) To peace officers in the course of investigating potential crimes;

103 (B) In response to a subpoena, discovery request, or court order;

104 (C) To an individual who holds a recorded interest in real property that was the subject
105 of an electronic document that was submitted for recording by the individual who
106 provided such information; or

107 (D) To an individual who is named as a party in an electronic document that was
108 submitted for recording by the individual who provided such information.

109 (c) To promote uniform standards and practices and compatibility of technology used
110 within offices of clerks of superior court in this state and recording offices in other states
111 that have enacted or may enact provisions substantially similar to those contained within
112 this part, the authority shall consider when adopting, amending, and repealing its rules and
113 regulations and any standardized forms:

114 (1) Standards and practices of other jurisdictions;

115 (2) The most recent standards promulgated by national standard-setting bodies, such as
116 the Property Records Industry Association;

117 (3) The views of interested persons and governmental officials and entities;

118 (4) The needs of counties of varying size, population, and resources; and

119 (5) Standards that ensure that electronic documents are accurate, authentic, adequately
120 preserved, and resistant to tampering."

121

SECTION 1-3.

122 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,
123 is amended by revising Code Section 45-17-8, relating to powers and duties generally of
124 notaries public, as follows:

125 "45-17-8.

126 (a) Notaries public shall have authority to:

127 (1) Witness or attest signature or execution of deeds and other written instruments;

128 (2) Take acknowledgments;

129 (3) Administer oaths and affirmations in all matters incidental to their duties as
130 commercial officers and all other oaths and affirmations which are not by law required
131 to be administered by a particular officer;

132 (4) Witness affidavits upon oath or affirmation;

133 (5) Take verifications upon oath or affirmation;

134 (6) Make certified copies, provided that the document presented for copying is an
135 original document and is neither a public record nor a publicly recorded document,
136 certified copies of which are available from an official source other than a notary, and
137 provided that the document was photocopied under supervision of the notary; and

138 (7) Perform such other acts as they are authorized to perform by other laws of this state.

139 (b) No notary shall be obligated to perform a notarial act if he or she feels such act is:

140 (1) For a transaction which the notary knows or suspects is illegal, false, or deceptive;

141 (2) For a person who is being coerced;

142 (3) For a person whose demeanor causes compelling doubts about whether the person
143 knows the consequences of the transaction requiring the notarial act; or

144 (4) In situations which impugn and compromise the notary's impartiality, as specified in
145 subsection (c) of this Code section.

146 (c) A notary shall be disqualified from performing a notarial act in the following situations
147 which impugn and compromise the notary's impartiality:

- 148 (1) When the notary is a signer of the document which is to be notarized; or
149 (2) When the notary is a party to the document or transaction for which the notarial act
150 is required.
- 151 (d) A notary public shall not execute a notarial certificate containing a statement known
152 by the notary to be false nor perform any action with an intent to deceive or defraud.
- 153 (e) In performing any notarial act, a notary public shall confirm the identity of the
154 document signer, oath taker, or affirmant ~~based on personal knowledge or on satisfactory~~
155 ~~evidence. Such satisfactory evidence shall include, but not be limited to, by verification~~
156 of a government issued photo identification document, including without limitation a valid
157 driver's license, personal identification card authorized under Code Sections 40-5-100
158 through 40-5-104, or a military identification card such as a Veterans Health Identification
159 Card issued by the United States Department of Veterans Affairs, or based on personal
160 knowledge.
- 161 (f) The signature of a notary public documenting a notarial act shall not be evidence to
162 show that such notary public had knowledge of the contents of the document so signed,
163 other than those specific contents which constitute the signature, execution,
164 acknowledgment, oath, affirmation, affidavit, verification, or other act which the signature
165 of that notary public documents, nor is a certification by a notary public that a document
166 is a certified or true copy of an original document evidence to show that such notary public
167 had knowledge of the contents of the document so certified.
- 168 (g)(1) As used in this subsection, the term 'self-filer' shall have the same meaning as
169 provided in Code Section 44-2-2.
- 170 (2) A notary public shall maintain a written or electronic journal which shall include an
171 entry for each notarial act performed at the request of a self-filer. Each such entry shall
172 include the name of the self-filer; the self-filer's address; the self-filer's telephone
173 number; the date, time, and location of notarization; the type of government issued photo
174 identification document presented by the self-filer, unless the identity of the self-filer was

175 confirmed based on personal knowledge; elements of such identification document, if
 176 applicable, including any identifying number; the self-filer's signature; and the type of
 177 document presented for notarization.

178 (h)(1) A notary public shall complete an educational training class relating to the duties
 179 of notaries public as provided for in this chapter. Such training shall be completed prior
 180 to the initial appointment and within 30 days prior to each subsequent renewal
 181 appointment.

182 (2) The Georgia Superior Court Clerks' Cooperative Authority may adopt rules and
 183 regulations necessary to implement the provisions of this subsection."

184 **PART II**

185 **SECTION 2-1.**

186 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
 187 amended in Code Section 10-1-393.19, relating to unsolicited inquiries, by adding a new
 188 subparagraph to paragraph (1) of subsection (a), revising subsection (b), and adding a new
 189 subsection to read as follows:

190 "(A.1)(i) If the solicitation includes a monetary offer, following the text required in
 191 subparagraph (A) of this paragraph, the following notice in capital letters:

192 'THIS OFFER MAY OR MAY NOT BE THE FAIR MARKET VALUE
 193 OF THE PROPERTY.'

194 (ii) If the solicitation includes a monetary offer less than the value of the previous
 195 year's assessed value for ad valorem taxation by the county tax assessor for the county
 196 in which the property is located, following the text required in subdivision (i) of this
 197 subparagraph, the following notice in capital letters:

198 'THIS OFFER IS LESS THAN THE COUNTY ASSESSED VALUE FOR
 199 THIS PROPERTY.'

200 "(b) Failure to comply with the provisions of this Code section shall be considered an
201 unfair or deceptive act or practice which is unlawful and shall therefore be punishable by
202 the provisions of this part; provided, however, that notwithstanding Code Section 10-1-399,
203 a claim of a violation of this Code section may be brought in a representative capacity and
204 may be the subject of a class action under Code Section 9-11-23; and provided, further, that
205 damages for such violation shall be three times the actual damages sustained
206 or ~~\$200.00~~ \$600.00 per violation, whichever is greater.

207 (c) Any person who violates the provisions of subsection (a) of this Code section shall be
208 guilty of a misdemeanor."

209 **SECTION 2-2.**

210 Title 23 of the Official Code of Georgia Annotated, relating to equity, is amended by revising
211 Code Section 23-3-41, relating to when relief is granted and costs, as follows:

212 "23-3-41.

213 (a) In all proceedings quia timet or proceedings to remove clouds upon titles to real estate,
214 if a proper case is made, the relief sought shall be granted to any complainant irrespective
215 of whether the invalidity of the instrument sought to be canceled appears upon the face of
216 the instrument or whether the invalidity appears or arises solely from facts outside of the
217 instrument.

218 (b) In such cases the costs shall be taxed against the litigants in the discretion of the court;
219 provided, however, that, in any case where it is found that the defendant fraudulently
220 created the instrument that is sought to be cancelled, the complainant shall be entitled to
221 recover all costs, including reasonable attorney's fees, incurred in bringing the action to
222 cancel such instrument."

223 **SECTION 2-3.**

224 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended in Chapter 9,
225 relating to injuries to real estate, by adding a new Code section to read as follows:

226 "51-9-12.

227 (a) In addition to any other remedy that may be available at law or in equity, the owner of
228 any real property may bring an action against an individual who has knowingly filed,
229 entered, or recorded, or caused to be filed, entered, or recorded, in any public record a false
230 or forged deed or other instrument purporting to convey the owner's interest to such real
231 property to such individual or a third party or purporting to encumber the owner's interest
232 in such real property to:

233 (1) Recover the owner's actual damages caused by the filing, entering, or recording of
234 such false or forged deed or other instrument or \$5,000.00, whichever is greater; and

235 (2) Recover the owner's costs incurred in bringing such action, including reasonable
236 attorney's fees.

237 (b) Nothing in this Code section shall be construed as creating a cause of action against
238 any public official or employee, including, without limitation, a clerk of the superior court
239 or any employee or agent of a clerk of the superior court, for actions taken in the
240 performance of his or her duties."

241 **PART III**242 **SECTION 3-1.**

243 (a) Except as provided for in subsection (b) of this section, this Act shall become effective
244 upon its approval by the Governor or upon its becoming law without such approval.

245 (b) Part I of this Act shall become effective on January 1, 2025.

246

SECTION 3-2.

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