

10 LC 36 1558
House Bill 1228

By: Representatives Bryant of the 160th, Stephens of the 161st, Gordon of the 162nd, Long of the 61st, Day of the 163rd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Part 1 of Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to foreclosure generally, so as to allow for the right of redemption of foreclosed mortgages under certain circumstances; to provide for certain information to be included in the advertisements of certain foreclosure sales; to provide for related matters; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 1 of Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to foreclosure generally, is amended by inserting a new Code section to read as follows:

"44-14-160.1.

(a) As used in this Code section, the term:

(1) 'Mortgage' means any mortgage, deed of trust, or any other instrument intended to secure the payment of money.

(2) 'Sale' or 'sold' means any execution, judgment, or foreclosure sale, whether the sale is made under any power of sale in any mortgage or deed or statutory power of sale or by virtue of any judgment in any court of competent jurisdiction.

(b) The statutory rights of redemption given or conferred by this Code section are mere personal privileges and not property or property rights. The privileges must be exercised in the mode and manner prescribed in this Code section and may not be waived in a deed, judgment, or mortgage or in any agreement before foreclosure or execution sale.

(c) If a mortgaged property is foreclosed on and sold and the property is purchased at the foreclosure sale by the mortgage holder or its agent, the debtor, if he or she has owned the property for five years or longer prior to the date of the foreclosure sale, has 90 days to redeem the property and void the sale thereof. In order to redeem the property, the debtor must tender, in cash, the total amount due under the mortgage, plus interest at the rate specified in the mortgage, plus a 12 percent penalty on the amount due and payable.

(d) If a mortgaged property is foreclosed on and sold and the property is purchased at the foreclosure sale by a third party, the debtor, if he or she has owned the property for five years or longer prior to the date of the foreclosure sale, has 90 days to redeem the property and void the sale thereof. In order to redeem the property, the debtor must tender, in cash, a

20 percent redemption fee on all sums exceeding the total amount due under the mortgage amount that the third party paid at the foreclosure sale.

(e) Anyone desiring and entitled to redeem under the provisions of this Code section may make written demand of the purchaser or his or her transferees for a statement in writing of the debt and all lawful charges claimed by him or her, and such purchaser or their transferees shall, within ten days after such written demand, furnish such person making the demand with a written, itemized statement of all lawful charges claimed by him or her. If the purchaser or his or her transferee fails to furnish a written, itemized statement of all lawful charges within ten days after demand, he or she shall forfeit all claims or right to compensation.

(f) The right of redemption contained in this Code section shall be extinguished if the mortgage holder offers the debtor a six-month preforeclosure stay on foreclosure on a loan delinquent for at least 61 days.

(g) This Code section applies only to mortgages foreclosed on or after January 1, 2011."

SECTION 2.

Said part is further amended by revising Code Section 44-14-162, relating to sales made under power of sale and manner of advertisement and conduct necessary for validity, as follows:

"44-14-162.

(a) No sale of real estate under powers contained in mortgages, deeds, or other lien contracts shall be valid unless the sale shall be advertised and conducted at the time and place and in the usual manner of the sheriff's sales in the county in which such real estate or a part thereof is located and unless notice of the sale shall have been given as required by Code Section 44-14-162.2. If the advertisement contains the street address, city, and ZIP Code of the property, such information shall be clearly set out in ~~bold~~ boldface type. In addition to any other matter required to be included in the advertisement of the sale, if the property encumbered by the mortgage, security deed, or lien contract has been transferred or conveyed by the original debtor to a new owner and an assumption by the new owner of the debt secured by said mortgage, security deed, or lien contract has been approved in writing by the secured creditor, then the advertisement ~~should~~ shall also include a recital of the fact of such transfer or conveyance and the name of the new owner, as long as information regarding any such assumption is readily discernable by the foreclosing creditor. Failure to include such a recital in the advertisement, however, shall not invalidate an otherwise valid foreclosure sale. The advertisement shall indicate if the property is owner occupied residential property; provided, however, that failure to include such information in the advertisement shall not invalidate an otherwise valid foreclosure sale.

(b) The security instrument or assignment thereof vesting the secured creditor with title to the security instrument shall be filed prior to the time of sale in the office of the clerk of the superior court of the county in which the real property is located."

SECTION 3.

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