

House Bill 1292 (COMMITTEE SUBSTITUTE)

By: Representatives Okoye of the 102nd, Burns of the 159th, Efstoration of the 104th, Beverly of the 143rd, Reeves of the 99th, and others

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 that notaries public
4 keep a journal of each notarial act performed; to provide for education and training
5 requirements of notaries public; to provide for the promulgation of rules and regulations; to
6 amend Titles 23 and 51 of the Official Code of Georgia Annotated, relating to equity and
7 torts, respectively, so as to provide remedies for fraudulently recorded deeds or other
8 instruments; to provide for the recovery of costs and attorney's fees in certain quiet title
9 actions; to provide for a civil cause of action for the recording of fraudulent or forged deeds
10 or other instruments; to provide for related matters; to repeal conflicting laws; and for other
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

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

20 "44-2-2.

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

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

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

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

28 (4) An agent of a national or state chartered bank or any federally insured financial
29 institution or credit union or affiliate thereof;

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

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

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

35 ~~(a)~~(b)(1) The clerk of the superior court shall file, index on a computer program designed
36 for such purpose, and permanently record, in the manner provided constructively in Code
37 Sections 15-6-61 and 15-6-66, the following instruments conveying, transferring,
38 encumbering, or affecting real estate and personal property:

- 39 (A) Deeds;
40 (B) Mortgages;
41 (C) Liens as provided for by law;
42 (D) Maps or plats relating to real estate in the county; and
43 (E) State tax executions and state tax execution renewals as provided for in Article 2
44 of Chapter 3 of Title 48.

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

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

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

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

59 ~~(c)~~(d)(1) The clerk of the superior court shall offer electronic filing for the recording of all
60 instruments listed in paragraph (1) of subsection ~~(a)~~(b) of this Code section. On and after
61 January 1, 2025, any instrument listed in paragraph (1) of subsection (b) of this Code
62 section presented to a clerk of superior court for recording by a self-filer shall be submitted
63 using electronic filing.

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

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

- 69 (1) Void or render voidable such instrument;
70 (2) Affect the validity, enforceability, or priority of such instrument; or
71 (3) Affect any notice, constructive or otherwise, provided by the recordation of such
72 instrument.

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

76 **SECTION 1-2.**

77 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,
78 is amended by revising Code Section 44-17-8, relating to powers and duties generally of
79 notaries public, as follows:

80 "45-17-8.

81 (a) Notaries public shall have authority to:

- 82 (1) Witness or attest signature or execution of deeds and other written instruments;
83 (2) Take acknowledgments;
84 (3) Administer oaths and affirmations in all matters incidental to their duties as
85 commercial officers and all other oaths and affirmations which are not by law required
86 to be administered by a particular officer;
87 (4) Witness affidavits upon oath or affirmation;
88 (5) Take verifications upon oath or affirmation;

- 89 (6) Make certified copies, provided that the document presented for copying is an
90 original document and is neither a public record nor a publicly recorded document,
91 certified copies of which are available from an official source other than a notary, and
92 provided that the document was photocopied under supervision of the notary; and
- 93 (7) Perform such other acts as they are authorized to perform by other laws of this state.
- 94 (b) No notary shall be obligated to perform a notarial act if he or she feels such act is:
- 95 (1) For a transaction which the notary knows or suspects is illegal, false, or deceptive;
- 96 (2) For a person who is being coerced;
- 97 (3) For a person whose demeanor causes compelling doubts about whether the person
98 knows the consequences of the transaction requiring the notarial act; or
- 99 (4) In situations which impugn and compromise the notary's impartiality, as specified in
100 subsection (c) of this Code section.
- 101 (c) A notary shall be disqualified from performing a notarial act in the following situations
102 which impugn and compromise the notary's impartiality:
- 103 (1) When the notary is a signer of the document which is to be notarized; or
- 104 (2) When the notary is a party to the document or transaction for which the notarial act
105 is required.
- 106 (d) A notary public shall not execute a notarial certificate containing a statement known
107 by the notary to be false nor perform any action with an intent to deceive or defraud.
- 108 (e) In performing any notarial act, a notary public shall confirm the identity of the
109 document signer, oath taker, or affirmant ~~based on personal knowledge or on satisfactory~~
110 ~~evidence. Such satisfactory evidence shall include, but not be limited to, by verification~~
111 of a government issued photo identification document, including without limitation a valid
112 driver's license, personal identification card authorized under Code Sections 40-5-100
113 through 40-5-104, or a military identification card such as a Veterans Health Identification
114 Card issued by the United States Department of Veterans Affairs, or based on personal
115 knowledge.

116 (f) The signature of a notary public documenting a notarial act shall not be evidence to
117 show that such notary public had knowledge of the contents of the document so signed,
118 other than those specific contents which constitute the signature, execution,
119 acknowledgment, oath, affirmation, affidavit, verification, or other act which the signature
120 of that notary public documents, nor is a certification by a notary public that a document
121 is a certified or true copy of an original document evidence to show that such notary public
122 had knowledge of the contents of the document so certified.

123 (g) A notary public shall maintain a written or electronic journal which shall include an
124 entry for each notarial act performed. Each such entry shall include the name of the signer;
125 the signer's address; the signer's telephone number; the date, time, and location of
126 notarization; the type of government issued photo identification document presented by the
127 signer; elements of such identification document, including any identifying number; the
128 signer's signature; and the type of document presented for notarization.

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

133 (2) The Georgia Superior Court Clerks' Cooperative Authority may adopt rules and
134 regulations necessary to implement this subsection."

135 **PART II**

136 **SECTION 2-1.**

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

139 "23-3-41.

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

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

150 **SECTION 2-2.**

151 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
152 a new Code section to read as follows:

153 "51-9-12.

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

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

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

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

168

PART III

169

SECTION 3-1.

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

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

173

SECTION 3-2.

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