

House Bill 381(AS PASSED HOUSE AND SENATE)

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 provisions for the classification of abandoned mobile
3 homes as derelict or intact for purposes of disposal or filing of liens; to provide for a short
4 title; to provide for legislative intent; to provide for definitions; to provide for a procedure
5 for requesting classification of an abandoned mobile home as intact or derelict; to provide
6 for notice; to provide for a right to file a lien on abandoned mobile homes deemed to be
7 intact; to provide for 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 for a process to foreclose a lien on an
10 abandoned mobile home deemed to be intact; to provide for right to an appeal; to provide for
11 the public sale of an intact abandoned mobile home; to provide for the disposition of
12 proceeds from such public sale; to provide for a process to obtain certificate of title for
13 mobile homes purchased at public sale; to amend Code Section 15-10-2 of the Official Code
14 of Georgia Annotated, relating to general jurisdiction of magistrate courts, so as to provide
15 for jurisdiction of such courts relative to foreclosure of liens of abandoned mobile homes;
16 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
17 for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 SECTION 1.

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

22 "ARTICLE 6

23 44-7-110.

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

25 44-7-111.

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

34 44-7-112.

35 As used in this article, the term:

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

39 (A) A tenant's failure to pay rent or fees for 90 days;

40 (B) Removal of most or all personal belongings from such mobile home;

41 (C) Cancellation of insurance for such mobile home;

42 (D) Termination of utility services to such mobile home; or

43 (E) A risk to public health, safety, welfare, or the environment due to such mobile
 44 home.

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

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

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

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

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

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

55 (6) 'Local government agent' means a person appointed by a local governing authority
 56 who is qualified to inspect an abandoned mobile home by demonstrating that he or she
 57 is qualified to determine if the abandoned mobile home is derelict or intact.

58 (7) 'Manufactured home' shall have the same meaning as set forth in Code
 59 Section 8-2-160.

60 (8) 'Mobile home' shall have the same meaning as set forth in Code Section 8-2-160 and
 61 shall include a manufactured home.

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

67 44-7-113.

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

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

78 (c) If a local government agent determines an abandoned mobile home to be derelict, such
 79 agent shall post notice of such determination in a conspicuous location on such abandoned
 80 mobile home. Such notice shall include a date of issuance and shall be in substantially the
 81 following form:

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

89 (d)(1) Upon receipt of a determination that an abandoned mobile home is derelict by a
 90 local government agent, and on the same date the notice required by subsection (c) of this
 91 Code section is posted, a landowner shall send notice, which notice shall include a listing
 92 of all responsible parties and last known addresses, to all responsible parties by registered
 93 or certified mail or statutory overnight delivery. Such notice shall contain a description
 94 of the abandoned mobile home, including the make of the mobile home, the location of
 95 such mobile home, and the fact that such abandoned mobile home has been deemed

96 derelict. Such notice shall include a statement that such responsible party is entitled to
 97 request a hearing in magistrate court within 90 days from the date that appears on such
 98 notice to contest the determination that such abandoned mobile home is derelict and that
 99 failure to request such hearing within 90 days of receipt of such notice shall entitle such
 100 landowner to dispose of the derelict mobile home.

101 (2) If no responsible party can be ascertained, the landowner shall place an advertisement
 102 in a newspaper of general circulation in the county where such mobile home is located;
 103 if there is no newspaper in such county, shall post such advertisement at the county
 104 courthouse in such place where other public notices are posted. Such advertisement shall
 105 run in the newspaper once a week for two consecutive weeks or shall remain posted at
 106 the courthouse for two consecutive weeks. The advertisement shall contain a description
 107 of the mobile home, including the make of the mobile home, the location of such mobile
 108 home, and the fact that such mobile home has been deemed derelict. Such advertisement
 109 shall include a statement that such responsible party is entitled to request a hearing in
 110 magistrate court by a date certain and the advertisement shall state the specific end date
 111 to contest the determination that such abandoned mobile home is derelict and that failure
 112 to request such hearing by such date shall entitle such landowner to dispose of the derelict
 113 mobile home.

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

117 44-7-114.

118 (a) Within the 90 day period described in Code Section 44-7-113, a responsible party, or
 119 after the expiration of such 90 day period, a landowner shall petition a magistrate court to
 120 hold a hearing to confirm or deny the decision of a local government agent that an
 121 abandoned mobile home is derelict. If a petition is filed pursuant to this Code section, a
 122 hearing on such issue shall be held within ten days of the filing of such petition.

123 (b) The court shall hear evidence of the condition of the abandoned mobile home, which
 124 may include introduction of a copy of the determination from the local government agent,
 125 and whether the notice provisions set forth have been met.

126 (c) If, after a full hearing, the court determines the abandoned mobile home to be derelict,
 127 the court shall issue an order finding such mobile home to be derelict and authorizing the
 128 landowner to dispose of such derelict mobile home. A landowner issued such order shall
 129 dispose of such derelict mobile home within 180 days of the date of such order. Within 30
 130 days of disposal of a derelict mobile home, the landowner shall notify the Department of

131 Revenue and local tag agent of such disposal and such department shall cancel the
132 certificate of title for such derelict mobile home, if such certificate exists.

133 44-7-115.

134 Notwithstanding any conflicting provisions in Code Section 44-14-349, all liens acquired
135 upon an abandoned mobile home or intact mobile home under Code Section 44-7-113 shall
136 be foreclosed as follows:

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

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

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

158 (B) In addition to the filing fees required by Code Section 15-10-80, the fee for filing
159 such affidavit shall be \$5.00 per abandoned mobile home upon which a lien is asserted;

160 (4)(A) Upon the filing of such affidavit, the person asserting such lien shall give the
161 clerk or judge of the court the address, if known, of all responsible parties and the clerk
162 or judge of the court shall serve notice informing such responsible parties of a right to
163 a hearing to determine if reasonable cause exists to believe that a valid debt exists; that
164 such hearing shall be petitioned for within 30 days of receipt of such notice; and that,
165 if no petition for such hearing is filed within the time allowed, the lien shall

166 conclusively be deemed a valid one, foreclosure thereof allowed, and a public sale
167 pursuant to Code Section 44-7-116 shall be authorized.

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

171 (5) If a petition for a hearing is filed within the time allowed pursuant to paragraph (4)
172 of this Code section, the magistrate court shall set such a hearing within ten days of filing
173 of the petition. Upon the filing of such petition by a party defendant, neither the
174 prosecuting lienholder nor the court may sell the mobile home. If, at the hearing, the
175 magistrate court determines there is reasonable cause to believe that a valid debt exists,
176 then the person asserting the lien shall retain possession of the mobile home or the court
177 shall obtain possession of the mobile home, as ordered by the court;

178 (6) If no petition for a hearing is filed, or if, after a full hearing, the magistrate court
179 determines that a valid debt exists, the court shall authorize foreclosure upon and sale of
180 the mobile home subject to the lien to satisfy the debt if such debt is not otherwise
181 immediately paid. The holder of a security interest in or a lien on the mobile home, other
182 than the holder of a lien created by Code Section 44-7-113, shall have the right, in the
183 order of priority of such security interest or lien, to pay the debt and court costs no later
184 than 15 days after a magistrate court's order to authorize the foreclosure. If the holder of
185 a security interest or lien does so pay the debt and court costs, such person shall have the
186 right to possession of the mobile home, and that person's security interest in or lien on
187 such mobile home shall be increased by the amount so paid. A magistrate court order
188 shall be issued to this effect, and in this instance there shall not be a sale of the mobile
189 home. If the debt owed is not timely paid by the holder of a security interest or an appeal
190 of the magistrate court decision has not been timely filed pursuant to paragraph (8) of this
191 Code section, the court shall issue an order authorizing the sale of such mobile home;

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

196 (8) Any order issued by the magistrate court shall be appealable pursuant to Article 2 of
197 Chapter 3 of Title 5, provided that any such appeal shall be filed within seven days of the
198 date such order was entered and provided, further, that, after the notice of appeal is filed
199 with the clerk of the trial court, the clerk shall immediately notify the magistrate court of
200 the notice of appeal. If the order of the magistrate court is against the responsible party
201 and the responsible party appeals such order, the responsible party shall be required to
202 pay into the registry of the court all sums found by the magistrate court to be due in order

203 to remain in possession of the mobile home. The responsible party shall also be required
 204 to pay all future rent into the registry of the court as it becomes due in such amounts
 205 specified in paragraph (2) of this Code section until the issue has been finally determined
 206 on appeal.

207 44-7-116.

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

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

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

213 (C) At which the sale, if made, shall be made to the highest and best bidder; and

214 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the
 215 advertising of public sales, of which notice is given by advertisement once a week for
 216 two weeks in the newspaper in which the sheriff's advertisements are published in the
 217 county where the sale is to be held, and which notice shall state the day and hour,
 218 between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the
 219 goods to be sold.

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

222 (b) After satisfaction of the lien, the person selling such mobile home shall, not later
 223 than 30 days after the date of such sale, provide the clerk of the court with a copy of the bill
 224 of sale as provided to the purchaser and remit the remaining proceeds of such sale, if any,
 225 to the clerk of the court. Any person who fails to comply with the requirements of this
 226 subsection shall be guilty of a misdemeanor.

227 44-7-117.

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

235 44-7-118.

236 The purchaser at a sale as authorized by this article shall receive a certified copy of the
237 court order authorizing such sale. Any such purchaser may obtain a certificate of title to
238 such mobile home by filing the required application, paying the required fees, and filing
239 a certified copy of the order of the court with the Department of Revenue. The Department
240 of Revenue shall then issue a certificate of title, which shall be free and clear of all liens
241 and encumbrances.

242 44-7-119.

243 Nothing in this article shall be construed to require a local governing authority to appoint
244 a local government agent."

245 **SECTION 2.**

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

249 "(14) The trial and sentencing of misdemeanor violations of other Code sections as
250 provided by Article 13 of this chapter; ~~and~~

251 (15) The foreclosure of liens on animals as established in Title 4; and

252 (16) The foreclosure of liens on abandoned mobile homes as established in Article 6 of
253 Chapter 7 of Title 44."

254 **SECTION 3.**

255 This Act shall become effective on May 1, 2019.

256 **SECTION 4.**

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