House Bill 456

By: Representatives Bazemore of the 63rd, Mitchell of the 88th, Frazier of the 126th, Stephenson of the 90th, and Burnough of the 77th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to

2 acquisition and loss of property, so as to provide for requirements for the execution of

3 executory contracts for the conveyance of real property; to provide for notice requirements

4 to the purchaser; to provide for a period of cancellation and rescission; to provide for

5 requirements for the enforcement of remedies of defaults under executory contracts for the

6 conveyance of real property; to provide for related matters; to provide for applicability; to

7 repeal conflicting laws; and for other purposes.

8   BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9   **SECTION 1.**

10 Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to acquisition and

11 loss of property, is amended by adding a new article to read as follows:

12   "ARTICLE 2A

13 44-5-50.

14 As used in this article, the term 'executory contract' means a contract described under

15 subsection (b) of Code Section 13-1-2 that is for the conveyance of real property where

16 such real property is used or intended to be used as the purchaser's primary residence or as

17 the primary residence of a person related to the purchaser by consanguinity within the

18 second degree as determined by common law.

19 44-5-51.

20 (a) At the time of the execution of an executory contract there shall be on a separate sheet

21 of paper with no other written or pictorial material, in at least 14 point boldface type,

22 double spaced, the following notice which shall comprise a cover sheet for the executory

23 contract: 'THIS IS AN EXECUTORY CONTRACT FOR THE SALE OF REAL

24   PROPERTY. FOR THE DURATION OF THIS CONTRACT THE SELLER REMAINS

25   THE OWNER OF THE PROPERTY. YOUR FAILURE TO COMPLY WITH THE

26   TERMS OF THIS AGREEMENT MAY RESULT IN THE SELLER'S RIGHT TO TAKE

27   POSSESSION OF THE PROPERTY BEFORE YOUR FINAL PAYMENT AND THE

28   CONVEYANCE OF THE DEED.'

29   (b)(1) A seller shall not execute an executory contract with a purchaser if the seller does

30   not own the property in fee simple, free from any liens or other encumbrances.

31   (2) A seller, or the seller's heirs or assigns, shall maintain fee simple title, free from any

32   liens or other encumbrances, to the property covered by an executory contract for the

33   duration of the executory contract; provided, however, that this paragraph shall not apply

34   to a lien or encumbrance placed on the property by, or as a result of the conduct of, the

35   purchaser.

36   (c)(1) A purchaser may cancel and rescind an executory contract for any reason by

37   sending by certified mail or statutory overnight delivery a signed, written notice of

38   cancellation to the seller not later than the fourteenth day after the date of the execution

39   of the contract. If the purchaser cancels the executory contract as provided for under this

40   subsection, the seller shall, not later than the tenth day after receiving such written notice

41   of cancellation, return to the purchaser the executed contract and any property exchanged

42   or payments made by the purchaser under such contract.

43   (2) A seller shall include in immediate proximity to the space reserved in an executory

44   contract for the purchaser's signature the following statement in at least 14 point boldface

45   type, double spaced: 'YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT

46   AT ANY TIME UNTIL THE 14TH DAY AFTER YOU HAVE SIGNED THIS

47   CONTRACT. THE DEADLINE FOR CANCELING THIS CONTRACT IS (DATE).'

48   (d)(1) A seller may enforce the remedy of rescission or forfeiture and acceleration

49   against a purchaser in default under an executory contract only if the seller gives the

50   purchaser notice as provided for under paragraph (2) of this subsection and the purchaser

51   fails to cure the default as provided for under paragraph (3) of this subsection.

52   (2) Notice of a default under an executory contract shall be in writing and sent by

53   certified mail or statutory overnight delivery to the address of the property that is the

54   subject of the executory contract or to the last address provided by the purchaser if

55   different from the address of such property and shall include the following:

56   (A) A statement printed in 14 point boldface type: 'YOU ARE NOT COMPLYING

57   WITH THE TERMS OF THE CONTRACT TO BUY THE PROPERTY AT

58   (ADDRESS). UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE

59   BY (DATE), THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF THE

60   PROPERTY PURSUANT TO THE LAW.';

61   (B) If the purchaser failed to make a timely payment, specify:

62   (i) The delinquent amount, itemized into principal and interest;

63   (ii) Any additional charges claimed, such as late charges or attorney's fees; and

64   (iii) The period to which the delinquency and additional charges relate; and

65   (C) If the purchaser failed to comply with a term of the contract, identify the term

66   violated and the action required to cure the violation.

67   (3) Notwithstanding any agreement to the contrary, a purchaser in default under an

68   executory contract may avoid the enforcement of a remedy described in paragraph (1) of

69   this subsection by complying with the terms of the executory contract on or before the

70   sixtieth day after the certified mailing or statutory overnight delivery of the notice

71   provided for under paragraph (2) of this subsection.

72   44-5-52.

73   Except as specifically provided for in this article, nothing in this article shall be construed

74   to otherwise limit the contractual rights and remedies of the parties and laws pertaining to

75   the conveyance of property and dispossessory actions."

76   **SECTION 2.**

77   This Act shall apply to executory contracts for the conveyance of real property entered into

78   on or after July 1, 2017.

79   **SECTION 3.**

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