

Senate Bill 120

By: Senators Ligon, Jr. of the 3rd and Tillery of the 19th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
2 change provisions relating to the recording of deeds; to provide for constructive notice of
3 certain instruments to purchasers under certain circumstances; to provide for correction of
4 defects in attestations and acknowledgments to certain filings; to provide for retroactivity
5 under certain circumstances; to provide for related matters; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code
10 Section 44-2-14, relating to requirements for recordation, by revising subsection (a) as
11 follows:

12 "(a)(1) Except for documents electronically filed as provided for in Chapter 12 of Title
13 10, and in other Code sections in this part, before any deed to realty or personalty or any
14 mortgage, bond for title, or other recordable instrument executed in this state may be
15 recorded, it shall be an original instrument and shall be attested or acknowledged as
16 provided by law. ~~If such instrument is not attested or acknowledged as provided by law~~
17 ~~but is nevertheless filed and recorded as required by law, in the absence of fraud, such~~
18 ~~filed instrument shall serve as constructive notice of such instrument to subsequent bona~~
19 ~~fide purchasers beginning four years from the date such instrument was recorded.~~

20 ~~However, nothing~~

21 (2) Nothing in this Code section shall dispense with having another witness ~~where~~ when
22 an additional witness is required by law.

23 (3) This Code section shall not apply to transactions covered by Article 9 of Title 11.

24 (4) The commencement of the four-year period of time provided for in paragraph (1) of
25 this subsection shall apply to any deed to realty or personalty or any mortgage, bond for

26 title, or other recordable instrument executed in this state beginning on July 1, 2017, or
 27 the date upon which such instrument was executed, whichever date occurs last."

28 **SECTION 2.**

29 Said title is further amended by revising Code Section 44-2-18, relating to the recording of
 30 deed upon the affidavit of subscribing witness and the effect of substantial compliance, as
 31 follows:

32 "44-2-18.

33 When If a deed is neither not attested by nor or acknowledged before one of the officers
 34 named in Code Section 44-2-15, or is not attested by another witness when such other
 35 witness is required by law, it may be recorded upon the affidavit of a subscribing witness,
 36 which the individual who failed to make such attestation or acknowledgment. When an
 37 attestation or acknowledgment is defective, it may be recorded upon the affidavit of the
 38 individual whose attestation or acknowledgment was defective. Such affidavit shall be
 39 made before any one of the officers named in Code Section 44-2-15 and shall testify to the
 40 execution of the deed and its attestation according to law. A substantial compliance with
 41 the requirements of this Code section shall be held sufficient in the absence of all suspicion
 42 of fraud."

43 **SECTION 3.**

44 Said title is further amended by revising Code Section 44-2-19, relating to the recording of
 45 a deed on the affidavit of a third person, as follows:

46 "44-2-19.

47 If the ~~subscribing~~ witness or witnesses are dead, are insane, have moved outside the state,
 48 or are otherwise incapacitated to make the affidavit provided for in Code Section 44-2-18,
 49 the affidavit of a third person testifying to the execution of the deed and to the genuineness
 50 of the handwriting of the subscribing witness or witnesses shall be sufficient to admit the
 51 deed to record."

52 **SECTION 4.**

53 Said title is further amended by revising Code Section 44-14-33, relating to the attestation
 54 or acknowledgment of mortgage and additional witness in the case of land, as follows:

55 "44-14-33.

56 In order to admit a mortgage to record, it shall be signed by the maker, attested by an
 57 officer as provided in Code Section 44-2-15, and attested by one other witness. ~~In the~~
 58 ~~absence of fraud, if a mortgage is duly signed, witnessed, filed, recorded, and indexed on~~

59 ~~the appropriate county land records, such recordation shall be deemed constructive notice~~
60 ~~to subsequent bona fide purchasers."~~

61 **SECTION 5.**

62 Said title is further amended by revising Code Section 44-14-39, relating to the effect of a
63 defective record as notice, as follows:

64 "44-14-39.

65 Except as provided in paragraph (1) of subsection (a) of Code Section 44-2-14, a ~~A~~
66 mortgage which is recorded in an improper office or without due attestation or probate or
67 which is so defectively recorded as not to give notice to a prudent inquirer shall not be held
68 to be notice to subsequent bona fide purchasers. A mere formal mistake in the record shall
69 not vitiate it such mortgage."

70 **SECTION 6.**

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