

The House Committee on Judiciary offers the following substitute to SB 425:

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 3 of Chapter 19 of Title 15 and Article 1 of Chapter 17 of Title 45 of the
2 Official Code of Georgia Annotated, relating to the regulation of the practice of law and
3 general provisions regarding notaries public, respectively, so as to provide for the
4 modernization of certain legal, notarial, and court services using electronic means; to allow
5 an attorney to conduct a real estate closing for property in this state using in-person
6 electronic means under certain conditions; to clarify the definition of the practice of law; to
7 provide for definitions; to prohibit witness-only closings; to prohibit the unauthorized
8 practice of law; to provide for certain notarial acts to be performed remotely using electronic
9 means when certain requirements are satisfied; to provide for requirements and exemptions;
10 to provide for the use of an electronic seal of office for certain notarial acts; to provide for
11 penalties, liability, remedies, and relief; to provide for legislative findings; to provide for
12 legislative construction; to provide for related matters; to provide for an effective date; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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17**PART I***Real estate closing using electronic means***SECTION 1-1.**

18 The General Assembly recognizes that the Supreme Court of Georgia, in the exercise of its
19 authority to govern the practice of law in this state, has issued several opinions addressing
20 real estate closings and the practice of law, including, but not limited to, Formal Advisory
21 Opinion No. 86-5 (86-R9) (May 12, 1989), Formal Advisory Opinion No. 00-3 (February 11,
22 2000), In re: Formal Advisory Opinion No. 00-3 (November 10, 2003), Formal Advisory
23 Opinion No. 04-1 (August 6, 2004), In re: Formal Advisory Opinion No. 13-1
24 (September 22, 2014), UPL Advisory Opinion No. 2003-2 (April 22, 2003), and In re: UPL
25 Advisory Opinion No. 2003-2 (November 10, 2003). The General Assembly finds that it is
26 in the public's interest to codify the rulings of such opinions on what constitutes the
27 unauthorized practice of law as it pertains to real estate closings in this state.

28

SECTION 1-2.

29 Article 3 of Chapter 19 of Title 15 of the Official Code of Georgia Annotated, relating to the
30 regulation of the practice of law, is amended by revising Code Section 15-19-50, relating to
31 "practice of law" defined, as follows:

32 "15-19-50.

33 (a) The practice of law in this state is defined as:

- 34 (1) Representing litigants in court and preparing pleadings and other papers incident to
35 any action or special proceedings in any court or other judicial body;
- 36 (2) Conveyancing, including the transfer of ownership of or interest in real property
37 located in this state or any act in a real estate closing that constitutes the practice of law;
- 38 (3) The preparation of legal instruments of all kinds whereby a legal right is secured;

39 (4) The rendering of opinions as to the validity or invalidity of titles to real or personal
40 property;

41 (5) The giving of any legal advice; and

42 (6) Any action taken for others in any matter connected with the law.

43 (b) Nothing in paragraph (2) of subsection (a) of this Code section shall prohibit acts taken
44 by an individual or entity representing themselves in the purchase or sale of real estate
45 property located in this state.

46 (c) In the event of a conflict between the terms of this article and any ruling of the
47 Supreme Court of Georgia as to the practice of law or the unauthorized practice of law,
48 such ruling shall control."

49 **SECTION 1-3.**

50 Said article is further amended by adding new Code sections to read as follows:

51 "15-19-50.1.

52 As used in this article, the term:

53 (1) 'In-person electronic notarization' means a notarial act in which: the signatory appears
54 in front of and is identified by the notary in the same physical location at the time of
55 notarization; the document is presented in a digital format and signed using an electronic
56 signature; the notary witnesses the act of signing the document; and the notary uses an
57 electronic seal and signature to notarize the document.

58 (2) 'Real estate closing' refers to the actual settlement of the conveyance of the title to
59 real property located in this state from one party to another party. The actual settlement
60 of the conveyance of title to any property other than real property shall not constitute a
61 real estate closing for purposes of this article.

62 (3) 'Real estate closing using electronic means' refers to the continuous, interconnected
63 series of events through all acts that are part of a real estate closing that are conducted in
64 whole or in part using electronic means as provided for in Code Section 15-19-50.2.

65 Such term shall require all signatories to be in the same physical location but may provide
66 for the electronic signature of digital documents and in-person electronic notarization.

67 (4) 'Security instrument' means any written document presented for recording for the
68 purpose of conveying or creating a lien or encumbrance on real estate for the purpose of
69 securing a promissory note, guaranty, or other instrument.

70 (5) 'Witness-only closing' means a real estate closing in which an attorney presides over
71 the execution of deeds of conveyance and other closing documents but purports to do so
72 merely as a witness and notary and not as someone who is practicing law.

73 15-19-50.2.

74 (a) Any witness-only closing shall be unlawful in this state.

75 (b) An attorney conducting any real estate closing shall:

76 (1) Be licensed in this state at the time of such closing;

77 (2) For one-to-four family residential closings, be present in this state at the time of such
78 closing;

79 (3) Directly supervise and be responsible for the entirety of such closing, including all
80 employees, agents, and contractors who assist the attorney with such closing;

81 (4) Perform any and all duties otherwise required by law and by the rules and opinions
82 of the Supreme Court of Georgia; and

83 (5) Comply with subsection (c) of this Code section if conducting a real estate closing
84 using electronic means.

85 (c) In any real estate closing using electronic means, the participants shall have the
86 following duties:

87 (1) The attorney shall:

88 (A) Obtain consent from all participants to such closing, including any mortgage
89 lender, to the use of electronic means to facilitate such closing prior to such closing;

90 (B) Confirm the identity of any signatory through the presentation of a government
91 issued form of identification; and

92 (C) Attest that he or she is physically located in this state at the time of such closing.

93 (2) The witness shall:

94 (A) Be in the same physical location as the signatory and physically close enough to
95 see, hear, and communicate with the signatory, and able to witness the signature;

96 (B) Witness the signatory electronically sign the document; and

97 (C) Immediately electronically sign the document as a witness; and

98 (3) The notary public shall:

99 (A) Be the attorney conducting such closing and shall provide his or her bar number
100 on each notarized document;

101 (B) Be present in this state;

102 (C) Be physically close enough to see, hear, and communicate with the signatory and
103 witness the signature by being in the same physical location for an in-person electronic
104 notarization;

105 (D) Witness the signatory electronically sign the document;

106 (E) Immediately electronically sign the document as a notary public; and

107 (F) Immediately notarize the document using an electronic seal compliant with the
108 provisions of Code Section 45-17-6."

109 **SECTION 1-4.**

110 Said article is further amended by revising subsection (a) of Code Section 15-19-51, relating
111 to unauthorized practice of law forbidden, as follows:

112 "(a) It shall be unlawful for any person other than a duly licensed attorney at law:

113 (1) To practice or appear as an attorney at law for any person other than himself or
114 herself in any court of this state or before any judicial body;

- 115 (2) To make it a business to practice as an attorney at law for any person other than
 116 himself or herself in any of such courts;
- 117 (3) To hold himself or herself out to the public or otherwise to any person as being
 118 entitled to practice law;
- 119 (4) To render or furnish legal services or advice;
- 120 (5) To furnish attorneys or counsel;
- 121 (6) To render legal services of any kind in actions or proceedings of any nature;
- 122 (7) To assume or use or advertise the title of 'lawyer,' 'attorney,' 'attorney at law,' or
 123 equivalent terms in any language in such manner as to convey the impression that he or
 124 she is entitled to practice law or is entitled to furnish legal advice, services, or counsel;
- 125 or
- 126 (8) To advertise that either alone or together with, by, or through any person, whether
 127 a duly and regularly admitted attorney at law or not, he or she has, owns, conducts, or
 128 maintains an office for the practice of law or for furnishing legal advice, services, or
 129 counsel; or
- 130 (9) To perform any act that constitutes the practice of law under the law or under the
 131 rules and opinions of the Supreme Court of Georgia."

132 **SECTION 1-5.**

133 Said article is further amended by revising Code Section 15-19-58, relating to injunctive
 134 relief, venue, procedure, and other remedies not curtailed, as follows:

135 "15-19-58.

- 136 (a) The Attorney General, Either the State Bar of Georgia, the Judicial Council of this
 137 state, any attorney, or any organized bar association of this state is authorized to institute
 138 in the proper superior court of this state an action or actions seeking injunctive relief, civil
 139 penalties of at least \$20,000.00 per violation, restitution for an ascertainable loss caused
 140 by such violation, and investigative costs, reasonable expenses, and attorney and witness

141 fees, against any person, firm, or corporation, ~~when it determines~~ after an investigation
142 determines that such person, firm, or corporation:

143 (1) Is engaged in the unauthorized or unlawful practice of law;

144 (2) Reserved;

145 (3) Is in ~~in~~ violation of Code Section 15-19-55 or rules promulgated by the Supreme
146 Court, is by reason of orally or by in writing, for a consideration then or afterwards to be
147 charged or received by himself or herself or another, offering or tendering to another
148 person, without the solicitation of such other person, the services of an attorney at law,
149 resident or nonresident of this state, in order for the attorney to institute an action or
150 represent the person in the courts of this or any other state or of the United States in the
151 enforcement or collection by law of any claim, debt, or demand of any such person
152 against another or is suggesting or urging the bringing of the action; or

153 (4) Is engaged in the practice of seeking out and proposing to other persons that they
154 present and urge through any attorney at law the collection of any claim, debt, or demand
155 of such person against another.

156 (b) The venue of any action authorized by this Code section shall be determined by the
157 constitutional and statutory provisions relating to cases in equity.

158 (c) The hearing, interlocutory or final, and the trial of actions authorized by this Code
159 section shall be governed by the laws of this state relating to injunctions, as shall appeals
160 from orders or judgments therein.

161 (d) In any action brought under this Code section, the final judgment, if in favor of the
162 plaintiff, shall perpetually enjoin the defendant or defendants from the commission or
163 continuance of the act or acts complained of. Restraining orders or temporary injunctions
164 may be granted as in other cases in which injunctive relief is sought. Any person who
165 willfully or knowingly violates the terms of an injunction, judgment, or consent order
166 entered under the provisions of this Code section shall forfeit and pay to the state a civil

167 penalty of at least \$40,000.00 per violation of such injunction, judgment, or consent order,
 168 and investigative costs, reasonable expenses, and attorney and witness fees.

169 (e) This Code section and Code Section 15-19-57 shall not repeal or curtail any remedy
 170 provided in cases of unauthorized or unlawful practice of law, and nothing contained in
 171 these Code sections shall be construed as abridging the powers of the courts in such
 172 matters."

173 SECTION 1-6.

174 Said article is further amended by revising Code Section 15-19-60, relating to consumer
 175 action for damages for violations, as follows:

176 "15-19-60.

177 (a) Any consumer who is a party to a ~~one-to-four family residential~~ real estate transaction
 178 closing, as such term is defined in Code Section 15-19-50.1, or a consumer debtor or a
 179 trustee of a consumer debtor in a bankruptcy case that involves a ~~one-to-four family~~
 180 residential real property real estate closing who is damaged by a violation of this article or
 181 a violation of the Supreme Court's rules or opinions governing the unlicensed practice of
 182 law shall be entitled to maintain a civil action to recover damages, treble damages,
 183 reasonable attorney's attorney and witness fees, and expenses of litigation. A claim for a
 184 violation of this Code section shall be asserted in an individual action only and shall not
 185 be the subject of a class action under Code Section 9-11-23. This Code section shall not
 186 prevent the activities authorized by Code Section 15-19-52, 15-19-53, 15-19-54, 15-19-59
 187 or 43-40-25.1.

188 (b) Any buyer, seller, or borrower that is or was a party to a real estate closing in which
 189 any person involved in such closing engaged in conduct constituting the unauthorized or
 190 unlawful practice of law shall be entitled to maintain a civil action to recover damages.
 191 Such damages shall include, but not be limited to:

192 (1) Actual monetary losses incurred by the plaintiff as a result of a violation of the
193 provisions this article, or \$1,000.00 in damages for each such violation, whichever is
194 greater;

195 (2) Any expenses paid by the plaintiff for the services of any person or entity that
196 violated the provisions of this article; and

197 (3) De minimis or nominal damages incurred by the plaintiff as a result of a violation of
198 the provisions of this article.

199 (c) In addition to any other penalties provided for by law, if the court finds that the
200 defendant willfully or knowingly violated the provisions of this article in connection with
201 a real estate closing, the court may, in its discretion, increase the award to an amount equal
202 to not more than ten times the amount available under paragraph (1) of subsection (b) of
203 this Code section. The court shall consider the frequency and persistence of
204 noncompliance by the defendant, the nature of such noncompliance, the extent to which
205 such noncompliance was intentional, the number of persons or sales impacted by the
206 violation, the impact of the judgment, and the resources of the defendant.

207 (d) Any person, including, but not limited to, a notary public, a mortgage lender or its
208 affiliates, employees, agents, and attorneys, or an attorney or the attorney's employee or
209 agent, that, while participating in a real estate closing, engages in conduct that constitutes
210 the unauthorized or unlawful practice of law, willfully or knowingly aids and abets another
211 person in committing such conduct, or otherwise violates the provisions of this article
212 regulating real estate closings shall be liable for damages resulting from such conduct.

213 (e) When the loan agreement utilized in a real estate closing contains an arbitration clause
214 and the mortgage lender or such lender's agent engages in conduct that constitutes the
215 unauthorized or unlawful practice of law or an unlawful notarial act, the arbitration clause
216 shall not be enforceable to the extent it restricts or excludes damages or remedies that
217 would be available to the plaintiff in court.

- 218 (f) The court may provide such equitable relief it deems necessary or proper, including
 219 enjoining the defendants from further violations of the provisions of this article.
- 220 (g) In a successful action to enforce the provisions of this Code section, a court shall award
 221 the plaintiff costs, including reasonable attorney and witness fees.
- 222 (h) A person shall not be held liable for damages in any action brought under this article
 223 if the person shows by a preponderance of the evidence that the violation was not willful
 224 or knowing or resulted from a bona fide error notwithstanding the maintenance of
 225 procedures implemented to avoid such error.
- 226 (i) A cause of action brought under this Code section may be filed in any court of
 227 competent jurisdiction within this state without regard to the amount in controversy. Such
 228 cause of action shall be filed within one year from the date on which the violation occurred
 229 or the date of discovery of the violation, whichever is later."

230

PART II

231

Notarization using electronic means

232

SECTION 2-1.

233 Article 1 of Chapter 17 of Title 45 of the Official Code of Georgia Annotated, relating to
 234 general provisions regarding notaries public, is amended by revising paragraph (1) of
 235 subsection (a) of Code Section 45-17-6, relating to seal of office, as follows:

236 "(a)(1) For the authentication of his or her notarial acts each notary public must provide
 237 a seal of office, which seal shall have for its impression his or her name, the words
 238 'Notary Public,' the name of the state, and the county of his or her residence; or it shall
 239 have for its impression his or her name and the words 'Notary Public, Georgia, State at
 240 Large.' Notaries commissioned or renewing their commission after July 1, 1985, shall
 241 provide a seal of office which shall have for its impression the notary's name, the words
 242 'Notary Public,' the name of the state, and the county of his or her appointment. The

243 embossment of notarial certificates by the notary's seal shall be authorized but not
 244 necessary, and the use of a rubber or other type stamp shall be sufficient for imprinting
 245 the notary's seal. A scrawl shall not be a sufficient notary seal. An official notarial act
 246 must be documented by the notary's seal. For the authentication of notarial acts in a real
 247 estate closing using electronic means as provided for in Code Section 15-19-50.2 and
 248 certain remote notarial acts as provided for in Code Section 45-17-9, notaries
 249 commissioned or renewing their commission after July 1, 2024, shall use an electronic
 250 seal of office which shall provide the notary's name, the words 'Electronic Notary Seal'
 251 and 'Notary Public,' the name of the state, and the county of his or her appointment. The
 252 use of an electronic seal shall be sufficient for the notarization of certain notarial acts
 253 provided for in Code Sections 15-19-50.2 and 45-17-9."

254 **SECTION 2-2.**

255 Said article is further revised by revising Code Section 45-17-9, relating to where notarial
 256 acts may be exercised, as follows:

257 "45-17-9.

258 (a) Notarial acts may be exercised in any county in the state, provided that the notary
 259 public shall be physically located in this state and the notarial act is performed in the
 260 physical presence of the notary public as provided in subsection (b) of this Code section
 261 or is performed remotely as provided in subsection (c) of this Code section.

262 (b) Any notarial act to be performed in the physical presence of the notary public shall take
 263 place in the same physical location and at the same time and close enough for the notary
 264 public to see, hear, communicate with, and exchange tangible identification credentials
 265 with the individual whose act is being notarized.

266 (c) Any notarial act to be performed remotely shall meet the following requirements:

267 (1) The notary public shall use real-time two-way audio-video communication
 268 technology that allows the parties to see, hear, and communicate with each other and is

269 sufficiently secure to prevent interference with the authenticity, integrity, and security of
270 the transaction, corruption or loss of the recording of the transaction, and unauthorized
271 use of or tampering with the recording, record, and backup record;
272 (2) The signatory shall be physically located in the United States or one of its territories
273 or military bases or at a United States embassy, consulate, or diplomatic mission location
274 and present evidence of his or her identity and location;
275 (3) The notary public shall witness the signature;
276 (4) The notary public shall document evidence of the acts provided for in paragraphs (1)
277 through (3) of this subsection; and
278 (5) The notarial act shall not be performed to:
279 (A) Create or execute a will, codicil, or testamentary trust; or
280 (B) Notarize the signature on any security instrument, deed, or other real estate
281 document executed for the conveyance of real property located in this state in
282 connection with a real estate closing, as such term is defined in Code
283 Section 15-19-50.1, whether or not such security instrument, deed, or other real estate
284 document is recorded.
285 (d) A notary public may use an electronic signature and electronic seal of office to perform
286 a notarial act as provided for in subsection (c) of this Code section or to perform an
287 in-person electronic notarization in a real estate closing using electronic means as provided
288 for in Code Section 15-19-50.2. Such electronic seal of office shall comply with the
289 provisions of Code Section 45-17-6, and such document and signature shall be valid as
290 provided in Code Section 44-2-37.
291 (e) Nothing in this Code section shall invalidate an in-person notarial act performed in the
292 physical presence of the notary public that occurs in another state that complies with such
293 state's regulations for an in-person notarial act performed in the physical presence of the
294 notary public or a notarial act that occurs outside the limits of the United States that
295 complies with the provisions of Article 2 of this chapter."

296 **SECTION 2-3.**

297 Said article is further amended by revising Code Section 45-17-20, relating to penalty and
298 prosecution of violations of article, as follows:

299 "45-17-20.

300 (a) Any person who violates subsection (d) of Code Section 45-17-8 ~~shall be guilty of a~~
301 ~~misdemeanor or performs any notarial act without complying with the provisions of this~~
302 article shall, upon a first or second conviction, be guilty of a misdemeanor; provided,
303 however, that, upon a third or subsequent conviction, such person shall be guilty of a
304 felony, punishable by imprisonment of not less than one year nor more than five years, a
305 fine of at least \$20,000.00, or both.

306 (b) Any person ~~who performs any notarial service without complying with the provisions~~
307 ~~of this article shall, upon the, including, but not limited to, a notary public, a mortgage~~
308 lender or its affiliates, employees, agents, and attorneys, or an attorney or the attorney's
309 employee or agent, that willfully and knowingly aids or abets another person in violating
310 the provisions of this article, including, but not limited to, directing the performance of an
311 unauthorized notarial act, shall, upon a first or second conviction, be guilty of a
312 misdemeanor and; provided, however, that, upon a third or subsequent conviction, such
313 person shall be guilty of a felony, punishable by imprisonment of not less than one year nor
314 more than five years, a fine of up to \$5,000.00 at least \$20,000.00, or both."

315 **SECTION 2-4.**

316 Said article is further amended by adding a new Code section to read as follows:

317 "45-17-21.

318 (a) Any person, including, but not limited to, a notary public, a mortgage lender or its
319 affiliates, employees, agents, and attorneys, or an attorney or the attorney's employee or
320 agent, that, while participating in a real estate closing involving property located in this
321 state, engages in conduct that constitutes an unlawful notarial act, knowingly aids and abets

322 another person in committing an unlawful notarial act, or otherwise violates the provisions
323 of this article regulating real estate closings shall be liable for damages resulting from such
324 illegal conduct.

325 (b) Any buyer, seller, or borrower that is or was party to a real estate closing, as such term
326 is defined in Code Section 15-19-50.1, involving property located in this state in which any
327 person engaged in an unlawful notarial act or other violation of the provisions of this article
328 shall be entitled to maintain a civil action to recover damages. Such damages shall include,
329 but not be limited to:

330 (1) Actual monetary losses incurred by the plaintiff as a result of a violation of the
331 provisions of this article, or \$1,000.00 in damages for each such violation, whichever is
332 greater;

333 (2) Any expenses paid by the plaintiff for the services of any person or entity that
334 violated the provisions of this article; and

335 (3) De minimis or nominal damages incurred by the plaintiff as a result of a violation of
336 the provisions of this article.

337 (c) In addition to penalties provided for in this article, if the court finds that the defendant
338 willfully or knowingly violated the provisions of this article, the court may, in its
339 discretion, increase the award to any amount equal to not more than ten times the amount
340 available under paragraph (1) of subsection (b) of this Code section.

341 (d) When the loan agreement utilized in a real estate closing contains an arbitration clause
342 and the mortgage lender or such lender's agent engages in conduct that constitutes an
343 unlawful notarial act, the arbitration clause shall not be enforceable to the extent it restricts
344 or excludes damages or remedies that would be available to the plaintiff in court.

345 (e) The court may provide such equitable relief it deems necessary or proper, including
346 enjoining the defendants from further violations of the provisions of this article.

347 (f) In a successful action to enforce the provisions of this Code section, a court shall award
348 the plaintiff costs, including reasonable attorney and witness fees.

349 (g) A cause of action brought under this Code section may be filed in any court of
350 competent jurisdiction within this state without regard to the amount in controversy. Such
351 cause of action shall be filed within one year from the date on which the violation occurred
352 or the date of discovery of the violation, whichever is later."

353

PART III

354

Effective date and repealer

355

SECTION 3-1.

356 This Act shall become effective upon its approval by the Governor or upon its becoming law
357 without such approval.

358

SECTION 3-2.

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