

House Bill 337 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 115th, Powell of the 171st, Harrell of the 106th, and Kelley of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 11, 15, 44, and 48 of the Official Code of Georgia Annotated, relating to the
2 Uniform Commercial Code, clerks of superior courts, property, and revenue and taxation,
3 respectively, so as to modernize provisions relating to the transmittal, filing, recording,
4 access to, and territorial effect of tax liens issued by the Department of Revenue; to provide
5 for definitions; to provide for modern technological advances in electronic record keeping
6 relating to the filing and public access to state tax liens; to provide for certificates of
7 clearance for state tax liens; to provide for duties and responsibilities of the Georgia Superior
8 Court Clerks' Cooperative Authority; to provide a short title; to provide for related matters,
9 to provide for an effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 This Act shall be known and may be cited as the "State Tax Execution Modernization Act."

13 style="text-align:center">**SECTION 2.**

14 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
15 amended by revising Code Section 48-2-56, relating to priority of liens for taxes, as follows:

16 "48-2-56.

17 (a) Except as otherwise provided in this Code section, liens for all taxes due the state or
18 any county or municipality in the state shall arise as of the time the taxes become due and
19 unpaid and all tax liens shall cover all property in which the taxpayer has any interest from
20 the date the lien arises until such taxes are paid.

21 (b) Except as otherwise provided in this Code section, liens for taxes are superior to all
22 other liens and shall be paid before any other debt, lien, or claim of any kind. Liens for
23 taxes shall rank among themselves as follows:

24 (1) Taxes due the state;

25 (2) Taxes due counties of the state;

26 (3) Taxes due school and other special tax districts of the state; and

27 (4) Taxes due municipal corporations of the state.

28 (c) The lien for taxes imposed by Article 1 of Chapter 9 of this title, relating to motor fuel
29 taxes, shall not have priority as against:

30 (1) Any bona fide mortgagee, holder, or transferee of a deed to secure debt; or

31 (2) Any pledgee, judgment creditor, or purchaser of or from persons liable for the tax
32 imposed by Article 1 of Chapter 9 of this title

33 where the rights of such mortgagee, holder, or transferee of a deed to secure debt, pledgee,
34 judgment creditor, or purchaser have attached prior to the time ~~notice~~ of the lien has been
35 filed by the commissioner in the office of the clerk of superior court of the county in which
36 the principal place of business is located ~~or in the county where property of the person~~
37 ~~liable for payment of the motor fuel tax is located.~~

38 (d)(1) Liens for any ad valorem taxes shall cover the property of taxpayers liable to tax
39 from the time fixed by law for valuation of the property in each year until such taxes are
40 paid and shall cover the property of tax collectors or tax commissioners and their sureties
41 from the time of giving bond until all the taxes for which they are responsible are paid.

42 (2) The lien for any ad valorem tax shall not be superior to the title and operation of a
43 security deed when the tax represents an assessment upon property of the taxpayer other
44 than property specifically covered by the title and operation of the security deed.

45 (3) When real property located within this state is transferred between the date on which
46 any ad valorem tax lien on the property vests and the date on which the tax evidenced by
47 the tax lien becomes due and payable, the ad valorem tax lien on the transferred property
48 shall not extend to cover any other real property of the transferor.

49 (e) The lien for taxes imposed by the provisions of Article 2 of Chapter 7 of this title,
50 relating to certain income taxes, shall:

51 (1) Arise and ~~cover~~ attach to all property of the taxpayer within the state as of the time
52 a tax execution for these taxes is ~~entered upon the general execution docket~~ filed with the
53 clerk of superior court of the county of the last known address of the taxpayer appearing
54 on the records of the department at the time the state tax execution is filed; and

55 (2) Not attach to the interest of a prior bona fide purchaser where a certificate of
56 clearance is required and has been obtained or where a certificate of clearance is not
57 required pursuant to Code Section 44-1-18, nor be superior to the lien of a prior recorded
58 instrument securing a bona fide debt.

59 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~
60 ~~recorded in the county where the real property is located.~~

61 (f) The lien for taxes imposed by the provisions of Article 5 of Chapter 7 of this title,
62 relating to withholding taxes, shall:

63 (1) Arise and attach to all property of the defaulting employer or other person required
 64 to deduct and withhold on the date of the assessment of the taxes by operation of law or
 65 by action of the commissioner;

66 (2) Not attach to the interest of a prior bona fide purchaser where a certificate of
 67 clearance is required and has been obtained or where a certificate of clearance is not
 68 required pursuant to Code Section 44-1-18, nor be superior to the lien of a prior recorded
 69 instrument securing a bona fide debt; and

70 (3) ~~Not be superior to the lien~~ attach to the interest of a subsequent bona fide purchaser
 71 ~~or where a certificate of clearance is required and has been obtained or where a certificate~~
 72 of clearance is not required pursuant to Code Section 44-1-18, nor be superior to the lien
 73 of a lender for value recorded prior to the time the execution for the tax has been entered
 74 on the general execution docket filed in the office of the clerk of superior court of the
 75 county ~~in which the property affected is located~~ of the last known address of the taxpayer
 76 appearing on the records of the department at the time the state tax execution is filed.

77 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~
 78 ~~recorded in the county where the real property is located.~~

79 (g)(1) The lien of a specific or occupation tax shall not be superior to the title and
 80 operation of a security deed recorded prior to the time the execution for the tax has been
 81 ~~entered on the general execution docket~~ filed in the office of the clerk of ~~the~~ superior
 82 court of the county ~~in which the affected property is located~~ of the last known address of
 83 the taxpayer appearing on the records of the department at the time the state tax execution
 84 is filed.

85 (2) As used in this subsection, the term 'specific or occupation tax' means all state,
 86 county, and municipal taxes and all state licenses and fees except:

- 87 (A) The taxes imposed by Article 1 of Chapter 9 of this title;
- 88 (B) Ad valorem taxes;
- 89 (C) The taxes imposed by Article 2 of Chapter 7 of this title; and
- 90 (D) The taxes imposed by Article 5 of Chapter 7 of this title.

91 The term includes, but is not limited to, sales and use taxes, corporate net worth taxes,
 92 estate taxes, ~~real-estate~~ real estate transfer taxes, taxes on financial institutions, alcohol
 93 and tobacco taxes, road taxes on motor carriers, excise taxes, license fees, tax liabilities
 94 of corporate officers and business successors, and tax collections of a person who is a
 95 dealer under Chapter 8 of this title relating to sales and use taxation.

96 (h) Liens for taxes existing prior to July 1, 1983, shall not be changed by this Code section.
 97 On and after July 1, 1983, this Code section shall govern the time of creation of all tax liens
 98 and the priority of all tax liens.

99 (i) All executions, liens, releases, cancellations, or other related documents issued by the
 100 department to be filed with a superior court clerk shall be presented and filed electronically
 101 pursuant to Code Section 48-3-42 and the appropriate filing fees shall be paid by the
 102 department as provided in subsection (f) of Code Section 15-6-77."

103 **SECTION 3.**

104 Said title is further amended by revising subsection (b) of Code Section 48-2-59, relating to
 105 appeals to the Georgia Tax Tribunal, as follows:

106 "(b) The taxpayer shall commence an appeal by filing a petition with the Georgia Tax
 107 Tribunal in accordance with Chapter 13A of Title 50 or the superior court within 30 days
 108 from the date of decision by the commissioner or at any time after the department records
 109 a state tax execution pursuant to Code Section 48-3-42."

110 **SECTION 4.**

111 Said title is further amended by repealing Code Section 48-3-1, relating to the issuance of
 112 state tax executions and affidavit of illegality, and designating it as "Reserved."

113 **SECTION 5.**

114 Said title is further amended by revising Code Section 48-3-21, relating to the statute of
 115 limitations for tax executions, as follows:

116 "48-3-21.

117 All ~~state~~, county, municipal, or other tax executions, before or after legal transfer and
 118 record, shall be enforced within seven years from:

119 (1) The date of issue; or

120 (2) The time of the last entry upon the tax execution by the officer authorized to execute
 121 and return the execution if the execution and entry are properly entered or reentered upon
 122 the execution docket or books in which executions issued on judgments and entries on
 123 executions issued on judgments are required to be entered or reentered."

124 **SECTION 6.**

125 Said title is further amended by repealing Code Section 48-3-23, relating to nulla bona and
 126 tolling of the statute of limitations, and designating it as "Reserved."

127 **SECTION 7.**

128 Said title is further amended by revising Code Section 48-3-28, relating to entry of
 129 satisfaction on the execution docket, as follows:

130 "48-3-28.

131 An entry of satisfaction shall be made on the execution lien docket in the office of the clerk
 132 of superior court as soon as reasonably possible after a tax execution has been fully
 133 satisfied, except as otherwise provided in this chapter."

134 **SECTION 8.**

135 Said title is further amended by repealing Code Section 48-3-29, relating to the publication
 136 of state tax execution information, and designating it as "Reserved."

137 **SECTION 9.**

138 Said title is further amended by designating the current provisions as "Article 1" and adding
 139 a new article to read as follows:

140 "ARTICLE 2

141 48-3-40.

142 (a) The purpose of this article is to provide a uniform state-wide system for filing notices
 143 of state tax executions issued by the commissioner that are in favor of or enforced by the
 144 department.

145 (b) This article shall only be applicable to state tax executions and to the liens of state tax
 146 executions as against real and personal property which arise pursuant to Code Section
 147 48-2-56 for tax liabilities administered by the department.

148 (c) As used in this article, the term:

149 (1) 'Authority' shall mean the Georgia Superior Court Clerks' Cooperative Authority.

150 (2) 'Certificate of clearance' shall mean a document issued by the department affirming
 151 that a proper search has been conducted by the department and has yielded no active liens
 152 associated with an individual or entity.

153 (3) 'Delinquent taxpayer' means a person owing an unpaid tax liability that is collectable
 154 by the department.

155 (4) 'Execution' shall mean either a state tax execution or a renewed state tax execution,
 156 as applicable.

157 (5) 'Last known address of the delinquent taxpayer' means the address of the delinquent
 158 taxpayer appearing on the records of the department at the time the state tax execution
 159 is filed with the superior court clerk.

160 (6) 'Renewed state tax execution' means any tax execution properly filed by the
 161 department prior to January 1, 2018, that is refiled upon implementation of this article.

162 (7) 'State tax execution' means any execution issued by the department for the collection
163 of any tax, fee, license, penalty, interest, or collection costs due the state.

164 (8) 'URPERA' shall mean the Uniform Real Property Electronic Recording Act found
165 at Code Section 44-2-35, et seq.

166 (9) 'URPERA rules' shall mean the rules adopted by the Georgia Superior Court Clerks'
167 Cooperative Authority pursuant to the Uniform Real Property Electronic Recording Act.

168 48-3-41.

169 The department may issue an execution for the collection of any tax, fee, license, penalty,
170 interest, or collection costs due the state once a lien has arisen pursuant to Code Section
171 48-2-56. An execution shall be a lien in favor of the department upon all property and right
172 to property, whether real or personal, within the State of Georgia, belonging to the
173 delinquent taxpayer named on the execution.

174 48-3-42.

175 (a) On or after January 1, 2018, the execution shall be effective as provided by law when
176 such execution is filed by the department with the appropriate superior court clerk.

177 (b) All executions or writs of fieri facias issued by the department filed or recorded on the
178 general execution docket or lien docket of any county shall be invalid as of December 31,
179 2017. Any such execution or writs of fieri facias which the department does not show as
180 satisfied, issued in error, or otherwise withdrawn and which was last recorded or rerecorded
181 on the general execution docket within seven years before January 1, 2018, may be
182 renewed for a period of ten years upon the department's filing a renewed state tax execution
183 with the clerk of superior court on or after January 1, 2018. For priority purposes, a filed
184 renewed state tax execution shall retain its original date of filing on the general execution
185 docket or lien docket. All renewed state tax execution documents shall reflect the original
186 date of filing.

187 (c) On or after January 1, 2018, any execution and any related releases, cancellations, or
188 other documents submitted by the department for filing with the clerk of superior court
189 shall be submitted for filing electronically.

190 (d) An execution filed after January 1, 2018, pursuant to this Code section shall be a lien
191 against and attach to all existing and after-acquired property of the delinquent taxpayer,
192 both real and personal, tangible and intangible, located in any county and in all counties
193 within the State of Georgia, with the same force and effect as any recorded judgment on
194 the lien docket of the superior court clerk.

195 (e) An execution electronically transmitted to the authority pursuant to this Code section
196 shall be deemed filed and perfected upon its receipt by the authority for transmission to the

197 applicable clerk of superior court. The authority shall provide to the department
 198 confirmation of receipt of an execution. Absent evidence of such confirmation there shall
 199 be no presumption of filing. Executions filed shall have priority as provided by law.

200 (f) The lien of an execution filed pursuant to this Code section shall continue in effect until
 201 released by the department or until the execution has expired.

202 (g) An execution filed after January 1, 2018, shall expire ten years from the date of filing
 203 and shall not be subject to renewal. Said expiration period shall be tolled and suspended
 204 for:

205 (1) The duration of an installment agreement between the taxpayer and the commissioner
 206 for any tax liabilities contained within an execution plus an additional 90 days;

207 (2) If a timely proceeding in court for the imposition or collection of a tax is commenced,
 208 the duration of the period until the liability for the tax or a judgment against the taxpayer
 209 arising from such liability is satisfied or becomes unenforceable;

210 (3) The duration of any enforcement action to collect the liability contained within an
 211 execution initiated prior to the expiration of the period of limitations and released after
 212 such period of limitations;

213 (4) In a case under Title 11 of the United States Code, the running of the period of
 214 limitations provided in this Code section shall be suspended and tolled for the period
 215 during which the commissioner is prohibited from collecting any tax liability and six
 216 months thereafter; or

217 (5) The period during which a taxpayer's offer-in-compromise is under consideration by
 218 the commissioner.

219 48-3-43.

220 (a) The department shall maintain information on executions in its information
 221 management system in a form that permits information related to executions to be readily
 222 accessible in an electronic form via the Internet and available to the public. The following
 223 shall be available within such system at no charge to the public:

224 (1) Search by delinquent taxpayer name, execution number, last four digits of the
 225 taxpayer's social security number, or, when applicable, federal employee identification
 226 number;

227 (2) Search by identification number assigned to the execution by the department;

228 (3) The basis for an execution, including, but not limited to, the amount of the taxes,
 229 penalties, interest, and fees owed, and the tax periods and relevant assessment dates of
 230 the taxes owed;

231 (4) The place, date, and time of the filing of the execution;

232 (5) The status of the execution as defined in subsection (b) of this Code section;

- 233 (6) The present balance of the execution;
234 (7) Provision of official electronic copies of an execution;
235 (8) Provision and issuance of official statements of lien pursuant to Code Section
236 44-1-18;
237 (9) Provision and issuance of official certificates of clearance pursuant to Code Section
238 44-1-18.
239 (10) Search by identification number assigned to certificates of clearance; and
240 (11) Provision and issuance of official payoff information as to any execution pursuant
241 to Code Section 44-1-18.
- 242 (b) An execution shall hold one of the following official statuses on the department
243 information system and such status shall be available, except as provided below, and on the
244 electronic printable forms of state tax executions:
- 245 (1) Active — The execution is perfected and enforceable;
246 (2) Withdrawn — The execution was issued in error and is not enforceable. Within two
247 business days from the date the department discovers an error in the filing of an
248 execution, it shall change the status of the execution to withdrawn. Such execution shall
249 be treated as though it was never filed;
- 250 (3) Released — The execution has been released or canceled and is no longer
251 enforceable. Within 15 business days from the department's receipt of payment in full
252 of an execution, the department shall change the status of the execution to released. The
253 department may release an unpaid execution that the department determines is not legally
254 or practically collectable;
- 255 (4) Refiled — If an execution is released in error, the department may file a new
256 execution for any outstanding, finally determined tax liability to bear an active status as
257 of the date of the new recording; and
- 258 (5) Expired — The execution has expired pursuant to Code Section 48-3-42 and is
259 unenforceable.
- 260 (c) The department shall provide to the authority such electronic linking data elements as
261 may be required by the authority to link filed executions found in the authority's state-wide
262 uniform automated information system for real and personal property records to the
263 matching data related to the execution in the department's information management system.
- 264 (d) The department's information management system as provided for in this Code section
265 shall constitute a public record and the department shall redact information in accordance
266 with Code Section 9-11-7.1.
- 267 (e) The department's information management system as provided for in this Code section
268 shall not be used for survey, marketing, or solicitation purposes. Survey, marketing, or
269 solicitation purposes shall not include any action by the department or its authorized agents

270 to collect a debt on an execution. The Attorney General is hereby authorized to bring an
 271 action at law or in equity to address the unlawful use of such information for a survey,
 272 marketing, or solicitation purpose and to recover the costs of such action, including
 273 reasonable attorney's fees.

274 (f) The commissioner may adopt reasonable rules and regulations providing for the
 275 maintenance, reliability, accessibility, and use of the department's information management
 276 system. Such rules and regulations may address, among other matters, the authenticity of
 277 the electronic printable executions and issues related to periods during which the
 278 information system may be unavailable for use due to routine maintenance or other
 279 activities.

280 48-3-44.

281 (a) An execution bearing a 'Released' status on the department's information management
 282 system shall constitute a complete release of the execution by the department and of the
 283 lien in the office of the clerk of superior court where the execution was filed.

284 (b) A certificate of clearance issued by the department shall be deemed an effective release
 285 of an execution. The department shall provide to the delinquent taxpayer, within 30 days
 286 of the date of payment, a notice of the release of the execution and shall cause a release of
 287 the execution to be filed with the applicable superior court clerk."

288 **SECTION 10.**

289 Title 11 of the Official Code of Georgia Annotated, relating to the Uniform Commercial
 290 Code, is amended by revising Code Section 11-9-333, relating to the priority of certain liens,
 291 as follows:

292 "11-9-333.

293 **(a) Year's support; property taxes; other state taxes; other taxes or judgments.**

294 Except as is expressly provided to the contrary elsewhere in this article and in
 295 subsection (b) of this Code section, a perfected security interest in collateral takes priority
 296 over each and all of the liens, claims, and rights described in Code Section 44-14-320,
 297 relating to the establishment of certain liens, as now or hereafter amended; former Code
 298 Section 53-7-91 as such existed on December 31, 1997, if applicable; and Code Section
 299 53-7-40, relating to the priority of debts against the estate of a decedent, as now or
 300 hereafter amended; provided, nevertheless, that:

301 (1) Year's support to the family, duly set apart in the collateral prior to the perfection of
 302 the subject security interest, takes priority over such security interest;

303 (2) A lien for property taxes duly assessed upon the subject collateral, either prior or
 304 subsequent to the perfection of the subject security interest, takes priority over security
 305 interest;

306 (3) A lien for all ~~other~~ state taxes takes priority over such security interest, except where
 307 such security interest is perfected by filing a financing statement relative thereto prior to
 308 such time as the execution for such state taxes shall be ~~entered on the execution docket~~
 309 ~~in the place and~~ filed in the manner provided by law; provided, nevertheless, that, with
 310 respect to priority rights between such tax liens and security interests where under this
 311 article the same are perfected other than by filing a financing statement, the same shall
 312 be determined as provided by law prior to January 1, 1964; and

313 (4) A lien for other unpaid taxes or a duly rendered judgment of a court having
 314 jurisdiction shall have the same priority with regard to a security interest as it would have
 315 if the tax lien or judgment were a conflicting security interest within the meaning of Code
 316 Section 11-9-322 or an encumbrance within the meaning of Code Section 11-9-334,
 317 which conflicting security interest was perfected by filing or which encumbrance arose
 318 at the time the tax lien or judgment was duly recorded in the place designated by statute
 319 applicable thereto.

320 (b) **Mechanics' liens on farm machinery.** A mechanics' lien on farm machinery or
 321 equipment arising on or after July 1, 1985, shall have priority over any perfected security
 322 interest in such farm machinery or equipment unless a financing statement has been filed
 323 as provided in Code Section 11-9-501 and unless the financing statement describes the
 324 particular piece of farm machinery or equipment to which the perfected security interest
 325 applies. Such description may include the make, model, and serial number of the piece of
 326 farm machinery or equipment. However, such description shall be sufficient whether or
 327 not it is specific if it reasonably identifies what is described and a mistake in such
 328 description shall not invalidate the description if it provides a key to identifying the farm
 329 machinery or equipment."

330 SECTION 11.

331 Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to
 332 clerks of superior courts, is amended by adding a new Code Section to read as follows:

333 15-6-97.3.

334 (a) The Georgia Superior Court Clerks' Cooperative Authority or its designated agent shall
 335 revise the state-wide uniform automated information system for real and personal property
 336 records as provided for in Code Section 15-6-97 to provide for the inclusion in such system
 337 functionality as provided in this Code section for state tax executions and renewed state tax

338 executions electronically filed with clerks of superior court as provided for in Article 2 of
339 Chapter 3 of Title 48.

340 (b) As used in this Code section, the term 'state tax execution' shall be inclusive of the term
341 'renewed state tax execution.'

342 (c) Effective January 1, 2018, the state-wide uniform automated information system for
343 real and personal property records shall be revised to provide the following function and
344 utility related to state tax executions:

345 (1) Electronic query of the Georgia consolidated lien indexes for state tax execution
346 instrument types by direct party name to include state-wide results of all state tax
347 executions filed for such party regardless of any applied county limiting search filter;

348 (2) Electronic query of the Georgia consolidated lien indexes for all lien types by direct
349 party name to include state-wide results of all state tax executions filed for such party
350 regardless of any applied county limiting search filter;

351 (3) A secondary electronic query of the results returned by a search performed pursuant
352 to paragraphs (1) and (2) of this subsection by the last four digits of a social security
353 number or federal employer identification number which will render results of state tax
354 executions associated with such number;

355 (4) An electronic link from an index data record of a state tax execution found in the
356 system to the Department of Revenue information management system to provide users
357 access to detailed information, status, and clearance certificates from the department
358 system. The Department of Revenue shall provide to the authority such electronic linking
359 data elements as may be required by the authority to link filed executions found in the
360 state-wide uniform automated information system for real and personal property records
361 to the matching data on the execution in the Department of Revenue information
362 management system; and

363 (5) A searchable electronic filing submission docket or other means which allows a
364 search by direct party name, as provided by the Department of Revenue, for state tax
365 executions which have been submitted to the authority for filing with a clerk of superior
366 court pending the inclusion of final index data for such execution into the Georgia
367 consolidated lien indexes. Search features shall be available for an execution upon its
368 receipt by the authority.

369 (d) The Georgia Superior Court Clerks' Cooperative Authority shall have authority to
370 promulgate rules and regulations necessary to develop and implement the provisions of this
371 Code section."

372 **SECTION 12.**

373 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
 374 adding a new Code section to read as follows:

375 "44-1-18.

376 (a) As used in this Code section, the term:

377 (1) 'Certificate of clearance' or 'certificate' shall mean a document issued by the
 378 department affirming that a proper search has been conducted by the department and has
 379 yielded no active liens associated with an individual or entity, as provided for in Article
 380 2 of Chapter 3 of Title 48.

381 (2) 'Current owner' means:

382 (A) The individual or entity vested with fee simple title to a parcel of real property; or

383 (B) Where fee simple title to a parcel of real property has been vested by:

384 (i) A joint tenancy with survivorship rights, then the survivor of such joint tenancy;

385 (ii) A deed in lieu of foreclosure, then the grantor of such deed;

386 (iii) An order of a probate court providing for:

387 (I) An executor, administrator, and granting an order declaring no administration
 388 necessary, then the deceased subject party of such probate proceeding; or

389 (II) A conservator, custodian, or guardian, then the ward subject party of such
 390 probate proceeding;

391 (iv) A deed into a trustee of a trust in which the party to an execution is the trustor,
 392 then:

393 (I) Where an execution attaches to the trustor prior to the trustor's conveyance to
 394 the trust, then the trustor; and

395 (II) Where an execution attaches to the trustor after the trustor's conveyance to the
 396 trust, then the trustee of such trust in his or her capacity as trustee and the trust,
 397 which trust shall obtain a distinct federal employee identification number;

398 (v) An order of a court providing:

399 (I) Award of real property to a spouse in a divorce proceeding, then the spouse so
 400 awarded fee simple title to the property;

401 (II) Award of real property in a quiet title action as provided in Code Section
 402 23-3-40, et seq., and Code Section 23-3-60, et seq., then the successful petitioner
 403 of such action, provided proper service was effectuated upon the department; or

404 (III) Award of real property in an action to partition the property; where the
 405 property is physically partitioned into separate parcels, then the party vested with
 406 title to each such partitioned parcel; and where the property is ordered sold and the
 407 proceeds of such sale partitioned, then to each party to the extent of their interest in
 408 said proceeds;

- 409 (vi) The death of a life tenant, then the remaindermen of such life estate;
 410 (vii) The termination of an executory trust, then the vestees of such trust;
 411 (viii) The merger of entities wherein one or more of the entities is a party to an
 412 execution, then both the acquired and acquiring parties; or
 413 (ix) Voluntary deed to a condemnor for compensation as provided in Title 22, then the
 414 grantor in such deed.
- 415 (3) 'Department' shall mean the Georgia Department of Revenue.
- 416 (4) 'Execution' shall mean either a state tax execution or a renewed state tax execution
 417 as defined in Article 2 of Chapter 3 of Title 48.
- 418 (5) 'Statement of lien' or 'statement' shall mean a document issued by the department:
- 419 (A) Affirming that an active execution, as provided for in Article 2 of Chapter 3 of
 420 Title 48, is associated with the current owner;
- 421 (B) Providing the identification reference number assigned to the execution by the
 422 department; and
- 423 (C) Providing information to contact the department through the department's
 424 information management system for payoff information of such execution.
- 425 (b) Prior to the conveyance of real property upon which a title is transferred, any holder
 426 of a fee simple interest in real property, licensed attorney at law, or title insurance company
 427 shall be entitled to, upon request from the department:
- 428 (1) A certificate of clearance; or
 429 (2) A statement of lien.
- 430 (c) The department shall only require a certificate of clearance for the current owner of the
 431 property to be conveyed at the time of the conveyance, and shall not require a certificate
 432 of clearance as to any previous owners or title holders of such property.
- 433 (d) Subject to the provisions of subsection (n) of this Code section, all executions against
 434 any party previously vested with title other than the current owner shall be of no force and
 435 effect as to the title of, and shall not be a lien against, any real property owned by the
 436 current owner.
- 437 (e) All requests for a certificate of clearance made to the department shall:
- 438 (1) Be in writing;
 439 (2) State the name, address, e-mail address, and telephone number of the requestor;
 440 (3) State whether the requestor is the owner of the real property, an attorney at law, or
 441 a title insurance company;
 442 (4) State the name of the current owner of the real property;
 443 (5) State an e-mail address to which the certificate or statement can be directed; and
 444 (6) Provide a certification that the information provided therein is true and correct to the
 445 best of the requestor's knowledge.

446 (f) All requests shall be transmitted to the department by electronic means through the
447 department's information management system or be delivered to the registered address of
448 the department by certified mail, return receipt requested, or statutory overnight delivery.
449 Any request transmitted by electronic means shall be considered received on the first
450 business day following such transmission.

451 (g) The information specified in the certificate of clearance shall be binding upon the
452 department as of the date of the certificate and for 30 days thereafter, during which time
453 the department shall not issue any new executions against the current owner designated in
454 the certificate.

455 (h) The department shall furnish a certificate of clearance or statement of lien, as
456 applicable, to the requestor immediately upon request by electronic means through the
457 department's information management system or, if not available through such system, to
458 the e-mail address provided by the requestor within five business days of receipt of such
459 request.

460 (i) The failure of the department to provide a certificate or statement within such five-day
461 period shall cause any lien against real property arising from any execution against the
462 current owner to be extinguished and to be of no force and effect as to the title. Such
463 failure by the department to provide a certificate or statement shall be evidenced by a
464 recorded affidavit, signed by a licensed attorney at law, containing a statement that the
465 request was made pursuant to this Code section and that a certificate has not been issued
466 by the department and would not be found in the records of the department or otherwise,
467 with a copy of the acknowledgment of receipt of the request attached thereto.

468 (j) The certificate of clearance may be recorded in the superior court of the county where
469 any real property owned by the current owner lies, and upon such recording shall be
470 conclusive evidence that through that certain date 30 days after the date of the certificate
471 no lien of the department attaches to the real property owned by the current owner referred
472 to in such certificate.

473 (k) A copy of the certificate of clearance shall be maintained in the department's
474 information management system and shall be identified by an identification number
475 assigned to the certificate by the department, with such identification number being
476 required to be entered on the real estate transfer tax declaration form as required in Code
477 Section 48-6-4.

478 (l) If a statement of lien is issued and payoff information is acquired from the department
479 pursuant to the reference information provided therein, such payoff information shall be
480 binding upon the department as of the date such payoff information is received by any
481 requesting party and for 30 days thereafter, during which time the department shall not

482 issue any executions against the current owner designated in the statement, and upon
 483 payment in full of all sums due as set forth in any such payoff information:

484 (1) All liens of the department against the real property owned by the current owner in
 485 existence as of the date of the statement shall be extinguished and all executions
 486 encumbering such real property shall be cancelled. The department shall provide proof
 487 of receipt of such payoff to the party remitting such payoff funds, and such proof may be
 488 recorded in the superior court of the county where the real property lies, and upon such
 489 recording shall be conclusive evidence that through the date of the statement no lien of
 490 the department attaches to any real property owned by the current owner referred to in
 491 such statement; and

492 (2) If one or more executions are for any reason not set forth on such statement or payoff
 493 information, as to such omitted execution, said payment shall cause any lien against any
 494 real property owned by the current owner arising from any such omitted execution to be
 495 extinguished and to be of no force and effect as to the title.

496 (m) Any person who files a request in accordance with this Code section which request is
 497 fraudulent shall be guilty of a misdemeanor and shall be punished by imprisonment for not
 498 more than 12 months or by a fine of not less than \$1,000.00 nor more than \$5,000.00, or
 499 both.

500 (n) Noncompliance with any provision of this Code section shall preserve an execution
 501 properly executed and filed as provided for in Article 2 of Chapter 3 of Title 48 on real
 502 property on the date of any conveyance of such property.

503 (o) This Code section shall not apply to any conveyance listed below and the grantee of
 504 any such conveyance shall take title to the real property free and clear of any execution or
 505 lien created from such execution existing at the time of such conveyance:

506 (1) A foreclosure of a mortgage or security deed, wherein such mortgage or security deed
 507 has priority over any execution;

508 (2) A receiver or trustee in a bankruptcy proceeding;

509 (3) A judicial order resulting from an action regarding condemnation, forfeiture, and
 510 judicial foreclosure, wherein the department was properly provided personal service of
 511 such action;

512 (4) A tax sale performed by the Internal Revenue Service;

513 (5) A year's support order by operation of law; or

514 (6) A tax sale conducted by any sheriff, tax commissioner, or municipal levying officer
 515 in this state, provided that proper service was effectuated on the department in accordance
 516 with Code Section 48-4-45,

517 and upon such conveyance all liens of the department against the real property owned by
 518 the current owner of such property as of the date of such conveyance shall be extinguished
 519 and all executions encumbering such real property shall be cancelled.

520 (p) The certificate of clearance shall be signed by the state revenue commissioner, or
 521 authorized agent thereof, and shall contain certifications from the department regarding:

522 (1) Identification of the current owner;

523 (2) That upon statutory request by a proper party in accordance with this Code section,
 524 an examination of the department records was made by the department;

525 (3) That upon such examination by the department, the current owner as shown in the
 526 certificate has no active liens associated with such party by an execution or lien arising
 527 therefrom; and

528 (4) The certificate is given pursuant to this Code section.

529 (q) The state revenue commissioner shall promulgate such rules and regulations not in
 530 conflict with this Code section as may be necessary and appropriate to implement and
 531 administer this Code section."

532 **SECTION 13.**

533 Said title is further amended by revising Code Section 44-2-2, relating to the duties of clerks
 534 to record property transactions, as follows:

535 "44-2-2.

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

540 (A) Deeds;

541 (B) Mortgages;

542 (C) Liens ~~of all kinds~~ as provided for by law; and

543 (D) Maps or plats relating to real estate in the county; and

544 (E) State tax executions and state tax execution renewals as provided for in Article 2
 545 of Chapter 3 of Title 48.

546 (2) ~~For the purpose of~~ As used in this subsection, the term 'liens' shall ~~be defined~~ have
 547 the same meaning as provided in Code Sections 15-19-14, 44-14-320, and 44-14-602 and
 548 shall include all liens provided by state or federal statute.

549 (3) When indexing liens, the clerk shall enter the names of debtors in the index in the
 550 manner provided for names of grantors conveying real estate in subsection (b) of Code
 551 Section 15-6-66 and the names of creditors or claimants in the manner as provided therein
 552 for names of grantees making such conveyances. When indexing state tax executions and

553 state tax execution renewals as provided by subparagraph (a)(1)(E) of this Code section,
 554 the clerk shall enter the names of the taxpayers in the manner provided for names of
 555 grantors conveying real estate in subsection (b) of Code Section 15-6-66 and the name
 556 'GEORGIA STATE DEPT OF REVENUE' in the manner as provided therein for names
 557 of grantees making such conveyances. For state tax executions, the clerk shall also:
 558 (A) Index the last four characters of the taxpayer's social security number or the last
 559 four characters of the federal employer taxpayer number, as applicable to each
 560 taxpayer;
 561 (B) Index such state tax execution control number as provided by rule established by
 562 the Georgia Superior Court Clerks' Cooperative Authority;
 563 (C) Index using instrument types as provided by rule established by the Georgia
 564 Superior Court Clerks' Cooperative Authority; and
 565 (D) Transmit such data to the Georgia Superior Court Clerks' Cooperative Authority
 566 pursuant to the provisions of paragraph (15) of subsection (a) of Code Section 15-6-61.
 567 (4) When indexing maps or plats relating to real estate in the county, the clerk of superior
 568 court shall index the names or titles provided in the caption of the plat.
 569 (b) Deeds, mortgages, and liens of all kinds which are required by law to be recorded in
 570 the office of the clerk of the superior court and which are against the interests of third
 571 parties who have acquired a transfer or lien binding the same property and who are acting
 572 in good faith and without notice shall take effect only from the time they are filed for
 573 record in the clerk's office.
 574 (c) Nothing in this Code section shall be construed to affect the validity or force of any
 575 deed, mortgage, judgment, or lien of any kind between the parties thereto."

576 **SECTION 14.**

577 This Act shall become effective on January 1, 2018.

578 **SECTION 15.**

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