

House Bill 182 (AS PASSED HOUSE AND SENATE)

By: Representatives Reeves of the 99<sup>th</sup>, Williams of the 148<sup>th</sup>, Leverett of the 123<sup>rd</sup>, Silcox of the 53<sup>rd</sup>, and Evans of the 57<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 Part 1 of Article 1 of Chapter 2 of Title 44 of the Official Code of Georgia Annotated,  
2 relating to recording of deeds and other real property transactions, so as to revise provisions  
3 for curing defective deeds and other instruments; to comport with the legislative correction  
4 recommended by the United States Eleventh Circuit Court of Appeals in *Pingora Loan*  
5 *Servicing, LLC, v. Scarver (In Re: Lindstrom)*; to amend Part 7 of Article 5 of Chapter 3 of  
6 Title 44 of the Official Code of Georgia Annotated, relating to miscellaneous provisions  
7 regarding time-share projects and programs, so as to provide alternate procedures regarding  
8 nonjudicial foreclosure of time-share estates; to provide for notice; to provide for interests  
9 of mortgagees; to provide for trustees; to provide for recording of time-share interests; to  
10 provide for sales of encumbered time-share estates and proceeds of same; to provide for  
11 transfer of title; to provide for related matters; to provide for effective dates and applicability;  
12 to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Part 1 of Article 1 of Chapter 2 of Title 44 of the Official Code of Georgia Annotated,  
16 relating to recording of deeds and other real property transactions, is amended by revising

17 Code Section 44-2-18, relating to recording deed upon affidavit of subscribing witness and  
 18 effect of substantial compliance, as follows:

19 "44-2-18.

20 If a deed is ~~neither not~~ attested by ~~nor acknowledged before~~ one of the officers named in  
 21 Code Section 44-2-15, it may be recorded upon the affidavit of a subscribing witness,  
 22 which affidavit shall be made before any one of the officers named in Code  
 23 Section 44-2-15 and shall testify to the execution of the deed and its attestation according  
 24 to law. A substantial compliance with the requirements of this Code section shall be held  
 25 sufficient in the absence of all suspicion of fraud."

26 **SECTION 2.**

27 Part 7 of Article 5 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated,  
 28 relating to miscellaneous provisions regarding time-share projects and programs, is amended  
 29 in Code Section 44-3-206, relating to foreclosure by owners' association, procedure, and  
 30 effect of sale, by revising subsection (a) as follows:

31 "(a) An owners' association may foreclose its lien upon a time-share estate in accordance  
 32 with subsection (c) of Code Section 44-3-109 or with Code Section 44-3-207 or may  
 33 foreclose its lien under a power of sale that such owners' association shall have under this  
 34 Code section in order to sell a time-share estate for the purpose of paying any or all unpaid  
 35 assessments and other charges owed by the owner of such time-share estate."

36 **SECTION 3.**

37 Said part is further amended by adding new Code section to read as follows:

38 "44-3-207.

39 (a)(1)(A) In order to sell a time-share estate for the purpose of paying any or all unpaid  
 40 assessments and other charges owed by the owner of such time-share estate, an owners'  
 41 association, or its managing agent on behalf of the owner's association, may foreclose

42 its lien for all assessments and other charges assessed by the owners' association upon  
43 a time-share estate pursuant to the time-share instrument or subsections (a) and (b) of  
44 Code Section 44-3-109, in accordance with:

45 (i) The judicial foreclosure procedure of subsection (c) of Code Section 44-3-109  
46 or 44-3-232, as applicable;

47 (ii) The trustee foreclosure procedure under this Code section; or

48 (iii) The nonjudicial foreclosure procedure under Code Section 44-3-206.

49 (B) If the time-share instrument contains any provision specifically prohibiting the use  
50 of the trustee foreclosure procedure, or if the owners' association otherwise determines  
51 that the time-share instrument should be amended to specifically provide for the use of  
52 the trustee foreclosure procedure, an amendment to the time-share instrument  
53 permitting the use of the trustee foreclosure procedure set forth in this Code section  
54 must be adopted and recorded prior to the use of the trustee foreclosure procedure.  
55 Prior to the owners' association's first use of the trustee foreclosure procedure, it shall  
56 notify all owners of time-share estates in the time-share program that, after the date of  
57 the notification, the owners' association has the right to elect to use the trustee  
58 foreclosure procedure with respect to any foreclosure of assessment liens as established  
59 in this Code section. The owners' association, or its managing agent on behalf of the  
60 owners' association, shall be deemed to have complied with this notice requirement if  
61 the owners of time-share estates in the time-share program are informed by mail sent  
62 to each owner's property address that was most recently provided to the owners'  
63 association, in the notice of an annual or special meeting of the owners, by posting on  
64 the website of the applicable time-share program, or by any other communication used  
65 by the owners' association.

66 (2) A mortgagee may foreclose its mortgage upon a time-share estate in accordance with  
67 Part 2 of Article 7 of Chapter 14 of this title or may foreclose its mortgage pursuant to the  
68 trustee foreclosure procedure under this Code section in order to sell a time-share estate

69 for the purpose of satisfying any obligation of the owner of such time-share estate created  
70 by such mortgage; provided, however, that the mortgage, or an amendment to a mortgage  
71 executed by the owner of the time-share estate, permits the trustee foreclosure procedure.  
72 (b)(1) For the purpose of carrying out and effectuating a trustee foreclosure authorized  
73 by this Code section, the owners' association or mortgagee, as applicable, shall appoint  
74 a trustee or substitute trustee by recording a notice of appointment of trustee or notice of  
75 substitution of trustee in the official records of the county in which the time-share estate  
76 is located. The owners' association or mortgagee may appoint multiple trustees in a  
77 single appointment, and any appointed trustee may be used by the owners' association,  
78 its managing agent, or the mortgagee, as applicable, regarding the trustee foreclosure of  
79 any assessment lien or mortgage under any time-share project for which the trustee is  
80 appointed. The recorded notice of appointment of trustee or notice of substitution of  
81 trustee shall contain the name and address of the trustee or substitute trustee, the name  
82 and address of the owners' association or mortgagee, and the name and address of the  
83 time-share project.

84 (2) For purposes of this Code section, an attorney who is a member in good standing of  
85 the State Bar of Georgia and who has been practicing law for at least five years, or that  
86 attorney's law firm, or a title insurer, underwriter, or agent authorized to transact business  
87 in this state is permitted to serve as a trustee or substitute trustee. A trustee shall use  
88 good faith, skill, care, and diligence in discharging all of the trustee duties under this  
89 Code section and shall deal honestly and fairly with all parties. A trustee who  
90 intentionally violates the provisions of this Code section concerning the trustee  
91 foreclosure procedure shall be guilty of a felony and shall be punished by a fine of not  
92 more than \$5,000.00 or imprisonment for not less than one year nor more than three  
93 years, or both.

94 (c)(1) Before initiating the trustee foreclosure procedure against any time-share estate,  
95 a claim of lien or mortgage against the time-share estate shall have been recorded in the  
96 county in which the time-share estate is located.

97 (2) In any trustee foreclosure proceeding, the trustee shall first deliver to the owner of  
98 the time-share estate a written notice of default sent by registered or certified mail or  
99 statutory overnight delivery, return receipt requested, to the owner's property address that  
100 was most recently provided to the owners' association or mortgagee and no later than 30  
101 days prior to the initiation of the trustee foreclosure procedure. The notice of default  
102 shall be deemed delivered on the official postmark day or the day on which it is received  
103 for delivery by a commercial delivery firm. The notice of default shall state:

104 (A) The intent of the owners' association or mortgagee to commence foreclosing on the  
105 assessment lien or mortgage, after the end of the 30 day period, using the trustee  
106 foreclosure procedure set forth in this Code section;

107 (B) The address and telephone number of the trustee and owners' association, its  
108 managing agent, or the mortgagee, as applicable;

109 (C) The legal description of the time-share estate;

110 (D) The nature of the default;

111 (E) The outstanding amounts secured by the assessment lien or mortgage and a per  
112 diem amount to account for further accrual of such amounts;

113 (F) The method by which the owner of the time-share estate may cure the default; and

114 (G) The right of the owner of the time-share estate to object to the use of the trustee  
115 foreclosure procedure and require the owners' association or mortgagee to proceed  
116 thereafter only with a judicial foreclosure action as to that specified default by  
117 delivering a written objection to the trustee within 20 days after the delivery date of the  
118 notice.

119 (3) At any time before the trustee foreclosure sale of the encumbered time-share estate  
120 is consummated pursuant to subsection (e) of this Code section, the owner of the

121 time-share estate may cure the default and redeem the time-share estate by paying the  
122 amounts secured by the assessment lien or mortgage in cash or certified funds to the  
123 trustee. No right of redemption shall exist after the consummation of the sale.

124 (d)(1) In order for a trustee to sell an encumbered time-share estate foreclosed under this  
125 Code section:

126 (A) The trustee must have provided the written notice of default as required under  
127 paragraph (2) of subsection (c) of this Code section, and a period of at least 30 calendar  
128 days must have elapsed after such notice of default is deemed delivered;

129 (B) The trustee must not have received from the owner of the time-share estate a  
130 written objection to the use of the trustee foreclosure procedure prior to the end of  
131 the 20 day period provided for in the notice of default and the time-share estate was not  
132 redeemed under paragraph (3) of subsection (c) of this Code section;

133 (C) The trustee must have delivered a notice of sale meeting the requirements of  
134 paragraph (4) of this subsection to the owner of the time-share estate, by registered or  
135 certified mail or statutory overnight delivery, return receipt requested, to the property  
136 address of the owner of the time-share estate most recently provided to the owners'  
137 association or mortgagee no later than 30 days prior to the date of the proposed sale and  
138 the notice of sale shall be deemed delivered on the official postmark day or the day on  
139 which it is received for delivery by a commercial delivery firm;

140 (D) The trustee must have delivered a copy of the notice of sale to any junior lien  
141 holder of record by registered or certified mail or statutory overnight delivery, return  
142 receipt requested, no later than 30 days prior to the date of the proposed sale. The  
143 notice of sale shall be deemed delivered on the official postmark day or the day on  
144 which it is received for delivery by a commercial delivery firm;

145 (E) The trustee must have recorded a copy of the notice of sale in the official records  
146 of the county in which the time-share estate is located not less than 30 days prior to the  
147 date of the proposed sale; and

148 (F) The trustee must have published a notice in the legal organ for the county in which  
149 the time-share estate is located, or if there is no newspaper designated as such, then in  
150 the nearest newspaper having the largest general circulation in such county, once a  
151 week during the four calendar weeks immediately preceding the calendar week of the  
152 date of such sale. The last of such notices shall be published at least seven calendar  
153 days prior to the date of the sale.

154 (2) If a notice of lis pendens has not previously been recorded, the recording of the notice  
155 of sale shall have the same force and effect as the filing of a lis pendens in a judicial  
156 proceeding.

157 (3) Any trustee foreclosure sale pursuant to this subsection shall be conducted by the  
158 trustee, or by an agent of the trustee under the supervision of the trustee, and shall occur  
159 on a legal sale day within the legal hours of sale at the place of sale designated in the  
160 notice of sale, which must be accessible to the public in the county where the time-share  
161 estate is located. The trustee foreclosure sale may also occur online at a specific website  
162 on the internet or in any other manner used for a judicial foreclosure sale procedure in the  
163 county in which the time-share estate is located.

164 (4) The notice of sale required by paragraph (1) of this subsection shall be in writing and  
165 shall state:

166 (A) The name of the owner of the time-share estate;

167 (B) The legal description of the time-share estate;

168 (C) The name and address of the trustee;

169 (D) A description of the default that is the basis for the foreclosure;

170 (E) The recording information for the assessment lien or mortgage;

171 (F) The amounts secured by the assessment lien or mortgage and a per diem amount  
172 to account for further accrual of the amounts secured by the assessment lien or  
173 mortgage; and

174 (G) The date, location, and starting time of the trustee foreclosure sale, which shall be  
175 between the hours of 9:00 A.M. and 4:00 P.M., eastern standard time.

176 (e)(1) At the trustee foreclosure sale, the trustee shall issue to the highest bidder, who has  
177 paid the price bid in cash or certified funds, as purchaser or purchasers, a certificate of  
178 sale stating that a foreclosure conforming to the requirements of this Code section has  
179 occurred, including the time, location, and date of the sale; a legal description of the  
180 time-share estate that was sold; the amounts secured by the assessment lien or mortgage;  
181 the amount of the highest bid; and the name of the purchaser. Within three days of the  
182 trustee foreclosure sale, a copy of the certificate of sale shall be sent by registered or  
183 certified mail or statutory overnight delivery, return receipt requested, to the owner of the  
184 time-share estate at the owner's property address that was most recently provided to the  
185 owners' association or mortgagee. Upon the issuance of a certificate of sale, all of the  
186 rights of redemption of the owner of the time-share estate that have been foreclosed under  
187 this Code section shall terminate.

188 (2) Within ten calendar days after a sale, absent the prior filing and service on the trustee  
189 of a judicial action to enjoin issuance of the trustee foreclosure deed to the time-share  
190 estate, the trustee shall issue a trustee foreclosure deed to the purchaser and deliver the  
191 trustee foreclosure deed to the clerk of the superior court for recording in the official  
192 records of the county in which the time-share estate is located. The trustee foreclosure  
193 deed shall include the name and address of the trustee, the name and address of the  
194 purchaser or purchasers, the name and address of the former owner of the time-share  
195 estate, and a legal description of the time-share estate. The trustee foreclosure deed shall  
196 contain no warranties of title from the trustee. A certificate of compliance confirming  
197 that the notice and publication requirements of this Code section were met, that the  
198 default was not cured, that the trustee did not timely receive any written objection to the  
199 trustee foreclosure procedure from the owner of the time-share estate, and that the

200 time-share estate was not timely redeemed shall be executed by the trustee and attached  
201 as an exhibit to the trustee foreclosure deed.

202 (3) A sale and delivery of the trustee foreclosure undertaken as authorized by this Code  
203 section shall divest the owner of the time-share estate of all right, title, interest, and equity  
204 that such owner has in or to the time-share estate and shall vest fee simple title to the  
205 time-share estate in the purchaser or purchasers at the trustee foreclosure sale. The  
206 issuance and recording of the trustee foreclosure deed is presumed valid and may be  
207 relied upon by third parties without actual knowledge of irregularities in the trustee  
208 foreclosure proceedings.

209 (4) The proceeds of the trustee foreclosure sale shall be applied first in accordance with  
210 the lien priorities set forth in paragraphs (1) through (4) of subsection (a) of Code  
211 Section 44-3-109, after which any remaining proceeds shall be applied to the payment in  
212 full of such unpaid assessments and other charges or mortgage obligations, as applicable,  
213 and next to the payment of all expenses actually incurred by the owners' association in  
214 connection with the trustee foreclosure proceedings, including attorneys' fees. Any  
215 remaining proceeds shall be paid to the prior owner of the time-share estate. The owners'  
216 association or mortgagee, as applicable, may bid at the sale and purchase the time-share  
217 estate and receive a credit up to the amount of unpaid assessments and other charges or  
218 mortgage obligations, as applicable, and all expenses actually incurred by the owners'  
219 association or mortgagee, as applicable, in connection with the trustee foreclosure  
220 proceedings, including attorney's fees.

221 (5) A trustee foreclosure sale releases the prior owner of the time-share estate of liability  
222 for any and all amounts secured by the assessment lien or mortgage, as applicable. The  
223 owners' association or mortgagee, as applicable, has no right to any deficiency judgment  
224 against the prior owner of the time-share estate after the completion of the trustee  
225 foreclosure sale of the time-share estate under this Code section."

226 **SECTION 4.**

227 This Act shall become effective on July 1, 2023; provided, however, that Section 1 of this  
228 Act shall become effective upon its approval by the Governor or upon its becoming law  
229 without such approval and shall apply to all deeds and other instruments recorded pursuant  
230 to Code Section 44-14-61 from July 1, 2015.

231 **SECTION 5.**

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