

## House Bill 210

By: Representatives Fludd of the 48<sup>th</sup>, Post 4, Moraitakis of the 42<sup>nd</sup>, Post 4, Oliver of the 56<sup>th</sup>, Post 2, Stephenson of the 60<sup>th</sup>, Post 1, Hill of the 81<sup>st</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated,  
2 relating to condominiums, so as to clarify the relevant date of recording of condominium  
3 instruments; to clarify the definition of "unit owner"; to clarify requirements for identifying  
4 recorded plats on amendments for expandable condominiums; to clarify requirements for  
5 identifying recorded plans on amendments for expandable condominiums; to clarify the  
6 classification of pipes and vents; to clarify the classification of decks; to clarify enforcement  
7 powers and procedures and assessment of expenses for suspension of utilities; to clarify  
8 voting procedures for multiple-owner units; to conform proxy requirements to other  
9 provisions of Georgia law; to clarify expenses which may be assessed against owners  
10 equitably; to clarify expenses which may be assessed against owners uniformly; to clarify  
11 that each grantee in a conveyance is jointly and severally liable for unpaid assessments due  
12 prior to the date of issuance of a closing statement; to conform special assessment procedures  
13 to other provisions of the article; to clarify limited common element assignment and  
14 reassignment procedures; to clarify declarant easement rights for repairs; to correct a  
15 typographical error regarding mortgagee execution of expansion amendments; to require  
16 owners altering or damaging the structural integrity of a condominium to promptly repair  
17 such damage; to clarify amendment procedures and requirements; to clarify requirements for  
18 amendments which alter allocations of liability for common expenses; to clarify effective  
19 dates of amendments; to provide for presumption of validity of amendments after declarant  
20 transition; to clarify restoration procedures following casualties covered under insurance  
21 required to be maintained by the association; to clarify effective dates of liens against the  
22 condominium; to require prompt release of materialmen's liens on units upon payment of a  
23 pro rata share of the encumbrance; to clarify an association's powers to convey common  
24 elements by deed in lieu of eminent domain and special assessments related thereto; to clarify  
25 procedures for the withdrawal of submitted property in the event of eminent domain; to  
26 clarify requirements for calling annual meetings and for stating purposes of special meetings;  
27 to clarify that quorum requirements may be specified in the bylaws; to clarify responsibilities  
28 to repair damage to units through which access is taken; to clarify an association's powers

1 to grant deeds in lieu of eminent domain; to clarify minimum hazard insurance requirements;  
 2 to clarify distribution of surplus proceeds to unit owners; to increase maximum late charges  
 3 on delinquent assessments; to increase the maximum rate of interest on delinquent  
 4 assessments; to clarify assessment collection and judicial foreclosure powers and procedures  
 5 and increase the duration of the association's lien; to increase the maximum fee chargeable  
 6 for closing payoff certifications; to make editorial revisions; to provide for related matters;  
 7 to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to  
 11 condominiums, is amended by striking paragraph (26) of Code Section 44-3-71, relating to  
 12 definitions, and inserting in lieu thereof the following:

13 "(26) 'Record' means to file for record in the office of the clerk of the superior court of  
 14 all counties in which the condominium or any part thereof is located. In any instance  
 15 where a county deems the date of recording to be a different date than the date of filing  
 16 for record, the term shall refer to the filing of record, and the date of such filing of record  
 17 shall be deemed the date of recording under this article."

18 **SECTION 2.**

19 Said article is further amended by striking paragraph (29) of Code Section 44-3-71, relating  
 20 to definitions, and inserting in lieu thereof the following:

21 "(29) 'Unit owner' means one or more persons, including the declarant, who own a  
 22 condominium unit or, in the case of a leasehold condominium, whose leasehold interest  
 23 or interests in the condominium extend for the entire balance of the unexpired term or  
 24 terms. The holder of any tax deed on a unit shall be deemed the unit owner under this  
 25 paragraph, notwithstanding any rights of redemption which may exist in favor of other  
 26 persons."

27 **SECTION 3.**

28 Said article is further amended by striking subsection (b) of Code Section 44-3-74, relating  
 29 to recording condominium instruments, plats, plans, and encumbrances, and inserting in lieu  
 30 thereof the following:

31 "(b) In addition to the records and indexes required to be maintained by the clerk of the  
 32 superior court, such clerk shall maintain one or more separate plat books, entitled  
 33 'Condominium Plat Book,' in which shall be recorded all plats required to be filed pursuant

1 to this article. In addition to such plats, there shall also be entitled to be recorded in such  
2 plat books other plats, including site plans and plot plans, prepared by a registered land  
3 surveyor and affecting any condominium; but the same shall not constitute the recording  
4 of a plat pursuant to Code Section 44-3-83 unless they comply with all requirements  
5 thereof. The record of the declaration and of any amendment thereto made pursuant to  
6 Code Section 44-3-89 shall contain a reference to the plat book and page number of the plat  
7 or plats recorded in connection therewith."

#### 8 **SECTION 4.**

9 Said article is further amended by striking subsection (c) of Code Section 44-3-74, relating  
10 to recording condominium instruments, plats, plans, and encumbrances, and inserting in lieu  
11 thereof the following:

12 "(c) The plans required to be recorded pursuant to Code Section 44-3-83 shall be kept by  
13 the clerk of the superior court in a separate file for each condominium and shall be indexed  
14 in the same manner as a conveyance entitled to record, numbered serially in the order of  
15 receipt, each designated 'Condominium Plans,' with the name of the condominium, and  
16 each containing a reference to the deed book and page number where the first page of the  
17 declaration is recorded or the document number assigned to the declaration upon its  
18 recordation. The record of the declaration and of any amendment thereto made pursuant  
19 to Code Section 44-3-89 shall contain a reference to the file number of the plans recorded  
20 in connection therewith."

#### 21 **SECTION 5.**

22 Said article is further amended by striking paragraph (3) of subsection (a) of Code Section  
23 44-3-75, relating to construction and validity of condominium instruments, conflicts and  
24 inconsistencies, and severability, and inserting in lieu thereof the following:

25 "(3) If any chutes, flues, ducts, pipes, vents, conduits, wires, bearing walls, bearing  
26 columns, or any other apparatus lies partially inside and partially outside of the designated  
27 boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of  
28 that unit; but any portions thereof serving more than one unit or any portion of the common  
29 elements shall be deemed a part of the common elements;"

#### 30 **SECTION 6.**

31 Said article is further amended by striking paragraph (5) of subsection (a) of Code Section  
32 44-3-75, relating to construction and validity of condominium instruments, conflicts and  
33 inconsistencies, and severability, and inserting in lieu thereof the following:



1 in full. All common expenses for termination and restoration of any services pursuant to  
2 this Code section shall be an assessment and a lien against the unit."

3 **SECTION 8.**

4 Said article is further amended by striking subsection (b) of Code Section 44-3-79, relating  
5 to the allocation of votes in the association, and inserting in lieu thereof the following:

6 "(b) Since a unit owner may be more than one person, if only one of those persons is  
7 present at a meeting of the association or is voting by proxy, ballot, or written consent, that  
8 person shall be entitled to cast the votes pertaining to that unit. However, if more than one  
9 of those persons is present or executes a proxy, ballot, or written consent, the vote  
10 pertaining to that unit shall be cast only in accordance with their unanimous agreement  
11 unless the condominium instruments expressly provide otherwise; and such consent shall  
12 be conclusively presumed if any one of them purports to cast the votes pertaining to that  
13 unit without protest being made immediately by any of the others to the person presiding  
14 over the meeting or vote."

15 **SECTION 9.**

16 Said article is further amended by striking subsection (c) of Code Section 44-3-79, relating  
17 to the allocation of votes in the association, and inserting in lieu thereof the following:

18 "(c) The votes pertaining to any unit may, and, in the case of any unit owner not a natural  
19 person or persons, shall, be cast pursuant to a proxy or proxies duly executed by or on  
20 behalf of the unit owner or, in cases where the unit owner is more than one person, by or  
21 on behalf of the joint owners of the unit. No such proxy shall be revocable except as  
22 provided in Code Section 14-2-722 or Code Section 14-3-724 or by written notice  
23 delivered to the association by the unit owner or by any joint owners of a unit. Any proxy  
24 shall be void if it is not dated or if it purports to be revocable without such notice."

25 **SECTION 10.**

26 Said article is further amended by striking subsection (b) of Code Section 44-3-80, relating  
27 to the allocation of liability for common expenses, and inserting in lieu thereof the following:

28 "(b) If and to ~~To~~ the extent that the condominium instruments expressly so provide:

29 (1) Any other common expenses benefiting less than all of the units ~~shall~~ may, in a  
30 uniform and nondiscriminatory manner, be specially assessed equitably among all of the  
31 condominium units so benefited;

32 (2) Any other common expenses occasioned by the conduct of less than all of those  
33 entitled to occupy all of the units or by the licensees or invitees of any such unit or units  
34 ~~shall~~, including reasonable attorney's fees actually incurred by the association in

1 enforcing the condominium instruments, bylaws, or rules and regulations adopted  
 2 pursuant thereto, may be specially assessed against the condominium unit or units, the  
 3 conduct of any occupant, licensee, or invitee of which occasioned any such common  
 4 expenses;

5 (3) Any other common expenses significantly disproportionately benefiting all of the  
 6 units ~~shall~~ may be assessed equitably among all of the condominium units; and

7 (4) Other than for limited common elements ~~expressly designated as such in the~~  
 8 ~~condominium instruments and assigned to fewer than all units,~~ nothing contained in  
 9 paragraph (1) or (3) of this subsection shall permit an association to specially or  
 10 disproportionately allocate common expenses for periodic maintenance, repair, and  
 11 replacement of any portion of the common elements ~~or the units~~ for which the association  
 12 ~~has the obligation to maintain, repair, or replace~~ is assigned maintenance, repair, or  
 13 replacement responsibility under the condominium instruments.

#### 14 SECTION 11.

15 Said article is further amended by striking subsection (c) of Code Section 44-3-80, relating  
 16 to the allocation of liability for common expenses, and inserting in lieu thereof the following:

17 "(c) The amount of all common expenses not specially assessed pursuant to subsection (a)  
 18 or (b) of this Code section, less the amount of all undistributed and unreserved common  
 19 profits, shall be assessed against the condominium units in accordance with the allocation  
 20 of liability for common expenses set forth in the declaration. The allocation may be by  
 21 percentage, fraction, formula, or any other method which indicates the relative liabilities  
 22 for common expenses. If an equal liability for common expenses is allocated to each unit,  
 23 the declaration may merely so state. The entire liability for common expenses shall be  
 24 allocated among the units depicted on plats or plans that comply with subsections (a) and  
 25 (b) of Code Section 44-3-83 and shall be subject to reallocation as provided in this article.  
 26 Except to the extent otherwise expressly provided or permitted by this article, the  
 27 allocations of the liability shall not be altered; provided, however, that no reallocation shall  
 28 affect any assessment or installation thereof becoming due and payable prior to  
 29 reallocation. The assessments shall be made by the association annually or more often if  
 30 the condominium instruments so provide and shall be payable in the manner determined  
 31 by the ~~association~~ board of directors. Notwithstanding any unequal allocation of liabilities  
 32 for common expenses pursuant to this subsection, this provision shall not preclude the  
 33 association from levying charges equally among units for services or items provided to  
 34 owners upon request, or which provide proportionate or uniform benefit to the units,  
 35 including, but not limited to, uniform charges for pool keys or other common element entry  
 36 devices. Further, nothing in this article shall preclude the association from levying capital

1 contribution assessments on transfers of units to the extent authorized under the  
 2 condominium instruments."

### 3 SECTION 12.

4 Said article is further amended by striking subsection (e) of Code Section 44-3-80, relating  
 5 to the allocation of liability for common expenses, and inserting in lieu thereof the following:

6 "(e) Unless otherwise provided in the condominium instruments and except as provided  
 7 in subsection (f) of this Code section, ~~the~~ each grantee in a conveyance of a condominium  
 8 unit shall be jointly and severally liable with the grantor thereof for all unpaid assessments  
 9 against the latter up to the time of the conveyance without prejudice to the grantee's right  
 10 to recover from the grantor the amounts paid by the grantee therefor; provided, however,  
 11 that, if the grantor or grantee shall request a statement from the association as provided in  
 12 Code Section 44-3-109, ~~such~~ each grantee and his or her successors, successors-in-title, and  
 13 assigns shall not be liable for nor shall the condominium unit conveyed be subject to a lien  
 14 for any unpaid assessments against such grantor prior to the date of such statement in  
 15 excess of any amount set forth in the statement."

### 16 SECTION 13.

17 Said article is further amended by striking paragraph (1) of subsection (g) of Code Section  
 18 44-3-80, relating to the allocation of liability for common expenses, and inserting in lieu  
 19 thereof the following:

20 "(1) Except as provided in subsections (a) and (b) of this Code section, subsection (a) of  
 21 Code Section 44-3-97, and subsections (a) and (b) of Code Section 44-3-109, a special  
 22 assessment fee per unit in excess of an average of \$200.00 per fiscal year without the  
 23 approval of a majority of the unit owners; or"

### 24 SECTION 14.

25 Said article is further amended by striking subsection (a) of Code Section 44-3-82, relating  
 26 to assignments and reassignments of limited common elements, and inserting in lieu thereof  
 27 the following:

28 "(a) All assignments and reassignments of limited common elements shall be made or  
 29 provided for in the condominium instruments. No limited common element shall be  
 30 assigned or reassigned except in accordance with this article. No amendment to any  
 31 condominium instrument shall ~~alter any rights or obligations with respect to~~ assign or  
 32 reassign any limited common element without the consent of all unit owners whose use of  
 33 the limited common element is or may be directly affected by the assignment or  
 34 reassignment, as evidenced by their execution of the amendment, except to the extent that

1 the condominium instruments expressly provided otherwise prior to or simultaneously with  
2 the first assignment of the limited common element."

3 **SECTION 15.**

4 Said article is further amended by striking subsection (d) of Code Section 44-3-85, relating  
5 to liability for failure to follow plats or plans, easements, and liability for damages, and  
6 inserting in lieu thereof the following:

7 "(d) Subject to any restrictions and limitations which the condominium instruments may  
8 specify, the declarant shall have a transferable easement on and over the common elements  
9 for the purpose of making improvements and repairs contemplated by the condominium  
10 instruments on the submitted property and any additional property and for the purpose of  
11 doing all things reasonably necessary and proper in connection therewith."

12 **SECTION 16.**

13 Said article is further amended by striking Code Section 44-3-89, relating to expansion of a  
14 condominium, and inserting in lieu thereof the following:

15 "44-3-89.

16 No condominium shall be expanded except in accordance with the provisions of the  
17 declaration and this article. Any expansion shall be deemed to have occurred at the time  
18 of the recordation of plats or plans pursuant to subsection (c) of Code Section 44-3-83 and  
19 an amendment to the declaration effecting the expansion duly executed by the declarant,  
20 all other owners or lessees of the additional property being added to the condominium, and  
21 all ~~mortgages~~ mortgagees of the additional property being added to the condominium. The  
22 amendment shall contain a legal description by metes and bounds of the additional property  
23 being added to the condominium and shall reallocate undivided interests in the common  
24 elements, votes in the association, and liabilities for future common expenses all in  
25 accordance with the provisions of the declaration."

26 **SECTION 17.**

27 Said article is further amended by striking subsection (a) of Code Section 44-3-90, relating  
28 to alterations within units and combining two or more units, and inserting in lieu thereof the  
29 following:

30 "(a) Except to the extent prohibited by the condominium instruments and subject to any  
31 restrictions and limitations specified therein, any unit owner may make any improvements  
32 or alterations within his or her unit that do not materially impair the structural integrity of  
33 any structure or otherwise materially lessen the support of any portion of the condominium.  
34 No unit owner shall do anything which would change the exterior appearance of his or her

1 unit or of any other portion of the condominium except to such extent and subject to any  
 2 conditions which the condominium instruments may specify. Any owner violating the  
 3 provisions of this subsection shall be responsible for the prompt correction of the violation  
 4 and for the repair of all damage to any portion of the condominium resulting from the  
 5 violation."

#### 6 SECTION 18.

7 Said article is further amended by striking paragraph (1) of subsection (a) of Code Section  
 8 44-3-93, relating to amendment of condominium instruments, and inserting in lieu thereof  
 9 the following:

10 "(a)(1) Except to the extent expressly permitted or required by other provisions of this  
 11 article or as otherwise provided in the condominium instruments, the condominium  
 12 instruments shall be amended only by the agreement of ~~unit~~ owners of units to which  
 13 two-thirds of the eligible association vote pertains ~~votes in the association pertain or such~~  
 14 ~~larger majority as the condominium instruments may specify~~; provided, however, that,  
 15 during any such time as there shall exist an unexpired option to add any additional  
 16 property to the condominium or during any such time as the declarant has the right to  
 17 control the association pursuant to Code Section 44-3-101, the agreement shall be that of  
 18 the declarant and the ~~unit~~ owners of units to which ~~two-thirds~~ the required percentage of  
 19 the ~~votes in the association pertain~~ eligible association vote pertains, exclusive of any  
 20 vote or votes appurtenant to any unit or units then owned by the declarant, or a larger  
 21 majority as the condominium instruments may specify. For the purposes of this  
 22 paragraph, eligible votes shall include only the votes of members whose voting rights  
 23 have not been suspended in accordance with the condominium instruments or bylaws."

#### 24 SECTION 19.

25 Said article is further amended by striking subsection (c) of Code Section 44-3-93, relating  
 26 to amendment of condominium instruments, and inserting in lieu thereof the following:

27 "(c) Except to the extent expressly permitted or required by other provisions of this article  
 28 or agreed upon by all unit owners and the mortgagees of all condominium units, no  
 29 amendment to the condominium instruments shall change the boundaries of any unit, the  
 30 undivided interest in the common elements pertaining thereto, the number of votes in the  
 31 association pertaining thereto, or the allocation of liability for common expenses pertaining  
 32 thereto."

**SECTION 20.**

Said article is further amended by striking subsection (d) of Code Section 44-3-93, relating to amendment of condominium instruments, and inserting in lieu thereof the following:

"(d) Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment. In the alternative, ~~provided that the declarant does not then have the right to control the association pursuant to Code Section 44-3-101,~~ the sworn statement of the president, of any ~~vice-president~~ vice president, or of the secretary of the association attached to or incorporated in an amendment executed by the association, which sworn statement states unequivocally that agreement of the required majority was otherwise lawfully obtained and that any notices required under this article were properly given, shall be sufficient to evidence the required agreement. Any such amendment of the condominium instruments shall become effective only when ~~recorded~~ filed for recording or at such later date as may be specified in the amendment itself."

**SECTION 21.**

Said article is further amended by striking subsection (e) of Code Section 44-3-93, relating to amendment of condominium instruments, and inserting in lieu thereof the following:

"(e) In any court suit or action where the validity of the adoption of an amendment to a condominium instrument is in issue, the adoption of the amendment shall be presumed valid if the suit is commenced more than one year after the later of the date of transition of control of the association from the declarant to the unit owners pursuant to Code Section 44-3-101, or the filing for recording of the amendment on the public record. In such cases, the burden of proof shall be upon the party challenging the validity of the adoption of the amendment."

**SECTION 22.**

Said article is further amended by striking Code Section 44-3-94, relating to damage or destruction of units, and inserting in lieu thereof the following:

"44-3-94.

Unless otherwise provided in the condominium instruments, in the event of damage to or destruction of any unit by the casualty covered under insurance required to be maintained by the association under Code Section 44-3-107, the association shall cause the unit to be restored. Unless otherwise provided in the condominium instruments, any funds required for such restoration in excess of the insurance proceeds attributable thereto shall be paid by the unit owner of the unit; provided, however, that, in the event that the unit owner of the unit together with the unit owners of other units to which two-thirds of the votes in the

1 association pertain agree not to restore the unit, the unit shall not be restored and the entire  
 2 undivided interest in the common elements pertaining to that unit shall then pertain to the  
 3 remaining units, to be allocated to them in proportion to their undivided interests in the  
 4 common elements, and the remaining portion of that unit shall thenceforth be a part of the  
 5 common elements. Votes in the association and liability for future common expenses shall  
 6 thereupon pertain to the remaining units, being allocated to them in proportion to their  
 7 relative voting strength in the association and liability for common expenses, respectively.  
 8 ~~As to insurance required to be maintained by the association under this article and to~~ To  
 9 the extent provided for in the condominium instruments, the association may allocate  
 10 equitably the payment of a reasonable insurance deductible between the association and the  
 11 unit owners affected by a casualty against which the association is required to insure;  
 12 provided, however, that the amount of deductible which can be allocated to any one unit  
 13 owner shall not exceed ~~\$1,000.00~~ \$2,500.00 per casualty loss covered under any insurance  
 14 required to be maintained by the association under this article. ~~The existence of a~~  
 15 ~~reasonable deductible in any required insurance policy shall not be deemed a failure to~~  
 16 ~~maintain insurance as required by this Code section."~~

### 17 SECTION 23.

18 Said article is further amended by striking subsection (c) of Code Section 44-3-95, relating  
 19 to the effect of mortgages and liens, and inserting in lieu thereof the following:

20 "(c) Subsequent to the creation of the condominium and as long as the submitted property  
 21 remains subject to this article, no lien shall arise or, except as provided in subsections (a)  
 22 and (b) of this Code section, be effective against the submitted property as a whole. During  
 23 such period of submission to this article and except as provided in this subsection, liens or  
 24 encumbrances shall arise or be created or effective only against each condominium unit in  
 25 the same manner and under the same conditions in every respect as liens or encumbrances  
 26 may arise or be created upon or be effective against any other separate parcel of real  
 27 property subject to individual ownership; provided, however, that labor or services  
 28 performed or materials furnished for improvement of the common elements, if duly  
 29 authorized by the association, shall be deemed to be performed or furnished with the  
 30 express consent of each unit owner and shall, if other applicable provisions of law are  
 31 complied with and subject to the limitations thereof, create a lien upon all of the  
 32 condominium units, subject to subsection (d) of this Code section, upon the recording of  
 33 such lien against each such unit."



1 association for the taking of common elements other than limited common elements may,  
 2 in the discretion of the board of directors, be retained by the association for the restoration  
 3 of such common elements, applied to reserves, or distributed to the members. If the  
 4 association retains such award as provided in this subsection, then such shall be deemed  
 5 to be a special assessment against each unit owner in the corresponding amount of his or  
 6 her allocation of such award, without the need for a vote of the association to approve such  
 7 special assessment. Additionally, notwithstanding any power of the board of directors to  
 8 approve and execute a deed in lieu of eminent domain as to common elements, this  
 9 provision shall not operate to eliminate the requirement under Code Section 22-2-20 that  
 10 eminent domain actions be brought against the owner or owners of the affected property."

11 **SECTION 26.**

12 Said article is further amended by striking subsection (b) of Code Section 44-3-99, relating  
 13 to the withdrawal of submitted property, and inserting in lieu thereof the following:

14 "(b) Except for common elements removed from the condominium by eminent domain or  
 15 conveyed by deed in lieu of eminent domain, submitted ~~Submitted~~ property may be  
 16 withdrawn from the condominium only by an amendment to the condominium instruments  
 17 agreed to by the following required persons:

- 18 (1) The owner of each unit which is being withdrawn;  
 19 (2) The owner of each unit to which pertains any limited common element which is  
 20 being withdrawn;  
 21 (3) The declarant, if, at the time of the withdrawal there shall exist any unexpired option  
 22 to add any additional property to the condominium, or if, at the time of the withdrawal,  
 23 the declarant has the right to control the association pursuant to Code Section 44-3-101;  
 24 (4) The owners of the units to which pertain four-fifths of the votes in the association or  
 25 such larger majority as may be specified in the condominium instruments, exclusive of  
 26 the votes appertaining to the units owned by the persons required in paragraphs (1)  
 27 through (3) of this subsection. If none of the units in the condominium are restricted  
 28 exclusively to residential use, the condominium instruments may specify a majority  
 29 smaller than four-fifths; and  
 30 (5) Each mortgagee of the units owned by the required persons set forth in paragraphs  
 31 (1) through (4) of this subsection."

32 **SECTION 27.**

33 Said article is further amended by striking subsection (d) of Code Section 44-3-99, relating  
 34 to the withdrawal of submitted property, and inserting in lieu thereof the following:



1 a nonexclusive right to use that portion of the withdrawn property which formerly  
2 constituted common elements other than limited common elements."

3 **SECTION 30.**

4 Said article is further amended by striking subsection (h) of Code Section 44-3-99, relating  
5 to the withdrawal of submitted property, and inserting in lieu thereof the following:

6 "(h) Except for common elements removed from the condominium by eminent domain or  
7 conveyed by deed in lieu of eminent domain, upon ~~Upon~~ the effective date of the  
8 amendment, mortgages and liens of unit owners theretofore affecting any portion of the  
9 withdrawn property shall, regarding the withdrawn property, be deemed to be transferred  
10 in accordance with their existing priorities to the undivided interests of the respective  
11 owners in the withdrawn property. Mortgages and liens of the unit owners theretofore  
12 affecting any portion of the remaining submitted property shall, regarding such remaining  
13 submitted property, not be affected by the withdrawal and shall continue in full force and  
14 effect; provided, however, that, in the case of mortgages or liens theretofore affecting only  
15 a condominium unit or units which are included within the withdrawn property, the lien of  
16 such mortgage or lien shall be transferred wholly to the undivided interest of the owner or  
17 owners of such unit or units in the withdrawn property, including both the undivided  
18 interest allocated in consideration of the withdrawal of said units and the undivided interest  
19 allocated in common to all unit owners, and the lien of such mortgage or lien shall not  
20 thereafter affect or be applicable to any portion of the remaining submitted property."

21 **SECTION 31.**

22 Said article is further amended by striking Code Section 44-3-102, relating to meetings of  
23 the association, and inserting in lieu thereof the following:

24 "44-3-102.

25 Meetings of the members of the association shall be held in accordance with the provisions  
26 of the association's bylaws and in any event shall be called not less frequently than  
27 annually. A condominium instrument recorded on or after July 1, 1990, shall also provide  
28 for the calling of a meeting upon the written request of at least 15 percent of the unit  
29 owners. Notice shall be given to each unit owner at least 21 days in advance of any annual  
30 or regularly scheduled meeting and at least seven days in advance of any other meeting and  
31 shall state the time, place, and purpose of such meeting. Such notice shall be delivered  
32 personally, ~~or~~ sent by United States mail, postage prepaid, or issued electronically in  
33 accordance with Code Section 10-12-1 to all unit owners of record at such address or  
34 addresses as any of them may have designated or, if no other address has been so  
35 designated, at the address of their respective units. At the annual meeting, comprehensive

1 reports of the affairs, finances, and budget projections of the association shall be made to  
2 the unit owners."

3 **SECTION 32.**

4 Said article is further amended by striking Code Section 44-3-103, relating to quorums at  
5 meetings of the association or board, and inserting in lieu thereof the following:

6 "44-3-103.

7 Unless the condominium instruments or bylaws provide otherwise, a quorum shall be  
8 deemed present throughout any meeting of the members of the association if persons  
9 entitled to cast more than one-third of the votes are present at the beginning of the meeting.

10 Unless the condominium instruments or bylaws specify a larger majority, a quorum shall  
11 be deemed present throughout any meeting of the board of directors if persons entitled to  
12 cast one-half of the votes in that body are present."

13 **SECTION 33.**

14 Said article is further amended by striking Code Section 44-3-105, relating to powers and  
15 duties as to the upkeep of condominiums, and inserting in lieu thereof the following:

16 "44-3-105.

17 Except to the extent otherwise provided by the condominium instruments, all powers and  
18 responsibilities with regard to maintenance, repair, renovation, restoration, and replacement  
19 shall pertain to the association in the case of the common elements other than limited  
20 common elements and to the individual unit owner in the case of any unit and the limited  
21 common elements, if any, appurtenant thereto. Each unit owner shall afford to the other  
22 unit owners, to the association, and to any agents or employees of either such access  
23 through his or her unit as may be reasonably necessary to enable them to exercise and  
24 discharge their respective powers and responsibilities. To the extent that damage is inflicted  
25 on the common elements, including, without limitation, limited common elements, or on  
26 any unit through which access is taken, the association or unit owner occasioning ~~the same~~  
27 such damage in taking such access, whether by itself or himself or herself or through  
28 agents, employees, or others, shall be liable for the prompt repair thereof."

29 **SECTION 34.**

30 Said article is further amended by striking subsection (b) of Code Section 44-3-106, relating  
31 to powers and responsibilities of the association, and inserting in lieu thereof the following:

32 "(b) Except to the extent prohibited by the condominium instruments and subject to any  
33 restrictions and limitations specified therein, the association shall have the irrevocable  
34 power, as attorney in fact on behalf of all unit owners and their successors in title, to grant

1 easements, leases, and licenses through or over the common elements, to accept easements,  
 2 leases, and licenses benefiting the condominium or any portion thereof, to grant deeds in  
 3 lieu of eminent domain for portions of common elements other than limited common  
 4 elements, and to acquire or lease property in the name of the association as nominee for all  
 5 unit owners. Property so acquired by the association as nominee for the unit owners, upon  
 6 the recordation of the deed thereto or other instrument granting the same, shall  
 7 automatically and without more, and for all purposes, including, without limitation,  
 8 taxation, be a part of the common elements. The association shall also have the power to  
 9 acquire, lease, and own in its own name property of any nature, real, personal, or mixed,  
 10 tangible or intangible; to borrow money; and to pledge, mortgage, or hypothecate all or any  
 11 portion of the property of the association for any lawful purpose within the association's  
 12 inherent or expressly granted powers. Any third party dealing with the association shall be  
 13 entitled to rely in good faith upon a certified resolution of the board of directors of the  
 14 association authorizing any such act or transaction as conclusive evidence of the authority  
 15 and power of the association so to act and of full compliance with all restraints, conditions,  
 16 and limitations, if any, upon the exercise of such authority and power. The provisions of  
 17 Code Section 44-2-2 notwithstanding, any such actions taken by the association as attorney  
 18 in fact on behalf of all unit owners and their successors in title shall be effective record  
 19 notice to third parties if recorded in the name of the association as that name is reflected  
 20 in the recorded declaration or any recorded amendments thereto. Such recorded document  
 21 shall not require a listing of the names of the unit owners or their successors in title or  
 22 assigns."

23 **SECTION 35.**

24 Said article is further amended by striking paragraph (1) of Code Section 44-3-107, relating  
 25 to insurance coverage, and inserting in lieu thereof the following:

26 "(1) A casualty insurance policy or policies affording, at a minimum, fire and extended  
 27 coverage insurance for and in an amount consonant with the full replacement value of all  
 28 structures within the condominium; provided, however, that the association may exclude  
 29 from such coverage (A) improvements made by the unit owners, and (B) structures  
 30 covered by builder's risk insurance, such coverage to be in an amount consonant with the  
 31 full replacement value thereof, but only during such period of time as the builder's risk  
 32 insurance remains in full force and effect and only on the condition that the association  
 33 is named as an additional insured;"

**SECTION 36.**

Said article is further amended by striking Code Section 44-3-108, relating to common profits, and inserting in lieu thereof the following:

"44-3-108.

The common profits shall be applied to the payment of common expenses, and the rights in any surplus remaining after such payment shall pertain to the condominium units in proportion to the liability for common expenses pertaining to each such unit. The surplus shall be accordingly distributed to the unit owners or credited to the next assessments chargeable to the unit owners except to such extent as the condominium instruments may require or permit the same to be added to reserves maintained pursuant to those instruments."

**SECTION 37.**

Said article is further amended by striking paragraph (1) of subsection (b) of Code Section 44-3-109, relating to a lien for assessments, and inserting in lieu thereof the following:

"(1) A late or delinquency charge not in excess of the greater of ~~\$10.00~~ \$25.00 or 10 percent of the amount of each assessment or installment thereof not paid when due;"

**SECTION 38.**

Said article is further amended by striking paragraph (2) of subsection (b) of Code Section 44-3-109, relating to a lien for assessments, and inserting in lieu thereof the following:

"(2) At a rate not in excess of ~~10~~ 18 percent per annum, interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto from the date the same was first due and payable;"

**SECTION 39.**

Said article is further amended by striking subsection (c) of Code Section 44-3-109, relating to a lien for assessments, and inserting in lieu thereof the following:

"(c) Not less than ~~ten~~ 30 days after notice is sent by certified mail or statutory overnight delivery, return receipt requested, to the unit owner both at the address of the unit and at any other address or addresses which the unit owner may have designated to the association in writing, the lien may be foreclosed by the association by an action, judgment, and foreclosure in the same manner as other liens for the improvement of real property, subject to superior liens and encumbrances, but any such court order for judicial foreclosure shall not affect the rights of holders of superior liens or encumbrances to exercise any rights or powers afforded to them under their security instruments. The notice provided for in this subsection shall specify the amount of the assessments then due and payable together with

1 authorized late charges and the rate of interest accrued accruing thereon. Unless prohibited  
 2 by the condominium instruments, the association shall have the power to bid on the unit  
 3 at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The  
 4 lien for assessments shall lapse and be of no further effect, as to assessments or  
 5 installments thereof, together with late charges and interest applicable thereto, ~~which first~~  
 6 ~~become due and payable more than three years prior to the date upon which the notice~~  
 7 ~~contemplated in this subsection is given or more than three years prior to the institution of~~  
 8 ~~an action therefor if an action is not instituted within 90 days after the giving of the notice~~  
 9 four years after the assessment or installment first became due and payable."

#### 10 SECTION 40.

11 Said article is further amended by striking subsection (d) of Code Section 44-3-109, relating  
 12 to a lien for assessments, and inserting in lieu thereof the following:

13 "(d) Any unit owner, mortgagee of a unit, person having executed a contract for the  
 14 purchase of a condominium unit, or lender considering the loan of funds to be secured by  
 15 a condominium unit shall be entitled upon request to a statement from the association or  
 16 its management agent setting forth the amount of assessments past due and unpaid together  
 17 with late charges and interest applicable thereto against that condominium unit. Such  
 18 request shall be in writing, shall be delivered to the registered office of the association, and  
 19 shall state an address to which the statement is to be directed. Failure on the part of the  
 20 association to mail or otherwise furnish such statement regarding amounts due and payable  
 21 at the expiration of such five-day period with respect to the condominium unit involved to  
 22 such address as may be specified in the written request therefor within five business days  
 23 from the receipt of such request shall cause the lien for assessments created by this Code  
 24 section to be extinguished and of no further force or effect as to the title or interest acquired  
 25 by the purchaser or lender, if any, as the case may be, and their respective successors and  
 26 assigns, in the transaction contemplated in connection with such request. The information  
 27 specified in such statement shall be binding upon the association and upon every unit  
 28 owner. Payment of a fee not exceeding ~~\$10.00~~ \$25.00 may be required as a prerequisite to  
 29 the issuance of such a statement if the condominium instruments so ~~provided~~ provide."

#### 30 SECTION 41.

31 All laws and parts of law in conflict with this act are repealed.