

## House Bill 208

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 6 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated,  
2 known as the "Georgia Property Owners' Association Act," so as to clarify the definition of  
3 "lots"; to clarify the definition of "lot owner"; to clarify the definition of "property owners'  
4 development"; to clarify enforcement powers; to clarify voting procedures for multiple-  
5 owner units; to conform proxy requirements to other provisions of the law; to clarify  
6 expenses which may be assessed against owners equitably; to clarify that the instrument may  
7 provide for assessments to commence on lots after construction of and issuance of a  
8 certificate of occupancy on a dwelling on the lots; to clarify that each grantee in a  
9 conveyance is jointly and severally liable for unpaid assessments due prior to the date of  
10 issuance of a closing statement; to clarify amendment requirements and procedures; to  
11 provide reasonable procedures for amending instruments to submit a property owners'  
12 association to this article; to clarify procedures for amendments to change lot boundaries,  
13 votes, or allocations of liability; to clarify effective dates of amendments; to clarify  
14 incorporated names of associations; to clarify meeting quorum requirements; to clarify  
15 requirements for calling annual meetings and for stating purposes of special meetings; to  
16 clarify association review powers for owner modifications which change exterior  
17 appearances; to increase the maximum late charge on delinquent assessments; to increase the  
18 maximum rate of interest on delinquent assessments; to clarify assessment collection and  
19 judicial foreclosure powers and procedures and increase the duration of the association's lien;  
20 to increase the maximum fee chargeable for closing payoff certifications; to provide for  
21 inclusion of condominium developments within property owners' developments; to clarify  
22 applicability of this article; to provide for related matters; to repeal conflicting laws; and for  
23 other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:



1 provided, however, that no such suspension shall deny any lot owner or occupants access  
2 to the lot owned or occupied."

3 **SECTION 3.**

4 Said article is further amended by striking Code Section 44-3-224, relating to voting at  
5 association meetings, and inserting in lieu thereof the following:

6 "44-3-224.

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

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

22 **SECTION 4.**

23 Said article is further amended by striking subsections (a), (b), and (c) of Code Section  
24 44-3-225, relating to assessment of expenses, and inserting in lieu thereof the following:

25 "(a) ~~To~~ If and to the extent that the instrument expressly so provides:

26 (1) Any common expenses benefitting less than all of the lots may, in a uniform and  
27 nondiscriminatory manner, ~~shall~~ be specially assessed equitably among all of the lots so  
28 benefitted, as determined by the board;

29 (2) Any common expenses occasioned by the conduct of less than all of those entitled  
30 to occupy all of the lots or by the licensees or invitees of any such lot or lots including  
31 reasonable attorney's fees actually incurred by the association in enforcing the  
32 instrument, bylaws, or rules and regulations adopted pursuant thereto, may ~~shall~~ be  
33 specially assessed against the lot or lots, the conduct of any occupant, licensee, or invitee  
34 of which occasioned any such common expenses; and

1 (3) Any common expenses significantly disproportionately benefitting all of the lots shall  
 2 may be assessed equitably among all of the lots in the development as determined by the  
 3 board; and,

4 ~~(4) Other than for limited common areas expressly designated as such in the instrument  
 5 and assigned to fewer than all lots, nothing contained in paragraph (1) or (3) of this  
 6 subsection shall permit an association to specially or disproportionately allocate common  
 7 expenses for periodic maintenance, repair, and replacement of any portion of the common  
 8 area or the lots which the association has the obligation to maintain, repair, or replace.~~

9 (b) No lot owner other than the association shall be exempted from any liability for any  
 10 assessment under this Code section or under any instrument for any reason whatsoever,  
 11 including, without limitation, abandonment, nonuser, or waiver of the use or enjoyment of  
 12 his or her lot or any part of the common area except to the extent that any lot expressly may  
 13 be made exempt from assessments under the instrument where a certificate of occupancy  
 14 has not been issued by the governing governmental authority for a dwelling on such lot.

15 (c) Unless otherwise provided in the instrument and except as provided in subsection (d)  
 16 of this Code section, ~~the~~ each grantee in a conveyance of a lot shall be jointly and severally  
 17 liable with the grantor thereof for all unpaid assessments against the latter up to the time  
 18 of the conveyance without prejudice to the grantee's right to recover from the grantor the  
 19 amounts paid by the grantee; provided, however, that if the grantor or grantee shall request  
 20 a statement from the association as provided in subsection (d) of Code Section 44-3-232,  
 21 such grantee and his or her successors, successors-in-title, and assigns shall not be liable  
 22 for nor shall the property owners' association lot conveyed be subject to a lien for any  
 23 unpaid assessments against such grantor prior to the date of such statement in excess of any  
 24 amount set forth in the statement."

## 25 SECTION 5.

26 Said article is further amended by striking subsections (a), (b), (c), (d), and (f) of Code  
 27 Section 44-3-226, relating to amendment of instruments, and inserting in lieu thereof the  
 28 following:

29 "(a) Except to the extent expressly permitted or required by other provisions of this article,  
 30 or as otherwise provided in the declaration, the ~~instrument~~ declaration shall be amended  
 31 only by the agreement of lot owners of lots to which two-thirds of the eligible votes in the  
 32 association pertain ~~or such larger majority as the instrument may specify~~; provided,  
 33 however, that, to the extent provided in the declaration, during any such time as ~~there shall~~  
 34 exist an unexpired option to add any additional property to the property owners' association  
 35 ~~or during any such time as the declarant has the right to control the association under the~~  
 36 instrument the declarant shall own at least one lot primarily for the purpose of the sale of

1 such lot, the agreement shall be that of the declarant and the ~~lot~~ owners of lots to which  
2 ~~two-thirds~~ the required percentage of the eligible votes in the association, as specified in  
3 the declaration, pertain, exclusive of any vote or votes appurtenant to any lot or lots then  
4 owned by the declarant, or a larger majority as the instrument may specify.  
5 Notwithstanding any other provisions of this subsection, during such time as the declarant  
6 shall own at least one lot primarily for the purpose of sale of such lot, no amendment shall  
7 be made to the instrument without the written agreement of the declarant if such  
8 amendment would impose a greater restriction on the use or development by the declarant  
9 of the lot or lots owned by the declarant. For the purposes of this Code section, eligible  
10 votes shall include only the votes of owners whose voting rights have not been suspended  
11 in accordance with the declaration or bylaws.

12 (b) No amendment of an instrument, or of any declaration being amended to submit to the  
13 terms of this article pursuant to Code Section 44-3-225, shall require approval of lot owners  
14 to which more than 80 percent of the association vote pertains and the mortgagees holding  
15 80 percent of the voting interest of mortgaged lots; any property owners' association which  
16 exists prior to July 1, 1994, and amends its documents to avail itself of the provisions of  
17 this article shall be deemed to have amended the association instrument to conform to this  
18 limitation. This subsection shall not be deemed to eliminate or modify any right of the  
19 declarant provided for in the instrument to approve amendments to the instrument so long  
20 as the declarant owns any lot primarily for the purpose of sale and, furthermore, this Code  
21 section shall not be construed as modifying or altering the rights of a mortgagee set forth  
22 elsewhere in this article.

23 (c) Except to the extent expressly permitted or required by other provisions of this article,  
24 or agreed upon or permitted by the instrument concerning submission of additional  
25 property to this article by the declarant or the association, or agreed upon by all lot owners  
26 and the mortgagees of all lots, no amendment to the instrument shall change the boundaries  
27 of any lot, the number of votes in the association pertaining thereto, or the allocation of  
28 liability for common expenses pertaining thereto; provided, however, this Code section  
29 shall not preclude lot owners from relocating lot boundaries or combining or subdividing  
30 lots to the extent authorized in the instrument. Unless otherwise provided in the  
31 instrument, the total allocation of votes in the association and liability for common  
32 expenses pertaining to such lots shall not be affected by a relocation of boundaries or  
33 subdivision or combination of lots in accordance with this Code section.

34 (d) Agreement of the required majority of lot owners to any amendment of the instrument  
35 shall be evidenced by their execution of the amendment. In the alternative, ~~provided that~~  
36 ~~the declarant does not then have the right to control the association pursuant to the~~  
37 ~~instrument~~, the sworn statement of the president, of any vice president, or of the secretary

1 of the association attached to or incorporated in an amendment executed by the association,  
 2 which sworn statement states unequivocally that agreement of the required majority was  
 3 otherwise lawfully obtained and that all notices required by this article were properly  
 4 given, shall be sufficient to evidence the required agreement. Any such amendment of the  
 5 instrument shall become effective only when ~~recorded~~ filed for recording in the office of  
 6 the superior court of the county or counties in which the property owners' development or  
 7 any portion thereof is located or at such later date as may be specified in the amendment  
 8 itself."

9 "(f) In any court suit or action where the validity of the adoption of an amendment to an  
 10 instrument is at issue, the adoption of the amendment shall be presumed valid if the suit is  
 11 commenced more than one year after the later of the date of transition of control of the  
 12 association from the declarant to the lot owners or the filing for recording of the  
 13 amendment on the public record. In such cases, the burden of proof shall be upon the party  
 14 challenging the validity of the adoption of the amendment."

#### 15 SECTION 6.

16 Said article is further amended by striking subsection (a) of Code Section 44-3-227, relating  
 17 to incorporation of the association, and inserting in lieu thereof the following:

18 "(a) Prior to submission to this article, the association shall be duly incorporated either as  
 19 a business corporation under Chapter 2 of Title 14 or as a nonprofit membership  
 20 corporation under Chapter 3 of Title 14, as amended. The corporate name of the association  
 21 shall include the word or words 'homeowners,' 'property owners,' 'community,' 'club,' or  
 22 'association' and shall otherwise comply with applicable laws regarding corporate names.  
 23 The articles of incorporation of the association and the bylaws adopted by the association  
 24 shall contain provisions not inconsistent with applicable law including but not limited to  
 25 this article or with the declaration as may be required by this article or by the declaration  
 26 and as may be deemed appropriate or desirable for the proper management and  
 27 administration of the association. The term 'member' shall include a shareholder in the  
 28 event the association is a business corporation or issues stock. Membership shall continue  
 29 during the period of ownership by such lot owner."

#### 30 SECTION 7.

31 Said article is further amended by striking Code Section 44-3-228, relating to presence of  
 32 quorums at meetings, and inserting in lieu thereof the following:

33 "44-3-228.

34 Unless the instrument provides or bylaws provide otherwise, a quorum shall be deemed  
 35 present throughout any meeting of the members of the association if persons entitled to cast

1 more than one-third of the votes are present at the beginning of the meeting. Unless the  
 2 instrument ~~specifies~~ or bylaws provide for a larger majority, a quorum shall be deemed  
 3 present throughout any meeting of the board of directors if persons entitled to cast one-half  
 4 of the votes in that body are present at such meeting."

5 **SECTION 8.**

6 Said article is further amended by striking Code Section 44-3-230, relating to frequency of  
 7 meetings, and inserting in lieu thereof the following:

8 "44-3-230.

9 Meetings of the members of the association shall be held in accordance with the provisions  
 10 of the association's bylaws and in any event shall be called not less frequently than  
 11 annually. Notice shall be given to each lot owner at least 21 days in advance of any annual  
 12 or regularly scheduled meeting and at least seven days in advance of any other meeting and  
 13 shall state the time, place, and, for any special meeting, purpose of such meeting. Such  
 14 notice shall be delivered personally or sent by United States mail, postage prepaid, or  
 15 issued electronically in accordance with Code Section 10-12-1, to all lot owners of record  
 16 at such address or addresses as designated by such lot owners or, if no other address has  
 17 been so designated, at the address of their respective lots. At the annual meeting,  
 18 comprehensive reports of the affairs, finances, and budget projections of the association  
 19 shall be made to the lot owners."

20 **SECTION 9.**

21 Said article is further amended by striking subsection (a) of Code Section 44-3-231, relating  
 22 to powers and duties of the association, and inserting in lieu thereof the following:

23 "(a) Except to the extent prohibited by the instrument and subject to any restrictions and  
 24 limitations specified therein, the association shall have the power to:

- 25 (1) Employ, retain, dismiss, and replace agents and employees to exercise and discharge  
 26 the powers and responsibilities of the association;
- 27 (2) Make or cause to be made alterations and additional improvements on and as a part  
 28 of the common area; and
- 29 (3) Grant or withhold approval of any action by one or more lot owners or other persons  
 30 entitled to occupancy of any lot if such action would change the exterior appearance of  
 31 any lot or the appearance from the exterior of any dwelling on a lot, or any structure  
 32 thereon, or of any other portion of the development or elect or provide for the  
 33 appointment of an architectural control committee to grant or withhold such approval."

**SECTION 10.**

Said article is further amended by striking Code Section 44-3-232, relating to assessments against lot owners as constituting a lien in favor of the association, and inserting in lieu thereof the following:

"44-3-232.

(a) All sums lawfully assessed by the association against any lot owner or property owners' association lot, whether for the share of the common expenses pertaining to that lot, fines, or otherwise, and all reasonable charges made to any lot owner or lot for materials furnished or services rendered by the association at the owner's request to or on behalf of the lot owner or lot, shall, from the time the sums became due and payable, be the personal obligation of the lot owner and constitute a lien in favor of the association on the lot prior and superior to all other liens whatsoever except:

(1) Liens for ad valorem taxes on the lot;

(2) The lien of any first priority mortgage covering the lot and the lien of any mortgage recorded prior to the recording of the declaration; or

(3) The lien of any secondary purchase money mortgage covering the lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the lot.

The recording of the declaration pursuant to this article shall constitute record notice of the existence of the lien, and no further recordation of any claim of lien for assessments shall be required.

(b) To the extent that the instrument provides, the personal obligation of the lot owner and the lien for assessments shall also include:

(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;

(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;

(3) The costs of collection, including court costs, the expenses required for the protection and preservation of the lot, and reasonable attorney's fees actually incurred; and

(4) The fair rental value of the lot from the time of the institution of an action until the sale of the lot at foreclosure or until judgment rendered in the action is otherwise satisfied.

(c) Not less than ~~ten~~ 30 days after notice is sent by certified mail or statutory overnight delivery, return receipt requested, to the lot owner both at the address of the lot and at any other address or addresses which the lot owner may have designated to the association in writing, the lien may be foreclosed by the association by an action, judgment, and court order for foreclosure in the same manner as other liens for the improvement of real

1 property, subject to superior liens and encumbrances. Any such court order for judicial  
 2 foreclosure shall not affect the rights of holders of superior liens or encumbrances to  
 3 exercise any rights or powers afforded to them under their security instruments. The notice  
 4 provided for herein shall specify the amount of the assessments then due and payable  
 5 together with authorized late charges and the rate of interest accrued accruing thereon.  
 6 Unless prohibited by the instrument, the association shall have the power to bid on the lot  
 7 at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The  
 8 lien for assessments shall lapse and be of no further effect, as to assessments or  
 9 installments thereof, together with late charges and interest applicable thereto, ~~which first~~  
 10 ~~become due and payable more than three~~ four years prior to the date upon which the notice  
 11 ~~contemplated in this subsection is given or more than three years prior to the institution of~~  
 12 ~~an action therefor if an action is not instituted within 90 days after the giving of the notice~~  
 13 after the assessment or installment first became due and payable.

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

31 (e) Nothing in this Code section shall be construed to prohibit actions maintainable  
 32 pursuant to Code Section 44-3-223 to recover sums for which subsection (a) of this Code  
 33 section creates a lien."

#### 34 **SECTION 11.**

35 Said article is further amended by striking subsection (b) of Code Section 44-3-235, relating  
 36 to applicability of the article and inserting in lieu thereof the following:

1 "(b) This article shall not apply to associations created pursuant to Article 3 of this chapter,  
2 the 'Georgia Condominium Act.' Act,' except to the extent that a property owners'  
3 development created under this article includes a condominium, together with other real  
4 property, as provided in paragraph (9) of Code Section 44-3-221."

5 **SECTION 24.**

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