

The House Committee on Judiciary offers the following substitute to HB 210:

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 change provisions relating to compliance with  
3 condominium instruments; to change provisions relating to allocation of votes in  
4 associations; to clarify liability for common expenses which may be assessed against owners;  
5 to clarify amendment procedures and requirements of condominium instruments; to change  
6 provisions relating to damage or destruction of units; to change provisions for calling  
7 meetings of the association; to change provisions relating to quorums at association or board  
8 meetings; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**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 Code Section 44-3-76, relating to compliance with  
12 condominium instruments, and inserting in lieu thereof the following:

14 "44-3-76.

15 Every unit owner and all those entitled to occupy a unit shall comply with all lawful  
16 provisions of the condominium instruments. In addition, any unit owner and all those  
17 entitled to occupy a unit shall comply with any reasonable rules or regulations adopted by  
18 the association pursuant to the condominium instruments which have been provided to the  
19 unit owners and with the lawful provisions of bylaws of the association. Any lack of such  
20 compliance shall be grounds for an action to recover sums due, for damages or injunctive  
21 relief, or for any other remedy available at law or in equity, maintainable by the association  
22 or, in any proper case, by one or more aggrieved unit owners, on their own behalf or as a  
23 class action. If and to the extent provided in the condominium instruments, the association  
24 shall be empowered to impose and assess fines, and suspend temporarily voting rights and  
25 the right of use of certain of the common elements in order to enforce such compliance;  
26 provided, however, that no such suspension shall deny any unit owner or occupants access

1 to the unit owned or occupied nor cause any hazardous or unsanitary condition to exist. If  
 2 the voting right of a unit owner has been suspended, then to the extent provided in the  
 3 condominium instruments, that unit owner's vote shall not count for purposes of  
 4 establishing a quorum or taking any action which requires a vote of the owners under this  
 5 article or the condominium instruments. Notwithstanding any other provision of this Code  
 6 section, to the extent provided in the condominium instruments, water, gas, electricity,  
 7 heat, and air conditioning services being provided to a unit or unit owner by the association  
 8 may be terminated for failure to pay assessments and other amounts due pursuant to  
 9 subsection (a) of Code Section 44-3-109, subject to the suspension standards and notice  
 10 requirements imposed on the institutional providers providing such services to the  
 11 condominium development, only after a final judgment or final judgments in excess of a  
 12 total of \$750.00 are obtained in favor of the association from a court of competent  
 13 jurisdiction. The utility services shall not be required to be restored until the judgment or  
 14 judgments and any reasonable utility provider charges or other reasonable costs incurred  
 15 in suspending and restoring such services are paid in full. All common expenses for  
 16 termination and restoration of any services pursuant to this Code section shall be an  
 17 assessment and a lien against the unit."

18

## SECTION 2.

19 Said article is further amended by striking subsections (b) and (c) of Code Section 44-3-79,  
 20 relating to the allocation of votes in the association, and inserting in lieu thereof the  
 21 following:

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

31 (c) The votes pertaining to any unit may, and, in the case of any unit owner not a natural  
 32 person or persons, shall, be cast pursuant to a proxy or proxies duly executed by or on  
 33 behalf of the unit owner or, in cases where the unit owner is more than one person, by or  
 34 on behalf of the joint owners of the unit. No such proxy shall be revocable except as  
 35 provided in Code Section 14-2-722 or 14-3-724 or by written notice delivered to the

1 association by the unit owner or by any joint owners of a unit. Any proxy shall be void if  
2 it is not dated or if it purports to be revocable without such notice."

3 **SECTION 3.**

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

6 "(c) The amount of all common expenses not specially assessed pursuant to subsection (a)  
7 or (b) of this Code section, less the amount of all undistributed and unreserved common  
8 profits, shall be assessed against the condominium units in accordance with the allocation  
9 of liability for common expenses set forth in the declaration. The allocation may be by  
10 percentage, fraction, formula, or any other method which indicates the relative liabilities  
11 for common expenses. If an equal liability for common expenses is allocated to each unit,  
12 the declaration may merely so state. The entire liability for common expenses shall be  
13 allocated among the units depicted on plats or plans that comply with subsections (a) and  
14 (b) of Code Section 44-3-83 and shall be subject to reallocation as provided in this article.  
15 Except to the extent otherwise expressly provided or permitted by this article, the  
16 allocations of the liability shall not be altered; provided, however, that no reallocation shall  
17 affect any assessment or installation thereof becoming due and payable prior to  
18 reallocation. The assessments shall be made by the association annually or more often if  
19 the condominium instruments so provide and shall be payable in the manner determined  
20 by the association. Notwithstanding any unequal allocation of liabilities for common  
21 expenses pursuant to this subsection, this provision shall not preclude the association from  
22 levying charges equally among units for services or items provided to owners upon request,  
23 or which provide proportionate or uniform benefit to the units, including, but not limited  
24 to, uniform charges for pool keys or other common element entry devices."

25 **SECTION 4.**

26 Said article is further amended by striking paragraph (1) of subsection (a) of Code Section  
27 44-3-93, relating to amendment of condominium instruments, and inserting in lieu thereof  
28 the following:

29 "(a)(1) Except to the extent expressly permitted or required by other provisions of this  
30 article or as otherwise provided in the condominium instruments, the condominium  
31 instruments shall be amended only by the agreement of ~~unit~~ owners of units to which  
32 two-thirds of the eligible association vote pertains ~~votes in the association pertain or such~~  
33 ~~larger majority as the condominium instruments may specify;~~ provided, however, that,  
34 during any such time as there shall exist an unexpired option to add any additional  
35 property to the condominium or during any such time as the declarant has the right to

1 control the association pursuant to Code Section 44-3-101, the agreement shall be that of  
 2 the declarant and the unit owners of units to which ~~two-thirds~~ the required percentage of  
 3 the ~~votes in the association pertain~~ eligible association vote pertains, exclusive of any  
 4 vote or votes appurtenant to any unit or units then owned by the declarant, ~~or a larger~~  
 5 ~~majority as the condominium instruments may specify.~~ For the purposes of this  
 6 paragraph, eligible votes shall include only the votes of members whose voting rights  
 7 have not been suspended in accordance with the condominium instruments or bylaws."

#### 8 SECTION 5.

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

11 "44-3-94.

12 Unless otherwise provided in the condominium instruments, in the event of damage to or  
 13 destruction of any unit by a casualty covered under insurance required to be maintained by  
 14 the association pursuant to Code Section 44-3-107, the association shall cause the unit to  
 15 be restored. Unless otherwise provided in the condominium instruments, any funds  
 16 required for such restoration in excess of the insurance proceeds attributable thereto shall  
 17 be paid by the unit owner of the unit; provided, however, that, in the event that the unit  
 18 owner of the unit together with the unit owners of other units to which two-thirds of the  
 19 votes in the association pertain agree not to restore the unit, the unit shall not be restored  
 20 and the entire undivided interest in the common elements pertaining to that unit shall then  
 21 pertain to the remaining units, to be allocated to them in proportion to their undivided  
 22 interests in the common elements, and the remaining portion of that unit shall thenceforth  
 23 be a part of the common elements. Votes in the association and liability for future common  
 24 expenses shall thereupon pertain to the remaining units, being allocated to them in  
 25 proportion to their relative voting strength in the association and liability for common  
 26 expenses, respectively. ~~As to insurance required to be maintained by the association under~~  
 27 ~~this article and to~~ To the extent provided for in the condominium instruments, the  
 28 association may allocate equitably the payment of a reasonable insurance deductible  
 29 between the association and the unit owners affected by a casualty against which the  
 30 association is required to insure; provided, however, that the amount of deductible which  
 31 can be allocated to any one unit owner shall not exceed ~~\$1,000.00~~ \$2,500.00 per casualty  
 32 loss covered under any insurance required to be maintained by the association under this  
 33 article. The existence of a reasonable deductible in any required insurance policy shall not  
 34 be deemed a failure to maintain insurance as required by this Code section."



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

17 **SECTION 9.**

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