

The Senate Special Judiciary Committee offered the following substitute to HB 208:

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 change certain
3 definitions; to clarify voting procedures at association meetings; to change provisions
4 relating to liability for unpaid assessments; to change provisions relating to amending
5 instruments; to clarify incorporated names of associations; to clarify meeting quorum
6 requirements; to clarify requirements for calling meetings; to change procedures for judicial
7 foreclosure; to clarify applicability of this article; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Article 6 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, known as the
12 "Georgia Property Owners' Association Act," is amended by striking paragraphs (9) and (18)
13 of Code Section 44-3-221, relating to definitions, and inserting in lieu thereof the following:

14 "(9) 'Lot' means any plot or parcel of land, other than a common area, designated for
15 separate ownership and occupancy shown on a recorded subdivision plat for a
16 development and subject to a declaration. Where the context indicates or requires, the
17 term lot includes any structure on the lot. With respect to a property owners'
18 development which includes a condominium, and to the extent provided for in the
19 instrument, each condominium unit, as defined in paragraph (28) of Code Section
20 44-3-71, shall be deemed a separate lot."

21 "(18) 'Property owners' development' or 'development' means real property ~~containing~~
22 ~~both~~ which contains lots and which may contain common area located within Georgia
23 and subject to a declaration and submitted to this article."

SECTION 2.

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

"44-3-224.

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

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

SECTION 3.

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

"(b) No lot owner other than the association shall be exempted from any liability for any assessment under this Code section or under any instrument for any reason whatsoever, including, without limitation, abandonment, nonuser, or waiver of the use or enjoyment of his or her lot or any part of the common area except to the extent that any lot, upon request by the owner of the lot, expressly may be made exempt from assessments and thus denied voting rights of the lot under the instrument until a certificate of occupancy is issued by the governing authority for a dwelling on such lot."

SECTION 4.

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

"(a) Except to the extent expressly permitted or required by other provisions of this article, or as otherwise provided in the declaration, the instrument declaration shall be amended only by the agreement of lot owners of lots to which two-thirds of the eligible votes in the

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

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

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

SECTION 5.

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

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

SECTION 6.

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

"44-3-228.

Unless the instrument ~~provides~~ or bylaws provide otherwise, a quorum shall be deemed present throughout any meeting of the members of the association if persons entitled to cast more than one-third of the votes are present at the beginning of the meeting. Unless the instrument ~~specifies~~ or bylaws specify a larger majority, ~~a quorum shall be deemed present throughout any meeting of the board of directors if~~ percentage, the presence of persons entitled to cast one-half of the votes of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board ~~in that body are present at such meeting."~~

SECTION 7.

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

"44-3-230.

Meetings of the members of the association shall be held in accordance with the provisions of the association's bylaws and in any event shall be called not less frequently than annually. Notice shall be given to each lot owner at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting and

1 shall state the time, place, and, for any special meeting, purpose of such meeting. Such
 2 notice shall be delivered personally or sent by United States mail, postage prepaid,
 3 statutory overnight delivery, or issued electronically in accordance with Chapter 12 of Title
 4 10, the 'Georgia Electronic Records and Signatures Act,' to all lot owners of record at such
 5 address or addresses as designated by such lot owners or, if no other address has been so
 6 designated, at the address of their respective lots. At the annual meeting, comprehensive
 7 reports of the affairs, finances, and budget projections of the association shall be made to
 8 the lot owners."

9 SECTION 8.

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

13 "(c) Not less than ~~ten~~ 30 days after notice is sent by certified mail or statutory overnight
 14 delivery, return receipt requested, to the lot owner both at the address of the lot and at any
 15 other address or addresses which the lot owner may have designated to the association in
 16 writing, the lien may be foreclosed by the association by an action, judgment, and court
 17 order for foreclosure in the same manner as other liens for the improvement of real
 18 property, subject to superior liens or encumbrances but any such court order for judicial
 19 foreclosure shall not affect the rights of holders of superior liens or encumbrances to
 20 exercise any rights or powers afforded to them under their security instruments. The notice
 21 provided for in this subsection shall specify the amount of the assessments then due and
 22 payable together with authorized late charges and the rate of interest ~~accrued~~ accruing
 23 thereon. Unless prohibited by the instrument, the association shall have the power to bid
 24 on the lot at any foreclosure sale and to acquire, hold, lease, encumber, and convey the
 25 same. The lien for assessments shall lapse and be of no further effect, as to assessments or
 26 installments thereof, together with late charges and interest applicable thereto, ~~which first~~
 27 ~~become due and payable more than three~~ four years prior to the date upon which the notice
 28 ~~contemplated in this subsection is given or more than three years prior to the institution of~~
 29 ~~an action therefor if an action is not instituted within 90 days after the giving of the notice~~
 30 after the assessment or installment first became due and payable."

31 SECTION 9.

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

34 "(b) This article shall not apply to associations created pursuant to Article 3 of this chapter,
 35 the 'Georgia Condominium Act.' Act,' except to the extent that a property owners'

1 development created under this article includes a condominium, together with other real
2 property, as provided in paragraph (9) of Code Section 44-3-221."

3 **SECTION 10.**

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