

House Bill 208 (AS PASSED HOUSE AND SENATE)

By: Representatives Fludd of the 48th, Post 4, Moraitakis of the 42nd, Post 4, Oliver of the 56th, Post 2, Stephenson of the 60th, Post 1, Hill of the 81st, 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 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 change provisions relating to damage or destruction of units; to change provisions for
6 calling meetings of the association; to change provisions relating to quorums at association
7 or board meetings; to amend Article 6 of Chapter 3 of Title 44 of the Official Code of
8 Georgia Annotated, known as the "Georgia Property Owners' Association Act," so as to
9 change certain definitions; to clarify voting procedures at association meetings; to change
10 provisions relating to liability for unpaid assessments; to clarify incorporated names of
11 associations; to clarify meeting quorum requirements; to clarify requirements for calling
12 meetings; to change procedures for judicial foreclosure; to clarify applicability of this article;
13 to provide for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to
17 condominiums, is amended by striking Code Section 44-3-76, relating to compliance with
18 condominium instruments, and inserting in lieu thereof the following:

19 "44-3-76.

20 Every unit owner and all those entitled to occupy a unit shall comply with all lawful
21 provisions of the condominium instruments. In addition, any unit owner and all those
22 entitled to occupy a unit shall comply with any reasonable rules or regulations adopted by
23 the association pursuant to the condominium instruments which have been provided to the
24 unit owners and with the lawful provisions of bylaws of the association. Any lack of such
25 compliance shall be grounds for an action to recover sums due, for damages or injunctive
26 relief, or for any other remedy available at law or in equity, maintainable by the association

1 or, in any proper case, by one or more aggrieved unit owners, on their own behalf or as a
 2 class action. If and to the extent provided in the condominium instruments, the association
 3 shall be empowered to impose and assess fines, and suspend temporarily voting rights and
 4 the right of use of certain of the common elements in order to enforce such compliance;
 5 provided, however, that no such suspension shall deny any unit owner or occupants access
 6 to the unit owned or occupied nor cause any hazardous or unsanitary condition to exist. If
 7 the voting right of a unit owner has been suspended, then to the extent provided in the
 8 condominium instruments, that unit owner's vote shall not count for purposes of
 9 establishing a quorum or taking any action which requires a vote of the owners under this
 10 article or the condominium instruments. Notwithstanding any other provision of this Code
 11 section, to the extent provided in the condominium instruments, water, gas, electricity,
 12 heat, and air conditioning services being provided to a unit or unit owner by the association
 13 may be terminated for failure to pay assessments and other amounts due pursuant to
 14 subsection (a) of Code Section 44-3-109, subject to the suspension standards and notice
 15 requirements imposed on the institutional providers providing such services to the
 16 condominium development, only after a final judgment or final judgments in excess of a
 17 total of \$750.00 are obtained in favor of the association from a court of competent
 18 jurisdiction. The utility services shall not be required to be restored until the judgment or
 19 judgments and any reasonable utility provider charges or other reasonable costs incurred
 20 in suspending and restoring such services are paid in full. All common expenses for
 21 termination and restoration of any services pursuant to this Code section shall be an
 22 assessment and a lien against the unit."

23 **SECTION 2.**

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

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

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

8 SECTION 3.

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

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

30 SECTION 4.

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

1 "44-3-94.
 2 Unless otherwise provided in the condominium instruments, in the event of damage to or
 3 destruction of any unit by a casualty covered under insurance required to be maintained by
 4 the association pursuant to Code Section 44-3-107, the association shall cause the unit to
 5 be restored. Unless otherwise provided in the condominium instruments, any funds
 6 required for such restoration in excess of the insurance proceeds attributable thereto shall
 7 be paid by the unit owner of the unit; provided, however, that, in the event that the unit
 8 owner of the unit together with the unit owners of other units to which two-thirds of the
 9 votes in the association pertain agree not to restore the unit, the unit shall not be restored
 10 and the entire undivided interest in the common elements pertaining to that unit shall then
 11 pertain to the remaining units, to be allocated to them in proportion to their undivided
 12 interests in the common elements, and the remaining portion of that unit shall thenceforth
 13 be a part of the common elements. Votes in the association and liability for future common
 14 expenses shall thereupon pertain to the remaining units, being allocated to them in
 15 proportion to their relative voting strength in the association and liability for common
 16 expenses, respectively. ~~As to insurance required to be maintained by the association under~~
 17 ~~this article and to~~ To the extent provided for in the condominium instruments, the
 18 association may allocate equitably the payment of a reasonable insurance deductible
 19 between the association and the unit owners affected by a casualty against which the
 20 association is required to insure; provided, however, that the amount of deductible which
 21 can be allocated to any one unit owner shall not exceed ~~\$1,000.00~~ \$2,500.00 per casualty
 22 loss covered under any insurance required to be maintained by the association under this
 23 article. The existence of a reasonable deductible in any required insurance policy shall not
 24 be deemed a failure to maintain insurance as required by this Code section."

25 **SECTION 5.**

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

28 "44-3-102.

29 Meetings of the members of the association shall be held in accordance with the provisions
 30 of the association's bylaws and in any event shall be called not less frequently than
 31 annually. A condominium instrument recorded on or after July 1, 1990, shall also provide
 32 for the calling of a meeting upon the written request of at least 15 percent of the unit
 33 owners. Notice shall be given to each unit owner at least 21 days in advance of any annual
 34 or regularly scheduled meeting and at least seven days in advance of any other meeting and
 35 shall state the time, place, and purpose of such meeting. Such notice shall be delivered
 36 personally, ~~or~~ sent by United States mail, postage prepaid, statutory overnight delivery, or

1 issued electronically in accordance with Chapter 12 of Title 10, the 'Georgia Electronic
 2 Records and Signatures Act,' to all unit owners of record at such address or addresses as
 3 any of them may have designated or, if no other address has been so designated, at the
 4 address of their respective units. At the annual meeting, comprehensive reports of the
 5 affairs, finances, and budget projections of the association shall be made to the unit
 6 owners."

7 **SECTION 6.**

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

10 "44-3-103.

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

14 Unless the condominium instruments or bylaws specify a larger majority, ~~a quorum shall~~
 15 ~~be deemed present throughout any meeting of the board of directors if percentage, the~~
 16 presence of persons entitled to cast one-half of the votes ~~in that body are present~~ of the
 17 board of directors shall constitute a quorum for the transaction of any business at any
 18 meeting of the board."

19 **SECTION 7.**

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

22 "(c) Not less than ~~ten~~ 30 days after notice is sent by certified mail or statutory overnight
 23 delivery, return receipt requested, to the unit owner both at the address of the unit and at
 24 any other address or addresses which the unit owner may have designated to the association
 25 in writing, the lien may be foreclosed by the association by an action, judgment, and
 26 foreclosure in the same manner as other liens for the improvement of real property, subject
 27 to superior liens or encumbrances, but any such court order for judicial foreclosure shall
 28 not affect the rights of holders of superior liens or encumbrances to exercise any rights or
 29 powers afforded to them under their security instruments. The notice provided for in this
 30 subsection shall specify the amount of the assessments then due and payable together with
 31 authorized late charges and the rate of interest accrued accruing thereon. Unless prohibited
 32 by the condominium instruments, the association shall have the power to bid on the unit
 33 at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The
 34 lien for assessments shall lapse and be of no further effect, as to assessments or
 35 installments thereof, together with late charges and interest applicable thereto, ~~which first~~

1 ~~become due and payable more than three years prior to the date upon which the notice~~
 2 ~~contemplated in this subsection is given or more than three years prior to the institution of~~
 3 ~~an action therefor if an action is not instituted within 90 days after the giving of the notice~~
 4 four years after the assessment or installment first became due and payable."

5 SECTION 8.

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

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

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

19 SECTION 9.

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

22 "44-3-224.

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

31 (b) The votes pertaining to any lot may, and, in the case of any lot 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 lot owner or, in cases where the lot owner is more than one person, by or on
 34 behalf of the joint owners of the lot. No such proxy shall be revocable except as provided
 35 in Code Section 14-2-722 or Code Section 14-3-724 or by written notice delivered to the

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

3 **SECTION 10.**

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

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

13 **SECTION 11.**

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

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

28 **SECTION 12.**

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

31 "44-3-228.

32 Unless the instrument ~~provides~~ or bylaws provide otherwise, a quorum shall be deemed
33 present throughout any meeting of the members of the association if persons entitled to cast
34 more than one-third of the votes are present at the beginning of the meeting. Unless the

1 instrument ~~specifies or bylaws specify~~ a larger majority, a quorum shall be deemed present
 2 throughout any meeting of the board of directors if percentage, the presence of persons
 3 entitled to cast one-half of the votes of the board of directors shall constitute a quorum for
 4 the transaction of business at any meeting of the board in that body are present at such
 5 meeting."

6 SECTION 13.

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

9 "44-3-230.

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

22 SECTION 14.

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

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

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

9 **SECTION 15.**

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

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

16 **SECTION 16.**

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