

Senate Bill 267

By: Senators Hamrick of the 30th, Pearson of the 51st and Rogers of the 21st

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, the  
2 "Georgia Condominium Act," so as to define certain terms; to provide that a declarant shall  
3 pay certain expenses; to provide for exceptions; to provide for an exception for a certain  
4 obligation to provide a certificate of occupancy; to provide for the effect on land use and  
5 zoning ordinances or laws of an expandable condominium; to provide for the creation of a  
6 subcondominium; to provide for a subassociation; to provide for insurance; to provide for  
7 the effect of certain liens; to provide for eminent domain; to provide for the description of  
8 certain units; to provide for assessments; to provide for related matters; to repeal conflicting  
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, the "Georgia  
13 Condominium Act," is amended in Code Section 44-3-71, relating to definitions, by adding  
14 new paragraphs to read as follows:

15 "(19.1) 'Master association' means an association of a master condominium.

16 (19.2) 'Master condominium' means a condominium in which the condominium  
17 instruments permit one or more of the units to constitute a subcondominium."

18 "(26.1) 'Subassociation' means an association of a subcondominium.

19 (26.2) 'Subcondominium' means the property consisting of a unit of an existing  
20 condominium lawfully submitted under this article by the recordation of separate  
21 condominium instruments pursuant to this article."

22 "(27.1) 'Subunit' means a unit that constitutes a portion of a subcondominium."

23 **SECTION 2.**

24 Said article is further amended in Code Section 44-3-80, relating to allocation and liability  
25 for common expenses and how assessments are made, by revising subsection (d) as follows:

1 ~~“(d)(1) No unit owner other than the association shall be exempted from any liability for~~  
2 ~~any assessment under this Code section or under any condominium instrument for any~~  
3 ~~reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the~~  
4 ~~use or enjoyment of his unit or any part of the common elements. The declarant shall pay~~  
5 ~~for all common expenses until the association makes the first common expense~~  
6 ~~assessment. Thereafter, no unit owner other than the association shall be exempted from~~  
7 ~~any liability for any assessment under this Code section or under any condominium~~  
8 ~~instrument for any reason whatsoever, including, without limitation, abandonment,~~  
9 ~~nonuse, or waiver of the use or enjoyment of his or her unit or any part of the common~~  
10 ~~elements.~~

11 (2) Notwithstanding paragraph (1) of this subsection, if authorized by the declaration,  
12 a declarant who is offering units for sale may elect to be excused from payment of  
13 assessments assessed pursuant to subsection (c) of this Code section against those unsold  
14 units for a stated period of time after the declaration is recorded, not to exceed the first  
15 two full fiscal years of the association after the declaration is recorded; provided,  
16 however, that as to assessments assessed pursuant to subsection (c) of this Code section,  
17 the declarant must pay common expenses incurred during such period which exceed the  
18 amounts assessed against other unit owners in the same condominium. No capital  
19 contributions, start-up funds, initiation fees, or contributions to capital reserve accounts  
20 which are receivable from unit purchasers or unit owners and payable to the association  
21 at closing may be used for payment of common expenses during any period in which the  
22 declarant is excused from payment of assessments assessed pursuant to subsection (c) of  
23 this Code section.

24 (3) If the association has maintained all insurance coverage required by Code Section  
25 44-3-107 during the period that the declarant is excused from payment of assessments as  
26 provided in paragraph (2) of this subsection, common expenses incurred during the stated  
27 period resulting from a casualty occurring during the stated period which are not covered  
28 by proceeds from insurance maintained by the association may be assessed against all  
29 unit owners owning units on the date of such casualty, and their respective successors and  
30 assigns, including the declarant with respect to units owned by the declarant. In the event  
31 of such an assessment, all units shall be assessed in accordance with the allocation of the  
32 liability for common expenses set forth in the declaration as provided in subsection (c)  
33 of this Code section.”



1 (b) To the extent permitted in the condominium instruments, a condominium unit may be  
2 submitted by the owner thereof to a subcondominium and such owner shall thereafter be  
3 deemed the declarant, as such term is defined in paragraph (13) of Code Section 44-3-71,  
4 of such subcondominium.

5 (c) Upon the creation of a subcondominium:

6 (1) No tax or governmental assessment shall be levied against the unit as a whole but  
7 instead shall only be levied on the subunits;

8 (2) The subassociation shall represent and be responsible for acting on behalf of the  
9 subunit owners in discharging the rights and obligations of the unit owner as a member  
10 of the master association, including, without limitation, voting the interests of the unit in  
11 the master association and paying assessments owing on the unit to the master  
12 association;

13 (3) The insurance required in paragraph (1) of Code Section 44-3-107 may be obtained  
14 by either the subassociation or the master association for the condominium in which the  
15 subcondominium is a unit;

16 (4) No lien for labor or services performed or materials furnished in the improvement of  
17 the unit shall be filed against the subcondominium as a whole but shall only be filed  
18 against the subunits, and such lien may be discharged by the owner of any subunit in the  
19 same manner provided in subsection (d) of Code Section 44-3-95;

20 (5) No eminent domain action shall be brought against the unit as a whole but only  
21 against the subunit owners thereof; and

22 (6) No description of a subunit shall be deemed to be vague, uncertain or otherwise  
23 insufficient if the description complies with Code Section 44-3-73.

24 (d) The description of a unit in a master condominium in the manner provided in Code  
25 Section 44-3-73 shall be deemed sufficient for describing submitted property or additional  
26 property to a subcondominium required by paragraph (3) of subsection (a), paragraph (4)  
27 of subsection (b), and paragraph (1) of subsection (e) of Code Section 44-3-77 and by Code  
28 Section 44-3-89, and no metes and bounds description of such unit shall be required.

29 (e) All sums lawfully assessed by a master association against the subassociation, whether  
30 for the share of the common expenses pertaining to the subcondominium, for fines, or  
31 otherwise, and all reasonable charges made to the subassociation, either on behalf of itself  
32 or the subunit owners, for materials furnished or services rendered by the master  
33 association at the subassociation's request, either on behalf of itself or the subunit owners,  
34 shall, from the time same become due and payable, be the obligation of the subassociation  
35 and constitute a lien in favor of the master association upon all of the subunits prior and  
36 superior to all other liens, including any liens of the subassociation whatsoever except:

37 (1) Liens for ad valorem taxes on the subunit;

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

3 (3) The lessor's lien provided for in Code Section 44-3-86; and

4 (4) The lien of any secondary purchase money mortgage covering the subunit, provided  
5 that neither the grantee nor any successor grantee on the mortgage is the seller of the  
6 subunit.

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

10 (f) In the event any lien becomes effective against a subunit as provided in subsection (e)  
11 of this Code section, any subunit owner may remove that lien from his or her subunit by the  
12 payment of the amount attributable to his or her subunit. The amount shall be computed  
13 by reference to the liability for common expenses pertaining to that condominium unit  
14 pursuant to subsection (c) of Code Section 44-3-80. Subsequent to the payment, discharge,  
15 or other satisfaction of such amount, the subunit owner of that subunit shall be entitled to  
16 have that lien released as to his or her subunit in accordance with applicable provisions of  
17 law, and notwithstanding anything to the contrary in Code Sections 44-3-80 and 44-3-109,  
18 the master association shall not assess or have a valid lien against that subunit for any  
19 portion of the common expenses incurred by the master association in connection with that  
20 lien.

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

1 (h) Any subunit owner, mortgagee of a subunit, person having executed a contract for the  
2 purchase of a subunit, or lender considering the loan of funds to be secured by a subunit  
3 shall be entitled upon request to a statement from the master association or its management  
4 agent setting forth the amount of assessments past due and unpaid together with late charges  
5 and interest applicable thereto against that subunit. Such request shall be in writing, shall  
6 be delivered to the registered office of the master association, and shall state an address to  
7 which the statement is to be directed. Failure on the part of the master association to mail  
8 or otherwise furnish such statement regarding amounts due and payable with respect to the  
9 subunit involved to such address as may be specified in the written request therefor within  
10 five business days from the receipt of such request shall cause the lien for assessments  
11 created by subsection (e) of this Code section to be extinguished and of no further force or  
12 effect as to the title or interest acquired by the purchaser or lender, if any, as the case may  
13 be, and their respective successors and assigns, in the transaction contemplated in  
14 connection with such request. The information specified in such statement shall be binding  
15 upon the master association and upon every subunit owner. Payment of a fee not exceeding  
16 \$10.00 may be required as a prerequisite to the issuance of such a statement if the master  
17 condominium instruments so provide.

18 (i) In addition to the documents required to be furnished to the prospective buyer under  
19 subsection (b) of Code Section 44-3-111, if the covered contract applies to a condominium  
20 unit which is part of a subcondominium, the following shall be provided to the prospective  
21 buyer:

22 (1) A copy of the declaration for the master condominium, and a copy of each  
23 amendment thereto; and

24 (2) A copy of the articles of incorporation and bylaws of the master association, and of  
25 each amendment to either."

## 26 SECTION 6.

27 All laws and parts of laws in conflict with this Act are repealed.