

The Senate Special Judiciary Committee offered the following substitute to SB 217:

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 relating to property owners' associations, so as to provide that certain property owners'
3 associations and similar organizations shall have standing as a party and a party in interest
4 to bring a legal action to enforce certain covenants, ordinances, and codes; to provide for
5 procedures; to provide for related matters; to provide an effective date; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Article 6 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to
9 property owners' associations, is amended by designating the existing text of the article as
10 Part 1 and adding a new Part 2 to read as follows:
11

"Part 2

12 44-3-250.

13 As used in this part, the term 'homeowners' association' includes but is not limited to a
14 property owners' association subject to Part 1 of this article. The term also includes any
15 homeowners' association, community association, or other similar organization which has
16 as one of its principal purposes the preservation or promotion of its member homeowners'
17 enjoyment of their property in any residential neighborhood or community. The term shall
18 include any such organization without regard to whether it consists of a corporation, an
19 association, or some other form of organization. The term shall include any such
20 organization without regard to whether membership in the organization is voluntary or
21 mandatory and without regard to the number of eligible homeowners who are members.
22

1 44-3-251.

2 (a) To the extent that a homeowners' association does not have the required legal standing
3 under any other provision of law, any homeowners' association shall have legal standing
4 as a party and a real party in interest to bring or intervene in a legal action to enforce any
5 covenant or county or municipal ordinance or code where a violation of the covenant or
6 ordinance or code diminishes one or more member homeowners' enjoyment of their
7 property. The violation at issue may be one occurring on a member's property or one
8 occurring on nearby property not that of a member. The homeowners' association shall
9 have standing to bring suit or intervene when:

10 (1) One or more of its members would otherwise have standing to sue or intervene in
11 their own right;

12 (2) The interests it seeks to protect are germane to the homeowners' association's
13 purpose; and

14 (3)(A) Neither the claim asserted nor the relief requested requires the participation as
15 parties of individual members; or

16 (B) Any individual member whose participation is required joins as a party.

17 (b) The final disposition of an action subject to this Code section shall be res judicata with
18 respect to the association.

19 (c) Nothing in this Code section shall be construed to modify or limit any rights given to
20 a homeowners' association under any of the provisions of Article 6 of Chapter 3 of Title
21 44, the 'Georgia Property Owners' Association Act,' Article 3 of Chapter 3 of Title 44, the
22 'Georgia Condominium Act,' or Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation
23 Code.'

24 44-3-252.

25 (a) Except as provided for in subsection (b) of this Code section, no less than 30 days prior
26 to a homeowners' association bringing or intervening in a legal action, as authorized by
27 subsection (a) of Code Section 44-3-251, the homeowners' association shall make a good
28 faith effort to notify its members of its intention to bring or intervene in such legal action
29 by providing a written notice meeting the requirements of paragraph (1) of subsection (c)
30 of this Code section by hand delivery or any form of United States Postal Service mail or
31 by posting signs meeting the requirements of paragraph (2) of subsection (c) of this Code
32 section for three consecutive days in no less than three conspicuous places in the property
33 owner's development, community center, clubhouse, or other gathering or recreational site.

34 (b) As soon as practicable, but in any event no later than when efforts are made to give
35 notice to an adverse party of an ex parte hearing in the homeowners' association's
36 application for a temporary restraining order, as authorized by subsection (a) of Code

1 Section 44-3-251, or no later than 24 hours after the conclusion of such ex parte hearing,
 2 whichever first occurs, the homeowners' association shall make a good faith effort to notify
 3 its members of its bringing of or intervention in such application for a temporary
 4 restraining order by providing a written notice meeting the requirements of paragraph (1)
 5 of subsection (d) of this Code section by hand delivery or any form of United States Postal
 6 Service mail or by posting signs meeting the requirements of paragraph (2) of subsection
 7 (d) of this Code section for three consecutive days in no less than three conspicuous places
 8 in the property owner's development, community center, clubhouse, or other gathering or
 9 recreational site.

10 (c)(1) Any written notice as provided for in subsection (a) of this Code section shall be
 11 substantially as follows, with the paragraph immediately preceding the complimentary
 12 close in boldface type:

13 '[Salutation]

14 Within 30 days of the hand delivery or mailing of this notice to you, [name of
 15 homeowners' association] plans to initiate or intervene in a legal action against [address
 16 of property and, if notice of an intervention, the case style]. This legal action involves
 17 allegations of a violation of a covenant of this residential neighborhood or of a county
 18 or municipal ordinance or code, and [name of homeowners' association's] plan to
 19 initiate or intervene in this legal action will be on behalf of one or more of our
 20 homeowners. For more information, please contact [name of homeowners' association]
 21 at [address and phone number of the contact for homeowners' association].

22 **Neither the claim asserted in this proposed lawsuit nor the relief requested**
 23 **requires your participation. This does not necessarily mean that you would not**
 24 **have to be involved in some aspect of the legal action, such as, by way of examples**
 25 **only, being deposed before trial or being called as a witness to trial. Whether or**
 26 **not you choose to participate or are not required to be involved, you are hereby**
 27 **advised that the final disposition of the case will preclude any homeowner from**
 28 **taking any further action or seeking any further relief.**

29 [Complimentary close]

30 [Name of homeowners' association]'

31 (2) Any sign posted as provided for in subsection (a) of this Code section shall be
 32 substantially as follows:

33 (A) The sign shall be at least 36 inches in height and 36 inches in width with a white
 34 background; and

35 (B) The sign shall contain the following language in black lettering with the last
 36 sentence in boldface type:

1 'Within 30 days, [name of homeowners' association] plans to initiate or intervene in
 2 a legal action against [address of property]. This legal action involves allegations of
 3 a violation of a covenant of this residential neighborhood or of a county or municipal
 4 ordinance or code, and [name of homeowners' association's] plan to initiate or
 5 intervene in this legal action will be on behalf of one or more of our homeowners.
 6 For more information, please contact [name of homeowners' association] at [address
 7 and phone number of the contact for homeowners' association]. **You are hereby
 8 advised that the final disposition of the case will preclude any homeowner from
 9 taking any further action or seeking any further relief.'**

10 (d)(1) Any written notice as provided for in subsection (b) of this Code section shall be
 11 substantially as follows, with the paragraph immediately preceding the complimentary
 12 close in boldface type:

13 '[Salutation]

14 [Name of homeowners' association] has, within the past couple of days, initiated or
 15 intervened in or, within the next couple of days, plans to initiate or intervene in a legal
 16 application for a temporary restraining order against [address of property and, if notice
 17 of an intervention, the case style]. This application involves allegations of a violation
 18 of a covenant of this residential neighborhood or of a county or municipal ordinance or
 19 code, and [name of homeowners' association's] plan to initiate or intervene in this legal
 20 action will be on behalf of one or more of our homeowners. For more information,
 21 please contact [name of homeowners' association] at [address and phone number of the
 22 contact for the homeowners' association].

23 **Neither the claim asserted in this proposed lawsuit nor the relief requested
 24 requires your participation. This does not necessarily mean that you would not
 25 have to be involved in some aspect of the legal action, such as, by way of examples
 26 only, being deposed before a hearing or trial or being called as a witness to a
 27 hearing or trial. Whether or not you choose to participate or are not required to
 28 be involved, you are hereby advised that the final disposition of the case will
 29 preclude any homeowner from taking any further action or seeking any further
 30 relief.**

31 [Complimentary close]

32 [Name of homeowners' association]'

33 (2) Any sign posted as provided for in subsection (b) of this Code section shall be
 34 substantially as follows:

35 (A) The sign shall be at least 36 inches in height and 36 inches in width with a white
 36 background; and

1 (B) The sign shall contain the following language in black lettering with the last
2 sentence in boldface type:

3 '[Name of homeowners' association] has, within the past couple of days, initiated or
4 intervened in or, within the next couple of days, plans to initiate or intervene in a legal
5 application for a temporary restraining order. This application involves allegations of
6 a violation of a covenant of this residential neighborhood or of a county or municipal
7 ordinance or code, and [name of homeowners' association's] plan to initiate or
8 intervene in this legal action will be on behalf of one or more of our homeowners. For
9 more information, please contact [name of homeowners' association] at [address and
10 phone number of the contact for homeowners' association]. **You are hereby advised
11 that the final disposition of the case will preclude any homeowner from taking any
12 further action or seeking any further relief.'**

13 (e) No documentation of actual receipt of notice shall be required for any good faith effort
14 required under this Code section.

15 (f) This Code section shall not apply to a property owners' association subject to Part 1 of
16 this article for a particular development or an owners' association referenced in the
17 recorded real estate records for a particular development.

18 44-3-253.

19 Where there exists a property owners' association subject to Part 1 of this article for a
20 particular development or an owners' association referenced in the recorded real estate
21 records for a particular development, in covenants that have not expired, no other
22 homeowners' association may act under this part with respect to the enforcement of
23 covenants running with land within that development.

24 44-3-254.

25 (a) This part shall have no application to the determination of standing with respect to any
26 action involving:

- 27 (1) The adoption of a zoning ordinance;
- 28 (2) The adoption of an amendment to a zoning ordinance which changes the text of the
29 zoning ordinance;
- 30 (3) The adoption of an amendment to a zoning ordinance which rezones property from
31 one zoning classification to another;
- 32 (4) The adoption of an amendment to a zoning ordinance by a municipal local
33 government which zones property to be annexed into the municipality;
- 34 (5) The grant of a governmental permit relating to the use of property; or
- 35 (6) Other similar government decisions relating to the development or use of property.

1 (b) Standing in actions described in this Code section shall be determined as otherwise
2 provided by law."

3 **SECTION 2.**

4 This Act shall become effective upon its approval by the Governor or upon its becoming law
5 without such approval.

6 **SECTION 3.**

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