

Senate Bill 333

By: Senators Hill of the 32nd, Butterworth of the 50th, Rogers of the 21st, Harp of the 29th and Smith of the 52nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
2 prohibit covenants for a planned subdivision and a property owners' association which
3 infringe upon a lot owner's right to display the United States and Georgia flags; to provide
4 for applicability; to correct cross-references; to provide for an effective date; to provide for
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code
9 Section 44-3-231, relating to powers and duties of a property owners' association, by revising
10 subsection (a) and by adding a new subsection to read as follows:

11 "(a) Except to the extent prohibited by the instrument and subject to any restrictions and
12 limitations specified therein, the association shall have the power to:

13 (1) Employ, retain, dismiss, and replace agents and employees to exercise and discharge
14 the powers and responsibilities of the association;

15 (2) Make or cause to be made additional improvements on and as a part of the common
16 area; and

17 (3) Except as provided in subsection (i) of this Code section, grant ~~Grant~~ or withhold
18 approval of any action by one or more lot owners or other persons entitled to occupancy
19 of any lot if such action would change the exterior appearance of any lot, or any structure
20 thereon, or of any other portion of the development or elect or provide for the
21 appointment of an architectural control committee to grant or withhold such approval."

22 "(i) The association shall not, through the adoption or amendment of an instrument or
23 through decision-making processes, prohibit a lot owner from displaying the official flag
24 of the United States of America or the State of Georgia or both through the use of an
25 attachment to the structure of a building or by erecting a pole in order to display such flag
26 or flags, provided that such flagpole shall not obstruct sightlines at intersections, shall not

27 be more than 20 feet high, and shall not be erected within or upon an easement. This
 28 subsection shall not be construed to affect any instrument recorded or amended prior to the
 29 effective date of this subsection or any decision made by an appointed or elected
 30 architectural control committee before such date."

31 **SECTION 2.**

32 Said title is further amended by revising subsection (d) of Code Section 44-5-60, relating to
 33 covenants running with the land, as follows:

34 "(d)(1) Notwithstanding the limitation provided in subsection (b) of this Code section,
 35 covenants restricting lands to certain uses affecting planned subdivisions containing no
 36 fewer than 15 individual plots shall automatically be renewed beyond the period provided
 37 for in subsection (b) of this Code section unless terminated as provided in this subsection.
 38 Each such renewal shall be for an additional 20 year period, and there shall be no limit
 39 on the number of times such covenants shall be renewed.

40 (2) To terminate a covenant as provided in paragraph (1) of this subsection, at least 51
 41 percent of the persons owning plots affected by such covenant shall execute a document
 42 containing a legal description of the entire area affected by the covenant, a list of the
 43 names of all record owners of plots affected by the covenant, and a description of the
 44 covenant to be terminated, which may be incorporated by reference to another recorded
 45 document. By signing such document, each such person shall verify that he or she is a
 46 record owner of property affected by the covenant. Such document shall be recorded in
 47 the office of the clerk of the superior court of the county where the land is located no
 48 sooner than but within two years prior to the expiration of the initial 20 year period or any
 49 subsequent 20 year period. The clerk of the superior court shall index the document
 50 under the name of each record owner appearing in the document.

51 (3) No covenant that prohibits the use or ownership of property within the subdivision
 52 may shall discriminate based on race, creed, color, age, sex, or national origin.

53 (4) No covenant adopted after the effective date of this paragraph shall prohibit the
 54 display of the official flag of the United States of America or the State of Georgia or both
 55 through the use of an attachment to the structure of a building or by erecting a pole in
 56 order to display such flag or flags, provided that such flagpole shall not obstruct
 57 sightlines at intersections, shall not be more than 20 feet high, and shall not be erected
 58 within or upon an easement.

59 ~~(4)~~(5) Notwithstanding any other provision of this Code section or of any covenants with
 60 respect to the land, no change in the covenants which imposes a greater restriction on the
 61 use or development of the land ~~will~~ shall be enforced unless agreed to in writing by the
 62 owner of the affected property at the time such change is made."

63 **SECTION 3.**

64 Said title is further amended by revising Code Section 44-3-116, relating to the
65 inapplicability of limitations in certain restrictive covenants as applied to condominium
66 instruments, as follows:

67 "44-3-116.

68 The limitations provided in subsection (b) and in paragraphs (1), (2), and ~~(4)~~ (5) of
69 subsection (d) of Code Section 44-5-60 shall not apply to any covenants contained in any
70 condominium instrument created pursuant to this article."

71 **SECTION 4.**

72 Said title is further amended by revising Code Section 44-3-234, relating to the applicability
73 of the "Georgia Property Owners' Association Act" to covenants running with the land, as
74 follows:

75 "44-3-234.

76 The limitations provided in subsection (b) and paragraphs (1), (2), and ~~(4)~~ (5) of subsection
77 (d) of Code Section 44-5-60 shall not apply to any covenants contained in any instrument
78 created pursuant to or submitted pursuant to this article."

79 **SECTION 5.**

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

82 **SECTION 6.**

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