

Senate Bill 136

By: Senator Hamrick of the 30th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to
2 specialized land transactions, so as to provide for transfer of control of a condominium
3 association in certain circumstances; to set out public policy concerning the standing of
4 condominium associations to file suit; to provide for priority of certain liens against
5 condominium property and against property subject to a property owners' association; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to specialized land
10 transactions, is amended in Code Section 44-3-101, relating to control of the condominium
11 association by the declarant, by inserting a new subsection (c) and redesignating former
12 subsection (c) as follows:

13 "(c) Notwithstanding and prior to the usual expiration of the period of the declarant's right
14 to control the association pursuant to subsection (a) of this Code section, the right to
15 control also may pass to the unit owners as provided in this subsection if the declarant fails
16 to do any of the following: (1) incorporate the association pursuant to subsection (a) of
17 Code Section 44-3-100; (2) cause the board of directors to be duly appointed and the
18 officers to be elected pursuant to subsection (b) of Code section 44-3-100; (3) maintain and
19 make available to owners, upon written request, a list of the names and business or home
20 addresses of the association's current directors and officers; (4) call meetings of the
21 members of the association in accordance with the provisions of the association's bylaws
22 at least annually pursuant to Code Section 44-3-102; or (5) prepare an annual operating
23 budget and establish the annual assessment and distribute the budget and notice of
24 assessment to the owners in accordance with the condominium instruments no later than
25 30 days after the beginning of the association's fiscal year. In the event that the declarant
26 fails to meet one or more of the obligations of this subsection, then any owner, acting

27 individually or jointly with other owners, may send the declarant written notice of the
 28 failure to comply with such requirements and provide the declarant a 30 day opportunity
 29 to cure the failure; and such notice shall be sent by certified mail or statutory overnight
 30 delivery to the declarant's principal office. If the declarant fails to cure any or all
 31 deficiencies identified in the notice within 30 days of such notice, then any owner, acting
 32 individually or jointly with other owners, may file a petition in the superior court of the
 33 county in which any portion of the condominium is located in order to obtain an order to
 34 grant the owners control of the association. The superior court shall have authority to hold
 35 a hearing and issue a summary ruling on said petition at any time designated by the court
 36 not earlier than 20 days after the service thereof, unless the parties consent in writing to an
 37 earlier trial. If the owners prevail in such action, then the superior court shall award to the
 38 owners all reasonable attorney's fees and costs incurred by the owners for the prosecution
 39 of such action.

40 (d) In addition to any right of termination set forth therein, any management contract, any
 41 lease of recreational area or facilities, or any other contract or lease executed by or on
 42 behalf of the association during the period of the declarant's right to control the association
 43 pursuant to subsection (a) of this Code section shall be subject to cancellation and
 44 termination at any time during the 12 months following the expiration of such control
 45 period by the affirmative vote of the unit owners of units to which a majority of the votes
 46 in the association pertain, unless the unit owners by a like majority shall have theretofore,
 47 following the expiration of such control period, expressly ratified and approved the same."

48 **SECTION 2.**

49 Said chapter is further amended in Code Section 44-3-106, relating to powers of
 50 condominium associations, by revising subsection (h) as follows:

51 "(h) The association shall have the capacity, power, and standing to institute, intervene in,
 52 prosecute, represent in, or defend, in its own name, litigation, administrative or other
 53 proceedings of any kind concerning claims or other matters relating to any portions of the
 54 units or common elements which the association has the responsibility to administer,
 55 repair, or maintain; and it is the public policy of this state that this capacity, power, and
 56 standing may not be waived, abridged, modified, or removed by any provision of any
 57 contract or document, including the condominium instruments, which document is
 58 recorded, entered into, or established prior to the expiration of the period of the declarant's
 59 right to control the association pursuant to subsection (a) of Code Section 44-3-101."

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SECTION 3.

61 Said chapter is further amended in Code Section 44-3-109, relating to liens for condominium
62 assessments, by revising subsection (a) as follows:

63 "(a)(1) All sums lawfully assessed by the association against any unit owner or
64 condominium unit, whether for the share of the common expenses pertaining to that
65 condominium unit, for fines, or otherwise, and all reasonable charges made to any unit
66 owner or condominium unit for materials furnished or services rendered by the
67 association at the owner's request to or on behalf of the unit owner or condominium unit,
68 shall, from the time the same become due and payable, be the personal obligation of the
69 unit owner and constitute a lien in favor of the association on the condominium unit prior
70 and superior to all other liens whatsoever except:

71 ~~(1)(A)~~ Liens for ad valorem taxes on the condominium unit;

72 ~~(2)(B)~~ The lien of any first priority mortgage covering the unit and the lien of any
73 mortgage recorded prior to the recording of the declaration, except as provided in
74 paragraph (2) of this subsection;

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

76 ~~(4)(D)~~ The lien of any secondary purchase money mortgage covering the unit,
77 provided that neither the grantee nor any successor grantee on the mortgage is the seller
78 of the unit, except as provided in paragraph (2) of this subsection.

79 (2) However, a lien under this Code section shall also be prior to the lien of any
80 mortgage described in subparagraphs (a)(1)(B) and (a)(1)(D) of this Code section in an
81 amount equal to all the unpaid common expense assessments that came due during the
82 12 months immediately preceding the date of a foreclosure sale by, or deed in lieu of
83 foreclosure given to, the holder of any mortgage described in subparagraphs (a)(1)(B) and
84 (a)(1)(D) of this Code section.

85 (3) The recording of the declaration pursuant to this article shall constitute record notice
86 of the existence of the lien, and no further recordation of any claim of lien for
87 assessments shall be required."

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SECTION 4.

89 Said chapter is further amended in Code Section 44-3-232, relating to liens against property
90 subject to a property owners' association, by revising subsection (a) as follows:

91 "(a)(1) All sums lawfully assessed by the association against any lot owner or property
92 owners' association lot, whether for the share of the common expenses pertaining to that
93 lot, fines, or otherwise, and all reasonable charges made to any lot owner or lot for
94 materials furnished or services rendered by the association at the owner's request to or on
95 behalf of the lot owner or lot, shall, from the time the sums became due and payable, be

96 the personal obligation of the lot owner and constitute a lien in favor of the association
 97 on the lot prior and superior to all other liens whatsoever except:

98 ~~(1)(A)~~ Liens for ad valorem taxes on the lot;

99 ~~(2)(B)~~ The lien of any first priority mortgage covering the lot and the lien of any
 100 mortgage recorded prior to the recording of the declaration, except as provided in
 101 paragraph (2) of this subsection; or and

102 ~~(3)(C)~~ The lien of any secondary purchase money mortgage covering the lot, provided
 103 that neither the grantee nor any successor grantee on the mortgage is the seller of the
 104 lot, except as provided in paragraph (2) of this subsection.

105 (2) However, a lien under this Code section shall also be prior to the lien of any
 106 mortgage described in subparagraphs (a)(1)(B) and (a)(1)(C) of this Code section in an
 107 amount equal to the unpaid common expense assessments that came due during the 12
 108 months immediately preceding the date of a foreclosure sale by, or deed in lieu of
 109 foreclosure given to, the holder of any mortgage described in subparagraphs (a)(1)(B) and
 110 (a)(1)(C) of this Code section.

111 (3) The recording of the declaration pursuant to this article shall constitute record notice
 112 of the existence of the lien, and no further recordation of any claim of lien for
 113 assessments shall be required."

SECTION 5.

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