

The Senate Judiciary Committee offered the following substitute to SB 136:

**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 related matters; to repeal conflicting  
5 laws; and for other purposes.

6 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

7 **SECTION 1.**

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

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

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

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

## **SECTION 2.**

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

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

### SECTION 3.

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