

The House Committee on Judiciary offers the following substitute to HB 685:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 9-3-29 of the Official Code of Georgia Annotated, relating to
2 limitations of actions relative to breach of restrictive covenant, so as to provide for accrual
3 periods of rights of action; to amend Title 44 of the Official Code of Georgia Annotated,
4 relating to property, so as to provide for the expansion of a condominium after the declarant's
5 right to expand has expired and provide for procedures for such expansion; to provide for the
6 procedure and right of certain property owners to take control of a condominium association,
7 property owner's association, or entity created pursuant to covenants restricting land to
8 certain uses affecting certain planned subdivisions; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Code Section 9-3-29 of the Official Code of Georgia Annotated, relating to limitations of
13 actions relative to breach of restrictive covenant, is amended by revising subsection (c) as
14 follows:

15 "(c) For the purpose of this Code section, the right of action shall accrue immediately upon
16 the erection of a permanent fixture which results in a violation of the covenant restricting
17 lands to certain uses or the violation of a set-back line provision. When an action alleges
18 a continuous violation of a covenant resulting from an act or omission, the right of action
19 shall accrue each time such act or omission occurs. This Code section shall not be
20 construed so as to extend any applicable statute of limitations affecting actions in equity."

21 style="text-align:center">**SECTION 2.**

22 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code
23 Section 44-3-89, relating to expansion of condominiums and amendments to declarations,
24 as follows:

25 "44-3-89.

26 (a) No condominium shall be expanded except in accordance with the provisions of the
27 declaration and this article.

28 (b) Any expansion shall be deemed to have occurred at the time of the recordation of plats
29 or plans pursuant to subsection (c) of Code Section 44-3-83 and an amendment to the
30 declaration effecting the expansion duly executed by the declarant, all other owners or
31 lessees of the additional property being added to the condominium, and all mortgages of
32 the additional property being added to the condominium. The amendment shall contain a
33 legal description by metes and bounds of the additional property being added to the
34 condominium and shall reallocate undivided interests in the common elements, votes in the
35 association, and liabilities for future common expenses all in accordance with the
36 provisions of the declaration.

37 (c) Notwithstanding any other provision of this article, a condominium may be expanded
38 by the association at any time after the declarant's right to expand the condominium has
39 expired, provided that the unit owners of units to which two-thirds of the votes in the
40 association appertain, or such higher amount as may be required by the declaration,
41 exclusive of any vote or votes appurtenant to any unit or units then owned by the declarant,
42 consent to an amendment to the governing documents expanding the condominium under
43 the same terms and conditions as set forth in an explicit reservation of an option or options
44 to expand the condominium contained in the condominium instruments as required by
45 subsection (b) of Code Section 44-3-77; provided, however, that such explicit reservation
46 existed within the first seven years of the recording of the governing documents. The
47 amendment shall contain a legal description by metes and bounds of the additional property
48 being added to the condominium and shall reallocate undivided interests in the common
49 elements, votes in the association, and liabilities for future common expenses all in
50 accordance with the provisions of the declaration. The amendment shall be executed by
51 all owners or lessees of the additional property being added to the condominium and all
52 mortgagees of the additional property being added to the condominium. Additionally, the
53 agreement of the required majority of unit owners to the amendment shall be evidenced by
54 their execution of the amendment. In the alternative, the sworn statement of the president,
55 any vice president, or the secretary of the association attached to or incorporated in an
56 amendment executed by the association, which sworn statement states unequivocally that
57 agreement of the required majority was otherwise lawfully obtained and that any notices
58 required under this article were properly given, shall be sufficient to evidence the required
59 agreement."

60 **SECTION 3.**

61 Said title is further amended in Code Section 44-3-101, relating to control of a condominium
 62 association by a declarant, surrender of control to unit owners, liability for books and
 63 records, and cancellation of leases and contracts, by revising subsection (c) as follows:

64 "(c)(1) Notwithstanding and prior to the usual expiration of the period of the declarant's
 65 right to control the association pursuant to subsection (a) of this Code section, any
 66 condominium instruments, the association's articles of incorporation, or the association's
 67 bylaws, the right to control also may pass to the unit owners as provided in this
 68 subsection if the declarant fails to do any of the following:

69 ~~(1)(A) incorporate the association~~ Incorporate or maintain the annual registration
 70 pursuant to subsection (a) of Code Section 44-3-100;

71 ~~(2)(B) cause~~ Cause the board of directors to be duly appointed and the officers to be
 72 elected pursuant to subsection (b) of Code section 44-3-100;

73 ~~(3)(C) maintain~~ Maintain and make available to owners, upon written request, a list of
 74 the names and business or home addresses of the association's current directors and
 75 officers;

76 ~~(4)(D) call~~ Call meetings of the members of the association in accordance with the
 77 provisions of the association's bylaws at least annually pursuant to Code Section
 78 44-3-102; ~~or~~

79 ~~(5)(E) prepare~~ Prepare an annual operating budget and establish the annual assessment
 80 and distribute the budget and notice of assessment to the owners in accordance with the
 81 condominium instruments no later than 30 days after the beginning of the association's
 82 fiscal year; or

83 (F) Pay property taxes on common property of the condominium for two or more
 84 years.

85 (2) In the event that the declarant fails to meet one or more of the obligations of this
 86 subsection, then any owner, acting individually or jointly with other owners, may send
 87 the declarant written notice of the failure to comply with such requirements and provide
 88 the declarant a 30 day opportunity to cure the failure; and such notice shall be sent by
 89 certified mail or statutory overnight delivery to the declarant's principal office. If the
 90 declarant fails to cure any or all deficiencies identified in the notice within 30 days of
 91 such notice, then any owner, acting individually or jointly with other owners, may file a
 92 ~~petition~~ direct action in the superior court of the county in which any portion of the
 93 condominium is located in order to obtain an order to grant the owners control of the
 94 association by ordering an election and setting the terms thereof, or issuing any other
 95 orders appropriate to transfer control of the association. The superior court shall have
 96 authority to hold a hearing and issue a summary ruling on said petition at any time

97 designated by the court not earlier than 20 days after the service thereof, unless the parties
 98 consent in writing to an earlier trial. No discovery shall be had unless ordered by the
 99 court for good cause. In addition, the superior court shall be authorized to issue a
 100 summary ruling on the conveyance of any intended common areas or other property in
 101 the common interest community to the association or other appropriate entity. If the
 102 owners prevail in such action, then the superior court shall award to the owners all
 103 reasonable attorney's fees and costs incurred by the owners for the prosecution of such
 104 action. This Code section shall not be the basis for any liability against any entity party
 105 or agent of any party outside of the exclusive remedies provided herein."

106 SECTION 4.

107 Said title is further amended by adding a new Code section to read as follows:

108 "44-3-232.1.

109 (a) Notwithstanding and prior to the usual expiration of the period of the declarant's right
 110 to control the association pursuant to any property owners' association instruments, the
 111 association's articles of incorporation, or the association's bylaws, the right to control also
 112 may pass to the property owners as provided in this Code section if the declarant fails to
 113 do any of the following:

114 (1) Incorporate or maintain the annual registration pursuant to subsection (a) of Code
 115 Section 44-3-227;

116 (2) Cause the board of directors to be duly appointed and the officers to be elected
 117 pursuant to subsection (b) of Code section 44-3-227;

118 (3) Maintain and make available to owners, upon written request, a list of the names and
 119 business or home addresses of the association's current directors and officers;

120 (4) Call meetings of the members of the association in accordance with the provisions
 121 of the association's bylaws at least annually pursuant to Code Section 44-3-230;

122 (5) Prepare an annual operating budget and establish the annual assessment and
 123 distribute the budget and notice of assessment to the owners in accordance with the
 124 condominium instruments no later than 30 days after the beginning of the association's
 125 fiscal year; or

126 (6) Pay property taxes on common property of the association for two or more years.

127 (b) In the event that the declarant fails to meet one or more of the obligations of this Code
 128 section, then any owner, acting individually or jointly with other owners, may send the
 129 declarant written notice of the failure to comply with such requirements and provide the
 130 declarant a 30 day opportunity to cure the failure; and such notice shall be sent by certified
 131 mail or statutory overnight delivery to the declarant's principal office. If the declarant fails
 132 to cure any or all deficiencies identified in the notice within 30 days of such notice, then

133 any owner, acting individually or jointly with other owners, may file a direct action in the
 134 superior court of the county in which any portion of the property owner's association is
 135 located in order to obtain an order to grant the owners control of the association by
 136 ordering an election and setting the terms thereof, or issuing any other orders appropriate
 137 to transfer control of the association. The superior court shall have authority to hold a
 138 hearing and issue a summary ruling on said petition at any time designated by the court not
 139 earlier than 20 days after the service thereof, unless the parties consent in writing to an
 140 earlier trial. No discovery shall be had unless ordered by the court for good cause. In
 141 addition, the superior court shall be authorized to issue a summary ruling on the
 142 conveyance of any intended common areas or other property in the common interest
 143 community to the association or other appropriate entity. If the owners prevail in such
 144 action, then the superior court shall award to the owners all reasonable attorney's fees and
 145 costs incurred by the owners for the prosecution of such action. This Code section shall
 146 not be the basis for any liability against any entity party or agent of any party outside of the
 147 exclusive remedies provided herein."

148 **SECTION 5.**

149 Said title is further amended in Code Section 44-5-60, relating to covenants running with the
 150 land, effect of zoning laws, covenants and scenic easements for use of public, renewal of
 151 certain covenants, and costs, by adding a new paragraph to subsection (d) to read as follows:

152 "(5)(A) Notwithstanding and prior to the usual expiration of the period of covenants
 153 restricting land to certain uses affecting planned subdivisions containing no fewer than
 154 15 individual plots as provided for by this subsection, the right to control any entity
 155 formed for the purpose of enforcing such covenants may pass to the subdivision plot
 156 owners as provided in this paragraph if such entity fails to do any of the following:

157 (i) Incorporate or maintain the annual registration pursuant to the terms of the
 158 covenants;

159 (ii) Cause the board of directors to be duly appointed and the officers to be elected
 160 pursuant to the terms of the covenants;

161 (iii) Maintain and make available to owners, upon written request, a list of the names
 162 and business or home addresses of the entity's current directors and officers;

163 (iv) Call meetings of the members of the entity in accordance with the provisions of
 164 the covenants;

165 (v) Prepare an annual operating budget and establish the annual assessment and
 166 distribute the budget and notice of assessment to plot owners in accordance with the
 167 provisions of the covenants no later than 30 days after the beginning of the entity's
 168 fiscal year; or

169 (vi) Pay property taxes on common property in the planned subdivision for two or
170 more years.

171 (B) In the event that an entity formed for the purpose of enforcing covenants restricting
172 land to certain uses fails to meet one or more of the obligations of this paragraph, then
173 any plot owner, acting individually or jointly with other plot owners, may send such
174 entity written notice of the failure to comply with such requirements and provide the
175 entity a 30 day opportunity to cure the failure; and such notice shall be sent by certified
176 mail or statutory overnight delivery to the entity's principal office. If the entity fails to
177 cure any or all deficiencies identified in the notice within 30 days of such notice, then
178 any plot owner, acting individually or jointly with other plot owners, may file a direct
179 action in the superior court of the county in which any portion of the entity is located
180 in order to obtain an order to grant the plot owners control of the entity by ordering an
181 election and setting the terms thereof, or issuing any other orders appropriate to transfer
182 control of the entity. The superior court shall have authority to hold a hearing and issue
183 a summary ruling on said petition at any time designated by the court not earlier than
184 20 days after the service thereof, unless the parties consent in writing to an earlier trial.
185 No discovery shall be had unless ordered by the court for good cause. In addition, the
186 superior court shall be authorized to issue a summary ruling on the conveyance of any
187 intended common areas or other property in the common interest community to the
188 association or other appropriate entity. If the plot owners prevail in such action, then
189 the superior court shall award to the plot owners all reasonable attorney's fees and costs
190 incurred by the owners for the prosecution of such action. This Code section shall not
191 be the basis for any liability against any entity party or agent of any party outside of the
192 exclusive remedies provided herein."

193 **SECTION 6.**

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