

Senate Bill 187

By: Senators James of the 35th, Jones II of the 22nd, Rhett of the 33rd, Davenport of the 44th, Anderson of the 43rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 44-3-232 of the Official Code of Georgia Annotated, relating to
2 assessments against lot owners as constituting lien in favor of association, additional charges
3 against lot owners, procedure for foreclosing lien, and obligation to provide statement of
4 amounts due, so as to set forth conditions for the foreclosure of liens; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 44-3-232 of the Official Code of Georgia Annotated, relating to assessments
9 against lot owners as constituting lien in favor of association, additional charges against lot
10 owners, procedure for foreclosing lien, and obligation to provide statement of amounts due,
11 is amended as follows:

12 "44-3-232.

13 (a) All sums lawfully assessed by the association against any lot owner or property owners'
14 association lot, whether for the share of the common expenses pertaining to that lot, fines,
15 or otherwise, and all reasonable charges made to any lot owner or lot for materials
16 furnished or services rendered by the association at the owner's request to or on behalf of
17 the lot owner or lot, shall, from the time the sums became due and payable, be the personal
18 obligation of the lot owner and constitute a lien in favor of the association on the lot prior
19 and superior to all other liens whatsoever except:

20 (1) Liens for ad valorem taxes on the lot;

21 (2) The lien of any first priority mortgage covering the lot and the lien of any mortgage
22 recorded prior to the recording of the declaration; or

23 (3) The lien of any secondary purchase money mortgage covering the lot, provided that
24 neither the grantee nor any successor grantee on the mortgage is the seller of the lot.

25 The recording of the declaration pursuant to this article shall constitute record notice of the
 26 existence of the lien, and no further recordation of any claim of lien for assessments shall
 27 be required.

28 (b) To the extent that the instrument provides, the personal obligation of the lot owner and
 29 the lien for assessments shall also include:

30 (1) A late or delinquency charge not in excess of the greater of \$10.00 or 10 percent of
 31 the amount of each assessment or installment thereof not paid when due;

32 (2) At a rate not in excess of 10 percent per annum, interest on each assessment or
 33 installment thereof and any delinquency or late charge pertaining thereto from the date
 34 the same was first due and payable;

35 (3) The costs of collection, including court costs, the expenses required for the protection
 36 and preservation of the lot, and reasonable attorney's fees actually incurred; and

37 (4) The fair rental value of the lot from the time of the institution of an action until the
 38 sale of the lot at foreclosure or until judgment rendered in the action is otherwise
 39 satisfied.

40 ~~(c)(1) Subject to the conditions set forth in paragraphs (2) through (5) of this subsection,~~
 41 ~~the lien established by this Code section~~ Not less than 30 days after notice is sent by
 42 ~~certified mail or statutory overnight delivery, return receipt requested, to the lot owner~~
 43 ~~both at the address of the lot and at any other address or addresses which the lot owner~~
 44 ~~may have designated to the association in writing, the lien may be foreclosed by the~~
 45 ~~association by an action, judgment, and court order for foreclosure in the same manner~~
 46 ~~as other liens for the improvement of real property, subject to superior liens or~~
 47 ~~encumbrances, but any such court order for judicial foreclosure shall not affect the rights~~
 48 ~~of holders of superior liens or encumbrances to exercise any rights or powers afforded to~~
 49 ~~them under their security instruments. The notice provided for in this subsection shall~~
 50 ~~specify the amount of the assessments then due and payable together with authorized late~~
 51 ~~charges and the rate of interest accruing thereon.~~

52 (2) No foreclosure action against a lien arising out of this subsection shall be permitted
 53 unless the amount of the lien is at least \$2,000.00. Unless prohibited by the instrument,
 54 the association shall have the power to bid on the lot at any foreclosure sale and to
 55 acquire, hold, lease, encumber, and convey the same.

56 (3) The lien for assessments shall lapse and be of no further effect, as to assessments or
 57 installments thereof, together with late charges and interest applicable thereto, four years
 58 after the assessment or installment first became due and payable.

59 (4) The association shall not use a collection agency or take legal action to collect unpaid
 60 assessments unless the association has adopted, and follows, a written policy governing
 61 the collection of unpaid assessments. Such policy shall, at a minimum, specify:

62 (A) The date on which assessments must be paid to the association and when an
 63 assessment is considered past due and delinquent;

64 (B) That, at least 30 days before the association turns over a delinquent account to a
 65 collection agency or retains an attorney for legal action, the association must send by
 66 certified mail or statutory overnight delivery, return receipt requested, to the lot owner,
 67 both at the address of the lot and at any other address or addresses that the lot owner
 68 may have designated to the association in writing, a notice specifying:

69 (i) The total amount due, with an accounting of how the total was determined;

70 (ii) The name and contact information for the association's representative whom the
 71 lot owner may contact to request a copy of the lot owner's ledger in order to verify the
 72 amount of the debt; and

73 (iii) That action is required to cure the delinquency and that failure to do so within
 74 30 days may result in the lot owner's delinquent account being turned over to a
 75 collection agency, a lawsuit being filed against the lot owner's property, or other
 76 remedies available at law; and

77 (C) The method by which payments may be applied on the delinquent account of a lot
 78 owner, which method must include the option of a reasonable payment plan.

79 (5) The board of directors of the association must formally resolve, by a vote recorded
 80 on its minutes, to authorize the filing of a legal action against a specific lot on an
 81 individual basis. No attorney's fees, court costs, interest, or other charges incurred by the
 82 association in connection with an action that is dismissed for failure to satisfy this
 83 condition may be assessed against the lot owner.

84 (c.1) Unless prohibited by the instrument, the association shall have the power to bid on
 85 the lot at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same.

86 (d) Any lot owner, mortgagee of a lot, person having executed a contract for the purchase
 87 of a lot, or lender considering the loan of funds to be secured by a lot shall be entitled upon
 88 request to a statement from the association or its management agent setting forth the
 89 amount of assessments past due and unpaid together with late charges and interest
 90 applicable thereto against that lot. Such request shall be in writing, shall be delivered to
 91 the registered office of the association, and shall state an address to which the statement is
 92 to be directed. Failure on the part of the association, within five business days from the
 93 receipt of such request, to mail or otherwise furnish such statement regarding amounts due
 94 and payable at the expiration of such five-day period with respect to the lot involved to
 95 such address as may be specified in the written request therefor shall cause the lien for
 96 assessments created by this Code section to be extinguished and of no further force or
 97 effect as to the title or interest acquired by the purchaser or lender, if any, as the case may
 98 be, and their respective successors and assigns, in the transaction contemplated in

99 connection with such request. The information specified in such statement shall be binding
100 upon the association and upon every lot owner. Payment of a fee not exceeding \$10.00
101 may be required as a prerequisite to the issuance of such a statement if the instrument so
102 provides.

103 (e) Nothing in this Code section shall be construed to prohibit actions maintainable
104 pursuant to Code Section 44-3-223 to recover sums for which subsection (a) of this Code
105 section creates a lien."

106 **SECTION 2.**

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