

Representatives Fleming of the 121st and Strickland of the 111th offer the following substitute to SB 46:

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 **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 alleged
18 violation or complaint is based upon a continuous violation of the covenant resulting from
19 an act or omission, the right of action shall accrue each time such act or omission occurs.

20 This Code section shall not be construed so as to extend any applicable statute of
21 limitations affecting actions in equity."

22 **SECTION 2.**

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

26 "44-3-89.

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

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

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

61 **SECTION 3.**

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

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

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

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

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

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

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

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

87 (2) In the event that the declarant fails to meet one or more of the obligations of this
88 subsection, then any owner, acting individually or jointly with other owners, may send
89 the declarant written notice of the failure to comply with such requirements and provide
90 the declarant a 30 day opportunity to cure the failure; and such notice shall be sent by
91 certified mail or statutory overnight delivery to the declarant's principal office. If the
92 declarant fails to cure any or all deficiencies identified in the notice within 30 days of
93 such notice, then any owner, acting individually or jointly with other owners, ~~may file a~~
94 petition shall have standing individually, and not solely through a derivative action, to
95 institute an action in the superior court of the county in which any portion of the
96 condominium is located in order to obtain ~~an order~~ a declaratory judgment to grant the
97 owner or owners control of the association by ordering an election and setting the terms

98 thereof, or issuing any other orders appropriate to transfer control of the association. The
 99 superior court shall have authority to hold a hearing and issue a summary ruling on said
 100 petition action at any time designated by the court not earlier than 20 days after the
 101 service thereof, unless the parties consent in writing to an earlier trial. No discovery shall
 102 be had unless ordered by the court for good cause. In addition, the superior court shall
 103 be authorized to issue a summary ruling on the conveyance of any intended common
 104 areas or other property in the common interest community to the association or other
 105 appropriate entity. If the owner or owners prevail in such action, then the superior court
 106 shall award to the owner or owners all reasonable attorney's fees and costs incurred by
 107 ~~the owners~~ for the prosecution of such action. This subsection shall not be the basis for
 108 any liability against any party or agent of any party outside of the exclusive remedies
 109 provided herein."

110 SECTION 4.

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

112 "44-3-232.1.

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

118 (1) Incorporate or maintain an annual registration pursuant to subsection (a) of Code
 119 Section 44-3-227;

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

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

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

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

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

130 (b) In the event that the declarant fails to meet one or more of the obligations of this Code
 131 section, then any owner, acting individually or jointly with other owners, may send the
 132 declarant written notice of the failure to comply with such requirements and provide the
 133 declarant a 30 day opportunity to cure the failure; and such notice shall be sent by certified

134 mail or statutory overnight delivery to the declarant's principal office. If the declarant fails
 135 to cure any or all deficiencies identified in the notice within 30 days of such notice, then
 136 any owner, acting individually or jointly with other owners, shall have standing
 137 individually, and not solely through a derivative action, to institute an action in the superior
 138 court of the county in which any portion of the property owner's association is located in
 139 order to obtain a declaratory judgment to grant the owner or owners control of the
 140 association by ordering an election and setting the terms thereof, or issuing any other orders
 141 appropriate to transfer control of the association. The superior court shall have authority
 142 to hold a hearing and issue a summary ruling on said action at any time designated by the
 143 court not earlier than 20 days after the service thereof, unless the parties consent in writing
 144 to an earlier trial. No discovery shall be had unless ordered by the court for good cause.
 145 In addition, the superior court shall be authorized to issue a summary ruling on the
 146 conveyance of any intended common areas or other property in the common interest
 147 community to the association or other appropriate entity. If the owner or owners prevail
 148 in such action, then the superior court shall award to the owner or owners all reasonable
 149 attorney's fees and costs incurred for the prosecution of such action. This Code section
 150 shall not be the basis for any liability against any party or agent of any party outside of the
 151 exclusive remedies provided herein."

152

SECTION 5.

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

156 "(5)(A) Notwithstanding and prior to the usual expiration of the period of covenants
 157 restricting land to certain uses affecting planned subdivisions containing no fewer than
 158 15 individual plots as provided for by this subsection, the right to control any entity
 159 formed for the purpose of enforcing such covenants may pass to the subdivision plot
 160 owners as provided in this paragraph if such entity fails to do any of the following:

161 (i) Incorporate or maintain an annual registration pursuant to the terms of the
 162 covenants;

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

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

167 (iv) Call meetings of the members of the entity in accordance with the provisions of
 168 the covenants;

169 (v) Prepare an annual operating budget, establish the annual assessment, and
 170 distribute such budget and notice of assessment to plot owners in accordance with the
 171 provisions of the covenants no later than 30 days after the beginning of the entity's
 172 fiscal year; or

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

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

198 **SECTION 6.**

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