

House Bill 203

By: Representatives Strickland of the 111th, Welch of the 110th, Fleming of the 121st, and Rutledge of the 109th

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

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

SECTION 2.

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code Section 44-3-89, relating to expansion of condominiums and amendments to declarations, 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."

SECTION 3.

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

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

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

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

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

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

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

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

(2) In the event that the declarant fails to meet one or more of the obligations of this subsection, then any owner, acting 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~~ shall have standing individually, and not solely through a derivative action, to institute an action in the superior court of the county in which any portion of the condominium is located in order to obtain ~~an order~~ a declaratory judgment to grant the owner or owners control of the association by ordering an election and setting the terms

thereof, or issuing any other orders appropriate to transfer control of the association. The superior court shall have authority to hold a hearing and issue a summary ruling on said petition action 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. No discovery shall be had unless ordered by the court for good cause. In addition, the superior court shall be authorized to issue a summary ruling on the conveyance of any intended common areas or other property in the common interest community to the association or other appropriate entity. If the owner or owners prevail in such action, then the superior court shall award to the owner or owners all reasonable attorney's fees and costs incurred by the owners for the prosecution of such action. This subsection shall not be the basis for any liability against any party or agent of any party outside of the exclusive remedies provided herein."

SECTION 4.

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

"44-3-232.1.

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

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

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

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

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

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

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

(b) In the event that the declarant fails to meet one or more of the obligations of this Code section, then any owner, acting 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, shall have standing individually, and not solely through a derivative action, to institute an action in the superior court of the county in which any portion of the property owner's association is located in order to obtain a declaratory judgment to grant the owner or owners control of the association by ordering an election and setting the terms thereof, or issuing any other orders appropriate to transfer control of the association. The superior court shall have authority to hold a hearing and issue a summary ruling on said action 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. No discovery shall be had unless ordered by the court for good cause. In addition, the superior court shall be authorized to issue a summary ruling on the conveyance of any intended common areas or other property in the common interest community to the association or other appropriate entity. If the owner or owners prevail in such action, then the superior court shall award to the owner or owners all reasonable attorney's fees and costs incurred for the prosecution of such action. This Code section shall not be the basis for any liability against any party or agent of any party outside of the exclusive remedies provided herein."

SECTION 5.

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

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

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

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

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

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

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

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

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

SECTION 6.

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