

Senate Bill 356

By: Senators James of the 35th, Rhett of the 33rd and Davenport of the 44th

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 regulation of specialized land transactions, so as to provide for protections of homeowners
3 in community associations; to revise provisions concerning the foreclosure of liens by
4 condominium associations and property owner's associations; to provide definitions; to
5 provide for limitations on the ability of community associations to foreclose liens; to provide
6 for a right of redemption following a foreclosure sale on a home by a community association;
7 to provide for the waiver of assessments owed by homeowners to community associations
8 in the event of death or disability; to provide for action and relief; to create the office of the
9 Community Association Ombudsman; to provide for powers and duties of the ombudsman;
10 to provide procedures concerning the submission of complaints to the ombudsman by
11 homeowner and community associations; to provide procedures concerning the resolution
12 of such complaints; to provide for the submission of certain recommendations made by the
13 ombudsman with respect to such complaints to community associations; to provide
14 procedures concerning the approval or rejection of such recommendations by community
15 associations; to provide for the monitoring of elections for boards of directors for community
16 associations; to provide for annual registration of community associations and related fees;
17 to provide for applicability; to provide for related matters; to repeal conflicting laws; and for
18 other purposes.

S. B. 356

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 **SECTION 1.**

21 Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to regulation of
22 specialized land transactions, is amended in Code Section 44-3-109, relating to lien for
23 assessments, personal obligation of unit owner, notice and foreclosure, lapse, right to
24 statement of assessments, and effect of failure to furnish statement, by revising subsection (c)
25 as follows:

26 "(c) Not less than 30 days after notice is sent by certified mail or statutory overnight
27 delivery, return receipt requested, to the unit owner both at the address of the unit and at
28 any other address or addresses which the unit owner may have designated to the association
29 in writing, the lien may be foreclosed by the association by an action, judgment, and
30 foreclosure in the same manner as other liens for the improvement of real property, subject
31 to the limitations set forth in Code Section 44-3-270 and to superior liens or encumbrances,
32 but any such court order for judicial foreclosure shall not affect the rights of holders of
33 superior liens or encumbrances to exercise any rights or powers afforded to them under
34 their security instruments. The notice provided for in this subsection shall specify the
35 amount of the assessments then due and payable together with authorized late charges and
36 the rate of interest accruing thereon. ~~No foreclosure action against a lien arising out of this~~
37 ~~subsection shall be permitted unless the amount of the lien is at least \$2,000.00.~~ Unless
38 prohibited by the condominium instruments, the association shall have the power to bid on
39 the unit at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same.
40 The lien for assessments shall lapse and be of no further effect, as to assessments or
41 installments thereof, together with late charges and interest applicable thereto, four years
42 after the assessment or installment first became due and payable."

SECTION 2.

Said chapter is further amended in Code Section 44-3-232, relating to assessments against lot owners as constituting liens in favor of association, additional charges against lot owners, procedure for foreclosing lien, and obligation to provide statement of amounts due, by revising subsection (c) as follows:

"(c) Not less than 30 days after notice is sent by certified mail or statutory overnight delivery, return receipt requested, to the lot owner both at the address of the lot and at any other address or addresses which the lot owner may have designated to the association in writing, the lien may be foreclosed by the association by an action, judgment, and court order for foreclosure in the same manner as other liens for the improvement of real property, subject to the limitations set forth in Code Section 44-3-270 and to superior liens or encumbrances, but any such court order for judicial foreclosure shall not affect the rights of holders of superior liens or encumbrances to exercise any rights or powers afforded to them under their security instruments. The notice provided for in this subsection shall specify the amount of the assessments then due and payable together with authorized late charges and the rate of interest accruing thereon. ~~No foreclosure action against a lien arising out of this subsection shall be permitted unless the amount of the lien is at least \$2,000.00.~~ Unless prohibited by the instrument, the association shall have the power to bid on the lot at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The lien for assessments shall lapse and be of no further effect, as to assessments or installments thereof, together with late charges and interest applicable thereto, four years after the assessment or installment first became due and payable."

SECTION 3.

Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 8

Part 1

44-3-260.

As used in this article, the term:

(1) 'Community association' or 'association' means an organization or corporation of homeowners or residential property owners of a particular residential community created for the purpose of managing or regulating such residential community, including, without limitation enforcing covenants set forth in a declaration of such residential community.

Such term shall include a condominium association and a property owners' association.

(2) 'Condominium association' means an organization or corporation formed pursuant to the Georgia Condominium Act for the purpose of exercising the powers of an association of any condominium under such Act.

(3) 'Declaration' means a recordable instrument creating restrictive covenants upon real property within a particular residential community which are administered by a community association in which membership is mandatory for all unit owners in such residential community.

(4) 'Governing documents' means the instruments that govern the administration or operation of the community association of a particular residential community, including, without limitation, the declaration of such residential community and the bylaws and articles of incorporation of such community association.

(5) 'Property owners' association' means a corporation formed pursuant to the Georgia Property Owners' Association Act for the purpose of exercising the powers of an association of property owners under such Act.

(6) 'Residential community' means a residential subdivision, planned community, or condominium.

(7) 'Unit' means a portion of a residential community intended for any type of independent ownership and use that is subject to a declaration and managed or regulated by a community association.

(8) 'Unit owner' means the owner of a unit.

Part 2

44-3-270.

Notwithstanding any provision of law to the contrary, no foreclosure action against a lien on a unit in favor of a community association shall be permitted if the amount of the lien:

(1) Is less than \$2,000; or

(2) Consists solely of fines imposed by the community association for the failure to comply with the provisions of the declaration or with the rules or regulations adopted by the community association, including, without limitation, fines imposed or levied pursuant to Code Section 44-3-76 or 44-3-223, and any late charges, interest, or costs associated with such fines.

44-3-271.

(a) A unit owner may redeem a unit from any purchaser at a sale foreclosing a lien on such unit in favor of a community association, including, without limitation a lien arising out of Code Section 44-3-109 or Code Section 44-3-232, by paying the amounts required for redemption, as set forth in this Code section, not later than 120 days after the date of such sale.

(b) A person who purchases a unit at a sale foreclosing a lien on such unit in favor of a community association shall not transfer ownership of such unit to a person other than the unit owner during the redemption period provided in subsection (a) of this Code section.

115 (c) To redeem a unit that was purchased at the foreclosure sale by the foreclosing
116 community association, the unit owner shall pay to the community association:

117 (1) All amounts owed by the unit owner to the community association at the time of the
118 foreclosure sale, plus interest on such amount from the date of foreclosure to the date of
119 redemption at the rate stated in the declaration for delinquent assessments or, if no such
120 rate is stated, at an annual interest rate of 10 percent;

121 (2) The costs incurred by the community association in foreclosing the lien and
122 conveying, after redemption, the unit to the unit owner, including reasonable attorney's
123 fees;

124 (3) Any assessments levied against the unit by the community association after the date
125 of the foreclosure sale;

126 (4) Any reasonable cost incurred by the community association in connection with its
127 ownership of the unit, including, without limitation mortgage payments and costs of
128 reasonable and necessary repair maintenance; and

129 (5) The purchase price paid by the community association at the foreclosure sale less any
130 amounts owed to the community association by the unit owner that were satisfied out of
131 such sale proceeds.

132 (d) To redeem a unit that was purchased at the foreclosure sale by a person other than the
133 foreclosing community association, the unit owner shall:

134 (1) Pay to the community association:

135 (A) All amounts owed by the unit owner to the community association at the time of
136 the foreclosure sale, less the sale price received by the community association at the
137 foreclosure sale, and plus interest on such net amount from the date of foreclosure to
138 the date of redemption at the rate stated in the declaration for delinquent assessments
139 or, if no such rate is stated, at an annual interest rate of 10 percent;

140 (B) The costs incurred by the community association in foreclosing the lien, including
141 reasonable attorney's fees; and

(C) Any unpaid assessments levied against the unit by the community association after the date of the foreclosure sale; and

(2) Pay to the person who purchased the unit at the foreclosure sale:

(A) The purchase price paid by such person at the foreclosure sale;

(B) The cost incurred by such person in recording the foreclosure deed and conveying, after redemption, the unit to the unit owner, including reasonable attorney's fees;

(C) Any assessments levied against the unit by the community association after the date of the foreclosure sale that were paid by such person; and

(D) Any amounts paid by such person as ad valorem taxes, penalties, and interest on the unit after the date of the foreclosure sale.

(e) If a unit owner redeems a unit in accordance with the provisions of this Code section, the purchaser of the unit at the foreclosure sale shall immediately execute and deliver to the unit owner a deed transferring the unit to the unit owner. If a purchaser fails to comply with the provisions of this subsection, a unit owner may bring an action against such purchaser for an order compelling the conveyance of such unit to such unit owner. If a unit owner is the prevailing party in an action brought pursuant to this subsection, such unit owner shall be entitled to recover the costs incurred in bringing such action, including reasonable attorney's fees.

(f) The redemption rights conferred by this Code section are personal privileges and not property or property rights. The privileges shall be exercised in the manner prescribed in this Code section and such privileges may not be waived in a deed, declaration, judgment, or any agreement.

(g) This Code section shall only apply to liens in favor of a community association that are foreclosed on or after July 1, 2024.

44-3-272.

(a) As used in this Code section, the term:

(1) 'Disability' means a medically determinable physical or mental impairment caused by injury or illness that renders a person unable to engage in any substantial gainful employment.

(2) 'Disabled' means a person who is unable to engage in any substantial gainful employment as a result of a medically determinable physical or mental impairment caused by injury or illness.

(3) 'Personal representative' shall have the same meaning as provided in Code Section 53-1-2.

(b)(1) Each community association created pursuant to a declaration executed on or after July 1, 2024, shall waive all assessments or installments thereof that become due and payable by any unit owner if such unit owner:

(A) Dies with an insolvent estate, provided that the personal representative of such unit owner's estate certifies in writing to the community association that such unit owner's estate is insolvent; or

(B) Becomes disabled, which causes a financial hardship on such unit owner, provided that such unit owner certifies in writing to the community association that, because of such disability, he or she is experiencing a financial hardship.

(2) A waiver of such assessments or installments thereof under paragraph (1) of this subsection shall begin on the date such unit owner dies or becomes disabled and shall continue for a period of not less than 12 months; provided, however, that, if such waiver is granted because of a disability of a unit owner, such waiver shall terminate if the financial hardship on such unit owner resulting from such disability ceases to exist prior to the expiration of such 12 month period.

(c) If a unit owner previously paid any assessments or installments thereof that are required to be waived by a community association pursuant to subsection (a) of this Code section, such unit owner or such unit owner's estate shall be entitled to a refund of such assessments or installments thereof, provided that the written certification that the estate

of such unit owner is insolvent required under paragraph (1) of subsection (a) of this Code section or the written certification of financial hardship required under paragraph (2) of subsection (a) of this Code section, whichever is applicable, was provided to the community association within 12 months of the date such unit owner died or became disabled.

(d)(1) If a community association fails to waive or refund any assessments or installments thereof that are required to be waived or refunded under the provisions of this Code section, the unit owner or the personal representative of the unit owner's estate may bring an action against such community association for a declaration that such assessments or installments thereof are required to be waived and for recovery of any amount of such assessments or installments thereof that are required to be refunded.

Such relief shall not be granted unless the court determines in such action that:

(A) The unit owner either:

(i) Became disabled, which caused a financial hardship on such unit owner; or

(ii) Died with an insolvent estate; and

(B) The written certification that the estate of such unit owner is insolvent required under paragraph (1) of subsection (a) of this Code section or the written certification of financial hardship required under paragraph (2) of subsection (a) of this Code section, whichever is applicable, was provided to the community association within 12 months of the date such unit owner died or became disabled.

(2) A unit owner or the personal representative of a unit owner's estate who prevails in an action brought pursuant to this subsection shall be entitled to recover the costs incurred in bringing such action, including reasonable attorney's fees.

Part 3

44-3-280.

(a) There is created within the Department of Community Affairs the Office of the Community Association Ombudsman.

(b) The commissioner of community affairs shall appoint the ombudsman, who shall be an attorney admitted to practice before the Georgia Supreme Court. The ombudsman shall serve at the pleasure of the commissioner of community affairs.

(c) Neither the ombudsman nor any full-time employee of the ombudsman's office shall:

(1) Actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office;

(2) Serve as the representative, or an executive, officer, or employee, of any political party, executive committee, or other governing body of a political party;

(3) Receive remuneration for activities on behalf of any candidate for public office;

(4) Engage in soliciting votes or other activities on behalf of a candidate for public office; or

(5) Become a candidate for election to public office unless he or she first resigns from his or her office or employment.

(d) The ombudsman shall maintain his or her principal office at a place convenient to the commissioner of community affairs, which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the commissioner of community affairs.

44-3-281.

The ombudsman shall have the powers necessary to carry out the duties of his or her office, including, without limitation:

(1) Employing professional and clerical staff as necessary for the efficient operation of the office;

(2) Preparing and issuing reports and recommendations to the Governor, the commissioner of community affairs, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of this article;

(3) Acting as a liaison between unit owners, or other affected parties, and community associations, including the boards of directors, board members, officers, and managers of such community associations;

(4) Monitoring and reviewing procedures and disputes concerning elections or meetings of community associations;

(5) Providing resources to assist board members and officers of community associations in carrying out their powers and duties in a manner consistent with this article, other applicable law, and their governing documents;

(6) Acting as a neutral resource regarding the rights and responsibilities of unit owners and community associations, including the boards of directors, board members, officers, and managers of such community associations;

(7) Encouraging and facilitating voluntary meetings between unit owners and community associations, including the boards of directors, board members, officers, and managers of such community associations, when the meetings may assist in resolving a dispute within a residential community;

(8) Assisting with the resolution of disputes between unit owners and their community associations, or between two or more unit owners within a residential community, if applicable, including mediating such disputes, issuing opinions with respect to such disputes, and the making of recommendations on actions that can be taken by unit owners and community associations to resolve such disputes;

(9) Receiving and compiling complaints and responses in relation to violations of applicable law and the governing documents of community associations; and

(10) Promulgating and adopting such rules and regulations as may be necessary to carry out the provisions of this article.

272 44-3-282.

273 The ombudsman shall:

274 (1) Develop policies and procedures to assist unit owners and community associations,
275 including the boards of directors, board members, officers, and managers of such
276 community associations, understand their rights and responsibilities as set forth in this
277 article, under other applicable law, and in their governing documents;

278 (2) Coordinate and assist in the preparation and adoption of educational and reference
279 material, and shall endeavor to coordinate with private or volunteer providers of these
280 services, so that the availability of these resources is made known to the largest possible
281 audience;

282 (3) Assist unit owners in understanding their rights and responsibilities under applicable
283 law and their governing documents, including, without limitation, publishing materials
284 related to those rights and responsibilities;

285 (4) Assist board members and officers of community associations in carrying out their
286 duties; and

287 (5) Compile and maintain a registration of each community association operating within
288 the state which includes, at a minimum, the following information:

289 (A) The name, address, and phone number of the community association;

290 (B) The name of each person who is authorized to manage the community association;

291 (C) The names, mailing addresses, and telephone numbers of the board members of the
292 community association;

293 (D) The number of units in the community association;

294 (E) The total annual assessment required to be paid by unit owners to the community
295 association; and

296 (F) The number of foreclosures that were completed by the community association on
297 units within its residential community.

298 44-3-283.

299 (a) The ombudsman shall adopt policies and procedures for submission and receipt of
300 complaints from unit owners and community associations regarding disputes concerning
301 the rights and responsibilities of unit owners and community associations or alleged
302 violations of the provisions of this article, other applicable law, or their governing
303 documents.

304 (b) The ombudsman shall publish a form for such complaints which, at a minimum, shall
305 include the following information:

306 (1) The unit owner's name;

307 (2) The name and contact information of the community association;

308 (3) The name of the community association management company, if any, and its contact
309 information, including telephone number and mailing addresses;

310 (4) Whether a unit owner:

311 (A) Was informed of the requirement of membership in a community association as
312 a condition of ownership, including when that information was provided and by whom;

313 (B) Received a copy of the governing documents of the community association and if
314 the copy was obtained before or after receiving title to the unit;

315 (C) Was denied access to the governing documents and, if so, what remedies the unit
316 owner took to obtain the governing documents; and

317 (D) Understands his or her rights and obligations under the governing documents;

318 (5) The nature of the unit owner's or community association's complaint; and

319 (6) An explanation of:

320 (A) Any communications between the unit owner and the community association
321 regarding the complaint;

322 (B) Any remedies the unit owner or community association sought in relation to the
323 complaint; and

(C) Any actions the unit owner or community association took concerning the complaint.

(c) Upon receiving a unit owner's or community association's complaint, the ombudsman shall:

(1) Provide the complaint to the community association or the unit owner complained against in a manner that verifies receipt of such complaint by the community association or unit owner, so the unit owner or community association may determine if the unit owner or community association desires to make a response to the complaint;

(2) Conduct an investigation into the allegations of the complaint;

(3) Offer to mediate the complaint among the affected parties, and conduct such mediation if the affected parties agree to participate; and

(4) If practicable, issue to the affected parties his or her opinions or recommendations with respect to the complaint. Such opinions or recommendations may include, without limitation, a proposed course of action, including, but not limited to, waiver of any fines imposed by a community association on a unit owner.

(d)(1) The ombudsman shall, at least annually, provide a report of all complaints received and any opinions or recommendations issued by the ombudsman with respect to such complaints as provided in this Code section to the Governor, the commissioner of community affairs, the General Assembly, and to the public on the ombudsman's public website.

(2) The report provided for in this Code section shall include categorized, filterable, and searchable information compiled from the complaints, responses, and any opinions or recommendations issued by the ombudsman with respect thereto. The ombudsman shall redact from such report any personal or private information of the affected parties, such as names, addresses, and telephone numbers of individuals, contained in the complaints, responses, or in any opinions or recommendations issued by the ombudsman with respect thereto.

351

352 44-3-284.

353 (a) If, in connection with a complaint received pursuant to Code Section 44-3-283, the
354 ombudsman recommends that any fines imposed by a community association against a unit
355 owner be waived, such recommendation shall be submitted by the board of directors of the
356 community association to the entire membership of the community association for approval
357 or rejection. Unless a majority of such members rejects such recommendation within 120
358 days from the date such recommendation is issued by the ombudsman, such
359 recommendation shall automatically be approved and such fines imposed by the
360 community association against the unit owner, together with all late fees, interest, and other
361 charges associated with such fines, shall be waived. During such 120 day period, the
362 community association shall not take any effort to collect such fines and shall not impose
363 any further late fees, interest, or charges with respect to such fines.

364 (b) This Code section shall only apply to community associations created pursuant to a
365 declaration executed on or after July 1, 2024.

366 44-3-285.

367 (a) Fifteen percent of the total membership in a community association, or six unit owners,
368 whichever is greater, may petition the ombudsman to appoint an election monitor to attend
369 a meeting of the community association to be held for the purpose of electing members of
370 the community association's board of directors and to conduct at such meeting the election
371 of such members of the board of directors.

372 (b) Upon receiving a petition for the appointment of an election monitor from a sufficient
373 number of unit owners pursuant to subsection (a) of this Code section, the ombudsman
374 shall appoint an employee of his or her office, a person who specializes in community
375 association election monitoring, or an attorney licensed to practice in this state as the

376 election monitor who shall attend the community association meeting and conduct the
377 election of the members of the board of directors.

378 (c) The ombudsman shall, by rule or regulation, establish procedures for the appointment
379 of election monitors under this Code section and the scope and extent of the monitor's role
380 in the election process.

381 44-3-286.

382 (a) Each community association shall register annually with the ombudsman on a form
383 prescribed by the ombudsman, which shall include the information required to be
384 maintained pursuant to paragraph (5) of Code Section 44-3-282.

385 (b) Each community association shall pay an annual registration fee to the ombudsman in
386 the amount of \$25.00 per unit within the residential community of such community
387 association. All such annual registration fees received by the ombudsman pursuant to this
388 subsection shall be paid into the state treasury; provided, however, that it is the intent of
389 the General Assembly that such fees shall be annually appropriated to the Department of
390 Community Affairs for the purpose of paying the expenses of the Office of the Community
391 Association Ombudsman and other costs associated with carrying out the provisions this
392 part."

393 **SECTION 4.**

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