

House Bill 62

By: Representatives Scott of the 76<sup>th</sup>, Davis of the 87<sup>th</sup>, and Schofield of the 63<sup>rd</sup>

A BILL TO BE ENTITLED

AN ACT

1 To amend Articles 3 and 6 of Chapter 3 of Title 44 of the Official Code of Georgia  
2 Annotated, relating to condominium associations and property owners' associations,  
3 respectively, so as to provide requirements for board members for condominium associations  
4 and property owners' associations; to provide for allocation of votes; to provide for proxies;  
5 to provide for quorums; to provide for residency for board members; to provide for size  
6 requirements for boards; to provide for board elections, filing, and certification; to provide  
7 for contests of election results; to provide for annual registration requirements for such  
8 associations; to provide for a short title; to provide for a purpose; to provide for related  
9 matters; to provide for an effective date and applicability; to provide for severability; to  
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 This Act shall be known as the "Georgia HOA Accountability and Community  
14 Empowerment Act (HACEA)."

15 **SECTION 2.**

16 The purpose of this Act is to establish fair, transparent, and enforceable regulations for  
 17 homeowners' associations, including condominium associations and property owner's  
 18 associations, to ensure accountability, enhance resident engagement, and protect the interests  
 19 of community members.

20 **SECTION 3.**

21 Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to  
 22 condominiums, is amended by revising paragraph (8) of subsection (a) of Code  
 23 Section 44-3-77, relating to contents of declaration, as follows:

24 "(8) The allocation to each unit ~~of a number of votes~~ in the association of one vote in  
 25 accordance with Code Section 44-3-79."

26 **SECTION 4.**

27 Said article is further amended by revising Code Section 44-3-79, relating to  
 28 allocation – votes in association, how votes cast, and majority vote requirements, as follows:

29 "44-3-79.

30 (a) The declaration shall allocate ~~a number of votes in the association to each unit depicted~~  
 31 ~~on plats or plans that comply with subsections (a) and (b) of Code Section 44-3-83. The~~  
 32 ~~allocation of such votes may be by percentage, fraction, formula, or any other method~~  
 33 ~~which indicates the relative voting power allocated to each unit. If an equal vote is~~  
 34 ~~allocated to each unit, the declaration may merely so state. All of the votes in the~~  
 35 ~~association shall be allocated among the units depicted on such plats or plans and shall be~~  
 36 ~~subject to reallocation as provided in this article~~ one vote to each unit.

37 (b) Since a unit owner may be more than one person, if only one of those persons is  
 38 present at a meeting of the association or is voting by proxy, ballot, or written consent, ~~that~~  
 39 such person shall be entitled to cast the ~~votes~~ vote pertaining to that unit. However, if more

40 than one of ~~those~~ such persons ~~is~~ are present or each executes a proxy, ballot, or written  
41 consent, the vote pertaining to that unit shall be cast only in accordance with their  
42 unanimous agreement unless the condominium instruments expressly provide otherwise;  
43 and such consent shall be conclusively presumed if any one of them purports to cast the  
44 ~~votes~~ vote pertaining to that unit without protest being made immediately by any of the  
45 others to the person presiding over the meeting or vote.

46 (c) The ~~votes~~ vote pertaining to any unit may, and, in the case of any unit owner not a  
47 natural person or persons, shall, be cast pursuant to a proxy or proxies duly executed by or  
48 on behalf of the unit owner or, in cases where the unit owner is more than one person, by  
49 or on behalf of the joint owners of the unit. No such proxy shall be revocable except as  
50 provided in Code Section 14-2-722 or 14-3-724 or by written notice delivered to the  
51 association by the unit owner or by any joint owners of a unit. Any proxy shall be void if  
52 it is not dated or if it purports to be revocable without such notice. Any proxy shall also  
53 reasonably identify the unit owner or owners and the unit for which it is a proxy. If such  
54 proxy does not reasonably identify the unit owner or owners and the unit for which it is a  
55 proxy, such proxy shall be void.

56 ~~(d) Except in the case of any condominium of which no part is restricted exclusively to~~  
57 ~~residential use, if 50 percent or more of the votes in the association pertain to 25 percent~~  
58 ~~or less of the condominium units, then in any case where a majority vote is required by the~~  
59 ~~condominium instruments or by this article the requirement for such a majority shall be~~  
60 ~~deemed to include, in addition to the specified majority of the votes, assent by the unit~~  
61 ~~owners of a like majority of the condominium units.~~

62 ~~(e)~~(d) Anything in this Code section to the contrary notwithstanding, no ~~votes~~ vote in the  
63 association shall be deemed to pertain to any condominium unit during such time as the  
64 unit owner thereof is the association nor shall any vote be allocated to any condominium  
65 unit unless the condominium unit is depicted on plats or plans that comply with  
66 subsections (a) and (b) of Code Section 44-3-83. Except to the extent otherwise expressly

67 provided or permitted by this article, the ~~votes~~ vote allocated to any condominium unit  
68 shall not be altered."

69 **SECTION 5.**

70 Said article is further amended by revising Code Sections 44-3-103 and 44-3-104, relating  
71 to quorums at meetings of association or board and directors and officers and eligibility,  
72 respectively, as follows;

73 "44-3-103.

74 (a) Unless the condominium instruments or bylaws provide otherwise, a quorum shall be  
75 deemed present throughout any meeting, except the annual meeting, of the members of the  
76 association if persons entitled to cast more than one-third of the votes are present at the  
77 beginning of the meeting. Unless the condominium instruments or bylaws specify a larger  
78 percentage, the presence of persons entitled to cast one-half of the votes of the board of  
79 directors shall constitute a quorum for the transaction of any business at any meeting of the  
80 board.

81 (b) A quorum shall be deemed present throughout any annual meeting of the members of  
82 the association. Decisions and elections may proceed regardless of the number of members  
83 of the association in attendance at such meeting.

84 44-3-104.

85 ~~(a) If the condominium instruments provide that any member of the board of directors or~~  
86 ~~any officer of the association must be a unit owner, then, notwithstanding paragraph (1) of~~  
87 ~~subsection (a) of Code Section 44-3-75, the~~ Members of a board of directors or any officer  
88 of an association shall be a unit owner with residency in the community. A unit owner  
89 establishes residency by being a unit owner of a condominium governed by the  
90 condominium association, paying utilities for the unit, using the unit address for voter  
91 registration, and listing the unit on his or her driver's license or other government

92 identification. Nonresident individuals shall not be eligible to serve on the board. The  
93 term 'unit owner' in such context shall, unless the condominium instruments otherwise  
94 provide, be deemed to include, without limitation, any shareholder, director, officer, partner  
95 in, or trustee of any person who is, either alone or in conjunction with any other person or  
96 persons, a unit owner. Any individual who would not be eligible to serve as a member of  
97 the board of directors or officer were he or she not a shareholder, director, officer, partner  
98 in, or trustee of such a person shall be deemed to have disqualified himself or herself from  
99 continuing in office if he or she ceases to have any such affiliation with that such person.  
100 (b) A board of directors shall consist of three or more individuals. Only one individual  
101 residing in a unit shall be eligible to serve on such board at any time.  
102 (c) The association shall provide proof of meeting the minimum number of board members  
103 as part of filing its annual registration for the Secretary of State pursuant to Code  
104 Section 14-2-1622 or Code Section 14-3-1622.  
105 (d) Failure to meet the requirements in subsection (c) of this Code section shall subject the  
106 condominium association to administrative suspension by the Secretary of State until the  
107 following conditions are met:  
108 (1) A successful election is held to reinstate the board with at least three members; and  
109 (2) A reinstatement request providing proof of meeting the minimum number of board  
110 members is submitted and approved by the Secretary of State."

111 **SECTION 6.**

112 Said article is further amended by adding new Code sections to read as follows:

113 "44-3-104.1.

114 (a) Elections of board members shall be held not less frequently than annually. Board  
115 members shall be elected by winning a majority of the voting units. Elections shall be held  
116 in accordance with the term limits set forth in the association's bylaws.

117 (b) Ballots shall include the names of candidates and shall be given to each voting  
118 member, including such members voting by proxy.

119 (c) The association shall maintain electronic scans of each ballot to be made available for  
120 inspection by unit owners for one year following any election for board members.

121 (d) Election results shall be filed with the Secretary of State's Corporations Division  
122 within 30 days of such election.

123 (e) The Secretary of State shall certify election results not fewer than 30 days nor more  
124 than 45 days after such election or more than 15 days after the Secretary of State's  
125 Corporations Division resolves election contests, whichever is later. The Secretary of  
126 State's Corporations Division shall maintain certified election records for at least three  
127 years after certification.

128 44-3-104.2.

129 (a) A petition to contest the result of an election provided for in Code Section 44-3-104.1  
130 shall be filed with the Secretary of State's Corporations Division by a unit owner within  
131 seven days of an association filing an election result with such division. Such petition shall  
132 allege:

133 (1) The contestant's qualification to institute the contest;

134 (2) The contestant's desire to contest the result of such election;

135 (3) The name of each person who was a candidate at such election;

136 (4) Each ground of contest;

137 (5) The date the association filed the result of such election with the Secretary of State's  
138 Corporations Division;

139 (6) The relief sought; and

140 (7) Such other facts as are necessary to provide a full, particular, and explicit statement  
141 of such contest.

142 (b) Such contestant may file documentation and other evidence to support the contest with  
143 the petition.

144 (c) The petition shall be verified by the affidavit of each contestant. Such affidavit shall  
145 be taken and subscribed before some person authorized by law to administer oaths and  
146 shall state that the contestant believes the facts alleged therein are true and that according  
147 to the best of his or her knowledge and belief the contested result of the election is incorrect  
148 and the petition to contest the same is made in good faith.

149 (d) Upon the filing of a petition provided for in this Code section, the Secretary of State's  
150 Corporations Division shall issue to the association notice requiring the association to  
151 answer such petition by a day to be fixed in such notice not more than ten days nor fewer  
152 than five days after the service of such notice. Such notice shall be sent to the association  
153 by certified mail.

154 (e) After the filing of a petition and answer, the Secretary of State's Corporations Division  
155 shall render a decision on the petition not more than 15 days after the filing of such answer.  
156 When a contestant prevails, the election for board members shall be repeated. When the  
157 association prevails, the results of such election shall stand as filed with the Secretary of  
158 State's Corporations Division.

159 (f) Petitions filed pursuant to this Code section after the Secretary of State's Corporations  
160 Division has certified the election but on or before seven days after the association filed the  
161 election result shall be deemed timely.

162 44-3-104.3.

163 The Secretary of State is authorized to investigate complaints, enforce compliance, and  
164 impose penalties for violations of this Act."

165 **SECTION 7.**

166 Article 6 of Chapter 3 of Title 44, relating to property owners' associations, is amended by  
167 revising Code Section 44-3-224, relating to voting at association meetings, as follows:

168 "44-3-224.

169 (a) The declaration shall allocate one vote to each lot.

170 ~~(a)(b)~~ Since a lot owner may be more than one person, if only one of those persons is  
171 present at a meeting of the association, or is voting by proxy, ballot, or written consent, ~~that~~  
172 such person shall be entitled to cast the ~~votes~~ vote pertaining to that lot. However, if more  
173 than one of ~~those~~ such persons ~~is~~ are present, or each executes a proxy, ballot, or written  
174 consent, the vote pertaining to that lot shall be cast only in accordance with their  
175 unanimous agreement unless the instrument expressly provides otherwise; and such  
176 consent shall be conclusively presumed if any one of them purports to cast the ~~votes~~ vote  
177 pertaining to that lot without protest being made immediately by any of the others to the  
178 person presiding over the meeting or vote.

179 ~~(b)(c)~~ The ~~votes~~ vote pertaining to any lot may, and, in the case of any lot owner not a  
180 natural person or persons, shall, be cast pursuant to a proxy or proxies duly executed by or  
181 on behalf of the lot owner or, in cases where the lot owner is more than one person, by or  
182 on behalf of the joint owners of the lot. No such proxy shall be revocable except as  
183 provided in Code Section 14-2-722 or Code Section 14-3-724 or by written notice  
184 delivered to the association by the lot owner or by any joint owners of a lot. Any proxy  
185 shall be void if it is not dated or if it purports to be revocable without such notice. Any  
186 proxy shall reasonably identify the lot owner or owners and the lot for which it is a proxy.  
187 If such proxy does not reasonably identify the lot owner or owners and the lot for which  
188 it is a proxy, such proxy shall be void."

189 **SECTION 8.**

190 Said article is further amended by adding new Code sections to read as follows:

191 "44-3-227.1.

192 (a) Members of a board or any officer of an association shall be a lot owner with residency  
193 in the community. A lot owner establishes residency by being a lot owner of property  
194 governed by the property owners' association, paying utilities for the lot, using the lot  
195 address for voter registration, and listing the lot on his or her driver's license or other  
196 government identification. Nonresident individuals shall not be eligible to serve on the  
197 board. The term 'lot owner' in such context shall, unless the instrument otherwise provides,  
198 be deemed to include, without limitation, any shareholder, director, officer, partner in, or  
199 trustee of any person who is, either alone or in conjunction with any other person or  
200 persons, a lot owner. Any individual who would not be eligible to serve as a board member  
201 or officer were he or she not a shareholder, director, officer, partner in, or trustee of such  
202 a person shall be deemed to have disqualified himself or herself from continuing in office  
203 if he or she ceases to have any such affiliation with such person.

204 (b) A board shall consist of three or more individuals. Only one individual residing on a  
205 property shall be eligible to serve on a board at any time.

206 (c) The association shall provide proof of meeting the minimum number of board members  
207 as part of filing its annual registration for the Secretary of State pursuant to Code  
208 Section 14-2-1622 or Code Section 16-3-1622.

209 (d) Failure to meet the requirements in subsection (c) of this Code section shall subject the  
210 property owner's association to administrative suspension by the Secretary of State until  
211 the following conditions are met:

212 (1) A successful election is held to reinstate the board with at least three members; and

213 (2) A reinstatement request providing proof of meeting the minimum number of board  
214 members is submitted and approved by the Secretary of State.

215 44-3-227.2.

216 (a) Elections of board members shall be held not less frequently than annually. Board  
217 members shall be elected by winning a majority of the voting lot owners. Elections shall  
218 be held in accordance with the term limits set forth in the association's bylaws.

219 (b) Ballots shall include the names of candidates and shall be given to each voting  
220 member, including such members voting by proxy.

221 (c) The association shall maintain electronic scans of each ballot to be made available for  
222 inspection by lot owners following any election for board members.

223 (d) Election results shall be filed with the Secretary of State's Corporations Division  
224 within 30 days of such election.

225 (e) The Secretary of State shall certify board election results not fewer than 30 days nor  
226 more than 45 days after such election or more than 15 days after the Secretary of State's  
227 Corporations Division resolves election contests, whichever is later. The Secretary of  
228 State's Corporations Division shall maintain certified election records for at least three  
229 years after certification.

230 44-3-227.3.

231 (a) A petition to contest the election result shall be filed with the Secretary of State's  
232 Corporations Division by a lot owner within seven days of an association filing an election  
233 result with such division. Such petition shall allege:

234 (1) The contestant's qualification to institute the contest;

235 (2) The contestant's desire to contest the result of such election;

236 (3) The name of each person who was a candidate at such election;

237 (4) Each ground of contest;

238 (5) The date the association filed the result with the Secretary of State's Corporations  
239 Division;

240 (6) The relief sought; and

241 (7) Such other facts as are necessary to provide a full, particular, and explicit statement  
242 of such contest.

243 (b) Such contestant may file documentation and other evidence to support the contest with  
244 the petition.

245 (c) The petition shall be verified by the affidavit of each contestant. Such affidavit shall  
246 be taken and subscribed before some person authorized by law to administer oaths and  
247 shall state that the contestant believes the facts alleged therein are true and that according  
248 to the best of his or her knowledge and belief the contested result of the election is incorrect  
249 and the petition to contest the same is made in good faith.

250 (d) Upon the filing of a petition provided for in this Code section, the Secretary of State's  
251 Corporations Division shall issue to the association notice requiring the association to  
252 answer such petition by a day to be fixed in such notice not more than ten days nor fewer  
253 than five days after the service of such notice. Such notice shall be sent to the association  
254 by certified mail.

255 (e) After the filing of a petition and answer, the Secretary of State's Corporations Division  
256 shall render a decision on the petition not more than 15 days after such filing of the answer.  
257 When a contestant prevails, the election for the board members shall be repeated. When  
258 the association prevails, the results of such election shall stand as filed with the Secretary  
259 of State's Corporations Division.

260 (f) Petitions filed pursuant to this Code section after the Secretary of State's Corporations  
261 Division has certified the election but on or before seven days after the association filed the  
262 election result shall be deemed timely.

263 44-3-227.4.

264 The Secretary of State is authorized to investigate complaints, enforce compliance, and  
265 impose penalties for violations of this Act."

266 **SECTION 9.**

267 Said article is further amended by revising Code Section 44-3-228, relating to presence of  
268 quorums at meetings, as follows:

269 "44-3-228.

270 (a) Unless the instrument or bylaws provide otherwise, a quorum shall be deemed present  
271 throughout any meeting, except the annual meeting, of the members of the association if  
272 persons entitled to cast more than one-third of the votes are present at the beginning of the  
273 meeting. Unless the instrument or bylaws specify a larger percentage, the presence of  
274 persons entitled to cast one-half of the votes of the board of directors shall constitute a  
275 quorum for the transaction of business at any meeting of the board.

276 (b) A quorum shall be deemed present throughout any annual meeting of the members of  
277 the association. Decisions and elections may proceed regardless of the number of members  
278 of the association in attendance at such meeting."

279 **SECTION 10.**

280 This Act shall become effective six months after its approval by the Governor and shall apply  
281 to any condominium association or property owners' association created on or after such date,  
282 any association election held on or after such date, any annual meeting held on or after such  
283 date, and any annual registration filed on or after such date.

284 **SECTION 11.**

285 The provisions of this Act are severable, and if any of its provisions shall be held  
286 unconstitutional by any court of competent jurisdiction, the decision of such court shall not  
287 affect or impair any of the remaining provisions.

288 **SECTION 12.**

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