

House Bill 190

By: Representatives Lim of the 98<sup>th</sup>, Davis of the 87<sup>th</sup>, and Lupton of the 83<sup>rd</sup>

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 prohibit condominium associations and  
3 property owners' associations from retaliating against property owners for taking certain  
4 actions; to provide for circumstances that are not considered retaliation; to provide  
5 definitions; to provide for remedies; to provide for a defense; to provide for related matters;  
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to regulation of  
10 specialized land transactions, is amended in Article 3, relating to condominiums, by adding  
11 a new Code section to read as follows:

12 "44-3-118.

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

14 (1) 'Permissible action' means any of the following actions taken by a unit owner in  
15 relation to his or her association:

(A) In good faith exercising against the association any legal right or remedy granted to such unit owner by contract or law;

(B) In good faith filing a complaint or report or participating in the investigation of a complaint or report with a court or governmental entity regarding the association;

(C) Providing feedback or input on or otherwise communicating about an association matter; or

(D) Establishing, attempting to establish, or participating in an organization or a group, however organized, to address problems related to the association.

(2) 'Retaliatory action' means any of the following actions taken against a unit owner by an association, its board, or any person acting on behalf of the association:

(A) Filing an action to recover sums due, for damages, or for injunctive relief under Code Section 44-3-76 or 44-3-106, or for foreclosure on a lien for assessments under Code Section 44-3-109; in either case, under circumstances where an enforcement action could have, but had not, been pursued previously;

(B) Depriving the unit owner of the use of his or her unit or any common elements, except for reasons authorized by contract or law;

(C) Reducing or suspending services to the unit owner, except as provided in paragraph (1) of subsection (c) of this Code section;

(D) Increasing the unit owner's assessment fees, except as provided in paragraph (1) of subsection (c) of this Code section; or

(E) Materially interfering with the unit owner's rights under any condominium instruments or any rules and regulations adopted by the association pursuant to the condominium instruments.

(b) A unit owner establishes a prima-facie case of retaliation by demonstrating that:

(1) He or she took a permissible action relating to a life, health, safety, or habitability concern; and

(2) The association took a retaliatory action within three months of such permissible action.

(c) An association shall not be liable under this Code section:

(1) For lawfully increasing assessment fees or reducing or suspending services:

(A) Under any written agreement between the association and the unit owner; or

(B) As part of a pattern of increases in assessment fees or a pattern of service reductions or suspensions for the entire condominium; or

(2) For lawfully taking an action described in subparagraph (a)(2)(A) of this Code section under circumstances where an enforcement action could have, but had not, been pursued previously.

(d) In addition to any other remedies provided for by law, if an association engages in retaliatory action against a unit owner in accordance with this Code section, such retaliatory action shall be a defense for the unit owner to an action for foreclosure on a lien for assessments filed by the association or its board. In such cases, the unit owner may recover from the association a civil penalty in the amount of one month's assessment fees plus \$500.00, court costs, and reasonable attorney's fees, less any delinquent assessment fees or other sums for which the unit owner is liable to the association, and declaratory relief."

## **SECTION 2.**

Said chapter is further amended in Article 6, relating to property owners' associations, by adding a new Code section to read as follows:

"44-3-232.2.

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

(1) 'Permissible action' means any of the following actions taken by a lot owner in relation to his or her association:

67 (A) In good faith exercising against the association any legal right or remedy granted  
68 to such lot owner by contract or law;

69 (B) In good faith filing a complaint or report or participating in the investigation of a  
70 complaint or report with a court or governmental entity regarding the association;

71 (C) Providing feedback or input on or otherwise communicating about an association  
72 matter; or

73 (D) Establishing, attempting to establish, or participating in an organization or group,  
74 however organized, to address problems related to the association.

75 (2) 'Retaliatory action' means any of the following actions taken against a lot owner by  
76 an association, its board, or any person acting on behalf of the association:

77 (A) Filing an action to recover sums due, for damages, or for injunctive relief under  
78 Code Section 44-3-223 or 44-3-231, or for foreclosure on a lien for assessments under  
79 Code Section 44-3-232; in either case, under circumstances where an enforcement  
80 action could have, but had not, been pursued previously;

81 (B) Depriving the lot owner of the use of his or her lot or any part thereof, except for  
82 reasons authorized by contract or law;

83 (C) Reducing or suspending services to the lot owner, except as provided in paragraph  
84 (1) of subsection (c) of this Code section;

85 (D) Increasing the lot owner's assessment fees, except as provided in paragraph (1) of  
86 subsection (c) of this Code section; or

87 (E) Materially interfering with the lot owner's rights under any property owners'  
88 association instrument or any rules and regulations adopted by the association pursuant  
89 to the property owners' association instrument.

90 (b) A lot owner establishes a prima-facie case of retaliation by demonstrating that:

91 (1) He or she took a permissible action relating to a life, health, safety, or habitability  
92 concern; and

93 (2) The association took a retaliatory action within three months of such permissible  
94 action.

95 (c) An association shall not be liable under this Code section:

96 (1) For lawfully increasing assessment fees or reducing or suspending services:

97 (A) Under any written agreement between the association and the lot owner; or

98 (B) As part of a pattern of increases in assessment fees or a pattern of service  
99 reductions or suspensions for the entire development; or

100 (2) For lawfully taking an action described in subparagraph (a)(2)(A) of this Code  
101 section under circumstances where an enforcement action could have, but had not, been  
102 pursued previously.

103 (d) In addition to any other remedies provided for by law, if an association engages in  
104 retaliatory action against a lot owner in accordance with this Code section, such retaliatory  
105 action shall be a defense for the lot owner to an action for foreclosure on a lien for  
106 assessments filed by the association or its board. In such cases, the lot owner may recover  
107 from the association a civil penalty in the amount of one month's assessment fees plus  
108 \$500.00, court costs, and reasonable attorney's fees, less any delinquent assessment fees  
109 or other sums for which the lot owner is liable to the association, and declaratory relief."

### 110 **SECTION 3.**

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