

House Bill 664

By: Representatives Silcox of the 53rd, Reeves of the 99th, Panitch of the 51st, and Hilton of the 48th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated,
2 relating to property owners' associations, so as to provide for property owners' associations
3 to submit to said article after the creation of such associations; to provide for voting
4 procedures; to provide for recordation of a vote to submit to said article; to provide for
5 notice; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 6 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to
9 property owners' associations, is amended by revising Code Section 44-3-222, relating to
10 creation of property owners' development and affirmative election to be governed by article,
11 as follows:

12 "44-3-222.

13 A property owners' development shall come into existence upon ~~either~~ the recordation of
14 the declaration pursuant to this article, ~~or~~ the amendment of a recorded declaration in
15 accordance with paragraph (2) of Code Section 44-3-235, or the recordation of an
16 instrument pursuant to paragraph (3) of Code Section 44-3-235. Any declaration or

17 amendment intending to bring or avail a development of the benefits and provisions of this
18 article shall state an affirmative election to be so governed. Any original declaration shall
19 be duly executed by or on behalf of all of the owners of the submitted property. Any such
20 amendment to an existing declaration shall be executed in accordance with the terms of the
21 recorded declaration being amended thereby. Any such instrument specified in
22 paragraph (3) of Code Section 44-3-235 shall be executed pursuant to that Code section."

23 **SECTION 2.**

24 Said article is further amended in Code Section 44-3-226, relating to amendments of
25 instrument and presumption of validity in court action, by revising subsection (b) as follows:

26 "(b)(1) No amendment of an instrument shall require approval of lot owners to which
27 more than 80 percent of the association vote pertains and the mortgagees holding 80
28 percent of the voting interest of mortgaged lots; any property owners' association which
29 exists prior to July 1, 1994, and amends its documents to avail itself of the provisions of
30 this article or otherwise submits to this article pursuant to Code Section 44-3-235 shall
31 be deemed to have amended the association instrument to conform to this limitation.
32 ~~This subsection shall not be deemed to eliminate or modify any right of the declarant~~
33 ~~provided for in the instrument to approve amendments to the instrument so long as the~~
34 ~~declarant owns any lot primarily for the purpose of sale and, furthermore, this Code~~
35 ~~section shall not be construed as modifying or altering the rights of a mortgagee set forth~~
36 ~~elsewhere in this article.~~

37 (2) Provisions of any declaration of an association that submits to this article pursuant
38 to paragraph (3) of Code Section 44-3-235 that require a majority in excess of 80 percent
39 to amend shall not be affected or modified by this Code section if, by the first anniversary
40 of the date of submission, the association and those mortgagees permitted to vote on
41 amendments vote to retain the requirements by a majority and, if no such vote occurs,

42 those provisions requiring more than 80 percent of the voting interest shall be deemed to
 43 only require 80 percent of the voting interest.

44 (3) This subsection shall not be deemed to eliminate or modify any right of the declarant
 45 provided for in the instrument to approve amendments to the instrument so long as the
 46 declarant owns any lot primarily for the purpose of sale and, furthermore, this Code
 47 section shall not be construed as modifying or altering the rights of a mortgagee set forth
 48 elsewhere in this article."

49 **SECTION 3.**

50 Said article is further amended in Code Section 44-3-235, relating to applicability of article,
 51 by revising subsection (a) as follows:

52 "(a)(1) This article shall apply to all property which is submitted to this article.

53 (2) This article shall also apply to any association of owners subject to a recorded
 54 declaration of covenants upon property, which covenants are administered by an owners'
 55 association in which membership is mandatory for all owners of lots in the development,
 56 which declaration is amended in accordance with Code Section 44-3-222 in order to
 57 submit the property owners' association to this article; provided, however, that any
 58 amendment must conform the instrument creating the property owners' association to this
 59 article, and the property owners' development shall thereafter be deemed to be submitted
 60 to this article.

61 (3) This article shall also apply to any association of owners subject to a recorded
 62 declaration of covenants upon property, which covenants are administered by an owners'
 63 association in which membership is mandatory for all owners of lots in the development
 64 subject to such declaration, where 80 percent of the association votes to approve the
 65 submission of such association to this article and records an instrument certifying such
 66 vote. Such instrument shall give notice that the recordation of the instrument subjects the
 67 association to the provisions of this article."

68

SECTION 4.

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