

Senate Bill 406

By: Senators Brass of the 6th, James of the 28th, Kirkpatrick of the 32nd, Dixon of the 45th,
Sims of the 12th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to require the registration of property owners' associations; to provide for
3 renewals and amendments; to provide for fees; to provide for inspection, maintenance, and
4 retention of records; to provide for records maintenance; to provide for denial, suspension,
5 and revocation of records; to provide for notices and orders; to provide for hearings; to
6 provide for referees; to provide for reports; to provide for appeals; to provide for a State
7 Board for Review of Complaints Regarding Property Owners' Associations; to provide for
8 review of complaints; to provide for rights of community association owners; to provide for
9 definitions; to amend Code Section 44-3-232 of the Official Code of Georgia Annotated,
10 relating to assessments against lot owners as constituting lien in favor of association,
11 additional charges against lot owners, procedure for foreclosing lien, and obligation to
12 provide statement of amounts due, so as to provide for authorization of liens and use of
13 assessments; to prohibit bidding at foreclosure sales by property owners' associations and
14 related individuals and entities; to provide for a short title; to provide for related matters; to
15 repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17

SECTION 1.

18 This Act shall be known and may be cited as the "Georgia Property Owners' Bill of Rights
19 Act."

20

SECTION 2.

21 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
22 is amended by adding a new chapter to read as follows:

23

"CHAPTER 17A24 43-17A-1.

25 (a)(1) It shall be unlawful for a person to operate a property owners' association in this
26 state pursuant to Article 6 of Chapter 3 of Title 44, 'Georgia Property Owners'
27 Association Act,' unless such person is registered under this chapter as a property owners'
28 association.

29 (2) No property owners' association shall collect dues, issue assessments, collect fines
30 or fees, issue liens, or initiate foreclosure proceedings on any lot unless such property
31 owners' association is registered pursuant to this Code section.

32 (3) Each property owners' association shall file with the Secretary of State a registration
33 statement on a form as prescribed by the Secretary of State that shall be signed by the
34 applicant, who shall be an authorized officer or representative of the property owners'
35 association. Such form shall, at a minimum, require:

36 (A) The name, address, and officers of the property owners' association; and

37 (B) That each registration statement include a financial statement of the property
38 owners' association dated no more than one year prior to filing.

39 (b) Upon the Secretary of State's determination of a property owners' association's
40 compliance with subsection (a) of this Code section and unless the Secretary of State finds

41 grounds for denial pursuant to Code Section 43-17A-2, the Secretary of State shall register
42 such property owners' association, provided that the property owners' association shall be
43 authorized to operate upon the filing of the registration statement under paragraph (3) of
44 subsection (a) of this Code section, unless the Secretary of State finds grounds for denial
45 pursuant to Code Section 43-17A-2. The date of such filing shall constitute the effective
46 date of the registration statement. The Secretary of State shall immediately notify the
47 property owners' association of such registration.

48 (c) Each registration statement issued pursuant to this Code section shall expire on
49 December 31 of each year and each property owners' association shall annually submit to
50 the Secretary of State by such date a renewal application containing the information
51 required for a registration statement in subsection (a) of this Code section.

52 (d) In the event of a change in name, address, officers, or other change which materially
53 affects the business and control of a property owners' association, the property owners'
54 association shall within 30 days file an amended registration statement with the Secretary
55 of State.

56 (e) The fee for filing of a property owners' association's initial registration statement and
57 each annual renewal shall be \$100.00.

58 (f) Records relating to a property owners' association's finances, dues, assessments, fines,
59 fees, liens, and foreclosures shall be subject to such reasonable examinations by
60 representatives of the Secretary of State as the Secretary of State may deem in the public
61 interest or for the protection of the public.

62 (g) A property owners' association shall maintain for not less than ten years at an office
63 located in this state or, if it has no office in this state, its principal office all records relating
64 to any dues, assessments, fines, fees, liens, and foreclosures. The property owners'
65 association or property management company shall notify the Secretary of State of the
66 address of the office at which such records are kept, if different from the address provided
67 in response to subparagraph (a)(3)(A) of this Code section.

68 (h) The Secretary of State in the administration of this chapter shall comply with the
69 record retention provisions of Article 5 of Chapter 18 of Title 50, relating to state records
70 management.

71 43-17A-2.

72 (a) The Secretary of State, by order, may deny, suspend, or revoke a registration statement
73 of a property owners' association; may limit the fines, fees, liens, or foreclosures that a
74 property owners' association may collect or perform in this state; or bar a person who is an
75 officer, director, trustee, or executive personnel employee, or board member of a property
76 owners' association if the Secretary of State finds that such action is in the public interest
77 and that the officer, director, trustee, or executive personnel employee, or board member
78 has:

79 (1) Filed an application for a registration statement with the Secretary of State which, as
80 of its effective date, or any date after filing in the case of an order denying effectiveness,
81 was incomplete in any material respect or contained a statement that was, in light of the
82 circumstances under which it was made, false or misleading with respect to a material
83 fact;

84 (2) Willfully violated or failed to comply with this chapter or a rule promulgated by the
85 Secretary of State under this chapter;

86 (3) Failed to pay the proper filing fee within 30 days after notification from the Secretary
87 of State of a deficiency, provided that the Secretary of State may provide for the
88 reinstatement of the registration or the suspension of a fine or penalty at such time as the
89 deficiency is corrected; or

90 (4) Failed to comply with a subpoena or order issued by the Secretary of State.

91 (b) The Secretary of State shall not begin a proceeding based solely on a fact or transaction
92 known to the Secretary of State on or before the effective date of the registration statement
93 unless the proceeding is begun within 90 days after such effective date.

94 (c) If the Secretary of State finds that an applicant or registered person is no longer in
95 existence; has ceased to do business as a property owners' association or management
96 company; is adjudicated mentally incompetent or subjected to the control of a committee,
97 conservator, or guardian; or cannot be located after reasonable search, the Secretary of
98 State, by order, may deny the application or revoke the registration statement.

99 (d) Any order issued by the Secretary of State pursuant to this Code section shall state
100 specifically the grounds for its issuance and a copy of such order shall be mailed to the
101 property owners' association at its registered address.

102 (e) The Secretary of State may delegate any of his or her powers and duties under this
103 chapter as he or she desires to a division director in his or her office. Such division
104 director, when duly appointed, shall be the ultimate decision maker in all contested case
105 hearings held pursuant to Code Section 43-17-16 and Chapter 13 of Title 50, the 'Georgia
106 Administrative Procedure Act.'

107 43-17A-3.

108 (a)(1) When the Secretary of State has issued any order denying, suspending, or revoking
109 a registration statement of a property owners' association, limiting the assessments, fines,
110 fees, liens, or foreclosures that a property owners' association may collect or perform in
111 this state, or barring a person who is an officer, director, trustee, or executive personnel
112 employee, or board member of a property owners' association under Code
113 Section 43-17A-2, he or she shall promptly send to the property owners' association a
114 notice of opportunity for hearing.

115 (2) Before entering an order refusing to register any person under Code
116 Section 43-17A-2 and after the entering of any order for revocation or suspension, the
117 Secretary of State shall promptly send to such person a notice of opportunity for hearing.

118 (3) Any hearing conducted pursuant to this Code section shall be overseen by the
119 Secretary of State or a person designated by the Secretary of State.

120 (b) Notices of opportunity for hearing shall be served by investigators appointed by the
121 Secretary of State or sent by registered or certified mail or statutory overnight delivery,
122 return receipt requested, to the addressee's business mailing address or residential address
123 as shown on information filed with the Secretary of State or directed for service to the
124 sheriff of the county where such person resides or is found. Such notice shall state:

125 (1) The order which has been issued or which is proposed to be issued;

126 (2) The grounds for issuing such order or proposed order; and

127 (3) That the person to whom such notice is sent will be afforded a hearing upon request
128 if such request is made within ten days after receipt of the notice.

129 (c) When a person requests a hearing after receipt of the notice provided for in
130 subsection (b) of this Code section, a date, time, and place for such hearing shall be
131 immediately set and the person requesting such hearing shall be notified of such hearing.
132 Except as provided in subsection (b) of Code Section 43-17-7, the date set for such hearing
133 shall be within 30 days, but not earlier than five days after the request for hearing has been
134 made, unless otherwise agreed to by the person requesting the hearing.

135 (d) For the purpose of conducting any hearing as provided in this Code section, the
136 Secretary of State shall have the power to administer oaths, to call any party to testify under
137 oath at such hearing, to require the attendance of witnesses and the production of books,
138 records, and papers, and to take the depositions of witnesses; and for such purposes the
139 Secretary of State is authorized, at the request of the person requesting the hearing or upon
140 his or her own initiative, to issue a subpoena for any witness or a subpoena for production
141 of documentary evidence to compel the production of any books, records, or papers. A
142 subpoena may be served by registered or certified mail or statutory overnight delivery,
143 return receipt requested, to the addressee's business mailing address or residential address
144 as shown on information filed with the Secretary of State or by investigators appointed by
145 the Secretary of State or shall be directed for service to the sheriff of the county where such
146 witness resides or is found or where the person in custody of any books, records, or papers

147 resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid
148 from the funds in the state treasury for the use of the Secretary of State in the same manner
149 that other expenses of the Secretary of State are paid.

150 (e)(1) At any hearing conducted under this Code section, a party or any affected person
151 may appear in their own behalf or may be represented by an attorney.

152 (2) A stenographic record of the testimony and other evidence submitted shall be taken
153 unless the Secretary of State and the person requesting the hearing shall agree that such
154 a stenographic record of the testimony shall not be taken.

155 (3) The Secretary of State shall determine the admissibility of such evidence, but a party
156 may at any time make objection to any such determination; provided, however, that, if
157 the Secretary of State refuses to admit evidence, the party offering such evidence shall
158 make a proffer thereof and such proffer shall be made a part of the record of the hearing.

159 (f)(1) In the case of any hearing conducted under this Code section, the Secretary of
160 State may conduct the hearing or may appoint a referee to conduct such hearing. The
161 appointed referee shall have the same powers and authority in conducting the hearing as
162 are granted in this Code section to the Secretary of State.

163 (2) In any hearing conducted by a referee, the referee shall submit to the Secretary of
164 State a written report that includes the transcript of the testimony and evidence, if such
165 transcript is requested by the Secretary of State; the findings of fact and conclusions of
166 law; and a recommendations of action to be taken by the Secretary of State. Within 30
167 days of the time of submission of such report to the Secretary of State, a copy of the
168 report shall be served upon the person who requested the hearing or their attorney or
169 other representative of record by registered or certified mail or statutory overnight
170 delivery, return receipt requested. That person or their attorney, within 30 days of service
171 of the copy of such written report and recommendations, may file with the Secretary of
172 State written objections to the report which shall be considered by the Secretary of State
173 before a final order is entered.

174 (3) No recommendation of the referee shall be approved, modified, or disapproved by
175 the Secretary of State until after 30 days following the service of such report as provided
176 in this subsection.

177 (4) The recommendations of the referee may be approved, modified, or disapproved by
178 the Secretary of State. The Secretary of State may direct his or her referee to take
179 additional testimony or to permit the introduction of further documentary evidence.

180 (5) In any hearing conducted by a referee, a transcript of testimony, evidence, and
181 objections, if any, shall have the same force and effect as if such hearing or hearings had
182 been conducted by the Secretary of State.

183 (6) All recommendations of the referee shall be advisory only and shall not have the
184 effect of an order of the Secretary of State.

185 (g) If the Secretary of State does not receive a request for a hearing as provided in
186 subsection (b) of this Code section, he or she may permit an order previously entered to
187 remain in effect or may enter a proposed order. If a hearing is requested and conducted as
188 provided for in this Code section, the Secretary of State shall issue a written order which
189 shall set forth his or her findings with respect to the matters involved.

190 (h) All orders entered pursuant to Code Section 43-17A-2 shall be entered pursuant to this
191 Code section, except when:

192 (1) The Secretary of State deems that the public health, safety, or welfare imperatively
193 requires emergency action and incorporates a finding to that effect in the order, in which
194 case the order may be effective immediately pending proceedings, which proceedings
195 shall be promptly instituted and determined; or

196 (2) The order is expressly required by a court order, to be made without the right to a
197 hearing or continuance of any type.

198 43-17A-4.

199 (a) An appeal may be taken from any order of the Secretary of State resulting from a
200 hearing held in accordance with Code Section 43-17A-3 by any person adversely affected
201 by such order to the superior court of the county in which the largest portion of the property
202 owners' development is located by serving the Secretary of State, within 20 days after the
203 date of entry of such order, a copy of the petition for review filed in the appropriate
204 superior court and signed by the petitioner, stating:

205 (1) The order from which the appeal is taken;

206 (2) The grounds upon which a reversal or modification of the order is sought; and

207 (3) A demand for a certified transcript of the record of the order.

208 (b) Upon receipt of the petition for review, the Secretary of State shall, within ten days
209 thereafter, make, certify, and deliver to the appropriate superior court a transcript of the
210 record of the order from which the appeal is taken, provided that the appellant shall pay the
211 reasonable costs of such transcript. Such petition and such transcript shall constitute
212 appellant's complaint which shall be entered on the trial calendar of the court.

213 (c) If the order of the Secretary of State is reversed, the reviewing court shall by its
214 mandate specifically direct the Secretary of State as to any further action to be taken by the
215 Secretary of State in the matter, including the making and entering of an order or orders in
216 connection with such reversal and the conditions, limitations, or restrictions to be included
217 in such order or orders.

218 43-17A-5.

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

220 (1) 'Attorney General' means the Attorney General or his or her designee.

221 (2) 'Board' means the State Board for Review of Complaints Regarding Property Owners'
222 Associations established by this Code section.

223 (b) There shall be established in the Office of the Secretary of State the State Board for
224 Review of Complaints Regarding Property Owners' Associations to be constituted as
225 provided in this Code section with the powers, duties, and authority vested in such board
226 by this Code section.

227 (c)(1)(A) The board shall consist of five members.

228 (B) Members of the board shall be members of a property owners' association,
229 provided that no two members of the board shall also be members of the same property
230 owners' association.

231 (2) The members of the board shall be appointed for terms of office of six years as
232 follows:

233 (A) Three members shall be appointed by the Governor;

234 (B) One member shall be appointed by the President of the Senate; and

235 (C) One member shall be appointed by the Speaker of the House of Representatives.

236 (3) Vacancies occurring on the board shall be filled by the then-current holder of the
237 office that appointed such member pursuant to subparagraph (2) of this subsection. When
238 an appointment is made to fill a vacancy caused by the death or resignation of a member,
239 such appointment shall be for the remainder of the unexpired term of such member.

240 (4)(A) The then-current holder of the office that appointed a member pursuant to
241 subparagraph (2) of this subsection may remove from office such member of the board
242 for any reason or for no reason at all.

243 (B) The Governor shall have the power to remove from office any member of the board
244 for willful neglect of duty or for conviction of a crime involving moral turpitude. A
245 member so removed shall not be eligible for reappointment until the expiration of the
246 term of office for which such person was serving.

247 (d)(1) Each year the board shall elect from its members a chairperson whose term shall
248 be one year and who shall serve during the period for which elected and until a successor
249 shall be elected.

250 (2) The board shall meet at least quarterly and more often as directed by the Secretary
251 of State or as the proper and efficient discharge of its duties may require.

252 (3) Meetings of the board shall be made available to the public virtually.

253 (4) Each member of the board shall be reimbursed as provided for in subsection (f) of
254 Code Section 43-1-2.

255 (e)(1)(A) The board is authorized to investigate complaints of property owners'
256 associations as provided for in this subsection.

257 (B) A member of the board shall recuse himself or herself from the investigation of any
258 complaint involving the property owners' association to which such board member
259 belongs.

260 (2) Any complaints received by the board shall be investigated within 90 days of receipt.
261 If such investigation shows that there may be a violation of this Code section or any
262 violation of state or federal criminal law, there shall be an affirmative obligation on
263 behalf of the board to provide notice of such potential illegalities within seven days to the
264 Attorney General's office and to the sheriff's office in the county in which any of the
265 illegalities are believed to have occurred in whole or in part. As soon as practicable but
266 no more than 60 days after receiving such notification, the Attorney General shall
267 conduct a review of such complaint and, upon request by the prosecuting attorney,
268 provide the appropriate prosecuting attorney within any jurisdiction in which any
269 illegalities are believed to have occurred, in whole or in part, with relevant information
270 uncovered during the course of the investigation.

271 43-17A-6.

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

273 (1) 'Community association' means a nongovernmental association of participating
274 owners of residential property in a delineated geographic area in which recorded
275 covenants apply to such delineated geographic area, comprising a neighborhood,

276 condominium development, or group of homeowners or property owners, including, but
277 not limited to, associations formed pursuant to Articles 3 and 6 of Chapter 3 of Title 44.

278 (2) 'Governing documents' means a community association's declaration, bylaws, articles
279 of incorporation, and any rules and regulations established by its board of directors.

280 (3) 'Owner' means the record owner or owners of fee simple title to a single lot, unit, or
281 other individually owned property subject to the governing documents, excluding,
282 however, any person holding such interest merely as security for the performance or
283 satisfaction of any obligation.

284 (b) Owners of a community association shall have the right to:

285 (1) Inspect and obtain copies of community association records, accounting records, and
286 other records of the community association upon written demand and in compliance with
287 the laws of this state and the governing documents;

288 (2) Upon written demand to the community association, a copy of the community
289 association's certificate of insurance for all such insurance obtained by the community
290 association for the benefit of the owner and that may apply to a potential claim or
291 submitted claim;

292 (3) Notice of meetings of members in a fair and reasonable manner consistent with the
293 governing documents and the laws of this state;

294 (4) Attend meetings of the members of the community association, which shall be called
295 and held by the board of directors at least annually;

296 (5) One vote per individually owned property on each matter voted on by the members;

297 (6) Access to common areas, amenities, and common elements subject to the terms
298 contained in the governing documents;

299 (7) Ingress, egress, and access to their individually owned property;

300 (8) Statutory notice and process requirements under the laws of this state should a
301 community association proceed with foreclosure action against an individually owned
302 property;

- 303 (9) Amend governing documents with the approval thresholds required by the laws of
304 this state and the governing documents;
- 305 (10) Expect, unless otherwise provided by the laws of this state, that a director of a
306 community association's board of directors shall perform his or her duties in good faith
307 and with the degree of care an ordinary, prudent person in a like position would exercise
308 under similar circumstances;
- 309 (11) Expect directors to disclose to the other directors on the community association's
310 board of directors any conflicting interest with respect to a transaction;
- 311 (12) Install and use a satellite dish in compliance with the federal Telecommunications
312 Act of 1996, the federal Over-the-Air Reception Devices Rule, and the governing
313 documents;
- 314 (13) Display an American flag pursuant to the federal Freedom to Display the American
315 Flag Act of 2005 and the governing documents which shall set forth reasonable time,
316 place, and manner restrictions for the purpose of aesthetic considerations and minimizing
317 damage and disturbance to other owners and residents;
- 318 (14) Display political signs and symbols of the kinds normally displayed in or outside
319 of residences located in residential neighborhoods in their individually owned property
320 subject to the governing documents which shall set forth reasonable time, place, and
321 manner restrictions for the purpose of aesthetic considerations and minimizing damage
322 and disturbance to other owners and residents;
- 323 (15) Display religious and holiday signs, symbols, and decorations of the kinds normally
324 displayed in or outside of residences located in residential neighborhoods on their
325 individually owned property, subject to the governing documents which shall set forth
326 reasonable time, place, and manner restrictions for the purpose of aesthetic considerations
327 and minimizing damage and disturbance to other owners and residents;
- 328 (16) Be free from governing documents that interfere with the freedom of residents to
329 determine the composition of their household, except that community associations shall

330 have the power, subject to the laws of this state and federal law, to require that all
 331 occupants of a household be members of a single housekeeping unit, and to limit the total
 332 number of occupants permitted in each individually owned property and its fair share use
 333 of the common facilities, including parking; and
 334 (17) Challenge discriminatory practices by a community association as authorized by the
 335 laws of this state or federal law."

336 **SECTION 3.**

337 Code Section 44-3-232 of the Official Code of Georgia Annotated, relating to assessments
 338 against lot owners as constituting lien in favor of association, additional charges against lot
 339 owners, procedure for foreclosing lien, and obligation to provide statement of amounts due,
 340 is amended by revising subsection (c) as follows:

341 "(c) Not Unless limited by the Secretary of State pursuant to subsection (a) of Code
 342 Section 43-17A-2, not less than 30 days after notice is sent by certified mail or statutory
 343 overnight delivery, return receipt requested, to the lot owner both at the address of the lot
 344 and at any other address or addresses which the lot owner may have designated to the
 345 association in writing, the lien may be foreclosed by the association by an action, judgment,
 346 and court order for foreclosure in the same manner as other liens for the improvement of
 347 real property, subject to superior liens or encumbrances, but any such court order for
 348 judicial foreclosure shall not affect the rights of holders of superior liens or encumbrances
 349 to exercise any rights or powers afforded to them under their security instruments. The
 350 notice provided for in this subsection shall specify the amount of the assessments then due
 351 and payable together with authorized late charges and the rate of interest accruing thereon.
 352 No foreclosure action against a lien arising out of this subsection shall be permitted unless
 353 the amount of the lien is at least \$2,000.00 \$4,000.00, and no portion of any fees or fines
 354 shall be applied by an association to the cost of foreclosing against a lien. Unless
 355 prohibited by the instrument, Neither the association, nor any member of the association

356 or entity associated with the association or family member of any member or any owner,
357 member, officer, or director of any such entity, shall have the power to bid on the lot at any
358 foreclosure sale ~~and to acquire, hold, lease, encumber, and convey the same.~~ The lien for
359 assessments shall lapse and be of no further effect, as to assessments or installments
360 thereof, together with late charges and interest applicable thereto, four years after the
361 assessment or installment first became due and payable."

362

SECTION 4.

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