

House Bill 1036

By: Representatives Scott of the 76th, Schofield of the 63rd, Davis of the 87th, Taylor of the 92nd, Baker of the 64th, and others

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 establish a binding referendum process
3 allowing homeowners residing in communities governed by property owners' or
4 homeowners' associations to vote on the continuation or dissolution of such associations; to
5 repeal certain provisions for liens on condominiums and lots related to collection of property
6 association fees and assessments; to make conforming changes related to certain liens; to
7 provide for definitions; to provide for legislative findings; to prohibit foreclosure, power of
8 sale, and involuntary transfer of owner-occupied residential property by such associations;
9 to provide for petition thresholds, voting procedures, and referendum administration; to
10 provide for the legal effects of dissolution; to require transparency, nonretaliation, and
11 consumer protections; to provide for the transition of essential shared infrastructure; to
12 provide for enforcement and remedies; to provide for a short title; to provide for related
13 matters; to provide for severability; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 This Act shall be known and may be cited as the "Property Rights Through the Ballot Act."

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SECTION 2.

17

18 The General Assembly finds that:

19 (1) Homeowners' associations and similar entities exercise significant control over private
20 property without being elected governments;21 (2) Such entities are not subject to the Georgia Constitution's protections applicable to
22 governmental bodies;23 (3) The power to fine, lien, and foreclose on owner-occupied property has resulted in
24 losses of homes over minor disputes and non-tax debts;25 (4) Property ownership is a fundamental right protected under the laws and Constitution
26 of this state; and27 (5) Democratic consent of the governed is essential when private entities exercise
28 quasi-governmental authority.29 It is therefore the intent of the General Assembly to restore property rights by granting
30 homeowners the right to determine, through a binding referendum, whether such associations
31 shall continue to exist.**SECTION 3.**

32

33 Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to regulation of
34 specialized land transactions, is amended by revising subsection (c) of Code Section
35 44-3-109, relating to lien for assessments, personal obligation of unit owner, notice and
36 foreclosure, lapse, right to statement of assessments, and effect of failure to furnish
37 statement, as follows:38 "(c) Not less than 30 days after notice is sent by certified mail or statutory overnight
39 delivery, return receipt requested, to the unit owner both at the address of the unit and at
40 any other address or addresses which the unit owner may have designated to the association
41 in writing, the lien may be foreclosed by the association by an action, judgment, and
42 foreclosure in the same manner as other liens for the improvement of real property, subject

43 to superior liens or encumbrances, but any such court order for judicial foreclosure shall
44 not affect the rights of holders of superior liens or encumbrances to exercise any rights or
45 powers afforded to them under their security instruments. The notice provided for in this
46 subsection shall specify the amount of the assessments then due and payable together with
47 authorized late charges and the rate of interest accruing thereon. No foreclosure action
48 against a lien arising out of this subsection shall be permitted ~~unless the amount of the lien~~
49 ~~is at least \$2,000.00~~. Unless prohibited by the condominium instruments, the association
50 shall have the power to bid on the unit at any foreclosure sale and to acquire, hold, lease,
51 encumber, and convey the same. The lien for assessments shall lapse and be of no further
52 effect, as to assessments or installments thereof, together with late charges and interest
53 applicable thereto, four years after the assessment or installment first became due and
54 payable."

55 **SECTION 4.**

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

60 "(c) Not less than 30 days after notice is sent by certified mail or statutory overnight
61 delivery, return receipt requested, to the lot owner both at the address of the lot and at any
62 other address or addresses which the lot owner may have designated to the association in
63 writing, the lien may be foreclosed by the association by an action, judgment, and court
64 order for foreclosure in the same manner as other liens for the improvement of real
65 property, subject to superior liens or encumbrances, but any such court order for judicial
66 foreclosure shall not affect the rights of holders of superior liens or encumbrances to
67 exercise any rights or powers afforded to them under their security instruments. The notice
68 provided for in this subsection shall specify the amount of the assessments then due and

69 payable together with authorized late charges and the rate of interest accruing thereon. No
70 foreclosure action against a lien arising out of this subsection shall be permitted ~~unless the~~
71 ~~amount of the lien is at least \$2,000.00.~~ Unless prohibited by the instrument, the
72 association shall have the power to bid on the lot at any foreclosure sale and to acquire,
73 hold, lease, encumber, and convey the same. The lien for assessments shall lapse and be
74 of no further effect, as to assessments or installments thereof, together with late charges
75 and interest applicable thereto, four years after the assessment or installment first became
76 due and payable."

77 **SECTION 5.**

78 Said chapter is further amended by adding a new Code section to read as follows:

79 "44-3-232.2.

80 (a) As used in this chapter, the term:

81 (1) 'Association' means any homeowners' association, property owners' association,
82 condominium association, master association, or similar entity governing residential
83 property.

84 (2) 'Covered community' means any residential development subject to recorded
85 covenants that are enforced by an association.

86 (3) 'Eligible voter' means the owner of record of an owner-occupied residential dwelling
87 unit within a covered community.

88 (4) 'Referendum' means a binding vote conducted to determine whether an association
89 shall continue to exist.

90 (5) 'Essential shared infrastructure' means any roads, stormwater systems, utilities, or
91 similar facilities serving multiple dwelling units that cannot reasonably be owned or
92 maintained individually.

- 93 (b) Owners of residential property within a covered community shall have the right to
94 petition for a referendum on whether the association governing such community shall
95 continue to exist.
- 96 (c)(1) A referendum shall be triggered upon the submission of a petition signed by not
97 less than 20 percent of eligible voters.
- 98 (2) No association shall interfere with, discourage, or retaliate against any eligible voter
99 for participation in a petition.
- 100 (d) Within 90 days after certification of a valid petition, a referendum shall be conducted
101 by:
- 102 (1) The county elections superintendent; or
103 (2) An independent third-party administrator approved by the county.
- 104 (e) Each dwelling unit in a covered community shall be entitled to one vote. Proxy voting,
105 weighted voting, developer controlled voting, and class voting are prohibited.
- 106 (f) All of the costs of the referendum shall be paid by the association.
- 107 (g) The outcome of the referendum shall be determined by a simple majority of the votes
108 cast. If the majority votes to dissolve the association:
- 109 (1) The association shall be legally dissolved within 180 days;
110 (2) All governing documents, covenants, rules, and enforcement authority shall be void
111 and unenforceable;
- 112 (3) All liens held by the association shall be converted to unsecured civil debt;
113 (4) No foreclosure, power of sale, or involuntary transfer of property may be initiated or
114 continued; and
- 115 (5) Remaining association funds shall be distributed pro rata to owners after the
116 satisfaction of lawful debts.
- 117 (h) If the association is retained, another referendum may be initiated only after three
118 years.
- 119 (i) Notwithstanding any other provision of law:

- 120 (1) An association shall have no authority to foreclose upon, sell, or otherwise effect an
 121 involuntary transfer of an owner-occupied residential dwelling within a covered
 122 community based on unpaid assessments, dues, fines, or fees; and
 123 (2) Any covenant, declaration, or agreement purporting to grant such authority is
 124 declared void as against public policy.
- 125 (j) Until dissolution of an association, all associations shall:
 126 (1) Conduct open meetings;
 127 (2) Provide access to records upon request;
 128 (3) Obtain annual independent financial audits; and
 129 (4) Owe fiduciary duties enforceable in superior court.
- 130 (k)(1) Upon dissolution of an association, essential shared infrastructure shall be:
 131 (A) Dedicated to the county or municipality;
 132 (B) Managed through a voluntary maintenance agreement; or
 133 (C) Converted to a special service district only upon separate voter approval.
 134 (2) No eligible voter shall be required to join a new assessment entity without affirmative
 135 consent.
- 136 (l) An association shall not fine, lien, harass, or retaliate against an eligible voter for
 137 supporting or opposing a referendum.
- 138 (m) A violation of this Code section constitutes an unfair or deceptive act pursuant to
 139 Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.'"

140 **SECTION 6.**

141 In the event any section, subsection, paragraph, subparagraph, item, sentence, clause, phrase,
 142 or word of this Act shall be declared or adjudged invalid or unconstitutional, such
 143 adjudication shall in no manner affect the remaining provisions of this Act, which shall
 144 remain in full force and effect as if the section, subsection, paragraph, subparagraph, item,
 145 sentence, clause, phrase, or word so declared or adjudged invalid or unconstitutional were

146 not originally a part hereof. The General Assembly declares that it would have passed the
147 remaining provisions of this Act if it had known that such provision or provisions hereof
148 would be declared or adjudged invalid or unconstitutional.

149

SECTION 7.

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