

The House Committee on Judiciary offers the following substitute to HB 664:

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 subsection (a) of Code Section 44-3-235, or the
16 recordation of an instrument pursuant to paragraph (3) of subsection (a) of Code Section

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

24 **SECTION 2.**

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

27 "(b)(1) No amendment of an instrument shall require approval of lot owners to which
 28 more than ~~80~~ 75 percent of the association vote pertains and the mortgagees holding ~~80~~
 29 75 percent of the voting interest of mortgaged lots; any property owners' association
 30 which exists prior to July 1, 1994, and amends its documents to avail itself of the
 31 provisions of this article or otherwise submits to this article pursuant to Code Section
 32 44-3-235 shall be deemed to have amended the association instrument to conform to this
 33 limitation. ~~This subsection shall not be deemed to eliminate or modify any right of the~~
 34 ~~declarant provided for in the instrument to approve amendments to the instrument so long~~
 35 ~~as the declarant owns any lot primarily for the purpose of sale and, furthermore, this Code~~
 36 ~~section shall not be construed as modifying or altering the rights of a mortgagee set forth~~
 37 ~~elsewhere in this article.~~

38 (2) Provisions of any declaration of an association that submits to this article pursuant
 39 to paragraph (3) of subsection (a) of Code Section 44-3-235 that require a majority in
 40 excess of 75 percent of the association votes to amend shall not be affected or modified
 41 by this Code section if, by the first anniversary of the date of submission, the association
 42 and those mortgagees permitted to vote on amendments vote to retain the requirements

43 by a majority and, if no such vote occurs, those provisions requiring more than 75 percent
44 of the voting interest shall be deemed to only require 75 percent of the voting interest.
45 (3) This subsection shall not be deemed to eliminate or modify any right of the declarant
46 provided for in the instrument to approve amendments to the instrument so long as the
47 declarant owns any lot primarily for the purpose of sale and, furthermore, this Code
48 section shall not be construed as modifying or altering the rights of a mortgagee set forth
49 elsewhere in this article."

50 **SECTION 3.**

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

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

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

62 (3) This article shall also apply to any association of owners subject to a recorded
63 declaration of covenants upon property, which covenants are administered by an owners'
64 association in which membership is mandatory for all owners of lots in the development
65 subject to such declaration, where 75 percent of the association votes to approve the
66 submission of such association to this article and records an instrument certifying such
67 vote. Such instrument shall give notice that the recordation of the instrument subjects the
68 association to the provisions of this article."

69

SECTION 4.

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