

The Senate Committee on Judiciary offered the following substitute to SB 406:

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 an exception; to provide for renewals and amendments; to provide for fees; to provide for
4 inspection, maintenance, and retention of records; to provide for records maintenance; to
5 provide for denial, suspension, and revocation of records; to provide for notices and orders;
6 to provide for hearings; to provide for referees; to provide for reports; to provide for appeals;
7 to provide for a State Board for Review of Complaints Regarding Property Owners'
8 Associations; to provide for review of complaints; to provide for hearings and enforcement
9 actions; to provide for rights of property owners' association owners; to provide for priority
10 of application of payments by owners to property owners' associations; to provide for
11 definitions; to amend Code Section 44-3-232 of the Official Code of Georgia Annotated,
12 relating to assessments against lot owners as constituting lien in favor of association,
13 additional charges against lot owners, procedure for foreclosing lien, and obligation to
14 provide statement of amounts due, so as to provide for authorization of liens and use of
15 assessments; to provide for a short title; to provide for related matters; to repeal conflicting
16 laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18

SECTION 1.

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

21

SECTION 2.

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

24

CHAPTER 17A25 43-17A-1.26 (a) As used in this chapter, the term:

27 (1) 'Governing documents' means a property owners' association's declaration, bylaws,
28 articles of incorporation, and any rules and regulations established by its board of
29 directors.

30 (2) 'Nonregistered property owners' association' means a property owners' association
31 that elects not to register with the Secretary of State pursuant to subparagraph (A)(2)(B)
32 of Code Section 43-17A-2.

33 (3) 'Owner' means the record owner or owners of fee simple title to a single lot, unit, or
34 other individually owned property located in a property owners' development, excluding,
35 however, any person holding such interest merely as security for the performance or
36 satisfaction of any obligation.

37 (4) 'Property owners' association' means a nongovernmental association of participating
38 owners of residential property in a delineated geographic area in which recorded
39 covenants apply to such delineated geographic area, comprising a neighborhood,
40 condominium development, or group of homeowners or property owners, including, but
41 not limited to, associations formed pursuant to Articles 3 and 6 of Chapter 3 of Title 44;

42 provided, however, that such term shall not include nonregistered property owners'
43 associations.

44 (5) 'Property owners' development' means real property which contains lots and which
45 may contain common areas, located within this state, and subject to governing
46 documents.

47 43-17A-2.

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

52 (2)(A) Except as otherwise provided in subparagraph (B) of this paragraph, no
53 property owners' association shall collect fines or fees, issue liens, or initiate
54 foreclosure proceedings on any lot unless such property owners' association is
55 registered pursuant to this Code section.

56 (B) An entity that would otherwise constitute a property owners' association may by
57 written notice to the Secretary of State elect not to register or otherwise comply with
58 this chapter and be deemed a nonregistered property owners' association, provided that
59 it shall be unlawful for a nonregistered property owners' association or its agents to
60 collect fines or fees.

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

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

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

68 (b) Upon the Secretary of State's determination of a property owners' association's
69 compliance with subsection (a) of this Code section and unless the Secretary of State finds
70 grounds for denial pursuant to Code Section 43-17A-3, the Secretary of State shall register
71 such property owners' association, provided that the property owners' association shall be
72 authorized to operate upon the filing of the registration statement under paragraph (3) of
73 subsection (a) of this Code section, unless the Secretary of State finds grounds for denial
74 pursuant to Code Section 43-17A-3. The date of such filing shall constitute the effective
75 date of the registration statement. The Secretary of State shall immediately notify the
76 property owners' association of such registration.

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

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

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

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

91 (g) A property owners' association shall maintain for not less than ten years at an office
92 located in this state or, if it has no office in this state, its principal office all records,
93 including electronic records and records in any other format, relating to any dues,
94 assessments, fines, fees, liens, and foreclosures. The property owners' association or

95 property management company shall notify the Secretary of State of the address of the
96 office at which such records are kept, if different from the address provided in response to
97 subparagraph (a)(3)(A) of this Code section.

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

101 43-17A-3.

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

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

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

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

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

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

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

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

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

137 43-17A-4.

138 (a)(1) When the Secretary of State has issued any order denying, suspending, or revoking
139 a registration statement of a property owners' association, limiting the fines, fees, liens,
140 or foreclosures that a property owners' association may collect or perform in this state,
141 or barring a person who is an officer, director, trustee, or executive personnel employee,
142 or board member of a property owners' association under Code Section 43-17A-3, he or
143 she shall promptly send to the property owners' association a notice of opportunity for
144 hearing.

145 (2) Before entering an order refusing to register any person under Code
146 Section 43-17A-3 and after the entering of any order for revocation or suspension, the
147 Secretary of State shall promptly send to such person a notice of opportunity for hearing.

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

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

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

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

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

159 (c) When a person requests a hearing after receipt of the notice provided for in
160 subsection (b) of this Code section, a date, time, and place for such hearing shall be
161 immediately set and the person requesting such hearing shall be notified of such hearing.
162 Except as provided in subsection (b) of Code Section 43-17A-3, the date set for such
163 hearing shall be within 30 days, but not earlier than five days after the request for hearing
164 has been made, unless otherwise agreed to by the person requesting the hearing.

165 (d) For the purpose of conducting any hearing as provided in this Code section, the
166 Secretary of State shall have the power to administer oaths, to call any party to testify under
167 oath at such hearing, to require the attendance of witnesses and the production of books,
168 records, and papers, and to take the depositions of witnesses; and for such purposes the
169 Secretary of State is authorized, at the request of the person requesting the hearing or upon
170 his or her own initiative, to issue a subpoena for any witness or a subpoena for production
171 of documentary evidence to compel the production of any books, records, or papers. A

172 subpoena may be served by registered or certified mail or statutory overnight delivery,
173 return receipt requested, to the addressee's business mailing address or residential address
174 as shown on information filed with the Secretary of State or by investigators appointed by
175 the Secretary of State or shall be directed for service to the sheriff of the county where such
176 witness resides or is found or where the person in custody of any books, records, or papers
177 resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid
178 from the funds in the state treasury for the use of the Secretary of State in the same manner
179 that other expenses of the Secretary of State are paid.

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

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

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

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

193 (2) In any hearing conducted by a referee, the referee shall submit to the Secretary of
194 State a written report that includes the transcript of the testimony and evidence, if such
195 transcript is requested by the Secretary of State; the findings of fact and conclusions of
196 law; and a recommendations of action to be taken by the Secretary of State. Within 30
197 days of the time of submission of such report to the Secretary of State, a copy of the
198 report shall be served upon the person who requested the hearing or their attorney or

199 other representative of record by registered or certified mail or statutory overnight
200 delivery, return receipt requested. That person or their attorney, within 30 days of service
201 of the copy of such written report and recommendations, may file with the Secretary of
202 State written objections to the report which shall be considered by the Secretary of State
203 before a final order is entered.

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

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

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

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

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

220 (h) All orders entered pursuant to Code Section 43-17A-3 shall be entered pursuant to this
221 Code section, except when:

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

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

228 43-17A-5.

229 (a) An appeal may be taken from any order of the Secretary of State resulting from a
230 hearing held in accordance with Code Section 43-17A-4 by any person adversely affected
231 by such order to the superior court of the county in which the largest portion of the property
232 owners' development is located by serving the Secretary of State, within 20 days after the
233 date of entry of such order, a copy of the petition for review filed in the appropriate
234 superior court and signed by the petitioner, stating:

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

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

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

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

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

248 43-17A-6.

249 (a) As used in this Code section, the term 'board' means the State Board for Review of
250 Complaints Regarding Property Owners' Associations established by this Code section.

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

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

256 (B) Members of the board shall be members of a property owners' association,
257 provided that no two members of the board shall also be members of the same property
258 owners' association.

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

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

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

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

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

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

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

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

- 278 (2) The board shall meet at least quarterly and more often as directed by the Secretary
279 of State or as the proper and efficient discharge of its duties may require.
- 280 (3) Meetings of the board shall be made available to the public virtually.
- 281 (4) Each member of the board shall be reimbursed as provided for in subsection (f) of
282 Code Section 43-1-2.
- 283 (e) The board shall have the powers and duties to:
- 284 (1) Investigate, or authorize the Secretary of State to investigate, the registration pursuant
285 to this chapter of property owners' associations that collect dues, issue assessments,
286 collect fines or fees, issue liens, or initiate foreclosure proceedings and complaints against
287 such property owners' associations by residents of the applicable property owners'
288 developments;
- 289 (2) Conduct administrative hearings, to impose civil fines, and to issue cease and desist
290 orders based on violations of this chapter;
- 291 (3) Make and promulgate rules and regulations not inconsistent with the laws of this state
292 for the regulation of such board and pursuant to the provisions of this chapter;
- 293 (4) Undertake such other duties and to exercise such other powers as may from time to
294 time be prescribed by law; and
- 295 (5) Carry out the provisions of this chapter, including the authority to promulgate rules
296 and regulations, and the Secretary of State may delegate to the board all such duties
297 otherwise entrusted to the Secretary of State pursuant to this chapter.
- 298 (f)(1) Any person residing in a property owners' development claiming that he or she has
299 been damaged by a property owners' association's action or inaction may file a complaint
300 with the board. Such complaint shall be a written statement of the facts constituting the
301 complaint and must be made within 180 days of the alleged action or inaction.
- 302 (2) Upon the filing of such complaint in the manner provided in this subsection, the
303 board shall investigate the statement of facts made and in its discretion order a hearing
304 before the board, giving the complainant and the respondent notice of the filing of such

305 complaint and the time and place of such hearing. Immediately upon the conclusion of
306 the hearing, the board shall report its findings and render its conclusions upon the matter
307 complained of to the complainant and respondent in each case, who shall have 15 days
308 thereafter in which to make effective and satisfy the board's conclusions.

309 (3) If such settlement is not effected within such time, the board, the complainant, or the
310 respondent may bring an action to enforce the claim.

311 (g) An appeal may be taken from any decision of the board resulting from a hearing held
312 in accordance with this Code section by any person adversely affected by such decision to
313 the superior court of the county in which the largest portion of the property owners'
314 development is located by serving the board, within 20 days after the date of entry of such
315 order, a copy of the petition for review filed in the appropriate superior court and signed
316 by the petitioner, stating:

317 (1) The decision from which the appeal is taken;

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

319 (3) A demand for a certified transcript of the record of the decision.

320 (h) Upon receipt of the petition for review, the board shall, within ten days thereafter,
321 make, certify, and deliver to the appropriate superior court a transcript of the record of the
322 decision from which the appeal is taken, provided that the appellant shall pay the
323 reasonable costs of such transcript. Such petition and such transcript shall constitute
324 appellant's complaint which shall be entered on the trial calendar of the court.

325 (i) If the decision of the board is reversed, the reviewing court shall by its mandate
326 specifically direct the board as to any further action to be taken by the board in the matter,
327 including the making and entering of a decision or decisions in connection with such
328 reversal and the conditions, limitations, or restrictions to be included in such decision or
329 decisions.

330 (j) It shall be unlawful in connection with any hearing under this Code section, for any
331 person to knowingly make or cause to be made to the Secretary of State, the board, or

332 anyone acting on their behalf any false or misleading written or oral statement of material
333 fact or any statement which omits a material fact.

334 43-17A-7.

335 Owners shall have the right to:

336 (1) Inspect and obtain copies of property owners' association records, accounting records,
337 and other records of the property owners' association upon written demand and in
338 compliance with the laws of this state and the governing documents;

339 (2) Upon written demand to the property owners' association, a copy of the property
340 owners' association certificate of insurance for all such insurance obtained by the property
341 owners' association for the benefit of the owner and that may apply to a potential claim
342 or submitted claim;

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

345 (4) Attend meetings of the members of the property owners' association, which shall be
346 called and held by the board of directors at least annually;

347 (5) Access to common areas, amenities, and common elements subject to the terms
348 contained in the governing documents;

349 (6) Ingress, egress, and access to their individually owned property;

350 (7) Statutory notice and process requirements under the laws of this state should a
351 property owners' association proceed with foreclosure action against an individually
352 owned property;

353 (8) Amend governing documents with the approval thresholds required by the laws of
354 this state and the governing documents;

355 (9) Expect, unless otherwise provided by the laws of this state, that a director of a
356 property owners' association board of directors shall perform his or her duties in good

357 faith and with the degree of care an ordinary, prudent person in a like position would
 358 exercise under similar circumstances;

359 (10) Expect directors to disclose to the other directors on the property owners'
 360 association's board of directors any conflicting interest with respect to a transaction;

361 (11) Install and use a satellite dish in compliance with the federal Telecommunications
 362 Act of 1996, the federal Over-the-Air Reception Devices Rule, and the governing
 363 documents;

364 (12) Be free from governing documents that interfere with the freedom of residents to
 365 determine the composition of their household, except that property owners' associations
 366 shall have the power, subject to the laws of this state and federal law, to require that all
 367 occupants of a household be members of a single housekeeping unit, and to limit the total
 368 number of occupants permitted in each individually owned property and its fair share use
 369 of the common facilities, including parking; and

370 (13) Challenge discriminatory practices by a property owners' association as authorized
 371 by the laws of this state or federal law.

372 43-17A-8.

373 All funds remitted by an owner to a property owners' association shall be applied by such
 374 property owners' association to the following expenses by ranking of highest to lowest
 375 priority as follows:

376 (1) Dues until current;

377 (2) Fees; and

378 (3) Fines."

379

SECTION 3.

380 Code Section 44-3-232 of the Official Code of Georgia Annotated, relating to assessments
 381 against lot owners as constituting lien in favor of association, additional charges against lot

382 owners, procedure for foreclosing lien, and obligation to provide statement of amounts due,
383 is amended by revising subsection (c) as follows:

384 "(c) ~~Not~~ Unless limited by the Secretary of State pursuant to subsection (a) of Code
385 Section 43-17A-3, not less than 30 days after notice is sent by certified mail or statutory
386 overnight delivery, return receipt requested, to the lot owner both at the address of the lot
387 and at any other address or addresses which the lot owner may have designated to the
388 association in writing, the lien may be foreclosed by the association by an action, judgment,
389 and court order for foreclosure in the same manner as other liens for the improvement of
390 real property, subject to superior liens or encumbrances, but any such court order for
391 judicial foreclosure shall not affect the rights of holders of superior liens or encumbrances
392 to exercise any rights or powers afforded to them under their security instruments. The
393 notice provided for in this subsection shall specify the amount of the assessments then due
394 and payable together with authorized late charges and the rate of interest accruing thereon.
395 No foreclosure action against a lien arising out of this subsection shall be permitted unless
396 the amount of the lien is at least \$2,000.00 the lesser of \$4,000.00 or an amount equal to
397 12 months of dues in arrears, and no portion of such amount shall include collection fees
398 or fines. Unless prohibited by the instrument, the association shall have the power to bid
399 on the lot at any foreclosure sale and to acquire, hold, lease, encumber, and convey the
400 same. The lien for assessments shall lapse and be of no further effect, as to assessments
401 or installments thereof, together with late charges and interest applicable thereto, four six
402 years after the assessment or installment first became due and payable."

403

SECTION 4.

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