

AS PASSED SENATE

SENATE SUBSTITUTE TO HB 220

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
2 provide for means of enforcement of condominium and property owners' association
3 instruments, rules, and regulations; to provide for compliance with, and means of
4 enforcement of, covenants and instruments for certain planned subdivisions; to provide for
5 association meetings; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
10 revising Code Section 44-3-76, relating to compliance with condominium instruments, rules,
11 and regulations and means of enforcement, as follows:

12 "44-3-76.

13 Every unit owner and all those entitled to occupy a unit shall comply with all lawful
14 provisions of the condominium instruments. In addition, any unit owner and all those
15 entitled to occupy a unit shall comply with any reasonable rules or regulations adopted by
16 the association pursuant to the condominium instruments which have been provided to the
17 unit owners and with the lawful provisions of bylaws of the association. Any lack of such

18 compliance shall be grounds for an action to recover sums due, for damages, for or
19 injunctive relief, or for any other remedy available at law or in equity, maintainable by the
20 association or, in any proper case, by one or more aggrieved unit owners, on their own
21 behalf or as a class action. After providing notice in accordance with the terms of the
22 instrument, or, if the instrument is silent, ten days' written notice, the association may
23 pursue injunctive relief without the need or requirement to first pursue or utilize any other
24 remedies, regardless of whether other remedies may be available or might otherwise be
25 adequate, provided that such notice shall not be required in the event of a violation of the
26 instrument or the reasonable rules or regulations adopted by the association that presents
27 a clear and imminent danger to life, person, or property, or for which injunctive relief
28 would become moot if not granted before a notice period as prescribed above would expire.
29 If and to the extent provided in the condominium instruments, the association shall be
30 empowered to impose and assess fines, and suspend temporarily voting rights and the right
31 of use of certain of the common elements in order to enforce such compliance; provided,
32 however, that no such suspension shall deny any unit owner or occupants access to the unit
33 owned or occupied nor cause any hazardous or unsanitary condition to exist. If the voting
34 right of a unit owner has been suspended, then to the extent provided in the condominium
35 instruments, that unit owner's vote shall not count for purposes of establishing a quorum
36 or taking any action which requires a vote of the owners under this article or the
37 condominium instruments. Notwithstanding any other provision of this Code section, to
38 the extent provided in the condominium instruments, water, gas, electricity, heat, and air
39 conditioning services being provided to a unit or unit owner by the association may be
40 terminated for failure to pay assessments and other amounts due pursuant to subsection (a)
41 of Code Section 44-3-109, subject to the suspension standards and notice requirements
42 imposed on the institutional providers providing such services to the condominium
43 development, only after a final judgment or final judgments in excess of a total of \$750.00
44 are obtained in favor of the association from a court of competent jurisdiction. The utility

45 services shall not be required to be restored until the judgment or judgments and any
46 reasonable utility provider charges or other reasonable costs incurred in suspending and
47 restoring such services are paid in full. All common expenses for termination and
48 restoration of any services pursuant to this Code section shall be an assessment and a lien
49 against the unit."

50 **SECTION 2.**

51 Said title is further amended by revising subsection (a) of Code Section 44-3-106, relating
52 to powers and responsibilities of association and tort actions, as follows:

53 "(a) Except to the extent prohibited by the condominium instruments and subject to any
54 restrictions and limitations specified therein, the association shall have the power to:

55 (1) Employ, retain, dismiss, and replace agents and employees to exercise and discharge
56 the powers and responsibilities of the association;

57 (2) Make or cause to be made additional improvements on and as a part of the common
58 elements; ~~and~~

59 (3) Grant or withhold approval of any action by one or more unit owners or other persons
60 entitled to occupancy of any unit if such action would change the exterior appearance of
61 any unit or of any other portion of the condominium or elect or provide for the
62 appointment of an architectural control committee to grant or withhold such approval;
63 and

64 (4) Enforce all lawful provisions of the condominium instruments in accordance with
65 and pursuant to all powers granted by this article, by Chapter 2 or 3 of Title 14 as may
66 be applicable, and as provided for in the instruments, including, but not limited to, by an
67 action to recover sums due; for damages; for injunctive relief, without regard to whether
68 other remedies may exist or be adequate, provided that the provisions of Code
69 Section 44-3-76 and the instrument are complied with or for any other remedy available
70 at law or in equity to the association."

71

SECTION 3.

72 Said title is further amended by revising Code Section 44-3-223, relating to compliance with
73 provisions of instrument and with rules and regulations and penalties for noncompliance
74 relating to property owners' associations, as follows:

75 "44-3-223.

76 Every lot owner and all those entitled to occupy a lot shall comply with all lawful
77 provisions of the property owners' association instrument. In addition, any lot owner and
78 all those entitled to occupy a lot shall comply with any reasonable rules or regulations
79 adopted by the association pursuant to the instrument which have been provided to the lot
80 owners and with the lawful provisions of the bylaws of the association. Any lack of such
81 compliance shall be grounds for an action to recover sums due, for damages, for or
82 injunctive relief, or for any other remedy available at law or in equity, maintainable by the
83 association or, in any proper case, by one or more aggrieved lot owners on their own behalf
84 or as a class action. After providing notice in accordance with the terms of the instrument,
85 or, if the instrument is silent, ten days' written notice, the association may pursue injunctive
86 relief without the need or requirement to first pursue or utilize any other remedies,
87 regardless of whether other remedies may be available or might otherwise be adequate,
88 provided that such notice shall not be required in the event of a violation of the instrument
89 or the reasonable rules or regulations adopted by the association that presents a clear and
90 imminent danger to life, person, or property, or for which injunctive relief would become
91 moot if not granted before a notice period as prescribed above would expire. If and to the
92 extent provided in the instrument, the association shall be empowered to impose and assess
93 fines, which shall not impact voting rights, and to suspend temporarily voting rights for
94 failure to pay regular and special assessments, and to suspend the right of use of certain of
95 the common areas and services paid for as a common expense in order to enforce such
96 compliance; provided, however, that no such suspension shall deny any lot owner or

97 occupants access to the lot owned or occupied or the right to vote in board elections based
98 on failure to pay outstanding fines."

99

SECTION 4.

100 Said title is further amended by revising Code Section 44-3-230, relating to frequency of
101 meetings and notice, as follows:

102 "44-3-230.

103 (a) Meetings of the members of the association shall be held in accordance with the
104 provisions of the association's bylaws and in any event shall be called not less frequently
105 than annually. Notice shall be given to each lot owner at least 21 days in advance of any
106 annual or regularly scheduled meeting and at least seven days in advance of any other
107 meeting and shall state the time, place, and, for any special meeting, purpose of such
108 meeting. Such notice shall be delivered personally or sent by United States mail, postage
109 prepaid, statutory overnight delivery, or issued electronically in accordance with
110 Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act,' to all lot owners of
111 record at such address or addresses as designated by such lot owners or, if no other address
112 has been so designated, at the address of their respective lots. At the annual meeting,
113 comprehensive reports of the affairs, finances, and budget projections of the association
114 shall be made to the lot owners.

115 (b) In the event an association fails to hold an annual meeting on or before the last day of
116 the association's fiscal year, such meeting may called by the holders of at least 5 percent
117 of the voting power of the association, or such other amount as the articles of incorporation
118 or bylaws shall specify, provided that such articles or bylaws shall not require more than
119 25 percent as a minimum of the voting power, and provided, further, that such call shall be
120 signed by the holders, dated, and delivered to any corporate officer of the association and
121 shall include one or more demands and shall be transmitted in writing or by electronic
122 transmission for the meeting describing the purpose or purposes for which it is to be held."

123

SECTION 5.

124 Said title is further amended by revising subsection (a) of Code Section 44-3-231, relating
125 to powers and duties of association and legal actions against agent or employee of
126 association, as follows:

127 "(a) Except to the extent prohibited by the instrument and subject to any restrictions and
128 limitations specified therein, the association shall have the power to:

129 (1) Employ, retain, dismiss, and replace agents and employees to exercise and discharge
130 the powers and responsibilities of the association;

131 (2) Make or cause to be made additional improvements on and as a part of the common
132 area; ~~and~~

133 (3) Grant or withhold approval of any action by one or more lot owners or other persons
134 entitled to occupancy of any lot if such action would change the exterior appearance of
135 any lot, or any structure thereon, or of any other portion of the development or elect or
136 provide for the appointment of an architectural control committee to grant or withhold
137 such approval; and

138 (4) Enforce all lawful provisions of the property owners' association instrument in
139 accordance with and pursuant to all powers granted by this article, by Chapter 2 or 3 of
140 Title 14 as may be applicable, and as provided for in the instrument, including, but not
141 limited to, by an action to recover sums due; for damages; for injunctive relief, without
142 regard to whether other remedies may exist or be adequate, provided that the provisions
143 of Code Section 44-3-223 and the instrument are compiled with or for any other remedy
144 available at law or in equity to the association."

145

SECTION 6.

146 Said title is further amended by adding a new paragraph to subsection (d) of Code
147 Section 44-5-60, relating to effect of zoning laws, covenants and scenic easements for use
148 of public, renewal of certain covenants, and costs, as follows:

149 “(6) In every planned subdivision containing no fewer than 15 individual plots, every
150 person owning plots affected by such covenant owner and all those entitled to occupy
151 such property shall comply with all lawful provisions of said covenants and the
152 instrument containing such covenants. Any lack of such compliance shall be grounds for
153 an action to recover sums due; for damages; for injunctive relief; or for any other remedy
154 available at law or in equity, maintainable by a homeowners' association or other
155 common interest community association which has been created pursuant to those
156 covenants. Such association, if any, may pursue injunctive relief without the need or
157 requirement to first pursue or utilize any other remedies, regardless of whether other
158 remedies may be available or might otherwise be adequate. To the extent provided in the
159 instrument, such association shall be empowered to impose and assess fines and
160 temporarily suspend voting rights and the right of use of certain common areas and
161 services paid for as a common expense in order to enforce such compliance; provided,
162 however, that no such suspension shall deny any property owner or occupants access to
163 the property owned or occupied. Nothing in this paragraph shall be construed to render
164 any covenants in a subdivision containing fewer than 15 individuals plots unenforceable,
165 nor shall anything in this subsection be construed to limit or expand rights of property
166 owners or common interest community associations which may otherwise exist under
167 Georgia law or the instruments governing such community associations, except as
168 expressly stated in this paragraph.”

169

SECTION 7.

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