

The Senate Committee on the Judiciary offered the following 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 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

11 "44-3-76.

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

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

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

49 **SECTION 2.**

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

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

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

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

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

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

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SECTION 3.

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

74 "44-3-223.

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

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SECTION 4.

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

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

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

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

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

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

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SECTION 5.

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

122 "(6) In every planned subdivision containing no fewer than 15 individual plots, every
123 person owning plots affected by such covenant owner and all those entitled to occupy
124 such property shall comply with all lawful provisions of said covenants and the
125 instrument containing such covenants. Any lack of such compliance shall be grounds for
126 an action to recover sums due; for damages; for injunctive relief; or for any other remedy
127 available at law or in equity, maintainable by a homeowners' association or other
128 common interest community association which has been created pursuant to those
129 covenants. Such association, if any, may pursue injunctive relief without the need or
130 requirement to first pursue or utilize any other remedies, regardless of whether other
131 remedies may be available or might otherwise be adequate. To the extent provided in the
132 instrument, such association shall be empowered to impose and assess fines and
133 temporarily suspend voting rights and the right of use of certain common areas and
134 services paid for as a common expense in order to enforce such compliance; provided,
135 however, that no such suspension shall deny any property owner or occupants access to
136 the property owned or occupied. Nothing in this paragraph shall be construed to render
137 any covenants in a subdivision containing fewer than 15 individuals plots unenforceable,
138 nor shall anything in this subsection be construed to limit or expand rights of property
139 owners or common interest community associations which may otherwise exist under
140 Georgia law or the instruments governing such community associations, except as
141 expressly stated in this paragraph."

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SECTION 6.

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