

House Bill 685

By: Representatives Strickland of the 111th, Duncan of the 26th, Welch of the 110th, Fleming of the 121st, and Belton of the 112th

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 add a new article relating to real property
3 common interest communities and entities; to provide for a short title; to provide for
4 definitions; to provide for procedures, conditions, and limitations; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to regulation of
9 specialized land transactions, is amended by adding a new article to read as follows:

10 "ARTICLE 6A

11 44-3-240.

12 This article shall be known and may be cited as the 'Georgia Real Property Common
13 Interest Act.'

14 44-3-241.

15 As used in this article, the term:

16 (1) 'Board of directors' means an executive and administrative body, by whatever name
17 denominated, designated in the declaration of covenants as the governing body of a real
18 property common interest entity.

19 (2) 'Common area' means any area indicated on a plat, declaration of covenants, or other
20 recorded instrument which is indicated for the common use and enjoyment of a real
21 property common interest community regardless of the terminology used to describe such
22 area in such documents.

23 (3) 'Court' means the superior court of the county where the real property common
24 interest community or any part thereof is located.

25 (4) 'Declarant' means all owners and lessees of a common area in a real property
 26 common interest community who execute the declaration or on whose behalf the
 27 declaration is executed.

28 (5) 'Declaration of covenants' or 'declaration' means the recordable instrument containing
 29 those matters required by Code Section 44-3-77 or 44-3-222 or other instrument
 30 indicating an intent to provide for common interests in real property recorded with a court
 31 of competent jurisdiction and any lawful amendments thereto.

32 (6) 'Member' means any person with an ownership interest in a real property common
 33 interest community or has legal rights outlined by a declaration of covenants.

34 (7) 'Person' means a natural person, corporation, partnership, association, trust, other
 35 entity, or any combination thereof.

36 (8) 'Real property common interest community' means real property located within
 37 Georgia which contains lots, units, or other similar subdivisions and common areas which
 38 are subject to a declaration. A real property common interest community shall include
 39 a condominium as defined in paragraph (7) of Code Section 44-3-71 and a property
 40 owners' development as defined in paragraph (18) of Code Section 44-3-221.

41 (9) 'Real property common interest entity' means any corporation or association formed
 42 or to be formed for the purpose of administering the provisions of a declaration of
 43 covenants. A real property common interest entity shall include, but not be limited to,
 44 a condominium association established pursuant to Article 3 of this chapter, a property
 45 owners' association established pursuant to Article 6 of this chapter, and a homeowners'
 46 association or other community association established pursuant to an instrument
 47 indicating an intent to provide for common interests in real property recorded with a court
 48 of competent jurisdiction.

49 44-3-242.

50 (a) Any real property common interest community shall have available to it a procedure
 51 by which a member, upon failure of a declarant or board of directors to maintain a common
 52 area, may call for an election to replace a board of directors and may petition a court for
 53 the transfer of ownership interest of a common area regardless of whether such procedure
 54 has been provided for in the declaration of covenants. For purposes of this subsection,
 55 failure to maintain a common area shall occur when a declarant or board of directors fails
 56 for two consecutive years to pay required property taxes or pay for the maintenance of
 57 landscaping or vegetation in or around such common area.

58 (b) Upon failure of a declarant to establish a real property common interest entity, a
 59 property owner in a real property common interest community may petition the court for
 60 an order calling for an election for an initial board of directors to be held by all property

61 owners in a real property common interest community. For purposes of this subsection,
 62 failure to establish a real property common interest entity shall occur when a declarant fails
 63 to duly incorporate either as a business corporation under Chapter 2 of Title 14 or as a
 64 nonprofit corporation under Chapter 3 of Title 14.

65 (c) Upon failure of a declarant to maintain or otherwise administer a real property common
 66 interest entity, a member may petition the court for an order calling for an election for the
 67 replacement of the board of directors to be held by the members. For purposes of this
 68 subsection, the court shall consider the totality of the circumstances in determining whether
 69 the declarant has failed to maintain or administer a real property common interest entity.
 70 Factors to be considered shall include, but not be limited to, the declarant's failure to:

71 (1) Pay any annual fees required under Chapter 2 or Chapter 3 of Title 14 for two
 72 consecutive years;

73 (2) File tax returns on behalf of the real property common interest entity;

74 (3) Maintain accounting records on behalf of the real property common interest entity;

75 (4) Maintain insurance on any common area; or

76 (5) Provide an annual budget to members.

77 (d) A violation of subsection (a) or (c) of this Code section shall not invalidate or affect
 78 any declaration of covenants, the powers granted to a real property common interest entity
 79 through such declaration, or any assessments, budgets, or other actions adopted by a real
 80 property common interest entity prior to the filing of a petition pursuant to this Code
 81 section.

82 44-3-243.

83 (a) A petition for a violation of this article shall be brought to the judge of the court after
 84 notice of intent to bring a petition has been sent to a declarant or real property common
 85 interest entity via certified mail or statutory overnight delivery, return receipt requested.
 86 The court shall schedule a hearing no later than 90 days after receipt of the answer of a
 87 declarant or real property common interest entity; and at the hearing, the court shall
 88 determine if a declarant or real property common interest entity has violated Code Section
 89 44-3-242. No discovery shall be had unless ordered by the court for good cause.

90 (b) Upon a finding of a violation of this article, the court may issue an order that:

91 (1) Appoints an appropriate corporate entity to serve as a real property common interest
 92 entity;

93 (2) Sets forth a date and standards by which an election for a board of directors for a real
 94 property common interest entity shall be held;

95 (3) Appoints a community association manager as defined in paragraph (4.3) of Code
96 Section 43-40-1, for a period not to exceed two years, to serve as a receiver and manager
97 of daily affairs for the real property common interest entity;

98 (4) Transfers common areas or other property in a real property common interest
99 community to a real property common interest entity or other appropriate entity; and

100 (5) Provides for the payment of reasonable attorney's fees incurred by the petitioner.

101 44-3-244.

102 A community association manager appointed pursuant to paragraph (3) of subsection (b)
103 of Code Section 44-3-243 may act as a general agent for the real property common interest
104 community with all authority necessary to manage the daily business of such community.

105 44-3-245.

106 Notwithstanding any language to the contrary in the declaration of covenants, should a
107 declarant fail to hold an election within six months following the sale of all units, lots, or
108 parcels in a real property common interest community, an election for a new board of
109 directors for a real property common interest entity may be held upon the request of any
110 member."

111 **SECTION 2.**

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