

O.C.G.A. TITLE 44 Chapter 3 Article 6

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*** Current through the 2009 Regular Session ***

TITLE 44.PROPERTY
CHAPTER 3. REGULATION OF SPECIALIZED LAND TRANSACTIONS
ARTICLE 6. PROPERTY OWNERS' ASSOCIATIONS

(Georgia Property Owners' Association Act)

O.C.G.A. TITLE 44 Chapter 3 Article 3 (2009)

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§ 44-3-220. Short title

This article shall be known and may be cited as the "Georgia Property Owners' Association Act."

§ 44-3-221. Definitions

As used in this article, the term:

- (1) "Board of directors" or "board" means an executive and administrative body, by whatever name denominated, designated in the instrument as the governing body of the association.
- (2) "Common area" means all real and personal property submitted to the declaration which is owned or leased by the association for common use and enjoyment of the members.
- (3) "Common expenses" means all expenditures lawfully made or incurred by or on behalf of the association together with all funds lawfully assessed for the creation and maintenance of reserves pursuant to the provisions of the instrument.
- (4) "Court" means the superior court of the county where the development or any part thereof is located.
- (5) "Declarant" means all owners and lessees of the property who execute the declaration or on whose behalf the declaration is executed; provided, however, that the phrase "owners and lessees," as used in this article, shall not include in his or her capacity as such any mortgagee, any lien holder, any person having an equitable interest under any contract for the sale or lease of a lot, or any lessee or tenant of a lot. From the time of the recordation of any amendment to the declaration expanding an expandable property owners' development, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within the definition of "declarant." Any successors-in-title of any owner or lessee referred to in this paragraph who comes to stand in the same relation to the property owners' development as his or her predecessor did shall also come within such definition.
- (6) "Declaration" means the recordable instrument creating covenants upon property which covenants are administered by a property owners' association in which membership is mandatory for all owners of lots in the property owners' development.
- (7) "Foreclosure" means, without limitation, the judicial foreclosure of a mortgage and the exercise of a power of sale contained in any mortgage.
- (8) "Limited common areas" means a portion of the common area reserved for the exclusive use of those entitled to occupy one or more, but less than all, of the lots.

(9) "Lot" means any plot or parcel of land, other than a common area, designated for separate ownership and occupancy shown on a recorded subdivision plat for a development and subject to a declaration. Where the

context indicates or requires, the term lot includes any structure on the lot. With respect to a property owners' development which includes a condominium, and to the extent provided for in the instrument, each condominium unit, as defined in paragraph (28) of Code Section 44-3-71, shall be deemed a separate lot.

(10) "Lot owner" means one or more persons who are record title owners of a lot.

(11) "Mortgage" means a mortgage, deed to secure debt, deed of trust, or other instrument conveying a lien upon or security title to property.

(12) "Mortgagee" means the holder of a mortgage.

(13) "Officer" means an officer of the association.

(14) "Person" means a natural person, corporation, partnership, association, trust, other entity, or any combination thereof.

(15) "Property" means any real property and any interest in real property, including, without limitation, parcels of air space.

(16) "Property owners' association" or "association" means a corporation formed for the purpose of exercising the powers of the property owners' association created pursuant to this article.

(17) "Property owners' association instrument" or "instrument" means the declaration, plats, and plans recorded pursuant to this article. Any exhibit, schedule, or certification accompanying an instrument and recorded simultaneously therewith shall be deemed an integral part of that instrument. Any amendment or certification of any instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected instrument so long as such amendment or certification was made in accordance with this article.

(18) "Property owners' development" or "development" means real property which contains lots and which may contain common area located within Georgia and subject to a declaration and submitted to this article.

§ 44-3-222. Creation of property owners' developments

A property owners' development shall come into existence upon either the recordation of the declaration pursuant to this article or the amendment of a recorded declaration in accordance with Code Section 44-3-235. Any declaration or amendment intending to bring or avail a development of the benefits and provisions of this article shall state an affirmative election to be so governed. Any original declaration shall be duly executed by or on behalf

of all of the owners of the submitted property. Any such amendment to an existing declaration shall be executed in accordance with the terms of the recorded declaration being amended thereby.

§ 44-3-223. Compliance with association instrument and rules and regulations; enforcement

Every lot owner and all those entitled to occupy a lot shall comply with all lawful provisions of the property owners' association instrument. In addition, any lot owner and all those entitled to occupy a lot shall comply with any reasonable rules or regulations adopted by the association pursuant to the instrument which have been provided to the lot owners and with the lawful provisions of the bylaws of the association. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association or, in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. If and to the extent provided in the instrument, the association shall be empowered to impose and assess fines and suspend temporarily voting rights and the right of use of certain of the common areas and services paid for as a common expense in order to enforce such compliance; provided, however, that no such suspension shall deny any lot owner or occupants access to the lot owned or occupied.

§ 44-3-224. Voting procedures

(a) Since a lot owner may be more than one person, if only one of those persons is present at a meeting of the association, or is voting by proxy, ballot, or written consent, that person shall be entitled to cast the votes pertaining to that lot. However, if more than one of those persons is present, or executes a proxy, ballot, or written consent, the vote pertaining to that lot shall be cast only in accordance with their unanimous agreement unless the instrument expressly provides otherwise; and such consent shall be conclusively presumed if any one of them purports to cast the votes pertaining to that lot without protest being made immediately by any of the others to the person presiding over the meeting or vote.

(b) The votes pertaining to any lot may, and, in the case of any lot owner not a natural person or persons, shall, be cast pursuant to a proxy or proxies duly executed by or on behalf of the lot owner or, in cases where the lot owner is more than one person, by or on behalf of the joint owners of the lot. No such proxy shall be revocable except as provided in Code Section 14-2-722 or Code Section 14-3-724 or by written notice delivered to the association by the lot owner or by any joint owners of a lot. Any proxy shall be void if it is not dated or if it purports to be revocable without such notice.

§ 44-3-225. Assessments

(a) To the extent that the instrument expressly so provides:

(1) Any common expenses benefiting less than all of the lots shall be specially assessed equitably among all of the lots so benefited, as determined by the board; (2) Any

common expenses occasioned by the conduct of less than all of those entitled to occupy all of the lots or by the licensees or invitees of any such lot or lots shall be specially assessed against the lot or lots, the conduct of any occupant, licensee, or invitee of which occasioned any such common expenses; (3) Any common expenses significantly disproportionately benefiting all of the lots shall be assessed equitably among all of the lots in the development as determined by the board; and (4) Other than for limited common areas expressly designated as such in the instrument and assigned to fewer than all lots, nothing contained in paragraph (1) or (3) of this subsection shall permit an association to specially or disproportionately allocate common expenses for periodic maintenance, repair, and replacement of any portion of the common area or the lots which the association has the obligation to maintain, repair, or replace.

(b) No lot owner other than the association shall be exempted from any liability for any assessment under this Code section or under any instrument for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his or her lot or any part of the common area except to the extent that any lot, upon request by the owner of the lot, expressly may be made exempt from assessments and thus denied voting rights of the lot under the instrument until a certificate of occupancy is issued by the governing authority for a dwelling on such lot.

(c) Unless otherwise provided in the instrument and except as provided in subsection (d) of this Code section, the grantee in a conveyance of a lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantor or grantee shall request a statement from the association as provided in subsection (d) of Code Section 44-3-232, such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the property owners' association Ga. Code Ann., § 44-3-225 Page 1 © 2009 Thomson Reuters. No Claim to Orig. US Gov. Works. lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

(d) In the event that the holder of a first priority mortgage or secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the lot, or in the event that any other person acquires title to any lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the lot be subject to any lien for assessments under this Code section or under any instrument chargeable to the lot on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be deemed to be a common expense collectable from all of the lot owners, including such holder or other person and his or her successors, successors-in-title, and assigns.

§ 44-3-226. Amendment of instrument

(a) Except to the extent expressly permitted or required by other provisions of this article, the instrument shall be amended only by the agreement of lot owners of lots to which two-thirds of the votes in the association pertain or such larger majority as the instrument may specify; provided, however, that, during any such time as there shall exist an unexpired option to add any additional property to the property owners' association or during any such time as the declarant has the right to control the association under the instrument, the agreement shall be that of the declarant and the lot owners of lots to which two-thirds of the votes in the association pertain, exclusive of any vote or votes appurtenant to any lot or lots then owned by the declarant, or a larger majority as the instrument may specify. Notwithstanding any other provisions of this subsection, during such time as the declarant shall own at least one lot primarily for the purpose of sale of such lot, no amendment shall be made to the instrument without the written agreement of the declarant if such amendment would impose a greater restriction on the use or development by the declarant of the lot or lots owned by the declarant.

(b) No amendment of an instrument shall require approval of lot owners to which more than 80 percent of the association vote pertains and the mortgagees holding 80 percent of the voting interest of mortgaged lots; any property owners' association which exists prior to July 1, 1994, and amends its documents to avail itself of the provisions of this article shall be deemed to have amended the association instrument to conform to this limitation.

This subsection shall not be deemed to eliminate or modify any right of the declarant provided for in the instrument to approve amendments to the instrument so long as the declarant owns any lot primarily for the purpose of sale and, furthermore, this Code section shall not be construed as modifying or altering the rights of a mortgagee set forth elsewhere in this article.

(c) Except to the extent expressly permitted or required by other provisions of this article, or agreed upon or permitted by the instrument concerning submission of additional property to this article by the declarant or the association, or agreed upon by all lot owners and the mortgagees of all lots, no amendment to the instrument shall change the boundaries of any lot, the number of votes in the association pertaining thereto, or the liability for common expenses pertaining thereto.

(d) Agreement of the required majority of lot owners to any amendment of the instrument shall be evidenced by their execution of the amendment. In the alternative, provided that the declarant does not then have the right to control the association pursuant to the instrument, the sworn statement of the president, of any vice president, or of the secretary of the association attached to or incorporated in an amendment executed by the association, which sworn statement states unequivocally that agreement of the required majority was otherwise lawfully obtained and that all notices required by this article were properly given, shall be sufficient to evidence the required agreement. Any such amendment of the instrument shall become effective only when recorded or at such later date as may be specified in the amendment itself.

(e) Notwithstanding anything to the contrary in this article or in the instrument, the approval of any proposed amendment by a mortgagee shall be deemed implied and consented to if the mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the mortgagee receives notice of the proposed amendment sent by certified mail or statutory overnight delivery, return receipt requested.

(f) In any court suit or action where the validity of the adoption of an amendment to an instrument is at issue, the adoption of the amendment shall be presumed valid if the suit is commenced more than one year after the recording of the amendment on the public record. In such cases, the burden of proof shall be upon the party challenging the validity of the adoption of the amendment.

§ 44-3-227. Incorporation of associations

(a) Prior to submission to this article, the association shall be duly incorporated either as a business corporation under Chapter 2 of Title 14 or as a nonprofit membership corporation under Chapter 3 of Title 14, as amended. The corporate name of the association shall include the word or words "homeowners," "property owners," "community," "club," or "association" and shall otherwise comply with applicable laws regarding corporate names. The articles of incorporation of the association and the bylaws adopted by the association shall contain provisions not inconsistent with applicable law including but not limited to this article or with the declaration as may be required by this article or by the declaration and as may be deemed appropriate or desirable for the proper management and administration of the association. The term "member" shall include a shareholder in the event the association is a business corporation or issues stock. Membership shall continue during the period of ownership by such lot owner.

(b) Prior to the first conveyance of a property owners' association lot, the declarant shall cause the first board directors to be duly appointed, the officers to be elected, and the organization of the association to be effectuated.

(c) True and correct copies of the articles of incorporation and bylaws of the association and all amendments thereto shall be maintained at the principal and the registered offices of the association and at the sales office of the declarant so long as the declarant has the right to control the association pursuant to the instrument; and copies thereof shall be furnished to any lot owner on request upon payment of a reasonable charge therefor.

§ 44-3-228. Quorums and procedures at meetings

Unless the instrument or bylaws provide otherwise, a quorum shall be deemed present throughout any meeting of the members of the association if persons entitled to cast more than one-third of the votes are present at the beginning of the meeting. Unless the instrument or bylaws specify a larger percentage, the presence of persons entitled to cast one-half of the votes of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board.

§ 44-3-229. Directors and officers

If the instrument provides that any member of the board of directors or any officer of the association must be a lot owner, then, notwithstanding Code Section 44-3-221, the term "lot owner" in such context shall, unless the instrument otherwise provides, be deemed to include, without limitation, any shareholder, director, officer, partner in, or trustee of any person who is, either alone or in conjunction with any other person or persons, a lot owner. Any individual who would not be eligible to serve as a member of the board of directors or officer were he or she not a shareholder, director, officer, partner in, or trustee of such a person shall be deemed to have disqualified himself or herself from continuing in office if he or she ceases to have any such affiliation with that person.

§ 44-3-230. Meetings; notice of meetings

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

§ 44-3-231. Powers and duties of association

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

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

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

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

(b) Except to the extent prohibited by the instrument and subject to any restrictions and limitations specified therein, the association shall have the power to grant easements, leases, and licenses through or over the common area, to accept easements, leases, and

licenses benefiting the development or any portion thereof, and to acquire or lease property in the name of the association. Property so acquired by the association upon the recordation of the deed thereto or other instrument granting the same and designating property as common area shall, for all purposes including without limitation taxation, be a part of the common area. The association shall also have the power to acquire, lease, and own in its own name property of any nature, real, personal, or mixed, tangible or intangible; to borrow money; and to pledge, mortgage, or hypothecate all or any portion of the property of the association for any lawful purpose within the association's inherent or expressly granted powers. Any third party dealing with the association shall be entitled to rely in good faith upon a certified resolution of the board of directors of the association authorizing any such act or transaction as conclusive evidence of the authority and power of the association so to act and of full compliance with all restraints, conditions, and limitations, if any, upon the exercise of such authority and power.

(c) The association shall have the power to amend the instrument, the articles of incorporation, and the bylaws of the association in such respects as may be required to conform to mandatory provisions of this article or of any other applicable law without a vote of the lot owners.

(d) In addition to any other duties and responsibilities as this article or the instrument may impose, the association shall keep:

(1) Detailed minutes of all meetings of the members of the association and of the board of directors;

(2) Detailed and accurate financial records, including itemized records of all receipts and expenditures; and

(3) Any books and records as may be required by law or be necessary to reflect accurately the affairs and activities of the association.

(e) This Code section shall not be construed to prohibit the grant or imposition of other powers and responsibilities to or upon the association by the instrument.

(f) Except to the extent otherwise expressly required by this article, by Chapter 2 or 3 of Title 14, by the instrument, by the articles of incorporation, or by the bylaws of the association, the powers inherent in or expressly granted to the association may be exercised by the board of directors, acting through the officers, without any further consent or action on the part of the lot owners.

(g) A tort action alleging or founded upon negligence or willful misconduct by any agent or employee of the association or in connection with the conditions of any portion of the instrument which the association has the responsibility to maintain shall be brought against the association. No lot owner shall be precluded from bringing such an action by virtue of his membership in the association. A judgment against the association arising from a tort action shall be a lien against the assets of the association.

(h) The association shall have the capacity, power, and standing to institute, intervene, prosecute, represent, or defend in its own name litigation or administrative or other proceedings of any kind concerning claims or other matters relating to any portion of the lots or common area which the association has the responsibility to administer, repair, or maintain.

§ 44-3-232. Liens for assessments

(a) All sums lawfully assessed by the association against any lot owner or property owners' association lot, whether for the share of the common expenses pertaining to that lot, fines, or otherwise, and all reasonable charges made to any lot owner or lot for materials furnished or services rendered by the association at the owner's request to or on behalf of the lot owner or lot, shall, from the time the sums became due and payable, be the personal obligation of the lot owner and constitute a lien in favor of the association on the lot prior and superior to all other liens whatsoever except:

(1) Liens for ad valorem taxes on the lot;

(2) The lien of any first priority mortgage covering the lot and the lien of any mortgage recorded prior to the recording of the declaration; or (3) The lien of any secondary purchase money mortgage covering the lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the lot. The recording of the declaration pursuant to this article shall constitute record notice of the existence of the lien, and no further recordation of any claim of lien for assessments shall be required.

(b) To the extent that the instrument provides, the personal obligation of the lot owner and the lien for assessments shall also include:

(1) A late or delinquency charge not in excess of the greater of \$ 10.00 or 10 percent of the amount of each assessment or installment thereof not paid when due;

(2) At a rate not in excess of 10 percent per annum, interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto from the date the same was first due and payable;

(3) The costs of collection, including court costs, the expenses required for the protection and preservation of the lot, and reasonable attorney's fees actually incurred; and

(4) The fair rental value of the lot from the time of the institution of an action until the sale of the lot at foreclosure or until judgment rendered in the action is otherwise satisfied.

(c) Not less than 30 days after notice is sent by certified mail or statutory overnight delivery, return receipt requested, to the lot owner both at the address of the lot and at any other address or addresses which the lot owner may have designated to the association in writing, the lien may be foreclosed by the association by an action, judgment, and court

order for foreclosure in the same manner as other liens for the improvement of real property, subject to superior liens or encumbrances, but any such court order for judicial foreclosure shall not affect the rights of holders of superior liens or encumbrances to exercise any rights or powers afforded to them under their security instruments. The notice provided for in this subsection shall specify the amount of the assessments then due and payable together with authorized late charges and the rate of interest accruing thereon. No foreclosure action against a lien arising out of this subsection shall be permitted unless the amount of the lien is at least \$2,000.00. Unless prohibited by the instrument, the association shall have the power to bid on the lot at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The lien for assessments shall lapse and be of no further effect, as to assessments or installments thereof, together with late charges and interest applicable thereto, four years after the assessment or installment first became due and payable.

(d) Any lot owner, mortgagee of a lot, person having executed a contract for the purchase of a lot, or lender considering the loan of funds to be secured by a lot shall be entitled upon request to a statement from the association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that lot. Such request shall be in writing, shall be delivered to the registered office of the association, and shall state an address to which the statement is to be directed. Failure on the part of the association, within five business days from the receipt of such request, to mail or otherwise furnish such statement regarding amounts due and payable at the expiration of such five-day period with respect to the lot involved to such address as may be specified in the written request therefor shall cause the lien for assessments created by this Code section to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the association and upon every lot owner. Payment of a fee not exceeding \$ 10.00 may be required as a prerequisite to the issuance of such a statement if the instrument so provides.

(e) Nothing in this Code section shall be construed to prohibit actions maintainable pursuant to Code Section 44-3-223 to recover sums for which subsection (a) of this Code section creates a lien.

§ 44-3-233. Construction of law

The provisions of this article and of an instrument recorded pursuant thereto shall be liberally construed in favor of the valid establishment of property owners' association pursuant to this article with respect to the submitted property. Substantial compliance with the requirements of this article for the establishment of a property owners' association shall suffice to being property described in an instrument recorded pursuant to this article within the purview and application of this article; and any defects in such instrument or want of

conformity with this article may be cured by an amendment thereto duly executed by the association and recorded or, upon application of any lot owner, with notice to the declarant, the association, and all other lot owners, by decree of the court.

§ 44-3-234. Certain limitations not applicable to covenants

The limitations provided in subsection (b) and paragraphs (1), (2), and (4) of subsection (d) of Code Section 44-5-60 shall not apply to any covenants contained in any instrument created pursuant to or submitted to this article.

§ 44-3-235. Applicability of law

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

(b) This article shall not apply to associations created pursuant to Article 3 of this chapter, the "Georgia Condominium Act," except to the extent that a property owners' development created under this article includes a condominium, together with other real property, as provided in paragraph (9) of Code Section 44-3-221.

(c) This article shall not be construed to affect the validity of any instrument recorded before or after July 1, 1994, but benefits derived from or based upon this article may only be claimed by developments submitted to this article.

CREDIT(S)

Laws 1994, p. 1879, § 1; [Laws 2004, Act 535, § 15, eff. July 1, 2004](#).

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