

House Bill 303

By: Representatives Davis of the 87<sup>th</sup>, Beverly of the 143<sup>rd</sup>, Scott of the 76<sup>th</sup>, Schofield of the 63<sup>rd</sup>, Taylor of the 92<sup>nd</sup>, and others

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 provide for protections for homeowners,  
3 condominium owners, and property owners in community associations; to provide for  
4 community association duties; to provide for policy and procedure, notice, and collection  
5 requirements; to provide for limitations on enforcement of violations, fees, fines, charges,  
6 and foreclosure; to provide for a community association ombudsman to assist owners and  
7 associations; to provide for rights and duties of the ombudsman; to provide for registration,  
8 election monitoring, and complaint requirements; to require declarants, developers, or other  
9 establishing entities to provide for budgets and reserve account funding for maintenance of  
10 community amenities; to require performance and maintenance bonds for community  
11 amenities; to implement requirements and procedures for turnover and transition from  
12 declarants, developers, or other establishing entities to property owners comprising the  
13 community association; to provide for civil causes of action for violations; to provide for  
14 civil penalties for violations and the recovery of litigation costs; to provide for a short title;  
15 to provide for definitions; to provide for related matters; to repeal conflicting laws; and for  
16 other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 303

- 1 -

**SECTION 1.**

Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to regulation of specialized land transactions, is amended by revising subsections (a) and (b) of Code Section 44-3-109, relating to lien for assessments, personal obligation of unit owner, notice and foreclosure, lapse, right to statement of assessments, and effect of failure to furnish statement, as follows:

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

(1) Liens for ad valorem taxes on the condominium unit;

(2) The lien of any first priority mortgage covering the unit and the lien of any mortgage recorded prior to the recording of the declaration;

(3) The lessor's lien provided for in Code Section 44-3-86; and

(4) The lien of any secondary purchase money mortgage covering the unit, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the unit.

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 condominium instruments provide, the personal obligation of the unit 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~~ 8 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 of sale, any expenses required for the protection and preservation of the unit, and reasonable attorney's fees actually incurred; and

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

## SECTION 2.

Said chapter is further amended by revising subsections (a) and (b) of Code Section 44-3-232, relating to assessments against lot owners as constituting lien in favor of association, additional charges against lot owners, procedure for foreclosing lien, and obligation to provide statement of amounts due, as follows:

"(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~~ 8 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."

### SECTION 3.

Said chapter is further amended by adding a new article to read as follows:

#### "ARTICLE 8

##### Part 1

44-3-260.

This article shall be known and may be cited as the 'Community Association Transparency and Protection Act.'



44-3-261.

As used in this article, the term:

(1) 'Amenities' means retention and detention systems or common area facilities.

(2) 'Common area facilities' means clubhouses; golf courses; swimming pools; tennis courts, basketball courts, and other recreational courts; sidewalks; cart paths; nature trails; street lighting; accent lighting; or any other facility that is intended to be communally shared by property owners as recorded in the plat last filed at the time of inception.

(3) 'Community association' or 'association' means a nongovernmental association of participating members in a delineated geographic area comprising a neighborhood, condominium, cooperative, or group of homeowners or property owners, including, but not limited to, a homeowners' association, condominium association, and property owners' association.

(4) 'Condominium association' means an organization or corporation formed pursuant to the Georgia Condominium Act for the purpose of exercising the powers of an association of any condominium under such act.

(5) 'Homeowners' association' means an organization or corporation of homeowners or declarants or developers of a particular subdivision, planned community, or condominium that makes and enforces rules for the properties within its jurisdiction and has an elected board of directors that enforces and oversees the organization's governing documents.

(6) 'Inception' means the first property sale of said community to a member or future member of the community association who is not a declarant, developer, or other establishing entity.

(7) 'Members other than the declarant, developer, or other establishing entity' shall not include builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale.

(8) 'Notice of delinquency' means a written notice that a community association sends to a unit owner to notify the unit owner of any unpaid assessments, fines, fees, or charges that the unit owner owes the community association.

(9) 'Property owners' association' means a corporation formed pursuant to the Georgia Property Owners' Association Act for the purpose of exercising the powers of an association of property owners under such act.

(10) 'Retention and detention systems' means any storm-water management system, method, or structure that is designed to provide storm-water storage or release for surface runoff as recorded in the plat last filed at the time of inception.

(11) 'Turnover and transition' means the relinquishment of control by a declarant, developer, or other establishing entity of the amenities and community association voluntarily or by operation of law whereby the property owners comprising the property jurisdiction of the community association take control of such amenities and community association.

(12) 'Unit' means a portion of the community association intended for any type of independent ownership and use.

(13) 'Unit owner' means the owner of a unit subject to a community association.

44-3-262.

To promote responsible governance, a community association shall:

(1) Maintain accurate and complete accounting records in accordance with generally accepted accounting principles;

(2) Maintain, to the extent reasonably available and subject to reasonable deductibles:

(A) Property insurance on common areas insuring against risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, shall be not less than 80 percent of the actual cash value of the insured property at the time

the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and  
(B) Commercial general liability insurance, including medical payments insurance, in an amount determined by the board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas; and

(3) Adopt policies, procedures, and rules and regulations concerning:

(A) Collection of unpaid assessments, fines, fees, and other charges;

(B) Handling of conflicts of interest involving board members, which shall, at a minimum:

(i) Define or describe the circumstances under which a conflict of interest exists;

(ii) Set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest shall be disclosed and whether a board member shall recuse himself or herself from discussing or voting on an issue;

(iii) Describe the circumstances under which a board member, or a party related to a board member, shall be prohibited from engaging in a financial transaction with the community association; and

(iv) Provide for the periodic review of the community association's conflict of interest policies, procedures, and rules and regulations;

(C) Conduct of meetings, which may refer to applicable provisions of Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code,' or other legally recognized rules and principles;

(D) Enforcement of covenants and rules, including notice and hearing procedures and a schedule of fines, fees, or other charges;

(E) Inspection and copying of community association records, which shall include, at a minimum, board meeting minutes, financial documents, budgets, contracts for

services or improvements, and insurance policies, by unit owners at no cost to the unit owners;

(F) Investment of reserve funds;

(G) The amenities the community association agrees to provide and the minimum upkeep standards of such amenities;

(H) Policies and procedures for the election of board members, which shall require that, to the extent possible, a majority of the board members reside in the association;

(I) Procedures for the adoption and amendment of policies, procedures, and rules; and

(J) Procedures for addressing disputes arising between the community association and unit owners, which shall, at a minimum, comply with Code Section 44-3-263.

44-3-263.

(a) As used in this Code section, the term 'alternative dispute resolution' means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision-making process.

(b)(1) A community association shall adopt a written policy providing for a fair, reasonable, and expeditious alternative dispute resolution procedure for resolving any dispute regarding sums assessed by the association.

(2) The association shall provide a copy of such policy to each unit owner annually and shall make a copy of such policy available to a unit owner upon request.

(c) In developing an alternative dispute resolution procedure pursuant to this Code section, an association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs.

(d) A fair, reasonable, and expeditious alternative dispute resolution procedure shall, at a minimum, satisfy all of the following requirements:

(1) The procedure may be invoked by a unit owner in writing;

195 (2) The procedure shall provide for prompt deadlines, which shall state the maximum  
196 time for the association to act on a request invoking the procedure;

197 (3) If the procedure is invoked by a unit owner, the association shall participate in the  
198 procedure; and

199 (4) A unit owner shall not be charged a fee to participate in the process.

200 44-3-264.

201 For the purpose of providing notice required pursuant to this article:

202 (1) A unit owner may notify the community association if the unit owner prefers that  
203 correspondence and notices sent to the unit owner from the community association be  
204 made in a language other than English. If a preference is not indicated, the community  
205 association shall send such correspondence and notices in English;

206 (2) A unit owner may identify another person to serve as a designated contact for the unit  
207 owner to be contacted on the unit owner's behalf and may indicate that correspondence  
208 and notices sent to such contact from the community association be made in a language  
209 other than English. If a preference is not indicated, the community association shall send  
210 such correspondence and notices in English; and

211 (3) The community association shall send the unit owner and any contact designated  
212 pursuant to paragraph (2) of this Code section the same correspondence and notices;  
213 provided, however, that the community association shall send the correspondence and  
214 notices in the language for which the unit owner has indicated a preference, if any.

215 44-3-265.

216 (a) A community association shall send each unit owner who has any outstanding balance  
217 owed to the community association a notice of delinquency that includes an itemized list  
218 of all assessments, fines, fees, and charges that the unit owner owes to the community

219 association each month by first-class mail and by email if the unit owner has provided an  
220 email address to the community association.

221 (b) For purposes of providing a notice of delinquency, a community association shall:

222 (1) Send notice by certified mail, return receipt requested;

223 (2) Physically post a copy of the notice at the unit owner's unit; and

224 (3) Send notice to the unit owner by one of the following means:

225 (A) Text message if the unit owner has provided a cell phone number to the  
226 community association; or

227 (B) Email if the unit owner has provided an email address to the community  
228 association.

229 (c) A notice of delinquency that a community association sends to a unit owner for unpaid  
230 assessments, fines, fees, or charges shall:

231 (1) Specify whether the delinquency concerns unpaid assessments; unpaid fines, fees, or  
232 charges; or both unpaid assessments and unpaid fines, fees, or charges, and, if the notice  
233 of delinquency concerns unpaid assessments, the notice of delinquency shall notify the  
234 unit owner that unpaid assessments may lead to foreclosure; and

235 (2) Include:

236 (A) A description of the steps the community association shall take before the  
237 community association may take legal action against the unit owner, including a  
238 description of the community association's cure process established in accordance with  
239 Code Section 44-3-268; and

240 (B) A description of what legal action the community association may take against the  
241 unit owner.

242 44-3-266.

243 (a) With regard to a unit owner's delinquency in paying assessments, fines, fees, or  
244 charges, a community association shall:

(1) First contact the unit owner to alert the unit owner of the delinquency before taking action in relation to the delinquency pursuant to subsection (b) of this Code section; and

(2) Maintain a record of any contacts, including information regarding the type of communication used to contact the unit owner and the date and time that the contact was made.

(b) A community association may refer a delinquent account to a collection agency or attorney only if a majority of the board members votes to refer the matter in a recorded vote at a meeting.

44-3-267.

(a) No community association shall:

(1) Charge a rate of interest on unpaid assessments, fines, or fees in an amount greater than 8 percent per year;

(2) Assess a fee or other charge to recover costs incurred for providing the unit owner a statement of the total amount that the unit owner owes; or

(3) Foreclose on an assessment lien if the debt securing the lien consists only of one or both of the following:

(A) Fines that the community association has assessed against the unit owner; or

(B) Collection costs or attorney's fees that the community association has incurred and that are only associated with assessed fines.

(b) No community association shall impose on a daily basis against a unit owner:

(1) Late fees; or

(2) Fines assessed for violations of the declaration, bylaws, covenants, or other governing documents of the community association.

44-3-268.

(a) A community association may only impose fines for violations in accordance with this Code section.

(b)(1) With respect to any violation of the declaration, bylaws, covenants, or other governing documents of a community association that the community association reasonably determines threatens the public safety or health, the community association shall provide the unit owner written notice of the violation informing the unit owner that the unit owner has 72 hours to cure the violation or the community association may fine the unit owner.

(2) If, after an inspection of the unit, the community association determines that the unit owner has not cured such violation within 72 hours after issuance of the notice, the community association may impose fines on the unit owner every other day and may take any available legal action against the unit owner for the violation.

(c)(1) If a community association reasonably determines that a unit owner committed a violation of the declaration, bylaws, covenants, or other governing documents of the community association, other than a violation that threatens the public safety or health, the community association shall, through certified mail, return receipt requested, provide the unit owner written notice of the violation informing the unit owner that the unit owner has 30 days to cure the violation or the community association, after conducting an inspection and determining that the unit owner has not cured the violation, may fine the unit owner.

(2) A community association shall grant a unit owner 60 days to cure such violation before the community association may take legal action against the unit owner for the violation.

(3) If the unit owner cures the violation within such 60 day period to cure, the unit owner may notify the community association of the cure and, if the unit owner sends with the notice visual evidence that the violation has been cured, the violation is deemed cured on



the date that the unit owner sends the notice. If the unit owner's notice does not include visual evidence that the violation has been cured, the community association shall inspect the unit as soon as practicable to determine if the violation has been cured.

(4) If the community association does not receive notice from the unit owner that the violation has been cured, the community association shall inspect the unit within seven days after the expiration of the 60 day period to cure to determine if the violation has been cured. If, after such inspection, the community association determines that the violation has not been cured, the community association may then take any available legal action.

(5) If the unit owner cures the violation within the 60 day period, the community association shall notify the unit owner:

(A) That the unit owner will not be further fined with regard to the violation; and

(B) Of any outstanding balance that the unit owner still owes the community association in relation to such violation.

(6) If the board determines that the unit owner should not be held responsible for an alleged violation, the community association shall not allocate to the unit owner's account with the community association any of the community association's costs or attorney's fees incurred in asserting or hearing the claim. Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the community association to the contrary, a unit owner shall not be deemed to have consented to pay such costs or fees.

(7) The total amount of fines imposed for the violation shall not exceed \$500.00.

44-3-269.

(a) Notwithstanding any provision of the declaration, bylaws, articles, rules or regulations to the contrary, or the absence of a relevant provision in the declaration, bylaws, articles, or rules or regulations, the community association shall not use a collection agency or take legal action to collect unpaid assessments unless the community association has adopted

and follows a written policy governing the collection of unpaid assessments and unless the community association complies with this Code section.

(b) The policy required by subsection (a) of this Code section shall, at a minimum, specify:

(1) The date on which assessments shall be paid and when an assessment is considered past due and delinquent;

(2) Any late fees and interest that a community association may impose on a delinquent unit owner's account;

(3) Any returned-check charges the community association may impose;

(4) The circumstances under which a unit owner is entitled to enter into a payment plan with the community association pursuant to Code Section 44-3-270 and the minimum terms of the payment plan mandated by that Code section;

(5) That, before the community association turns over a delinquent account of a unit owner to a collection agency or refers it to an attorney for legal action, the community association shall send the unit owner a notice of delinquency, by certified mail, return receipt requested, specifying:

(A) The total amount due, with an accounting of how the total was determined;

(B) Whether the opportunity to enter into a payment plan exists pursuant to Code Section 44-3-270 and instructions for contacting the community association to enter into such a payment plan;

(C) The name and contact information for the individual the unit owner may contact to request a copy of the unit owner's account information in order to verify the amount of the debt; and

(D) That action is required to cure the delinquency and that failure to do so within 60 days may result in the unit owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property, or other available legal remedies;

(6) The method by which payments may be applied on the delinquent account of a unit owner; and

(7) The legal remedies available to the community association to collect on a unit owner's delinquent account pursuant to the governing documents of the association and Georgia law.

44-3-270.

(a) In collecting past due assessments and other delinquent payments under this article, a community association or a holder or assignee of the community association's debt shall:

(1) Adopt and comply with a collections policy that meets the requirements of Code Section 44-3-269; and

(2) Make a good faith effort to coordinate with the unit owner to set up a payment plan that meets the requirements of this Code section, except when:

(A) The unit owner does not occupy the unit and has acquired the property as a result of:

(i) A default of a security interest encumbering the unit; or

(ii) Foreclosure of the community association's lien; or

(B) A unit owner who previously entered into a payment plan under this Code section.

(b)(1) A payment plan negotiated between a community association and a unit owner shall permit:

(A) The unit owner to pay off the deficiency in equal installments over a period of at least 18 months;

(B) The unit owner to choose the amount to be paid each month, so long as each payment shall be in an amount of at least \$25.00 until the balance of the amount owed is less than \$25.00; and

(C) The unit owner to pay the remaining balance owed under the repayment plan at any time during the duration of the repayment plan.

(2) Nothing in this subsection prohibits a community association from pursuing legal action against a unit owner if the unit owner fails to comply with the terms of the unit owner's payment plan. A unit owner's failure to remit payment of three or more agreed-upon installments, or to remain current with regular assessments as they come due during the 18 month period, constitutes a failure to comply with the terms of the unit owner's payment plan.

(c) If a unit owner who has both unpaid assessments and unpaid fines, fees, or other charges makes a payment to the community association, the community association shall apply the payment first to the assessments owed and any remaining amount of the payment to the fines, fees, or other charges owed.

(d) If a community association has violated any foreclosure laws, the unit owner in relation to whom the violation occurred may, within five years after the violation occurred, file civil suit in a court of competent jurisdiction against the community association to seek damages. The court may award the unit owner damages in an amount of up to \$25,000.00, plus costs and reasonable attorney's fees, if the unit owner proves the violation by a preponderance of the evidence.

44-3-271.

A community association shall not commence a legal action to initiate a foreclosure proceeding based on a unit owner's delinquency in paying assessments unless:

(1) The community association has complied with each of the requirements in this article related to a unit owner's delinquency in paying assessments;

(2) The community association has provided the unit owner with a written offer to enter into a repayment plan pursuant to Code Section 44-3-270;

(3) Within 30 days after the community association has provided the owner with a written offer to enter into a repayment plan, the unit owner has either:

(A) Declined the repayment plan; or

(B) After accepting the repayment plan, failed to pay at least three of the monthly installments within 15 days after the monthly installments were due; and  
(4) A majority of the board members votes to initiate such foreclosure in a recorded vote at a meeting.

Part 2

44-3-280.

(a) There is created an Office of the Community Association Ombudsman that shall be assigned for administrative purposes only to the office of the Secretary of State.

(b) The Governor shall appoint the ombudsman. The ombudsman shall be an attorney admitted to practice before the Georgia Supreme Court and shall serve at the pleasure of the Governor.

(c) The ombudsman, an officer, or a full-time employee of the ombudsman's office shall not:

(1) Actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office;

(2) Serve as the representative, or an executive, officer, or employee, of any political party, executive committee, or other governing body of a political party;

(3) Receive remuneration for activities on behalf of any candidate for public office;

(4) Engage in soliciting votes or other activities on behalf of a candidate for public office; or

(5) Become a candidate for election to public office unless he or she first resigns from his or her office or employment.

(d) The ombudsman shall maintain his or her principal office at a place convenient to the office of the Secretary of State, which will enable the ombudsman to expeditiously carry

423 out the duties and functions of his or her office. The ombudsman may establish branch  
424 offices elsewhere in the state upon the concurrence of the Governor.

425 44-3-281.

426 The ombudsman shall have the powers necessary to carry out the duties of his or her office,  
427 including, but not limited to:

428 (1) Employing professional and clerical staff as necessary for the efficient operation of  
429 the office;

430 (2) Preparing and issuing reports and recommendations to the Governor, the Georgia  
431 Real Estate Commission, the President of the Senate, and the Speaker of the House of  
432 Representatives on any matter or subject within the jurisdiction of this article;

433 (3) Acting as a liaison between the department, unit owners, boards of directors, board  
434 members, community association managers, and other affected parties;

435 (4) Monitoring and reviewing procedures and disputes concerning elections or meetings;

436 (5) Providing resources to assist board members and officers of associations to carry out  
437 their powers and duties consistent with this article and the governing documents of the  
438 association;

439 (6) Acting as a neutral resource regarding the rights and responsibilities of unit owners,  
440 associations, and board members;

441 (7) Encouraging and facilitating voluntary meetings between unit owners, boards of  
442 directors, board members, community association managers, and other affected parties  
443 when the meetings may assist in resolving a dispute within an association before a person  
444 submits a dispute for a formal or administrative remedy;

445 (8) Assisting with the resolution of disputes between unit owners and the association, or  
446 between unit owners, if applicable;

447 (9) Receiving and compiling complaints and responses in relation to violations of  
448 applicable law and the governing documents of an association; and

(10) Referring associations or association management companies to the Georgia Real Estate Commission for investigation and enforcement pursuant to Chapter 40 of Title 43.

44-3-282.

The ombudsman shall:

(1) Develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities, as set forth in this article and the governing documents of associations;

(2) Coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience;

(3) Assist unit owners to understand their rights and responsibilities under applicable law and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;

(4) Assist board members and officers of community associations to carry out their duties; and

(5) Compile and maintain a registration of each community association operating within the state which includes, without limitation, the following information:

(A) The name, address, and phone number of the community association;

(B) The name of each person who is authorized to manage the community association, and if any such person is licensed with the Georgia Real Estate Commission pursuant to Chapter 40 of Title 43, the licensee's name, license number and status, business name, business address, business telephone number, type of license held, and term of license;

474 (C) The names, mailing addresses, and telephone numbers of the board members of the  
475 community association;  
476 (D) The name of the declarant;  
477 (E) The number of units in the community association;  
478 (F) The total annual assessment required by the community association; and  
479 (G) The number of foreclosures which were completed on units within the community  
480 association.

481 44-3-283.

482 (a) The ombudsman shall adopt policies and procedures for submission and receipt of  
483 complaints from unit owners and community associations regarding the rights and  
484 responsibilities of unit owners and community associations.

485 (b) The ombudsman shall publish a form for such complaints which, at a minimum,  
486 includes the following information:

487 (1) The unit owner's name;

488 (2) The name and contact information of the community association;

489 (3) The name of the community association management company, if any, and its contact  
490 information, including telephone number, owner's name, and street and mailing  
491 addresses;

492 (4) Whether a unit owner:

493 (A) Was informed of the requirement of membership in a community association as  
494 a condition of ownership, including when that information was provided and by whom;

495 (B) Received a copy of the governing documents of the community association and if  
496 the copy was obtained before or after receiving title to the unit;

497 (C) Was denied access to the governing documents and, if so, what remedies the unit  
498 owner took to obtain the governing documents; and

499 (D) Understands his or her rights and obligations under the governing documents;



500 (5) The nature of the unit owner's or community association's complaint; and

501 (6) An explanation of:

502 (A) Any communications between the unit owner and the association regarding the  
503 complaint;

504 (B) Any remedies the unit owner or association sought in relation to the complaint; and

505 (C) Any actions the unit owner or association took concerning the complaint.

506 (c) Upon receiving a unit owner's or community association's complaint, the ombudsman  
507 shall provide the complaint to the community association or the unit owner complained  
508 against in a manner that verifies receipt of such complaint by the community association  
509 or unit owner, so the unit owner, board, or community association may determine if the  
510 unit owner, board, or community association desires to make a response to the complaint.

511 (d)(1) The ombudsman shall, at least annually, provide a report of all complaints  
512 received as provided in this Code section to the Governor and the General Assembly and  
513 the public on the ombudsman's website.

514 (2) The public report shall include categorized, filterable, and searchable information  
515 compiled from the complaints and responses and redact any personal or private  
516 information, such as names, addresses, and telephone numbers, contained in the  
517 complaints and responses.

518 (e) If the ombudsman has reasonable cause to believe that a community association  
519 manager has engaged in repeated violations of this article or other law, refer such  
520 community association to the Georgia Real Estate Commission for investigation and  
521 enforcement pursuant to Chapter 40 of Title 43.

522 44-3-284.

523 (a) Fifteen percent of the total voting interests in a community association, or six unit  
524 owners, whichever is greater, may petition the ombudsman to appoint an election monitor  
525 to attend the annual meeting of the unit owners and conduct the election of directors.

(b) The ombudsman shall appoint a division employee, a person who specializes in community association election monitoring, or an attorney licensed to practice in the state as the election monitor.

(c) The association shall pay all costs associated with the election monitoring process.

(d) The ombudsman shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

44-3-285.

(a) Each community association shall register annually with the ombudsman on a form prescribed by the ombudsman, which shall include the information required to be maintained pursuant to paragraph (5) of Code section 44-3-282.

(b) Each community association shall pay an annual registration fee to the ombudsman in the amount of \$3.00 per unit of the community association.

### Part 3

44-3-290.

(a) At the establishment of a community association by a declarant, developer, or other establishing entity, and prior to the turnover and transition, such declarant, developer, or other establishing entity shall establish a two-year operating and expense budget for any construction and ongoing maintenance or replacement of amenities. Such budget shall be verified by a real estate appraiser licensed pursuant to Chapter 39A of Title 40 and established using a good faith method of estimation for all such construction and ongoing maintenance or replacement expenses and shall include a reserve fund account as provided for in subsection (b) of this Code section for such construction and ongoing maintenance or replacement of such amenities. Such budget shall be maintained as a record by such declarant, developer, or other establishing entity, and all such records shall be provided to

the unit owners upon creation of such community association and upon turnover and transition.

(b) The reserve fund account provided for in subsection (a) of this Code section shall be fully funded by such declarant, developer, or other establishing entity, and shall include capital for all items that have a construction or ongoing maintenance or replacement expense that exceeds or will exceed \$10,000.00 over the two-year period. All funds in the reserve account shall be maintained by the declarant, developer, or other establishing entity in a separate account to be held in trust upon inception and until turnover and transition.

(c) The amount to be maintained in the reserve fund account by the declarant, developer, or other establishing entity shall be computed using a formula based upon estimated remaining useful life and estimated replacement cost or ongoing maintenance expense of each reserve item. The declarant, developer, or other establishing entity may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of an item caused by new construction or maintenance or replacement.

(d) The establishment of the operating and expense budget, the maintenance of the reserve fund account, and any adjustments in such reserve fund account shall be managed by an independent certified public accountant who is licensed by this state who shall certify whether activities concerning such budget, fund, or adjustments are in conformance with the purposes of this Code section. The declarant, developer, or other establishing entity shall make such activities, records, and certifications open to public inspection.

44-3-291.

(a)(1) Prior to the conveyance of the first property that is or shall be subject to membership in a community association, a declarant, developer, or other establishing entity shall post a performance bond with the governing authority of the city or county with jurisdiction, with the community association as successor in interest to such bond,

for 125 percent of the cost of the construction and build-out of amenities. The amount affixed to the cost of the construction and build-out of amenities shall be verified by a real estate appraiser licensed under Chapter 39A of Title 43 where such verification shall be based on the plat which was last filed at the time of inception as well as other architectural and construction planning documents and economic forecasts.

(2) Prior to the conveyance of the first property that is or shall be subject to membership in a community association, a declarant, developer, or other establishing entity shall post a maintenance bond with the governing authority of the city or county with jurisdiction, with the community association as successor in interest to such bond, for a maintenance term of at least 24 months beginning at inception.

(b) The bonds required under subsection (a) of this Code section shall be issued by a person licensed to do such business in this state and who shall appear on the list of certified companies as issued by the United States Department of the Treasury.

(c)(1) The construction and build-out of amenities shall be complete and fully operational, and turnover and transition shall occur, within two years after inception, otherwise the performance bond is forfeited.

(2) In the case of forfeiture, the governing authority of the city or county shall pay over funds from the bonds to the clerk of superior court of the county having jurisdiction, who shall segregate the funds pending proper petition for the clerk to pay over such funds to the community association as the successor in interest, and such funds shall then be used as provided for by the superior court for the purposes of this part.

(3) If no proper petition as provided for in paragraph (2) of this subsection is made within two years after such funds have been paid over to the clerk of superior court, then such funds shall be paid into the general funds of the city or county with jurisdiction.

44-3-292.

Not more than 90 days after turnover and transition, the declarant, developer, or other establishing entity shall deliver to the condominium association, at the declarant's, developer's, or other establishing entity's expense, all property, information, and reports of the unit owners and of the condominium association which is held or controlled by the declarant, developer, or other establishing entity, including, but not limited to:

(1) The original or a photocopy of the recorded declaration of condominiums and all amendments thereto. If a photocopy is provided, it shall be certified by affidavit of the declarant, developer, or other establishing entity or by their officer or agent as being a complete copy of the actual recorded declaration;

(2) A certified copy of the articles of incorporation of the condominium association or, if the condominium association was established prior to the Georgia Condominium Act and is not incorporated, copies of the documents creating the condominium association;

(3) A copy of the bylaws and amendments thereto;

(4) The minute books, including all minutes, and other books and records of the condominium association, if any;

(5) Any house rules and regulations that have been promulgated;

(6) Resignations of officers and board members who are required to resign because the declarant, developer, or other establishing entity is required to relinquish control of the condominium association;

(7) The financial records, including financial statements of the condominium association, and source documents from the incorporation of the condominium association through the date of turnover and transition. Such records shall be audited by an independent certified public accountant licensed by this state for the period from the incorporation of the condominium association or from the period covered by the last audit if an audit has been performed for each fiscal year since incorporation by an independent certified public accountant licensed by this state. All financial statements must be prepared in accordance

with generally accepted accounting principles and must be audited in accordance with generally accepted auditing standards. The accountant performing the audit shall examine, to the extent necessary, supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for condominium association purposes and the billings, cash receipts, and related records to determine that the declarant, developer, or other establishing entity was charged and paid the proper amounts of assessments. Audits required by this paragraph shall be paid for by the declarant, developer, or other establishing entity;

(8) All condominium association funds or the control thereof;

(9) All tangible personal property that is property of the condominium association, which is represented by the declarant, developer, or other establishing entity to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property;

(10) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the declarant, developer, or other establishing entity, or their agent or an architect or engineer authorized to practice in this state, that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium association property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than three years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply;

(11) The names and addresses of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or condominium association property which the declarant, developer, or

other establishing entity had knowledge of at any time in the development of the condominium;

(12) Insurance policies;

(13) Copies of any certificates of occupancy that may have been issued for the condominium property;

(14) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within one year prior to the date the unit owners other than the declarant, developer, or other establishing entity took control of the condominium association;

(15) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that built the condominium property or condominium association properties that are still effective;

(16) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the declarant's records;

(17) Leases of the common elements and other leases to which the condominium association is a party;

(18) Employment contracts or service contracts in which the condominium association is one of the contracting parties or service contracts in which the condominium association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service;

(19) All other contracts to which the condominium association is a party;

(20) A turnover and transition inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of common elements, including, but not limited to, the roof, structure, fireproofing and fire protection systems, elevators, heating and cooling systems, plumbing, electrical system, swimming pool or spa and equipment,

680 seawalls, pavement and parking areas, drainage systems, painting, and irrigation systems;  
681 and

682 (21) A copy of the certificate of a surveyor and mapper recorded, or the recorded  
683 instrument, that transfers title to a unit in the condominium which is not accompanied by  
684 a recorded assignment of the declarant's, developer's, or other establishing entity's rights  
685 in favor of the grantee of such unit, whichever occurred first.

686 44-3-293.

687 (a) In addition to the requirements set forth in Code Section 44-3-227, homeowners'  
688 association or property owners' association members other than the declarant, developer,  
689 or other establishing entity are entitled to elect at least one member of the board of  
690 directors of the homeowners' association or property owners' association if 50 percent of  
691 the parcels in all phases of the community which will ultimately be operated by the  
692 homeowners' or property owners' association have been conveyed to the members.

693 (b) Members of the homeowners' association or property owners' association other than  
694 the declarant, developer, or other establishing entity are entitled to elect at least a majority  
695 of the members of the board of directors of the homeowners' association or property  
696 owners' association when the earlier of the following events occurs:

697 (1) Ninety days after 90 percent of the parcels in all phases of the community that will  
698 ultimately be operated by the homeowners' association or property owners' association  
699 have been conveyed to the members;

700 (2) Such other percentage of the parcels has been conveyed to the members or such other  
701 date or event has occurred as is set forth in the governing documents in order to comply  
702 with the requirements of any governmentally chartered entity with regard to the mortgage  
703 financing of parcels;

704 (3) Upon the declarant, developer, or other establishing entity abandoning or deserting  
705 its responsibility to maintain and complete the amenities or infrastructure as disclosed in



the governing documents. For purposes of this paragraph, there is a rebuttable presumption that the declarant, developer, or other establishing entity has abandoned and deserted the property if the declarant, developer, or other establishing entity has unpaid assessments for a period of more than two years;

(4) Upon the declarant, developer, or other establishing entity filing a petition seeking protection under Chapter 7 of the United States Bankruptcy Code;

(5) Upon the declarant, developer, or other establishing entity losing title to the property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of the declarant's, developer's, or other establishing entity's rights and responsibilities first arising after the date of such assignment; or

(6) Upon a receiver for the declarant, developer, or other establishing entity being appointed by a superior court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the association or its members.

(c) The declarant, developer, or other establishing entity is entitled to elect at least one member of the board of directors of the homeowners' association or property owners' association as long as the declarant, developer, or other establishing entity holds for sale in the ordinary course of business at least 5 percent of the parcels in all phases of the community.

(d) After the declarant, developer, or other establishing entity relinquishes control of the homeowners' association or property owners' association, the declarant, developer, or other establishing entity may exercise the right to vote on any matter in the same manner as any other member, except for purposes of reacquiring control of the homeowners' association or property owners' association or selecting the majority of the members of the board of directors.

(e) At such time that the members of the homeowners' association or property owners' association are entitled to elect at least a majority of the board of directors of the homeowners' association or property owners' association, the declarant, developer, or other establishing entity, at the declarant's, developer's, or other establishing entity's expense, and not later than 90 days thereafter, shall deliver the following documents to the board of directors of the association:

(1) All deeds to common property owned by the homeowners' association or property owners' association;

(2) The original of the association's declarations of covenants and restrictions;

(3) A certified copy of the articles of incorporation of the association;

(4) A copy of the bylaws;

(5) The minute books, including all minutes;

(6) The books and records of the association;

(7) Policies, rules, and regulations, if any, which have been adopted;

(8) Resignations of directors who are required to resign because the declarant is required to relinquish control of the association;

(9) The financial records of the association from the date of incorporation through the date of turnover;

(10) All association funds and control thereof;

(11) All tangible property of the association;

(12) A copy of all contracts which may be in force with the association as one of the parties;

(13) A list of the names and addresses and telephone numbers of all contractors, subcontractors, or others in the current employ of the association;

(14) Any and all insurance policies in effect;

(15) Any permits issued to the association by governmental entities;

(16) Any and all warranties in effect;

(17) A roster of current homeowners and property owners and their addresses and telephone numbers and section and lot numbers;

(18) Employment and service contracts in effect;

(19) All other contracts in effect to which the association is a party; and

(20) The financial records, including, but not limited to, financial statements of the association and source documents from the incorporation of the association through the date of turnover and transition. The records shall be audited by an independent certified public accountant licensed by this state for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation by an independent certified public accountant licensed by this state. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards. The certified public accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records of the association to determine that the declarant was charged and paid the proper amounts of assessments. Audits required by this paragraph shall be paid for by the declarant, developer, or other establishing entity.

44-3-294.

(a) For a community proposed or represented to have amenities, the plat for the initial phase of the development shall identify an area encompassing 25 percent of the proposed buildable lots with installed and approved infrastructure sufficient to fully support the houses or residential units proposed for construction in such area. Such area shall be clearly delineated on the plat as 'not approved for construction or building permits.' Only after the governing jurisdiction in which the property is located has issued the applicable

certificate of occupancy for those areas or amenities requiring such a certificate and has otherwise approved those areas or amenities not requiring a certificate of occupancy, shall the final plat for said area be approved by the governing jurisdiction. For large multi-phased projects, the governing jurisdiction shall have the discretion to shift the requirement to a later phase that upon completion achieves no more than 50 percent of the planned fully built-out project.

(b)(1) Where a community includes amenities for which the community association will assume maintenance and responsibility or where a community association shall be established to govern all community association maintenance of property outside of all dwelling units, the requirements in paragraphs (2) through (7) of this subsection, in addition to any other requirements established by this part or the community association's rules and regulations, shall be met.

(2) A prerequisite to the transfer of the declarant's, developer's, or other establishing entity's responsibilities to the community association shall require that not more than 60 days prior to the date of turnover and transition the community association shall request, and the governing jurisdiction with enforcement action of the property shall perform, an inspection of the amenities to be maintained by the community association. The inspection shall identify those areas that do not meet the governing jurisdiction standards.

(3) Prior to the inspection, the declarant, developer, or other establishing entity shall have identified the amenities and shall prepare a form affidavit in the manner provided in this Code section, which shall be executed by the declarant, developer, or other establishing entity and design professionals certifying the sufficiency and workability of the facilities set forth in the affidavit. The declarant, developer, or other establishing entity shall provide a copy of the certification affidavit to the governing jurisdiction with enforcement action over the property after signature of its officers and that of the community association authorized representative or officer as is set forth in this Code section. The community association shall not delay execution of the certification

812 affidavit except for good cause shown or may be liable for civil penalties provided in this  
813 part.

814 (4) The declarant, developer, or other establishing entity shall correct and bear the cost  
815 of any substandard conditions identified by the inspection by the governing jurisdiction  
816 or any other source prior to the transfer of the infrastructure, common areas, and  
817 amenities or control responsibilities from the declarant, developer, or other establishing  
818 entity to the community association. In lieu of making the corrections, the declarant,  
819 developer, or other establishing entity may provide a bond to the community association  
820 in an amount sufficient to correct the identified deficiencies.

821 (5) At least 60 days prior to turnover and transition, the declarant, developer, or other  
822 establishing entity shall provide the executed certification affidavit to the governing  
823 jurisdiction with enforcement action over the property of the community association, with  
824 a copy to the community association, which affidavit shall attest and certify that the items  
825 to be turned over under this part are fully completed as designed or modified to provide  
826 equivalent functional performance, or have deficiencies remaining to be completed as  
827 specifically identified in the affidavit.

828 (6) Failure of the declarant, developer, or other establishing entity to provide the required  
829 certification affidavit shall subject the declarant, developer, or other establishing entity  
830 to the civil penalties provided under this part. Said affidavit shall be maintained by the  
831 governing body as a public record and shall be subject to disclosure under Article 4 of  
832 Chapter 18 of Title 50, relating to open records.

833 (7) The declarant, developer, or other establishing entity shall provide the certification  
834 affidavit to the local governing body with enforcement action over the property prior to  
835 the turnover and transition, which shall provide as follows:

836 'This certification affidavit is for (name of community as reflected in the community  
837 plat last filed at the time of the first property sale of said community to a member or  
838 future member of the community association who was not a declarant, developer, or

other establishing entity). I certify that the below listed items as recorded in the plat last filed at the time of inception are fully completed as designed or modified to provide equivalent functional performance or have deficiencies remaining to be completed as specifically identified below:

(a) With respect to common areas of the community for which the community association or other entity (other than individual residential property owners) is responsible to assume maintenance responsibility:

(1) All recreational areas are complete and operational;

(2) Swimming pools and facilities requiring Board of Health approval have been certified acceptable by the Health Department;

(3) Swimming pools have a fence with a self-closing and positive latching gate. The fence is constructed outside of the deck area and has an unclimbable space;

(4) All storm-water management facilities, including, but not limited to, piping, as well as nonstructural system components, including, but not limited to, detention ponds, swales, and ditches are constructed and operating as intended with all construction sediment and debris removed, and no observable or known maintenance requirements existing; and

(5) Sidewalks in the public and community association owned areas are complete and constructed in accordance with standards;

(b) With respect to a clubhouse or common area buildings and structures:

(1) All permanent street numbers are displayed;

(2) All proposed handicap parking and accessibility is complete;

(3) All handrails and guardrails are installed properly;

(4) All exit signs and emergency lights are installed and working properly;

(5) All planned and required fire extinguishers are mounted;

(6) All required fire alarms and sprinkler systems are installed per code and are functioning properly; and

(7) A written warranty has been provided;

(c) With respect to common or private property subject to restrictions to avoid negative impact to the public or environment:

(1) All areas with slopes of 40 percent or greater subject to the steep slope ordinance have been defined by a properly recorded easement;

(2) All buffers, setbacks, and easements have been properly recorded and are clearly identifiable; and

(3) All temporary erosion control measures have been removed;

(d) With respect to other items:

(1) All conditions of zoning have been complied with; and

(2) All construction and other areas subject to erosion have been stabilized with appropriate vegetation or other acceptable measures; and

(e) Deficiencies that currently exist and that will require action before use or maintenance at routine level may be achieved are as follows: (list and describe such deficiencies)'.

44-3-295.

Prior to the declarant, developer, or other establishing entity relinquishing control of the community association pursuant to this part or other law, actions taken by members of the board of directors designated by the declarant, developer, or other establishing entity are considered actions taken by the declarant, developer, or other establishing entity and the declarant, developer, or other establishing entity is responsible to the community association and its members for all such actions.

44-3-296.

If, during the period prior to the time that the declarant, developer, or other establishing entity relinquishes control of the community association pursuant to this part or other law,

891 any provision of this part or any rule promulgated thereunder is violated by the community  
892 association, then the declarant, developer, or other establishing entity shall be responsible  
893 for such violation and subject to civil penalties as provided for in this part.

894 44-3-297.

895 Any community association shall have a cause of action in the superior court of the county  
896 of the community association. Civil penalties for violations of this part by a declarant,  
897 developer, or other establishing entity shall be not less than \$500.00 and up to \$5,000.00  
898 per violation at the discretion of the court, in addition to any other remedies available at  
899 law to the community association. A community association may recover the cost of  
900 litigation, including, but not limited to, court costs and reasonable attorney's fees, from a  
901 declarant, developer, or other establishing entity for the enforcement of this part."

902 **SECTION 4.**

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