

Senate Bill 46

By: Senators Ligon, Jr. of the 3rd, Thompson of the 14th, Beach of the 21st, Albers of the 56th, McKoon of the 29th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To provide for the regulation of certain matters relating to property; to amend Code Section
2 9-3-29 of the Official Code of Georgia Annotated, relating to limitations of actions relative
3 to breach of restrictive covenant, so as to provide for accrual periods of rights of action; to
4 amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
5 provide for the expansion of a condominium after the declarant's right to expand has expired
6 and provide for procedures for such expansion; to provide for the procedure and right of
7 certain property owners to take control of a condominium association, property owner's
8 association, or entity created pursuant to covenants restricting land to certain uses affecting
9 certain planned subdivisions; to provide for the donation of abandoned dividends or capital
10 credits by rural telephone cooperatives for certain purposes; to provide for definitions; to
11 amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and
12 public transportation, so as to provide for regulation of certain matters pertaining to rural
13 telephone cooperatives; to provide for the donation of abandoned dividends or capital credits
14 by rural telephone cooperatives for certain purposes; to provide for definitions; to provide
15 for venue in proceedings against rural telephone cooperatives; to change certain provisions
16 relating to the bylaws of rural telephone cooperatives; to provide for return of revenues upon
17 the death of a member of a rural telephone cooperative; to provide for related matters; to
18 repeal conflicting laws; and for other purposes.

19 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

20 **SECTION 1.**

21 Code Section 9-3-29 of the Official Code of Georgia Annotated, relating to limitations of
22 actions relative to breach of restrictive covenant, is amended by revising subsection (c) as
23 follows:

24 "(c) For the purpose of this Code section, the right of action shall accrue immediately upon
25 the erection of a permanent fixture which results in a violation of the covenant restricting
26 lands to certain uses or the violation of a set-back line provision. When an alleged

27 violation or complaint is based upon a continuous violation of the covenant resulting from
28 an act or omission, the right of action shall accrue each time such act or omission occurs.
29 This Code section shall not be construed so as to extend any applicable statute of
30 limitations affecting actions in equity."

31 **SECTION 2.**

32 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code
33 Section 44-3-89, relating to expansion of condominiums and amendments to declarations,
34 as follows:

35 "44-3-89.

36 (a) No condominium shall be expanded except in accordance with the provisions of the
37 declaration and this article.

38 (b) Any expansion shall be deemed to have occurred at the time of the recordation of plats
39 or plans pursuant to subsection (c) of Code Section 44-3-83 and an amendment to the
40 declaration effecting the expansion duly executed by the declarant, all other owners or
41 lessees of the additional property being added to the condominium, and all mortgages of
42 the additional property being added to the condominium. The amendment shall contain a
43 legal description by metes and bounds of the additional property being added to the
44 condominium and shall reallocate undivided interests in the common elements, votes in the
45 association, and liabilities for future common expenses all in accordance with the
46 provisions of the declaration.

47 (c) Notwithstanding any other provision of this article, a condominium may be expanded
48 by the association at any time after the declarant's right to expand the condominium has
49 expired, provided that the unit owners of units to which two-thirds of the votes in the
50 association appertain, or such higher amount as may be required by the declaration,
51 exclusive of any vote or votes appurtenant to any unit or units then owned by the declarant,
52 consent to an amendment to the governing documents expanding the condominium under
53 the same terms and conditions as set forth in an explicit reservation of an option or options
54 to expand the condominium contained in the condominium instruments as required by
55 subsection (b) of Code Section 44-3-77; and provided, further, that such explicit
56 reservation existed within the first seven years of the recording of the governing
57 documents. The amendment shall contain a legal description by metes and bounds of the
58 additional property being added to the condominium and shall reallocate undivided
59 interests in the common elements, votes in the association, and liabilities for future
60 common expenses all in accordance with the provisions of the declaration. The
61 amendment shall be executed by all owners or lessees of the additional property being
62 added to the condominium and all mortgagees of the additional property being added to the

63 condominium. Additionally, the agreement of the required majority of unit owners to the
 64 amendment shall be evidenced by their execution of the amendment. In the alternative, the
 65 sworn statement of the president, any vice president, or the secretary of the association
 66 attached to or incorporated in an amendment executed by the association, which sworn
 67 statement states unequivocally that agreement of the required majority was otherwise
 68 lawfully obtained and that any notices required under this article were properly given, shall
 69 be sufficient to evidence the required agreement."

70 **SECTION 3.**

71 Said title is further amended in Code Section 44-3-101, relating to control of a condominium
 72 association by a declarant, surrender of control to unit owners, liability for books and
 73 records, and cancellation of leases and contracts, by revising subsection (c) as follows:

74 "(c)(1) Notwithstanding and prior to the usual expiration of the period of the declarant's
 75 right to control the association pursuant to subsection (a) of this Code section and
 76 notwithstanding any provision to the contrary in any condominium instruments, the
 77 association's articles of incorporation, or the association's bylaws, the right to control also
 78 may pass to the unit owners as provided in this subsection if the declarant fails to do any
 79 of the following:

80 ~~(1)(A) incorporate the association~~ Incorporate or maintain an annual registration
 81 pursuant to subsection (a) of Code Section 44-3-100;

82 ~~(2)(B) cause~~ Cause the board of directors to be duly appointed and the officers to be
 83 elected pursuant to subsection (b) of Code ~~section~~ Section 44-3-100;

84 ~~(3)(C) maintain~~ Maintain and make available to owners, upon written request, a list of
 85 the names and business or home addresses of the association's current directors and
 86 officers;

87 ~~(4)(D) call~~ Call meetings of the members of the association in accordance with the
 88 provisions of the association's bylaws at least annually pursuant to Code
 89 Section 44-3-102; ~~or~~

90 ~~(5)(E) prepare~~ Prepare an annual operating budget, ~~and~~ establish the annual
 91 assessment, and distribute ~~the~~ such budget and notice of assessment to the owners in
 92 accordance with the condominium instruments no later than 30 days after the beginning
 93 of the association's fiscal year; ~~or~~

94 (F) Pay property taxes on common property of the condominium for two or more
 95 years.

96 (2) In the event that the declarant fails to meet one or more of the obligations of this
 97 subsection, then any owner, acting individually or jointly with other owners, may send
 98 the declarant written notice of the failure to comply with such requirements and provide

99 the declarant a 30 day opportunity to cure the failure; and such notice shall be sent by
 100 certified mail or statutory overnight delivery to the declarant's principal office. If the
 101 declarant fails to cure any or all deficiencies identified in the notice within 30 days of
 102 such notice, then any owner, acting individually or jointly with other owners, ~~may file a~~
 103 petition shall have standing individually, and not solely through a derivative action, to
 104 institute an action in the superior court of the county in which any portion of the
 105 condominium is located in order to obtain ~~an order~~ a declaratory judgment to grant the
 106 owner or owners control of the association by ordering an election and setting the terms
 107 thereof, or issuing any other orders appropriate to transfer control of the association. The
 108 superior court shall have authority to hold a hearing and issue a summary ruling on said
 109 ~~petition~~ action at any time designated by the court not earlier than 20 days after the
 110 service thereof, unless the parties consent in writing to an earlier trial. No discovery shall
 111 be had unless ordered by the court for good cause. In addition, the superior court shall
 112 be authorized to issue a summary ruling on the conveyance of any intended common
 113 areas or other property in the common interest community to the association or other
 114 appropriate entity. If the owner or owners prevail in such action, then the superior court
 115 shall award to the owner or owners all reasonable attorney's fees and costs incurred ~~by~~
 116 ~~the owners~~ for the prosecution of such action. This subsection shall not be the basis for
 117 any liability against any party or agent of any party outside of the exclusive remedies
 118 provided herein."

119 **SECTION 4.**

120 Said title is further amended by adding a new Code section to read as follows:

121 "44-3-232.1.

122 (a) Notwithstanding and prior to the usual expiration of the period of the declarant's right
 123 to control the association pursuant to any property owners' association instruments, the
 124 association's articles of incorporation, or the association's bylaws, the right to control may
 125 pass to the property owners as provided in this Code section if the declarant fails to do any
 126 of the following:

127 (1) Incorporate or maintain an annual registration pursuant to subsection (a) of Code
 128 Section 44-3-227;

129 (2) Cause the board of directors to be duly appointed and the officers to be elected
 130 pursuant to subsection (b) of Code Section 44-3-227;

131 (3) Maintain and make available to owners, upon written request, a list of the names and
 132 business or home addresses of the association's current directors and officers;

133 (4) Call meetings of the members of the association in accordance with the provisions
 134 of the association's bylaws at least annually pursuant to Code Section 44-3-230;

135 (5) Prepare an annual operating budget, establish the annual assessment, and distribute
 136 such budget and notice of assessment to the owners in accordance with the condominium
 137 instruments no later than 30 days after the beginning of the association's fiscal year; or
 138 (6) Pay property taxes on common property of the association for two or more years.
 139 (b) In the event that the declarant fails to meet one or more of the obligations of this Code
 140 section, then any owner, acting individually or jointly with other owners, may send the
 141 declarant written notice of the failure to comply with such requirements and provide the
 142 declarant a 30 day opportunity to cure the failure; and such notice shall be sent by certified
 143 mail or statutory overnight delivery to the declarant's principal office. If the declarant fails
 144 to cure any or all deficiencies identified in the notice within 30 days of such notice, then
 145 any owner, acting individually or jointly with other owners, shall have standing
 146 individually, and not solely through a derivative action, to institute an action in the superior
 147 court of the county in which any portion of the property owner's association is located in
 148 order to obtain a declaratory judgment to grant the owner or owners control of the
 149 association by ordering an election and setting the terms thereof, or issuing any other orders
 150 appropriate to transfer control of the association. The superior court shall have authority
 151 to hold a hearing and issue a summary ruling on said action at any time designated by the
 152 court not earlier than 20 days after the service thereof, unless the parties consent in writing
 153 to an earlier trial. No discovery shall be had unless ordered by the court for good cause.
 154 In addition, the superior court shall be authorized to issue a summary ruling on the
 155 conveyance of any intended common areas or other property in the common interest
 156 community to the association or other appropriate entity. If the owner or owners prevail
 157 in such action, then the superior court shall award to the owner or owners all reasonable
 158 attorney's fees and costs incurred for the prosecution of such action. This Code section
 159 shall not be the basis for any liability against any party or agent of any party outside of the
 160 exclusive remedies provided herein."

161 **SECTION 5.**

162 Said title is further amended in Code Section 44-5-60, relating to covenants running with the
 163 land, effect of zoning laws, covenants and scenic easements for use of public, renewal of
 164 certain covenants, and costs, by adding a new paragraph to subsection (d) to read as follows:

165 "(5)(A) Notwithstanding and prior to the usual expiration of the period of covenants
 166 restricting land to certain uses affecting planned subdivisions containing no fewer than
 167 15 individual plots as provided for by this subsection, the right to control any entity
 168 formed for the purpose of enforcing such covenants may pass to the subdivision plot
 169 owners as provided in this paragraph if such entity fails to do any of the following:

170 (i) Incorporate or maintain an annual registration pursuant to the terms of the
171 covenants;
172 (ii) Cause the board of directors to be duly appointed and the officers to be elected
173 pursuant to the terms of the covenants;
174 (iii) Maintain and make available to owners, upon written request, a list of the names
175 and business or home addresses of the entity's current directors and officers;
176 (iv) Call meetings of the members of the entity in accordance with the provisions of
177 the covenants;
178 (v) Prepare an annual operating budget, establish the annual assessment, and
179 distribute such budget and notice of assessment to plot owners in accordance with the
180 provisions of the covenants no later than 30 days after the beginning of the entity's
181 fiscal year; or
182 (vi) Pay property taxes on common property in the planned subdivision for two or
183 more years.

184 (B) In the event that an entity formed for the purpose of enforcing covenants restricting
185 land to certain uses fails to meet one or more of the obligations of this paragraph, then
186 any plot owner, acting individually or jointly with other plot owners, may send such
187 entity written notice of the failure to comply with such requirements and provide the
188 entity a 30 day opportunity to cure the failure; and such notice shall be sent by certified
189 mail or statutory overnight delivery to the entity's principal office. If the entity fails to
190 cure any or all deficiencies identified in the notice within 30 days of such notice, then
191 any plot owner, acting individually or jointly with other plot owners, shall have
192 standing individually, and not solely through a derivative action, to institute an action
193 in the superior court of the county in which any portion of the entity is located in order
194 to obtain declaratory judgment to grant the plot owner or owners control of the entity
195 by ordering an election and setting the terms thereof, or issuing any other orders
196 appropriate to transfer control of the entity. The superior court shall have authority to
197 hold a hearing and issue a summary ruling on said action at any time designated by the
198 court not earlier than 20 days after the service thereof, unless the parties consent in
199 writing to an earlier trial. No discovery shall be had unless ordered by the court for
200 good cause. In addition, the superior court shall be authorized to issue a summary
201 ruling on the conveyance of any intended common areas or other property in the
202 common interest community to the association or other appropriate entity. If the plot
203 owner or owners prevail in such action, then the superior court shall award to the plot
204 owner or owners all reasonable attorney's fees and costs incurred for the prosecution
205 of such action. This paragraph shall not be the basis for any liability against any party
206 or agent of any party outside of the exclusive remedies provided herein."

207 **SECTION 6.**

208 Said title is further amended in Chapter 12, relating to rights in personality, by adding a new
209 Code section to read as follows:

210 "44-12-236.1.

211 (a) As used in the Code section, the term:

212 (1) 'Area' means any county in which a telephone cooperative provides telephone service
213 and any county adjacent thereto.

214 (2) 'Telephone cooperative' shall have the same meaning as provided for the term
215 'cooperative' in Code Section 46-5-62.

216 (3) 'Telephone service' shall have the same meaning as provided for in Code
217 Section 46-5-62.

218 (b) All patronage dividends or capital credits held by a telephone cooperative that are
219 presumed abandoned pursuant to this article in a given calendar year may, in lieu of
220 payment of delivery to the commissioner pursuant to this article, be donated to a nonprofit
221 organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code
222 that supports education or economic development in the area if the telephone cooperative
223 has:

224 (1) Maintained for at least six months on the telephone cooperative's website or on a
225 public posting in the telephone cooperative's main office, a list of the names and last
226 known addresses of all owners of property held by the telephone cooperative that have
227 been presumed abandoned, together with instructions on how to claim such property; and

228 (2) Published in the legal organ in the county in which the telephone cooperative's main
229 office is located notice of the last date to claim property that has been presumed
230 abandoned. Such notice shall be published within three to six months prior to the last
231 date to claim the property and shall state that the names of the owners may be found at
232 the telephone cooperative's website or main office."

233 **SECTION 7.**

234 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
235 transportation, is amended in Chapter 5, relating to acquisition and loss of property, by
236 adding a new Code section to read as follows:

237 "46-5-64.1.

238 (a) Venue in proceedings against a cooperative shall be determined in accordance with the
239 Constitution of Georgia and this Code section.

240 (b) Unless otherwise required by the Constitution of Georgia, a cooperative may be sued
 241 only in the county of its residence, as described below:

242 (1) Each cooperative authorized to transact business in this state shall be deemed to
 243 reside in the county where its registered office is maintained. If any such cooperative
 244 fails to maintain a registered office, it shall be deemed to reside in the county in this state
 245 where its last named registered office or principal office, as shown by the records of the
 246 Secretary of State, was maintained;

247 (2) Each cooperative authorized to transact business in this state shall be deemed to
 248 reside and may be sued on contracts in the county in which the contract sought to be
 249 enforced was made or is to be performed, if it has an office and transacts business in that
 250 county; or

251 (3) Each cooperative authorized to transact business in this state shall be deemed to
 252 reside, and may be sued for damages because of torts, wrong, or injury done, in the
 253 county where the cause of action originated, if it has an office and transacts business in
 254 that county."

255 **SECTION 8.**

256 Said title is further amended by revising Code Section 46-5-78, relating to bylaws of
 257 cooperative generally, as follows:

258 "46-5-78.

259 The board of directors shall adopt the first bylaws of a cooperative to be adopted following
 260 an incorporation, conversion, combined consolidation and conversion, merger, or
 261 consolidation. Thereafter, the board of directors shall have the power to alter, amend, or
 262 repeal the bylaws, or adopt new bylaws, unless such power is reserved exclusively to the
 263 members of the cooperative by this part, the articles of incorporation, or bylaws previously
 264 adopted by the members; provided, however, that any bylaws adopted by the board of
 265 directors may be altered, amended, or repealed and new bylaws may be adopted by the
 266 members. The members may prescribe that any bylaws adopted by them shall not be
 267 altered, amended, or repealed by the board of directors. The members shall may adopt,
 268 amend, or repeal the bylaws by the affirmative vote of a majority of those members voting
 269 thereon at a meeting of the members. The bylaws shall set forth the rights and duties of
 270 members, directors, and shareholders, if any, and may contain other provisions for the
 271 regulation and management of the affairs of the cooperative not inconsistent with this part
 272 or with its articles of incorporation."

273 **SECTION 9.**

274 Said title is further amended by adding a new Code section to read as follows:

275 "46-5-92.1.
 276 (a) Unless the bylaws provide otherwise, upon the death of a member or former member
 277 who is a natural person, the board of directors shall have authority, but shall not be
 278 required, to pay revenues allocated but not previously paid to such member or former
 279 member.
 280 (b) If the member or former member dies testate, such payments shall be made to the
 281 person who is the executor of the estate of the decedent at the time of the payment.
 282 (c) If the member or former member dies intestate and the cooperative is provided a copy
 283 of letters of administration for the estate of the decedent, such payments shall be made to
 284 the administrator of the estate named therein.
 285 (d) If the member or former member dies intestate and the cooperative is not provided a
 286 copy of letters of administration of the estate of the deceased and such payment
 287 is \$2,500.00 or less, such payment shall be made to the persons listed below and according
 288 to the priority indicated:
 289 (1) To the surviving spouse of the decedent;
 290 (2) If no surviving spouse, then to the surviving children of the decedent, pro rata;
 291 (3) If no surviving children, then to the surviving mother and father of the decedent,
 292 pro rata; or
 293 (4) If no surviving parent, then to the surviving brothers and sisters of the decedent,
 294 pro rata.
 295 (e) If the member or former member dies intestate and the cooperative is not provided a
 296 copy of the letters of administration and such payment is greater than \$2,500.00, such
 297 payment shall be made to the person entitled thereto under the laws of descent and
 298 distribution of this state.
 299 (f) Payment to the persons listed in subsections (b) through (e) of this Code section shall
 300 operate as a complete acquittal and discharge to the cooperative from any action, claim, or
 301 demand of whatever nature for the amount so paid by any heir, distributee, or creditor of
 302 the decedent or any other person. Payment to such persons is authorized to be made as
 303 provided in subsections (d) and (e) of this Code section without the administration of the
 304 estate of the decedent and without the necessity of obtaining an order that no administration
 305 is necessary."

306 **SECTION 10.**

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