

House Bill 1308

By: Representatives Holly of the 116th, Bell of the 75th, Hutchinson of the 106th, Glaize of the 67th, and Park of the 107th

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 a short
4 title; to provide for definitions; to require declarants, developers, or other establishing entities
5 to provide for budgets and reserve account funding for maintenance of community amenities;
6 to require performance and maintenance bonds for community amenities; to implement
7 requirements and procedures for turnover and transition from declarants, developers, or other
8 establishing entities to property owners comprising the community association; to provide
9 for civil causes of action for violations; to provide for civil penalties for violations and the
10 recovery of litigation costs; to provide for related matters; to provide for an effective date and
11 applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

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

H. B. 1308

- 1 -

16 "ARTICLE 8

17 44-3-260.

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

20 44-3-261.

21 As used in this article, the term:

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

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

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

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

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

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

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

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

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

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

55 44-3-262.

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

66 the unit or property owners upon creation of such community association and upon
67 turnover and transition.

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

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

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

87 44-3-263.

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

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

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

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

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

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

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

116 44-3-264.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 170 other establishing entity had knowledge of at any time in the development of the
171 condominium;
- 172 (12) Insurance policies;
- 173 (13) Copies of any certificates of occupancy that may have been issued for the
174 condominium property;
- 175 (14) Any other permits applicable to the condominium property which have been issued
176 by governmental bodies and are in force or were issued within one year prior to the date
177 the unit owners other than the declarant, developer, or other establishing entity took
178 control of the condominium association;
- 179 (15) All written warranties of the contractor, subcontractors, suppliers, and
180 manufacturers, if any, that built the condominium property or condominium association
181 properties that are still effective;
- 182 (16) A roster of unit owners and their addresses and telephone numbers, if known, as
183 shown on the declarant's records;
- 184 (17) Leases of the common elements and other leases to which the condominium
185 association is a party;
- 186 (18) Employment contracts or service contracts in which the condominium association
187 is one of the contracting parties or service contracts in which the condominium
188 association or the unit owners have an obligation or responsibility, directly or indirectly,
189 to pay some or all of the fee or charge of the person or persons performing the service;
- 190 (19) All other contracts to which the condominium association is a party;
- 191 (20) A turnover and transition inspection report included in the official records, under
192 seal of an architect or engineer authorized to practice in this state, attesting to required
193 maintenance, useful life, and replacement costs of common elements, including, but not
194 limited to, the roof, structure, fireproofing and fire protection systems, elevators, heating
195 and cooling systems, plumbing, electrical system, swimming pool or spa and equipment.

196 seawalls, pavement and parking areas, drainage systems, painting, and irrigation systems;
197 and
198 (21) A copy of the certificate of a surveyor and mapper recorded, or the recorded
199 instrument, that transfers title to a unit in the condominium which is not accompanied by
200 a recorded assignment of the declarant's, developer's, or other establishing entity's rights
201 in favor of the grantee of such unit, whichever occurred first.

202 44-3-265.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

258 (4) A copy of the bylaws;

259 (5) The minute books, including all minutes;

260 (6) The books and records of the association;

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

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

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

266 (10) All association funds and control thereof;

267 (11) All tangible property of the association;

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

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

272 (14) Any and all insurance policies in effect;

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

274 (16) Any and all warranties in effect;

275 (17) A roster of current homeowners and property owners and their addresses and
276 telephone numbers and section and lot numbers;
277 (18) Employment and service contracts in effect;
278 (19) All other contracts in effect to which the association is a party; and
279 (20) The financial records, including, but not limited to, financial statements of the
280 association and source documents from the incorporation of the association through the
281 date of turnover and transition. The records shall be audited by an independent certified
282 public accountant licensed by this state for the period from the incorporation of the
283 association or from the period covered by the last audit, if an audit has been performed
284 for each fiscal year since incorporation by an independent certified public accountant
285 licensed by this state. All financial statements shall be prepared in accordance with
286 generally accepted accounting principles and shall be audited in accordance with
287 generally accepted auditing standards. The certified public accountant performing the
288 audit shall examine to the extent necessary supporting documents and records, including
289 the cash disbursements and related paid invoices to determine if expenditures were for
290 association purposes and the billings, cash receipts, and related records of the association
291 to determine that the declarant was charged and paid the proper amounts of assessments.
292 Audits required by this paragraph shall be paid for by the declarant, developer, or other
293 establishing entity.

294 44-3-266.

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

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

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

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

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

328 affidavit except for good cause shown or may be liable for civil penalties provided in this
329 article.

330 (4) The declarant, developer, or other establishing entity shall correct and bear the cost
331 of any substandard conditions identified by the inspection by the governing jurisdiction
332 or any other source prior to the transfer of the infrastructure, common areas, and
333 amenities or control responsibilities from the declarant, developer, or other establishing
334 entity to the community association. In lieu of making the corrections, the declarant,
335 developer, or other establishing entity may provide a bond to the community association
336 in an amount sufficient to correct the identified deficiencies.

337 (5) At least 60 days prior to turnover and transition, the declarant, developer, or other
338 establishing entity shall provide the executed certification affidavit to the governing
339 jurisdiction with enforcement action over the property of the community association, with
340 a copy to the community association, which affidavit shall attest and certify that the items
341 to be turned over under this article are fully completed as designed or modified to provide
342 equivalent functional performance, or have deficiencies remaining to be completed as
343 specifically identified in the affidavit.

344 (6) Failure of the declarant, developer, or other establishing entity to provide the required
345 certification affidavit shall subject the declarant, developer, or other establishing entity
346 to the civil penalties provided under this article. Said affidavit shall be maintained by the
347 governing body as a public record and shall be subject to disclosure under Article 4 of
348 Chapter 18 of Title 50, relating to open records.

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

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

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

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

362 (1) All recreational areas are complete and operational;

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

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

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

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

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

375 (1) All permanent street numbers are displayed;

376 (2) All proposed disability parking and accessibility is complete;

377 (3) All handrails and guardrails are installed properly;

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

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

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

- 382 (7) A written warranty has been provided;
383 (c) With respect to common or private property subject to restrictions to avoid
384 negative impact to the public or environment:
385 (1) All areas with slopes of 40 percent or greater subject to the steep slope
386 ordinance have been defined by a properly recorded easement;
387 (2) All buffers, setbacks, and easements have been properly recorded and are
388 clearly identifiable; and
389 (3) All temporary erosion control measures have been removed;
390 (d) With respect to other items:
391 (1) All conditions of zoning have been complied with; and
392 (2) All construction and other areas subject to erosion have been stabilized with
393 appropriate vegetation or other acceptable measures; and
394 (e) Deficiencies that currently exist and that will require action before use or
395 maintenance at routine level may be achieved are as follows: (list and describe such
396 deficiencies)'

397 44-3-267.

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

404 44-3-268.

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

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

410 44-3-269.

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

418 **SECTION 2.**

419 This Act shall become effective on January 1, 2025, and shall apply to all property included
420 on a plat first filed on or after such date.

421 **SECTION 3.**

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