

House Bill 292

By: Representatives Reeves of the 99th, Silcox of the 53rd, Hilton of the 48th, Kelley of the 16th, and Stoner of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 7 of Article 5 of Chapter 3 of Title 44 of the Official Code of Georgia
2 Annotated, relating to miscellaneous provisions regarding time-share projects and programs,
3 so as to revise procedures regarding nonjudicial foreclosure of time-share estates; to provide
4 for notice; to provide for interests of mortgagees; to provide for trustees; to provide for
5 recording of time-share interests; to provide for sales of encumbered time-share estates and
6 proceeds of same; to provide for transfer of title; to provide for related matters; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Part 7 of Article 5 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated,
11 relating to miscellaneous provisions regarding time-share projects and programs, is amended
12 by revising Code Section 44-3-206, relating to foreclosure by owners' association,
13 procedure, and effect of sale, as follows:

14 "44-3-206.

15 (a)(1) An owners' association, or its managing agent on behalf of the owner's association,
16 may foreclose its lien for all assessments and other charges assessed by the owners'

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17 association upon a time-share estate pursuant to the time-share instrument or
18 subsections (a) and (b) of Code Section 44-3-109, and in accordance with the judicial
19 foreclosure procedure of subsection (c) of Code Section 44-3-109 or 44-3-232, as
20 applicable, or may foreclose its lien under a power of sale that such owners' association
21 shall have in accordance with the trustee foreclosure procedure under this Code section
22 in order to sell a time-share estate for the purpose of paying any or all unpaid assessments
23 and other charges owed by the owner of such time-share estate. If the time-share
24 instrument contains any provision specifically prohibiting the use of the trustee
25 foreclosure procedure, or if the owners' association otherwise determines that the
26 time-share instrument should be amended to specifically provide for the use of the trustee
27 foreclosure procedure, an amendment to the time-share instrument permitting the use of
28 the trustee foreclosure procedure set forth in this Code section must be adopted and
29 recorded prior to the use of the trustee foreclosure procedure. Prior to the owners'
30 association's first use of the trustee foreclosure procedure, it shall notify all owners of
31 time-share estates in the time-share program that, after the date of the notification, the
32 owners' association has the right to elect to use the trustee foreclosure procedure with
33 respect to any foreclosure of assessment liens as established in this Code section. The
34 owners' association, or its managing agent on behalf of the owners' association, shall be
35 deemed to have complied with this notice requirement if the owners of time-share estates
36 in the time-share program are informed by mail sent to each owner's property address that
37 was most recently provided to the owners' association, in the notice of an annual or
38 special meeting of the owners, by posting on the website of the applicable time-share
39 program, or by any other communication used by the owners' association.

40 (2) A mortgagee may foreclose its mortgage upon a time-share estate in accordance with
41 Part 2 of Article 7 of Chapter 14 of this title or may foreclose its mortgage pursuant to the
42 trustee foreclosure procedure under this Code section in order to sell a time-share estate
43 for the purpose of satisfying any obligation of the owner of such time-share estate created

44 by such mortgage; provided, however, that the mortgage, or an amendment to a mortgage
45 executed by the owner of the time-share estate, permits the trustee foreclosure procedure.

46 (b)(1) For the purpose of carrying out and effectuating a trustee foreclosure authorized
47 by this Code section, the owners' association or mortgagee, as applicable, shall appoint
48 a trustee or substitute trustee by recording a notice of appointment of trustee or notice of
49 substitution of trustee in the official records of the county in which the time-share estate
50 is located. The owners' association or mortgagee may appoint multiple trustees in a
51 single appointment, and any appointed trustee may be used by the owners' association,
52 its managing agent, or the mortgagee, as applicable, regarding the trustee foreclosure of
53 any assessment lien or mortgage under any time-share project for which the trustee is
54 appointed. The recorded notice of appointment of trustee or notice of substitution of
55 trustee shall contain the name and address of the trustee or substitute trustee, the name
56 and address of the owners' association or mortgagee, and the name and address of the
57 time-share project.

58 (2) For purposes of this Code section, an attorney who is a member in good standing of
59 the State Bar of Georgia and who has been practicing law for at least five years, or that
60 attorney's law firm, or a title insurer, underwriter, or agent authorized to transact business
61 in this state is permitted to serve as a trustee or substitute trustee. A trustee shall use
62 good faith, skill, care, and diligence in discharging all of the trustee duties under this
63 Code section and shall deal honestly and fairly with all parties. A trustee who
64 intentionally violates the provisions of this Code section concerning the trustee
65 foreclosure procedure shall be guilty of a felony and shall be punished by a fine of not
66 more than \$5,000.00 or imprisonment for not less than one year nor more than three
67 years, or both.

68 (c)(1) Before initiating the trustee foreclosure procedure against any time-share estate,
69 a claim of lien or mortgage against the time-share estate shall have been recorded in the
70 county in which the time-share estate is located.

71 (2) In any trustee foreclosure proceeding, the trustee shall first deliver to the owner of
72 the time-share estate a written notice of default sent by registered or certified mail or
73 statutory overnight delivery, return receipt requested, to the owner's property address that
74 was most recently provided to the owners' association or mortgagee and no later than 30
75 days prior to the initiation of the trustee foreclosure procedure. The notice of default
76 shall be deemed delivered on the official postmark day or the day on which it is received
77 for delivery by a commercial delivery firm. The notice of default shall state:

78 (A) The intent of the owners' association or mortgagee to commence foreclosing on the
79 assessment lien or mortgage, after the end of the 30 day period, using the trustee
80 foreclosure procedure set forth in this Code section;

81 (B) The address and telephone number of the trustee and owners' association, its
82 managing agent, or the mortgagee, as applicable;

83 (C) The legal description of the time-share estate;

84 (D) The nature of the default;

85 (E) The outstanding amounts secured by the assessment lien or mortgage and a per
86 diem amount to account for further accrual of such amounts;

87 (F) The method by which the owner of the time-share estate may cure the default; and

88 (G) The right of the owner of the time-share estate to object to the use of the trustee
89 foreclosure procedure and require the owners' association or mortgagee to proceed
90 thereafter only with a judicial foreclosure action as to that specified default by
91 delivering a written objection to the trustee within 20 days after the delivery date of the
92 notice.

93 (3) At any time before the trustee foreclosure sale of the encumbered time-share estate
94 is consummated pursuant to subsection (e) of this Code section, the owner of the
95 time-share estate may cure the default and redeem the time-share estate by paying the
96 amounts secured by the assessment lien or mortgage in cash or certified funds to the
97 trustee. No right of redemption shall exist after the consummation of the sale.

98 (d)(1) In order for an owners' association to foreclose its lien upon a time-share estate
99 under a power of sale, a notice of sale shall be a trustee to sell an encumbered time-share
100 estate foreclosed under this Code section:

101 (A) The trustee must have provided the written notice of default as required under
102 paragraph (2) of subsection (c) of this Code section, and a period of at least 30 calendar
103 days must have elapsed after such notice of default is deemed delivered;

104 (B) The trustee must not have received from the owner of the time-share estate a
105 written objection to the use of the trustee foreclosure procedure prior to the end of the
106 20 day period provided for in the notice of default and the time-share estate was not
107 redeemed under paragraph (3) of subsection (c) of this Code section;

108 (A)(C) The trustee must have delivered a notice of sale meeting the requirements of
109 paragraph (4) of this subsection to the owner of the time-share estate, Accomplished in
110 writing sent by registered or certified mail or statutory overnight delivery, return receipt
111 requested, to the property address of the owner of the time-share estate most recently
112 provided to the owners' association or mortgagee no later than 30 days prior to the date
113 of the proposed sale and the notice of sale shall be deemed given delivered on the
114 official postmark day or the day on which it is received for delivery by a commercial
115 delivery firm;

116 (B)(D) Provided in writing The trustee must have delivered a copy of the notice of sale
117 to any junior lien holder of record, sent by registered or certified mail or statutory
118 overnight delivery, return receipt requested, no later than 30 days prior to the date of
119 the proposed sale. The notice of sale shall be deemed delivered on the official
120 postmark day or the day on which it is received for delivery by a commercial delivery
121 firm; and

122 (E) The trustee must have recorded a copy of the notice of sale in the official records
123 of the county in which the time-share estate is located not less than 30 days prior to the
124 date of the proposed sale; and

125 ~~(C)~~(F) ~~Provided by advertising~~ The trustee must have published a notice the time,
126 place, and terms of said sale in a newspaper in which sheriff's advertisements are
127 published in the county where the development is located in the legal organ for the
128 county in which the time-share estate is located, or if there is no newspaper designated
129 as such, then in the nearest newspaper having the largest general circulation in such
130 county, once a week during the four calendar weeks immediately preceding the
131 calendar week of the date of such sale. The last of such notices shall be published at
132 least seven calendar days prior to the date of the sale.

133 (2) If a notice of lis pendens has not previously been recorded, the recording of the notice
134 of sale shall have the same force and effect as the filing of a lis pendens in a judicial
135 proceeding.

136 (3) Any trustee foreclosure sale pursuant to this subsection shall be conducted by the
137 trustee, or by an agent of the trustee under the supervision of the trustee, and shall occur
138 on a legal sale day within the legal hours of sale at the legal place of sale designated in
139 the notice of sale, which must be accessible to the public in the county where the
140 development time-share estate is located. The trustee foreclosure sale may also occur
141 online at a specific website on the internet or in any other manner used for a judicial
142 foreclosure sale procedure in the county in which the time-share estate is located.

143 (4) The notice of sale required by paragraph (1) of this subsection shall be in writing and
144 shall state:

145 (A) The name of the owner of the time-share estate;

146 (B) The legal description of the time-share estate;

147 (C) The name and address of the trustee;

148 (D) A description of the default that is the basis for the foreclosure;

149 (E) The recording information for the assessment lien or mortgage;

150 (F) The amounts secured by the assessment lien or mortgage and a per diem amount
151 to account for further accrual of the amounts secured by the assessment lien or
152 mortgage; and

153 (G) The date, location, and starting time of the trustee foreclosure sale, which shall be
154 between the hours of 9:00 A.M. and 4:00 P.M., eastern standard time.

155 (e)(1) At the trustee foreclosure sale, the trustee shall issue to the highest bidder, who has
156 paid the price bid in cash or certified funds, as purchaser or purchasers, a certificate of
157 sale stating that a foreclosure conforming to the requirements of this Code section has
158 occurred, including the time, location, and date of the sale; a legal description of the
159 time-share estate that was sold; the amounts secured by the assessment lien or mortgage;
160 the amount of the highest bid; and the name of the purchaser. Within three days of the
161 trustee foreclosure sale, a copy of the certificate of sale shall be sent by registered or
162 certified mail or statutory overnight delivery, return receipt requested, to the owner of the
163 time-share estate at the owner's property address that was most recently provided to the
164 owners' association or mortgagee. Upon the issuance of a certificate of sale, all of the
165 rights of redemption of the owner of the time-share estate that have been foreclosed under
166 this Code section shall terminate.

167 (2) Within ten calendar days after a sale, absent the prior filing and service on the trustee
168 of a judicial action to enjoin issuance of the trustee foreclosure deed to the time-share
169 estate, the trustee shall issue a trustee foreclosure deed to the purchaser and deliver the
170 trustee foreclosure deed to the clerk of the superior court for recording in the official
171 records of the county in which the time-share estate is located. The trustee foreclosure
172 deed shall include the name and address of the trustee, the name and address of the
173 purchaser or purchasers, the name and address of the former owner of the time-share
174 estate, and a legal description of the time-share estate. The trustee foreclosure deed shall
175 contain no warranties of title from the trustee. A certificate of compliance confirming
176 that the notice and publication requirements of this Code section were met, that the

177 default was not cured, that the trustee did not timely receive any written objection to the
178 trustee foreclosure procedure from the owner of the time-share estate, and that the
179 time-share estate was not timely redeemed shall be executed by the trustee and attached
180 as an exhibit to the trustee foreclosure deed.

181 ~~(c)~~(3) A sale and delivery of the trustee foreclosure undertaken as authorized by this
182 Code section shall divest the owner of the time-share estate of all right, title, interest, and
183 equity that such owner has in or to the time-share estate and shall vest fee simple title to
184 the time-share estate in the purchaser or purchasers at ~~said~~ the trustee foreclosure sale.
185 The issuance and recording of the trustee foreclosure deed is presumed valid and may be
186 relied upon by third parties without actual knowledge of irregularities in the trustee
187 foreclosure proceedings.

188 (4) The proceeds of ~~said~~ the trustee foreclosure sale shall be applied first in accordance
189 with the lien priorities set forth in paragraphs (1) through (4) of subsection (a) of Code
190 Section 44-3-109, after which any remaining proceeds shall be applied to the payment in
191 full of such unpaid assessments and other charges or mortgage obligations, as applicable,
192 and next to the payment of all expenses actually incurred by the owners' association in
193 connection with ~~said~~ the trustee foreclosure proceedings, including attorneys' fees, ~~and~~
194 ~~any~~ Any remaining proceeds shall be paid to the prior owner of the time-share estate.
195 The owners' association or mortgagee, as applicable, may bid at ~~said~~ the sale and
196 purchase the time-share estate and receive a credit up to the amount of unpaid
197 assessments and other charges or mortgage obligations, as applicable, and all expenses
198 actually incurred by the owners' association or mortgagee, as applicable, in connection
199 with the trustee foreclosure proceedings, including attorney's fees.

200 (5) A trustee foreclosure sale releases the prior owner of the time-share estate of liability
201 for any and all amounts secured by the assessment lien or mortgage, as applicable. The
202 owners' association or mortgagee, as applicable, has no right to any deficiency judgment

203 against the prior owner of the time-share estate after the completion of the trustee
204 foreclosure sale of the time-share estate under this Code section.

205 ~~(d) For the purpose of carrying out and effectuating the power of sale authorized by this~~
206 ~~Code section, the owners' association shall be constituted the true and lawful~~
207 ~~attorney-in-fact of such owner to sell such time-share estate, as provided in this Code~~
208 ~~section, and convey the same to the purchaser or purchasers at said sale in as full and ample~~
209 ~~a manner as such owner could do in person. The power and agency hereby granted are~~
210 ~~coupled with an interest and are irrevocable by death or otherwise."~~

211 **SECTION 2.**

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