

The Georgia Property Owners' Association Act ("POA") was adopted in 1994 to expand the powers of homeowners associations. The members of the association must "opt-in" to be governed by the POA through an amendment to the declaration.

Some of the benefits of the POA include the following:

#### Automatic Statutory Liens

After submitting to the POA, the association will no longer be required to file liens at the county courthouse for unpaid assessments or other charges. Instead, the POA creates an automatic statutory lien against a delinquent owner's lot. The declaration itself serves as notice that there is a lien for any unpaid assessment or other charges. As a result, closing attorneys, title examiners, purchasers or owners will generally contact the association for a statement of any amounts owed to the association prior to concluding a sale or refinance of the lot. The statutory lien also results in a secured claim of the association against an owner if the owner files for bankruptcy.

#### Joint and Several Liability to Pay Assessments

The POA provides that unless the declaration of covenants states otherwise, the grantee (or buyer) of a house is jointly and severally liable with the grantor (or seller) for all unpaid assessments. That means that if the automatic statutory lien is not paid at the closing, the association can proceed against the new owner who will be personally liable for all amounts owed prior to the closing. Our amendment to adopt the POA removes any language that eliminates the joint and several liability. (Note that the new owner can then seek reimbursement from the previous owner, but the association would not be involved in that dispute.)

#### Late Fees and Interest

The POA allows the association to charge a late fee of the greater of \$10.00 or ten percent (10%) of the amount due, and interest at a rate of ten percent (10%) per annum on unpaid assessments and charges. The statutory support for such charges removes the court's discretion on whether to allow those charges to be collected.

### Attorney's Fees and Costs of Collection

The POA provides statutory support for the recovery of the association's costs of collection of the delinquent assessments, including reasonable attorney's fees actually incurred. Again, this statutory support removes the court's discretion on whether to allow the Association to recover its reasonable attorney's fees.

### Specific Assessments

The POA allows a board may specifically assess expenses to an owner if the conduct of the owner or the owner's tenants or guests caused the expense. We add this right to the declaration in the amendment. For example, if an owner or owner's child damages common property that the association then pays to repair, or an owner causes the association to incur attorney's fees in covenant enforcement against the owner, then those amounts may be specifically assessed against the owner.

### Tenants

The POA also clarifies that all owners and tenants (i.e., people who rent a house in the community from the owner) must comply with all the provisions of the declaration of covenants and the association's rules and regulations.

### Leasing Restrictions

One of the important benefits of the POA is that it states Code Section 44-5-60 shall not apply to a declaration submitted to the POA. That Code Section has been held by Georgia courts to prevent the ability of an association to enforce leasing restrictions against owners that did not vote in favor of the amendment adopting the POA. Now that the association adopted the POA via the Board's authority, leasing restrictions can be adopted by a vote of the members and enforced against all members (whether they voted for or against the leasing amendment) excluding only those actually renting their homes at the time the leasing restrictions were adopted.

### Fines and Suspension

The POA gives the association a statutory power to assess fines against violators and to suspend the common area use rights of violators, provided the ability to fine and suspend are stated in the declaration. We add those terms as part of the amendment. Fines constitute a lien against the violator's lot, and the ability to fine

significantly strengthens the association's powers to enforce the covenants and the rules and regulations.

#### Perpetual Duration

Essentially, Georgia law at Code Section 44-5-60 generally provided that covenants can be terminated by a vote of the members. Code Section 44-5-60 shall not apply to a declaration submitted to the POA. Adopting the POA means that the covenants survive for perpetual duration and that the Code Section does not apply.

## Foreclosures

Community associations cannot fulfill their obligations related to maintenance, repair, and operations without owners paying their assessments. The primary purpose of foreclosure is to terminate the delinquent owner's ownership of the property to keep past due assessments from continuing to accrue OR to force that owner to pay what is due. The association must still sue the owner and obtain a judgment before it can foreclose. The POA authorizes judicial foreclosures of the association lien subject to prior mortgages or liens. This means that associations governed by POA are no longer required to pay off the owner's existing mortgage or lien prior to foreclosure. This does not mean, of course, that the owner's existing mortgage or lien simply disappears. Instead, any mortgage or lien will remain in place against the property after the association forecloses and will need to be paid off to avoid a subsequent foreclosure by the holder of that mortgage or lien.