

THE GEORGIA POA ACT AND YOUR ASSOCIATION

WHY YOU SHOULD CONSIDER SUBMITTING YOUR ASSOCIATION TO THE POA ACT

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WHAT IS IT: Following a trend across the country, in 1994 Georgia passed the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et.seq. ("Act") This Act set-out a statutory scheme for Homeowners Associations regarding familiar covenant provisions for such items as the collection of assessments, voting, notice of meetings, and powers and duties of Associations. Homeowners Associations in existence at the time the Act was passed did not automatically become subject to this law. Instead each Homeowners Association, whether incorporated prior to 1994 or this year, must pass an amendment to its Declaration of Covenants ("Declaration") if it wishes to submit itself to the terms and conditions of the Act.

WHY: The POA Act gives certain provisions of your covenants the force of law. For instance, most Association's Declarations state that unpaid Assessments along with late charges will become a lien in favor of the Association. However, the lien must be filed in the County Records to perfect this right of the Association. An Association that has become a POA has an automatic statutory lien against any Owner who is delinquent in his or her assessments, fines or other reasonable charges.

Although filing a physical notice on the County records is still recommended, so that any title examiner can easily see it, the lien became perfected at the time the assessments were incurred by the homeowner. This is particularly important if the Owner files Bankruptcy or the lot is sold before the physical notice can be filed. The Act provides that the Declaration itself serves as notice to prospective purchasers that they should contact the Association for a statement of account before they can close the loan or the sale of the home.

Some other helpful provisions of the Act are the standard requirements that the Association can charge the greater of \$10.00 or 10% of the amount due for late charges; interest at the rate of 10 % per annum from the date the assessment was due and payable; and the authorization of the recovery of reasonable attorney fees actually incurred, which allows the attorney to keep collection fees reasonable for the Association. In addition, the Act allows the Association to file suit for a court order allowing them to foreclose on an assessment lien subject to any mortgages...as opposed to having to pay-off the mortgages at the foreclosure.

There are also requirements about quorums and the notice for meetings - members receive 21 days notice before an Annual Meeting and 7 days notice before a Special Meeting. All of these provisions have the force of law when an Association is a POA. The Act also clarifies that the homeowners cannot be sued individually for a claim against the Association.

There are some other provisions of importance, especially for Associations that were created prior to 1993, when Georgia Law provided that covenants expire after twenty years. Section 44-3-234 of the Act states that the Law does not apply to those older Declarations that submit themselves to the Act. Additionally, Section 44-3-226(f) of the Act states that when a POA amends their Declaration that the adoption of the amendment shall be presumed valid if a suit in challenge of the validity of the amendment is commenced more than one year after the recording of the amendment on the public record.

HOW: To become a POA an Association has to amend its Declaration to state that it submits to the POA. The Association then has to change certain provisions of the Declaration to reference the Act. It also has to address any conflicting provisions such as, amounts of interest rates and late charges and meeting notice requirements, to comply with the requirements of the Act. This amendment requires the consent of the number of Owners stated in the Declaration for any other amendment, unless the Declarant has put in a special provision allowing for the amendment by the Board, without a vote of the membership, when all lots have been sold.

WHY NOT: One of the main reasons that Developers did not initially submit their new developments to the Act was because of a provision that prohibited any Lots from being exempt from assessments. Developers wanted to be exempt from assessments until the Lot was sold to a builder or homeowner. This section of the Act has not been amended to allow Developers to be exempted from assessments on their Lots.

One other point for Associations to consider is that since the POA Act is statutory, it can be amended by the Georgia legislature to provide for new provisions that will govern your Association if it has submitted itself to the POA. The advantages of submitting to the Act have to be weighed against the disadvantage of any future amendments to the Act. On the other hand, future amendments to the Act may provide additional benefits to the Association.