

THE GEORGIA POA ACT AND YOUR ASSOCIATION

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WHAT IS IT: Following a trend across the country, in 1994 Georgia passed the 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 SUBMIT: The POA Act contains certain benefits for an HOA. 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 an 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 to recovery of reasonable attorney fees actually incurred for collection action against a homeowner is delinquent in payment of assessments. This allows the association to recover their attorney fees from the delinquent homeowner, rather than being absorbed by the owners who pay on time. The Act also 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 Code Section 44-5-60 (b) provided that covenants expire after twenty years. Section 44-3-234 of the Act states that this portion of Georgia Law does not apply to those older Declarations that submit themselves to the Act, which in effect allows for the perpetual duration of the Declarations of Associations that become POAs. 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.

Finally, those Associations that become a Georgia POA have the advantage of not being subject to Section 44-5-60 (4) of the Georgia Code. This code section states that “no change in the covenants which imposes a greater restriction on the use or development of the land will be enforced unless agreed to in writing by the owner of the affected property at the time such change is made.” This advantage is most readily apparent in those Associations who wish to pass amendments to their Declaration to enact stricter leasing restrictions.

If an Association is not a POA, then a homeowner who did not affirmatively vote for the new leasing restriction could attempt to argue that they were not subject to the new leasing restrictions because of Section 44-5-60 (4). However, in an Association that is a POA all owners are subject to the new restrictions on the use of their lots, if the amendment is validly passed by the required percentage of members needed to pass an amendment to the Declaration.

HOW TO SUBMIT: 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 as stated in the Declaration for any other amendment.

WHY NOT SUBMIT: One of the main reasons that developers did not initially submit their new subdivisions to the Act was a provision that required the developer to pay assessments for Lots not yet built out. Developers wanted to be exempt from assessments until a Lot was sold to a builder or homeowner. The Act has now been amended to allow Developers to exempt Lots under certain conditions.

One 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. Although this should be taken into consideration, the advantages of submitting to the Act probably outweigh any disadvantages of future amendments to the Act. It is also just as possible that future amendments to the Act may provide additional benefits to the Association.