

## Georgia Property Owners' Association Act

The Georgia Property Owners' Association Act ("POA") was adopted in 1994 to expand the powers of homeowners associations. Weissman, Nowack, Curry & Wilco was instrumental in the adoption of the POA. The POA does not, however, apply automatically. Instead, the developer of a community or the members of a community's homeowners association must "opt in" to be governed by the POA. The "opt in" process generally takes place either by the developer when the developer initially creates the declaration of covenants for the community, or by the members of the homeowners association through an amendment to the declaration.

Unfortunately, developers of most communities do not submit their communities' covenants to the POA. Thus, it is usually after the developer finishes development of a community, or is close to finishing, that the members of the homeowners association are able to submit the community to the POA.

While many homeowner associations have already submitted to the POA, many still have not. We strongly encourage communities to do so. The process is relatively simple and inexpensive but the benefits are great. To submit to the POA, the association must follow the specific amendment process set forth in its declaration of covenants. For example, if the declaration states that the amendments require approval of two-thirds of the association members, then approval of such two-thirds would be needed to submit to the POA. Some of the benefits of the POA include the following:

### 1. 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 for any sums owed to the association. The POA provides that the declaration of covenants itself serves as notice that there is a lien on every lot in the community for any unpaid assessment or other charges. As a result, closing attorneys, title examiners, purchasers or owners must contact the association for a statement of any amounts owed to the association prior to concluding a sale or refinance of the lot, or risk the existence of a lien. If the association is not paid out of the proceeds of the sale or refinance, the lien continues against the lot and will generally have priority over subsequent liens and mortgages.

An additional tremendous benefit of the POA's automatic lien is that it protects the association even if the association's records have incorrect or misspelled owner names. Recorded liens are only effective if filed under the correct owner names. If the association's records have an owner's name misspelled the recorded lien may be ineffective. The POA makes the lien effective, even if you have incorrect or no information about an owner.

### 2. Buyers and Sellers are Jointly and Severally Liable to Pay Assessments

The POA includes another provision that generally strengthens an association's assessment collection powers. The POA makes buyers and sellers jointly and severally liable for all unpaid assessments. This 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.

### 3. Tenants are Obligated to Comply With Association Regulations

The POA also clarifies that all owners and tenants must comply with all the provisions of the declaration of covenants and the association's rules and regulations.

#### **4. Fines and Suspension of Privileges**

The POA gives the association a statutory power to assess fines against violators and to suspend the common area use rights of violators, if specified in the declaration. 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.

#### **5. Late Fees and Interest**

Submission to 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, if specified in the declaration.

#### **6. Recovery of Attorney's Fees from Owners**

The POA authorizes the recovery of the association's costs of collection of the delinquent assessments, including reasonable attorney's fees actually incurred. This provision is extremely helpful with judges who otherwise are reluctant to grant the association its attorneys fees, when it sues delinquent or violating owners.

#### **Perpetual Duration**

Prior to 1993, Georgia law at Code Section 44-5-60(d)(1) generally provided that covenants expire after twenty years. That statute was amended in 1993 to permit covenants to automatically renew, but the Georgia courts have held that covenants in communities that were recorded prior to 1994 do not receive the benefit of the new 1994 law. One of the extremely important benefits of the POA is that it has a provision that states Code Section 44-5-60(d)(1) shall not apply to any covenants contained in any instrument submitted to the POA. That means that if a community's covenants were recorded prior to 1994, submission to the POA now will eliminate the possibility that the covenants will expire after twenty years.

Check your documents. This is crucial because your documents may otherwise expire under the law.

Fortunately, the amendment process to obtain the consent of the association members can often be done by mail or by going door to door, depending upon the specific amendment provisions within a community's governing documents. While owners rarely oppose submitting to the POA, associations often face the problem of overcoming owner apathy. Developing a strategy to adopt the POA can therefore be the key to obtaining the necessary approval of the owners needed to amend the community's declaration of covenants.