

# New laws help condo, home associations

Condominium and homeowners associations should seriously consider amending their legal documents to take advantage of two laws just passed by the Georgia General Assembly.

The laws become effective July 1, 1994, and greatly improve an association's ability to operate and collect assessments. The laws, however, do not apply automatically to associations.

Instead, the association's legal documents must be amended to incorporate the beneficial provisions of the new laws. Set forth below is a summary of the important provisions of each bill.

## Property Owners Association Act (POA Act)

One of the bigger problems faced by homeowners associations is the collection of membership dues or assessments. While the legal documents for most communities reference that the association may file a lien when an owner fails to pay, there has previously not been a state statute in Georgia authorizing the lien of a homeowners association. The new POA Act changes that and establishes a statutory lien for unpaid dues for all communities subject to the new law.

Not only that, but the lien is automatic. In other words, homeowners associations do not need to file a physical lien in the courthouse to protect their rights. As soon as an owner is delinquent in paying his or her dues, a lien automatically attaches to the property.

The Act effectively requires closing attorneys and title examiners to contact the homeowners association for a statement of any amounts owed on the lot in connection with any sale.

More importantly, the new POA Act also provides that, if the homeowners association files a lawsuit against an owner to collect unpaid assess-



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ments, the actual attorneys' fees incurred by the association become a part of the lien against the owner's lot.

In giving homeowners associations stronger powers to collect assessments, the new law recognizes the important role that homeowners associations play and the need for them to have a steady cash flow to meet their obligations.

The POA Act also clarifies that all owners and tenants must comply with all lawful provisions of the covenants and the association's rules and regula-

tions, permits associations to assess fines against violators and suspend the common area use rights of violators, provides that associations may create architectural control committees, and requires tort claims to be brought against the association rather than individual lot owners.

Finally, communities subject to the POA Act can have their covenants run perpetually and not expire after 20 years. This is important for many of the newer planned communities that have essentially been set up as private governments with ongoing functions that would grind to a halt if the covenants were to expire.

Both existing and new homeowners associations may be submitted to the POA Act. Developers may, but are not required to, submit new developments to the Act when creating a homeowners association. Existing homeowners associations may submit to the POA Act by amending their

protective covenants to expressly subject the development to the Act.

## Amendments to the Georgia Condominium Act

The Georgia Condominium Act was also amended in this term of the Georgia General Assembly. The most significant change was to authorize condominium associations to terminate utility services (such as water) which are paid as common expenses.

However, this authority is conditioned on several factors: (1) the authority to terminate common utility services must be contained in the condominium documents; (2) the association must have a final judgment or final judgments in excess

of a total of \$750; (3) the association must follow the suspension standards and notice requirements imposed on the institutional providers providing such services to the condominium development. The new law will give associations a "big stick" to collect dues from seriously delinquent owners who benefit from the services provided by the Association without paying for them.

The new law also provides that approval of any proposed amendment to a condominium association's legal documents by a lender or mortgagee shall be deemed implied and consented to if the lender fails to submit a response to any written proposal for an amendment within 30 days after the mortgagee receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

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suspended an owner's vote, for example, for not paying assessments, and the association then amends its legal documents, it does not have to count the suspended owner's vote for any purpose.

The changes reflected in these new laws have been long advocated by condominium and homeowners associations. With relief finally at hand, look for lots of amendments to the legal documents in communities of this type.

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