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Benefits of the Georgia Property Owners' Association Act

The Georgia Property Owners' Association Act ("POA") was adopted in 1994 to expand the powers of homeowners associations. 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. Accordingly, 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 declaration of covenants to the POA by "opting-in" through an amendment to the declaration. For example, if the declaration of covenants states that the declaration may be amended by the consent of two-thirds of the association members, the consent of such two-thirds will be needed in order to submit the declaration of covenants to the POA. 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. In other words, the association will no longer have to file individual liens against lots in order to secure unpaid assessments; rather, the POA provides that the declaration of covenants 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. 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. The Association also has the ability to foreclose its lien without having to pay off superior liens which makes foreclosure an affordable collection option for the chronic delinquent.

Joint and Several Liability to Pay Assessments

The POA includes another provision that generally strengthens an association's assessment collection powers. That is, 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. (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

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. These provisions must also be stated within the declaration of covenants, so as part of the amendment process, we generally will include these provisions to strengthen the community's collection powers.

Attorney's Fees and Costs of Collection

The POA authorizes the recovery of the association's costs of collection of the delinquent assessments, including reasonable attorney's fees actually incurred. If your community's declaration of covenants does not already use the term "attorney's fees actually incurred," we generally will include that provisions as part of the amendment process.

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.

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 of covenants. We will therefore generally include such provisions as part of the amendment process. 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 & Ability to Impose More Restrictive Use Restrictions on Land

Prior to 1993, Georgia law at Code Section 44-5-60 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 shall not apply to any covenants contained in any instrument submitted to the POA. Also, as part of the amendment process when we submit a community's covenants to the POA, we will generally include an amendment that the covenants will be for a perpetual duration.

Additionally, submission to the POA allows an Association to place more restrictive use restrictions on property in the community. Code Section 44-5-60 prevents associations from enforcing amendments to covenants that are more restrictive unless an owner consents to the more restrictive provisions. The provision stating that Code Section 44-5-60 no longer applies removes that limitation from associations submitted to the POA. For example, amendments tightening leasing restrictions would be unenforceable against an owner who did not consent to the amendment.