

The following information pertains to the Georgia Property Owners' Association Act, Georgia Code Article 44-3-220 thru 235. I have the full text available (an eleven page Word document) and will provide a copy on request.

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. The actual amendment is simply to add a declaration to the Covenants stating that the Covenants are subject to the Georgia Property Owners' Association Act. The portion of the Code relevant to already existing HOAs (such as Whisper Creek) states this as follows:

A property owners' development shall come into existence upon...the amendment of a recorded declaration in accordance with Code Section 44-3-235. Any declaration or amendment intending to bring or avail a development of the benefits and provisions of this article shall state an affirmative election to be so governed....Any such amendment to an existing declaration shall be executed in accordance with the terms of the recorded declaration being amended thereby.

Our Covenants do NOT include any discussion of amendment procedures. The Association by-laws specify a quorum for a member's meeting is 10% of those eligible to vote (an amazingly small number, in my opinion, but that's what they say). The POA also specifies alternative methods for securing member approval, some of which are very simple.

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. 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.

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

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.