THE GEORGIA PROPERTY OWNERS' BILL OF RIGHTS ACT

Do We Have To Amend Our Covenants?

Michael Rome, Esq.
www.hoa-attorneys.com

The Georgia legislature has passed laws effective on January 1st, 2027, which will affect every type of community association, including common law HOAs, condominiums, and property owners' associations. The legislation creates a new statutory framework that applies to all associations entitled the Georgia Property Owners Bill of Rights Act ("Rights Act"). In addition, amendments were made to the Georgia Property Owners' Association Act ("POA Act").

A popular question from board members and property managers is whether or not their covenants or declaration need to be amended. The answer is "Yes and No". The covenants or declaration should be amended, but not in a way requiring owners to vote.

Some portions of the new laws take precedent over the language currently in an association's governing documents. A couple of these provisions apply to all types of associations, and others will only apply to covenants controlled by the POA Act.

ALL ASSOCIATIONS

Application of Partial Payments.
A partial payment from a delinquent Owner must be applied in the following order: (i) Regular assessments; (ii) Special assessments; (iii) Specific assessments; and (iv) Attorney fees & Fines.

Acceleration of Assessments Prohibited.
For owners' associations that have assessments paid other than annually (monthly, quarterly, semi-annually), a delinquent owner's account cannot be accelerated to include future payments due during the year.

ONLY POA ASSOCIATIONS

30 Day Notice of Attorney's Fees
Before attorney's fees can be added to an owner's account, the association must first send a 30 day notice via certified mail, stating the balance due and listing the attorney's fees to be applied if not paid within 30 days of receipt.

Foreclosure of Assessment Lien.
Notice of foreclosure must now be sent at least 60 days prior to suit rather than 30. Also, the delinquency of regular assessments must equal at least $4,000, or $2,000 if it is for 12 months of assessments. Regular assessments do not include special assessments or fines.

To answer the initial question about amending the covenants or declaration, they will need to be amended to reflect the new laws. Since the new legislation takes precedence over current governing document provisions, the amendments can be filed on the deed records as a "*Notice of Covenant Amendment by Operation of Law*." This document can be executed by the Board without a vote of the owners.

One of the new laws allows owners to file a complaint with the Georgia Secretary of State's Office about any grievance they have with an association. This in turn triggers an administrative hearing and decision. One grievance could be that the covenants do not reflect the new requirements under the Georgia statutes. Also, from a practical viewpoint, it could be very confusing for the covenants to retain provisions invalid under current law.

Some covenants and declarations expressly state they can be amended without a vote of the owners to reflect changes in the law, even absent such a provision the Notice can still be executed by the Board without a vote of the owners. (What are the owners going to do…vote down the new laws?) Our firm's flat fee for drafting and filing the Notice is $550 plus filing costs. Please contact us for further information at info@hoa-attorneys.com