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## GEORGIA COURTS STRIKE A BLOW TO HOA'S

***A new court decision means that many homeowner associations are facing much lower interest on past due assessments and may lose the ability to charge late fees!***

Recently, the Georgia Court of Appeals rendered a decision that will negatively impact many homeowners associations that have not yet adopted the Georgia Property Owners Association Act.

The Court recently held, in Northside Bank v. Mountainbrook of Bartow County, that unless the declaration of a homeowner association states a specific interest rate to be charged on delinquent assessments the association can only charge interest at the rate of 7%. This is much lower than typically charged by most associations. Compounding the hit to community associations, the Court also ruled that late fee covenants that allow a board of directors to decide the amount of the fee, rather than state a specific late fee amount, constitute an impermissible penalty and therefore are invalid.

For many homeowner associations, this means no late charges and reduced interest. Traditionally, many homeowner association declarations state that the association can recover interest at the "maximum legal rate per annum," without stating a specific rate. Most associations have interpreted the maximum legal rate to be 18%, based on statutory law and previous court decisions holding the higher rate to be appropriate for any payment of money for the furnishing of goods and services. However, this will no longer be permitted going forward, as the Court has explicitly stated that interest at the "maximum legal rate per annum" only allows for 7% interest.

As to late fees, the Court articulated specific requirements that must be met for late fee provisions to be enforceable in court, including that the provision state a specific late





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charge reasonably related to damages to the association caused by the delinquency.

This ruling certainly will impact many homeowner associations. It not only will reduce revenue to many communities, but it will eliminate or soften an effective collection tool for many communities.

What about condominiums and communities submitted to the Georgia Property Owners' Association Act (POA)? For these communities, the case may have less impact. This ruling appears to apply *only* to homeowner associations that have not submitted to the Georgia Condominium Act (GCA) or the POA. Since the GCA and the POA specify maximum late charges (10%) and interest rates (10% per annum), associations that have submitted to the GCA or the POA should be entitled to continue to charge these late charges and the higher interest rate.

What should homeowner associations do next if not submitted to the POA? Certainly amending the declaration to adopt the POA is a solution for many communities. The POA appears to resolve the late charge and interest problem, but also gives communities much greater collection and enforcement powers. For more about the importance and value of the POA, see [L&J's QuickFacts™](#).

For many homeowner associations, the community declaration may allow the board of directors to adopt the POA, without a homeowner vote. Where a homeowner vote is required, many communities have had great success getting homeowner support to gain the great benefits created by adopting the POA. If your community cannot amend your declaration to address these issues, then the best option is to begin the collections process early to minimize the impact of a lower interest rate and possible loss of late charges.

**Lazega & Johanson**  
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