

# L&J QUICK FACTS

## GEORGIA PROPERTY OWNERS' ASSOCIATION ACT

### THE BASICS

The Georgia Property Owners' Association Act (POA) is a Georgia law adopted in 1994, specifically for homeowner associations. L&J attorneys lead the drafting and adoption of the POA.

The POA was created to define the power and authority of homeowner associations, similar to those laws governing condominium associations. The primary purpose of the POA is to strengthen HOA collection powers.

The POA is a VOLUNTARY law. It does not apply automatically to all homeowner associations. Instead, the POA only applies to communities which "opt in" and choose to adopt the POA. The "opt in" process generally takes place either: (i) by the developer when the developer initially creates the declaration of covenants for the community; or (ii) by the members of the association through an amendment to the existing declaration.

The developers of most communities do not submit their communities to the POA, despite the benefits the POA would offer the community. Therefore, most communities are left having to amend their legal documents to submit to the POA.

### PRIMARY BENEFITS OF THE POA INCLUDE:

- **AUTOMATIC STATUTORY LIENS** — After submitting to the POA, the association is not required to file liens at the county courthouse for unpaid assessments. Instead, the POA creates an automatic statutory lien against a delinquent owner's lot. The declaration of covenants itself serves as notice to the world that there is a lien for any unpaid assessments or other charges.
- **INCREASED COLLECTION AUTHORITY, INCLUDING:**
  - **Attorneys' Fees and Costs of Collection** — The POA authorizes the recovery of the association's costs of collection of any delinquent assessments and other charges, including reasonable attorneys' fees actually incurred. Without including this specific language in the association's governing documents, some courts improperly reduce the attorneys' fees awarded to the association, thereby leaving the association with a legal bill to pay.
  - **Late Fees and Interest** — Submission to the POA allows an association to charge a late fee of the greater of \$10.00 or 10% of the amount due, and interest at a rate of 10% per annum on unpaid assessments and other charges.
  - **Joint and Several Liability to Pay Assessments** — The POA provides that, unless the declaration of covenants states otherwise, the buyer of a lot is jointly and severally liable with the seller for all unpaid assessments. Therefore, if an association's automatic statutory lien is not paid at closing, the association can proceed against the new owner, who will be personally liable for all amounts owed prior to the closing.
  - **Judicial Foreclosure** — The POA allows an association to judicially foreclose on its liens for assessments or other charges over \$2,000. **This means the association has the right to obtain an order from the court allowing the association to foreclose on its lien without first paying off all superior liens.** The superior liens, usually a first priority mortgage or lien for ad valorem taxes, will remain on the property and become the responsibility of the new owner.
- **TENANT COMPLIANCE** — The POA clarifies all owners and tenants must comply with the declaration of covenants and the association's rules and regulations. Violations of the governing documents by a tenant will be treated, in many instances, as a violation by the owner.
- **ENFORCEABLE AMENDMENTS** — Based on a recent case some covenant amendments might be enforceable only against owners who consented to the amendment. By submitting to the POA, communities can ensure all covenant amendments are enforceable against all owners in the community, including those who did not vote or disapprove the amendment.
- **FINES AND SUSPENSION** — The POA grants the association a statutory power to assess fines against violators of the association's governing documents and to suspend the common area use rights of those violators, provided that the association's ability to fine and suspend are expressly stated in the declaration of covenants. This significantly strengthens the association's powers to enforce its legal documents.
- **PERPETUAL DURATION** — Prior to 1993, Georgia law generally provided that covenants expire after 20 years. In 1994, the law was amended to permit covenants to automatically renew. Yet, Georgia courts have subsequently held that covenants in communities recorded prior to 1994 do not receive the benefit of the 1994 law. The POA, however, provides that the 20-year limitation on covenants does not apply to any covenants submitted to the POA. As a result, a community that adopts the POA can avoid complicated and expensive community votes to renew or extend its covenants because its covenants will last in perpetuity.