



NOWACKHOWARD
COMMUNITY ASSOCIATION ATTORNEYS

COMMUNITY ASSOCIATION MANAGEMENT

Look Before You Leap



With Georgia law following the principle that since covenants and other restrictions (rules, regulations, design guidelines) on the use of a person's property are not favored, covenants and restrictions must be clearly established and will be strictly construed in favor of the property owner. Courts will not enlarge or expand the provision. Courts defer to enforcement as it is written, if it is enforceable.

Enforceability is determined initially by authority. Authority depends on the governing documents, laws, and cases. The Georgia Condominium Act (GCA) and the Georgia Property Owners Association Act (POAA) make that determination in two ways — provisions of each statute that are automatically included in a Declaration and those that must be stated expressly in order to be authorized.

- I. The following provisions of the GCA and POAA must be expressly stated in the Declaration to be enforceable. If you can't find it, don't leap to enforcement. (Code Sections: **GCA – Red**; **POAA – Green**)
- **44-3-76; 44-3-223** – To impose fines, suspend the voting rights and use of common property so long as no suspension shall deny any owner or occupant access to the Unit/Lot.
 - **44-3-76** – If voting rights suspended the vote shall not count for purposes of establishing a quorum or taking any action.
 - **44-3-76** – Water, gas, electricity, heat, and air conditioning being provided by the Association may be terminated only after a final judgment or judgments in excess of \$750.00 are obtained from a court.
 - **44-3-80 (b); 44-3-225 (b)** – Any common expenses occasioned by the conduct of less than all shall be specifically assessed against the Lot of the perpetrator.
 - **44-3-82 (c)** – A common element not previously assigned as a limited common element may be assigned only pursuant to the Declaration.
 - **44-3-89** – No condominium shall be expanded except in accordance with provisions of the Declaration and the Act.
 - **44-3-91** – Relocation of boundaries between adjoining units.
 - **44-3-92** – Subdivision of units.
 - **44-3-94** – The Association may allocate equitably the payment of a reasonable deductible for a casualty which the Association is required to insure. Amount may be up to \$5,000.00.
 - **44-3-109 (b); 44-3-232 (b)** – Assessments include a late charge not in excess of \$10.00 or 10% of each assessment, whichever is greater.
 - Interest at a rate not in excess of 10% per annum on each assessment or installment.
 - Costs of collection including reasonable attorney's fees actually incurred.
 - **44-3-80 (c); 44-3-225 (c)** – The Grantee is jointly and severally liable with the Grantor for all unpaid assessments.
 - **44-3-90** – An owner may make improvements to a unit that do not materially impair the structural integrity of the structure.
 - **44-3-99** – Property may be withdrawn from a condominium.
 - **44-3-103; 44-3-228** – A quorum is deemed present if persons entitled to cast more than 1/3 of the votes are present at the beginning of the meeting.
 - **44-3-104; 44-3-229** – A "Unit Owner" includes any shareholder, director, officer, partner, or trustee.
 - **44-3-105** – The Association is responsible to maintain, repair, replace, renovate, restore the common elements; owner is responsible for limited common elements and Units.
 - **44-3-106; 44-3-231** – Association has the right to grant easements, licenses, acquire property and the powers of the "Association" may be exercised by the Board of Directors.
- II. The following provisions of the GCA and the POAA are deemed to apply except to the extent prohibited in the documents or except to the extent the documents provide alternatives. You must determine if the Declaration is different than the statute.
- **44-3-75** – Any chutes, flues, ducts, conduits, wires, bearing walls, or any other apparatus lies partially in and partially out of the Unit's boundaries, the portion serving only the Unit are deemed a part of the Unit.



Subdivisions

Common issues that determine if you can leap:

- Exhibit describing property submitted to Declaration is left blank.
- Ambiguous, incomplete, or non-existent maintenance obligations for Dwellings and Lots.
- Phased subdivision: the additional property is left blank or the Developer fails to file a Supplemental Declaration adding property.
- Deed transferring the common property to the Association is not filed.
- Covenants recorded before 1994 may expire after 20 years. (O.C.G.A. 44-5-60 (b)).
- Unless submitted to the POAA, an amendment that imposes a greater restriction on a lot owner's use of property is binding only on those who voted for the change. (O.C.G.A. 44-5-60 (d))

Bylaws

- Must be adopted to create a corporation (14-3-206).
- Not required to be recorded in land records.
- Not required to be filed with the Secretary of State.
- If silent on issues, falls back to the Georgia Non-Profit Code. (O.C.G.A. 14-3-101 et seq.)

Articles of Incorporation

- Must be filed with Secretary of State to form a corporation.
- Must file an annual report with names of the officers and registered agent.
- Failure to file can result in the administrative dissolution of the corporation.

Rules, Regulations, and Fines

- Authority to adopt and enforce for common property and Units/Lots must be in recorded document.
- Unless expressly authorized, Rules and Regulations cannot:
 1. Create restrictions not found in a recorded document;
 2. Expand a restriction already in a recorded document;
 3. Conflict a provision of a recorded document.
- Conflict is a greater restriction or imposing control on an issue a Board is not authorized to implement.

Examples of Problematic Rules

- Leasing
- Vehicles
- Pets
- Pool
- Planters/yard art

Design Guidelines

- Cannot impose or expand a greater restriction on the development – *i.e.*, minimum square footage
- Will be enforced as written
- Words of limitation must be defined or court will impose the broadest common meaning of a term – *i.e.*, unless defined, a “pet” is any creature that is kept by a person.

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