

Clarification on proposed Amendments to the Covenants

Hello Highland Oaks Homeowners,

We (the HOA Board of Directors) are aware that there is opposition to our proposed amendment changes. One homeowner is posting strong commentary on Facebook and another has delivered a letter to homes asking people to vote no. The majority of information in the letter and being posted is not accurate. For this reason, we are clarifying why we have been working so hard to give everyone the information they need to make an informed decision with their vote. The important thing to remember is that we are all on the same team. We all live here and want what is best for our community. The Association exists for one purpose: to protect and hopefully improve property values in the community. It does this, in large part, by ensuring that people adhere to the rules and regulations set forth in the document that everyone agreed to when they purchased a home in the subdivision. That's it. It's not an "us vs. them" situation. We are all on the same team, and we all have the exact same goal: improve the community. This amendment is meant to facilitate that goal.

The article posted by Steve Sizemore on Facebook does a good job of describing components of the Georgia POA law. Thanks Steve.

<https://sistersinlaw.blogspot.com/.../georgia-property...>

[Sisters in Law: Georgia Property Owners' Association Act](#)

In that document, there is the statement that the POA law was passed to expand powers of homeowner's associations. That may be the source of some concern for our residents. However, while that might be true in general, that statement and other general criticisms of the law can only be evaluated in the context of what Covenants are already in place. You have to evaluate it only on what *specific changes* are being proposed for our association.

The law defines areas of what is allowed and supported by state law, but it **DOES NOT MANDATE** what you must have in the Covenants.

There are nine points in the article. Seven of the nine are about items that are **ALREADY** a part of our Covenants and for which either **NO change** is being proposed, or only a *minor clarification* is being made. One item is not part of the proposed amendment at all.

Only one of the nine items is an actual proposed change for which we need to adopt the POA Statute.

Some people have made the statement that our community is operating just fine without making changes, perhaps that is because ***we have already been following almost all the POA allowed practices!***

Comments against the proposal that claim we are dramatically expanding our powers or are "converting to a POA" are *a mischaracterization and are incorrect*. What is true is that the law provides stronger legal support for what we have or for the few changes we are recommending.

Please make your decision based only on what is proposed for our neighborhood in the actual proposed Amendment document and NOT on general comments unsupported by any specific evidence. Because there is only a single impact on the neighborhood in adopting the POA, i.e., giving us a legal base for adding the leasing restriction, there is ***NO downside whatsoever in adopting the Georgia POA law.***

Below are specific comments for each of the areas described in the article. Item 9 does a very good job of describing why it's ***necessary to adopt*** the POA statute to add leasing restrictions rather than as some have suggested just passing leasing Amendments without adopting the POA.

1. Automatic Statutory Liens

We ***already have the power to file liens for unpaid assessment amounts***. We file liens all the time for unpaid balances. Then, if the amount is subsequently paid, we cancel the lien. This process entails engaging our lawyer to create and cancel liens against properties. The proposed change adopts the creation of a lien automatically in the deed. Just *like the present*, this lien doesn't come into play unless an amount is owed at the time of the sale of a property. If at that time the owner owes money, it has to be settled at closing. By creating a lien automatically, it saves us the cost of continually creating and canceling liens. This saves the HOA legal and processing fees. In other words, regardless of the process to create a lien, it is dormant until the property changes hands, and then only if money is still owed.

This is a **BENEFIT** for all our homeowners. **This is only a change in process that will save us some money and does NOT change or add any new power to the HOA.**

2 Joint and Several Liability to Pay Assessments

This is an example of *an item allowed under the POA law that is not in our covenants in this form*.

This is also **NOT** a part of the proposed amendments and **NOT A change**.

3. Late Fees and Interest

We ***already have authority in our current covenants*** for this, so this power is **NOT** an addition or change. The POA law caps the interest rate at 10%. We currently charge 18%.

This is a **BENEFIT** for homeowners with delinquent balances.

4. Attorney Fees and Collection Costs

The language of "Reasonable attorney's fees actually incurred" and "collection costs" is currently in our covenants and is the practice we have been following for years, so *we already have authority in our current covenants for these costs*.

This power is **NOT an addition or change**, and is **NOT** in the proposed amendment

5. Specific Assessments

This is another provision that is *already contained in our Covenants*.

This is NOT an additional power or change, and is **NOT** in the proposed amendment

6. Tenants.

The POA Law clarifies that all owners and tenants (i.e., people who rent a house in the community from the owner) must comply with all the provisions of the covenants and the Association's rules and regulations. This requirement is ***already in our Covenants***. The only change is to require that the provision be written into the actual lease, but also declares it is assumed even if it's not written in the lease. Adopting the POA law provides added legal support for this requirement.

It is NOT an expansion of HOA authority or power, and only a minor change.

7. Fines and Suspension

The power to assess fines against violators and to suspend the common area use rights of violators is *already in our Covenants*.

This is NOT an additional power or change, and is NOT in the proposed amendment

8. Perpetual Duration

The article is accurate in describing the situation with confusion on duration of Covenants. Our Covenant language reflects this situation from 1993 and is hard to follow.

(Please read current Covenants Article XII Sections 3 Duration, and Section 10 Perpetuities.) This clearly states that the Covenants automatically renew every 10 years after the initial period, with some qualifying conditions, so implies a perpetual duration.

Adopting amendment simplifies and clarifies that the Covenants are perpetually attached to the deed.

This change is a clarification and is NOT a change in intent from our current Covenants.

9. Additional Restrictions

The POA article does a great job in explaining why the POA law *must be adopted* to add leasing restrictions to our Covenants. Basically, because of some uncertainty in Georgia law, it's the only way to ensure that the imposition of the restriction would be certain to apply to all residents.

This is the ONLY significant change related to the POA law that is being proposed in the Amendments.