Proposed Covenant Changes

POA Meeting 5/1/21 – Q & A

Choosing to be Governed by the Georgia Property Owners' Association Act - the "POA" Law

Q. Why are we attempting to implement a POA when since the inception of the Subdivision, we have had a HOA?

A. The Association's name will not change. Rather, we are electing that the HOA be governed under the provisions of the POA statute. We remain a Homeowner's. association that is defined as a "residential property owners' development…" This change allows the HOA to take advantage of some specific provisions of that law.

Q. Two participants commented that they have input from other attorneys that do not agree that a POA is beneficial.

A. The POA law has provisions that allow certain specific actions but does not mandate them. We are proposing to change our Covenants to take advantage of only certain provisions of that law, and to ensure that all of the new covenants are applicable to everyone in the community. Most provisions in the POA statute have already been part of our Covenants from the beginning, for example the ability to fine, and collection of attorney fees actually incurred.

The advice from our attorney, who has 16 years of experience in community association law, it is in the best interests of the Association to adopt this change. He is also quite certain that no attorney in the State of Georgia would provide that opinion, and is available to discuss with any other attorney, who may not be familiar with our community, and why he strongly believes that.

Q. Is there any data indicating that there are other Associations rushing to switch to a POA?

A. We are not actually "switching" to a POA, just formally declaring that our community will be subject to provisions of that law. The Association's attorney stated that adopting the POA is easily the most popular amendment that his firm prepares on behalf of community associations in Georgia. It has been so for years, and became even more popular after the Court of Appeals decision in the Charter Club v. Walker lawsuit, which found that an HOA that has not submitted to the POA, new restrictions will only apply to those who consent. In other words if we want the new leasing rules to apply uniformly to everyone in the community, the POA is required.

Q. Is the proposed change from HOA to POA a money maker for the POA (new leasing fees)?

A. No, this is not expected to contribute significant amounts of income to the Homeowners Association. It will, however, allow us to have a better chance of recovering money owed to the association in collection matters.

In addition, the Capital Initiation fee will help provide some added funds to our Capital Reserve Fund depending on turnover of properties.
Legal operating costs will likely be reduced, but new Leasing fees could be a slight increase in income depending on the actual administrative costs incurred to track lease permits, and other office fees.
(Note: As stated above we are not “Changing from” an HOA)

Q. what are the initial costs to homeowners when and if this adopted?

A. Zero

Q. I would like to hear the actual costs to each homeowner upon closing if these amendments pass.

A. There are NO direct costs to homeowners to adopt this change. The Association incurred some modest legal costs for legal advice and document preparation.

Q. Why are we only focusing on the leasing aspect instead of a complete review of the covenants that simplifies our future and eliminates all developer language as well.

A. A total rewrite is a time consuming and a more expensive project.
The changes proposed are predominately for Leasing but do include other changes.

As far as language in the Covenants related to the Developer, they are moot now that there is no longer any developer owned property in the neighborhood. It is just as easy to ignore them than to rewrite it all.

Q. Why are we having one vote for Leasing restrictions and POA together?

A. It is more efficient to make the change to subject the HOA to the POA statute and adopt the other changes in one effort. As discussed above, both require a change in the Covenants, and the leasing component of the amendment will only apply to everyone if the Association submits to the POA.

Q. The article attached to your meeting notice seems to imply that the POA issue is still in litigation, Is that true?

A. No. There is no pending litigation related to the POA.

Q. Will this benefit the attorney more than the homeowners.

A. No, there is no benefit one way or the other for our attorney. In fact, with some of the changes it likely will reduce effort for the cases that are referred to our attorneys for action. Either way we pay for their services by the hour. If anything, the POA will cause the Association to run more effectively, which may reduce operating costs.

Q. [The] POA reads as very restrictive; too restrictive.

A. The POA Statute is largely supplemental to our existing covenants. Otherwise stated, it provides additional support to the restrictions that we already have in place. *Adopting the POA in and of itself does not add any additional use restrictions whatsoever.*

Comment. POA is the differing degrees of enforcement from Board members.

A. We are not clear how to respond to this comment. There are NO changes in any of the provisions of our Covenants or By-Laws regarding community standards, ARC requirements, or enforcement processes.

Capital Initiation Fee

Q. Will a new homeowner be required to pay the Capital Contribution Assessment AND the annual assessment in effect for the year in which they purchased the property (assume the seller already paid the annual assessment)?

Is the Capital Contribution Assessment expected to be cared for at closing for the sale, or will the purchaser be able to pay the Assessment after closing?

A. The new owner/purchaser will be charged the Capital Contribution fee at closing but will not pay the annual assessment until the beginning of the next year.

Yes, the Initiation fee / Capital Contribution fee is to be included in the closing costs upon purchase of the property. This is analogous to a membership fee you might pay to join a tennis or swim club, or a country club.

For example, if you sold your house next week, the $575 fee would be collected at the closing, and the new owner would not be invoiced for the normal annual assessment until 2022.

Please note that the initiation fee is NOT intended to be a substitute for or a catch-up of annual assessments. It is a separate fee primarily to fund the Capital Reserve account for future major project spending, although that is not a strict requirement. In any case it will be a small additional amount of income depending on the turnover of properties in the neighborhood.

Leasing and Use Restrictions

Q. What is the limit of leasing homes in the neighborhood?

A. There currently is **NO** limit.
The proposed limit is 5%, which based on 259 homes, equals 13 properties.
Please note that the proposed Amendments also add clarification that businesses like Airbnb, VRBO and HomeAway that are very short rentals are prohibited.

Q. We didn't get a final answer on the call about the number of properties that are currently being leased due to time constraints. Please confirm, is correct number of properties currently leased 17?

A. The number is closer to 22 or 23, with at least one new one added just in the last few weeks. AMAG is currently contacting all owners for properties that we think are rentals to confirm the status and to obtain tenant information.

Q. From today's (5/1/21) meeting it sounded like most of the current issues related to properties being leased are owned by a corporation or LLC. Is this accurate? If not, please advise.

A. No, issues are not uniquely related to the type of owner. From what we know right now it appears only 7 of the 23 are corporate entities.

Q. I thought there is already a requirement under existing HOA language for tenants in a leased property to agree to, as part of the lease terms, to comply with all HOA covenants and that the tenant must be provided with the covenants document and to sign affirming their agreement to comply. I also thought there is already a requirement to provide the HOA with tenant names and contact information. During the call today, it sounded like that is not a requirement, or that at least it is not being uniformly being provided by property owners. Please clarify.

A. Yes, with current leases "*as part of the lease*" the tenant is supposed to be given our community covenants and must acknowledge receipt and must follow all the provisions of the Covenants. Their *lease* with the owner obligates them to comply, but our Covenants do NOT. We can evict them on behalf of the owner and charge the owner.
Also, current covenants do obligate the owner to provide the names of renters prior to the effective date to the Association, but we do not always receive the information.. More importantly there is no involvement with leasing at all before it happens. We don't know it even happened until it's already been executed. It is correct to say these provisions are not being uniformly followed.

The proposed Covenant change makes Board review of the proposed lease before it is initiated and makes the tenant *personally* liable for following the Covenants and paying assessments and other expenses while still maintaining the owner's liability as well. Non-Payment also stipulates that the lessee will be in default of their lease.

Also, current Covenants allow a minimum of a 6-month lease, this is increased to 12 months in the proposed change.

Q. What will be the rental process that will ensure equality amongst requestors

A. This is contemplated in the leasing provisions themselves. As it stands, all owners who are leasing at the time the amendment passes will be grandfathered in. Anyone else who would like to lease will be granted leasing permits on a first come, first-served basis. If the community runs of out of leasing permits, an owner may request to lease based on a hardship.

Since the current leased properties exceed the proposed limit, any additional requests would only be considered under the hardship provisions.

Q. Can you limit leasing without changing to a POA?

A. Yes, but the restrictions would only apply to those who consent. Going this route would be both confusing and challenging from an administrative standpoint. Adopting the POA provision makes the restrictions applicable to everyone.

Q. The proposal grandfathers all current owners doing leasing so the 5% goal may be in place long after our lifetime. What is the benefit?

A. Grandfathering is required by Georgia law. There is, however, the great benefit is that leasing is capped at the current number of leases (above 5%), or more, depending on additional "Hardship" Leases, which will discourage investors and landlords from purchasing homes in our community.

Q. There will be homeowners who may never sell their home, therefore grandfathering them in allows for them to keep leasing while others are limited to 1 year.

A. Again, grandfathering is required by Georgia law, and we cannot change this provision.
There is NO restriction limiting a leasing permit to only one year. Each lease may be renewed for successive 12 month periods as long as the leasing permit has not been revoked. Perhaps that was a misunderstanding related to the minimum length of a lease being increased to twelve months from six months.

Q. There is a disadvantage to property owners who are currently leasing their properties - they will be subject to new fees, correct?

A. Yes, $150 annually.

Q. In regard to a maximum of 5% of houses can be leased, is that number (between 8-9 properties based on 171 total properties?) on top of the grandfathered properties, or if there are 17 properties being leased and "grandfathered", since that number is already above the 5%, does that mean that NO new properties would be able to be leased (unless a Hardship Leasing Permit is granted by the Board)?

A. As stated earlier, we have 259 properties so 5% equals a limit of 13.
The second part is true. The current number is higher than the limit so **no** new rentals will be allowed unless a Hardship Permit is approved.

Q. If you are restricting Corp, you ultimately are restricting the homeowners, right?

A. We do not understand this question. The restrictions on the # of leases will apply to all property owners, regardless of whether they are a person or a legal entity.

Q. Will property owners who are currently leasing their property be required to pay for a professional landscaping company?

A. Yes. However, while there will be a requirement that all leased properties use a professional landscape company, the Board can waive the requirement on a case-by-case basis If the existing tenant has a history of properly maintaining the lot.

A participant had a comment regarding Occupancy of homes.

A. The leasing limits are not focused on the number of occupants of a home but are focused on keeping the community from adding large numbers of rental homes and becoming a rental community. The objective is to keep property values high. There are both Gwinnett County and Federal rules on occupancy limits but that is not a subject of this discussion.

Q. For homeowners who would be "grandfathered" (property is already being leased), would the Lease Initiation Fee be applicable to property owners where there is already a lease/tenant in place (or would the Lease Initiation Fee only be applicable when a new lease is negotiated)?

The fee is NOT a lease initiation fee, it is a lease Administration fee and would apply.

Q. The Amendment states, *"The Lease Administration Fee shall constitute a specific assessment as described in this Declaration and is **in addition to any actual costs that the Association may incur in hiring a third-party to administer leasing within the Community, which shall also be specifically assessed to the leasing Owner**."*
The language in bold above is very concerning.
What is the additional cost that would be assessed in year 1 of the POA (assuming the POA amendments are approved)?

The requirement for property owners to hand the POA/Board a “blank check”, on top of the $150 lease initiation fee, to pay third-party costs for administering leasing in the community, is by itself a reason to reject the POA proposal in its entirety as far as I’m concerned. If I am missing something here, please let me know.

A. The proposed changes do not require nor mandate the use of any third-party company for managing leases. We already have AMAG as our agent for managing the community including the current leased properties and we do not anticipate engaging another third party, especially since the total number of leased properties is expected to decline under this change limit.

The $150 fee would help offset any added costs charged by AMAG in administering these provisions.
In addition, it bears pointing out that if the Association were to use a third-party to handle the administration of leases in the community, the cost of that service would be paid to the third-party administrator, not the Association. Under no circumstance would it be considered a “blank check” to the Association – the Association would receive none of the fee.

The only additional cost in the first year after adopting these amendments is the $150 Lease Administration Fee for those Owners who are leasing their property.

Q. In regard to #2 above, will property owners who are leasing their property have any input in the vendor selection process (vendor administering leasing)?

A. We do not see a need to hire an additional leasing administration company. AMAG can handle any additional administrative duties related to leases.
In the event leasing in the community reaches a level where a third-party company might be considered necessary, it would be a Board decision to hire them.

Q. In paragraph f (1), the amendment states, “The Board may approve or disapprove the form of the lease.” Just to confirm that I understand, is this saying the Board only has approve/disapprove authority with certain lease terms/language and will NOT have approve/disapprove authority for the specific individual(s) seeking a lease?

A. Correct.

Q. In paragraph “l”, Lawn Service, the language states, “To ensure appropriate maintenance of the Lot in accordance with the Declaration, and for the benefit of the Association, the Owner or Occupant shall be required to maintain a professional lawn service during the entire term of the lease or occupancy relationship, unless such requirement is waived by the Board of Directors in writing.” For those homeowners who are grandfathered and where there is already a tenant lease in place, does this requirement to hire a “professional lawn service” become applicable with the first new lease (or lease renewal) executed after the POA is effective? It is a legal issue if

property owners are required to retroactively renegotiate lease terms where lawn maintenance/covenants compliance requirements are already in the lease.

A. Grandfathered owners will have to comply with this provision (or seek an exemption) starting with *the lease that is entered into after* the amendment becomes effective. The lease that is existing at the time the amendment becomes effective will not be affected.

Q. In regard to Lawn Service above, does the current professional lawn service that takes care of Highland Oak's common areas offer lawn maintenance contracts to individual property owners? If yes, please provide contact information. Note: if enough homeowners are interested in such a contract (not just leased properties), perhaps the company would be willing to reduce the rate the HOA ~~(or POA~~) pays for maintenance of common areas.

A. That is a good thought. We will research that. (We will still be an HOA)

Q. If a grandfathered property becomes vacant because the existing tenant is not interested in renewing the lease, as long as the property is leased within 90-days of becoming vacant, the property does not lose its grandfathered status, correct?

A. As discussed, grandfathering is now mandatory in Georgia. The statute is silent on this particular scenario, however, most likely, the owner would not lose grandfathering status.

Liens and Foreclosures

While this is a rare occurrence, we typically have anywhere from 2 to 5 properties that are in arrears or in bankruptcy requiring the services of our attorneys. Legal fees for the year are typically in the thousands or even tens of thousands of dollars. Although these fees are collectible it is sometimes a long-drawn-out process with no assurance of success.
The change to implement a lien within the deed is a small step to help with that process.

Q./ Comment It sounds as though we would be moving into a zero-tolerance policy in the middle of a pandemic when some folks are likely negatively affected by our economy, etc.

A. The proposed amendments have NO effect whatsoever on the Association's current collection policies. Historically we have always been open to negotiations with owners who may be facing financial difficulties.

In case it ever comes time to invoke a lien for unpaid balances due the Association the only change is that instead of having to go through the legal process of creating and filing a lien on a property, the lien is already in place attached to the deed. Not having to

create and file a lien is a slight cost reduction and the change gives our lien a higher status in the event of a bankruptcy or foreclosure.

The lien is simply a way of securing someone's balance against their property. It will need to be paid in full before an owner can sell their home.

Q. How is selling someone's home after you take possession helping the neighborhood? You will have to sell the home and who does that?

This is rare, and we do not anticipate ever taking possession or selling a home. It has not happened in 27 years. Foreclosure is only an action of last resort after several years of action to attempt collection of long overdue and increasing amounts owed.

Under the POA rules we would no longer have to pay off any pre-existing mortgage or other liens prior to a foreclosure.

To be clear, in the event the Board makes the difficult decision to proceed with a foreclosure, it will be in the most extreme cases – cases where the owner is simply unwilling to pay their balance. In these cases, foreclosure may be the only viable way for the Association to collect the delinquency.

It is helpful to the neighborhood because it will effectively remove an owner who does not contribute to the shared costs of operating our community and replace them with someone who will.

Covenant Changes – Voting

As stated in our current Covenants, and in the proposed Amendment that everyone should have received, changes to the Covenants require a 2/3 affirmative vote. Voting can be done by Mail, FAX, or email. Electronic voting was considered but the expense was too high.

Q. If it comes down to having someone (Board members? Or if not, who?) going door to door to get people to vote on the proposed amendment, what safeguards will be in place to ensure that tenants in a leased property will not be asked to vote?

A. We do have a list of the legal owners of our properties, so any votes are matched to that master list. The property owner of leased properties is the only one authorized to vote.
We will likely be asking for volunteers to assist the board in answering questions and in obtaining votes from individual homeowners.

Summary

We encourage everyone to vote FOR the proposed changes to help maintain property values, and for easier recovery of overdue funds.