



COMMUNITY MATTERS

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News and Trends in Community Association Law

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Empowering Communities Through Committees: Legal Framework and Best Practices

by | **David C. Boy IV, Esq.**

Committees are important to the efficient governance of homeowners and condominium associations. They allow boards to delegate responsibilities, engage members, and

manage specialized tasks. Whether reviewing architectural requests or planning social events, committees help associations thrive. Committees also serve as a valuable pipeline for future leadership. Engaging members in committee work allows them to gain experience, build relationships, and demonstrate commitment to the community.

Associations can establish a variety of committees. The Architectural Control Committee (“ACC”) is a standing committee typically required by the Declaration, responsible for reviewing exterior modifications and ensuring compliance with design standards. Note that unless the board has appointed itself (the directors) as the ACC, the board ordinarily does not have the ability to override decisions of the ACC or act in place of the ACC.

Other committees may include: a Landscaping and Grounds Committee advising on the maintenance and enhancement of common areas; a Finance and Budget Committee assisting in preparing budgets, reviewing financial reports, and recommending fiscal policies; a Social Committee organizing events to foster community engagement; or a Maintenance Committee overseeing common area infrastructure and suggesting repairs or improvements.

Under the Georgia Nonprofit Corporation Code (“Code”), boards may establish committees unless restricted by the articles of incorporation or bylaws. A 2023 amendment to the Code now requires that each committee include at least one current director. This is a significant change for many associations that have previously operated committees without a director as

a member of those committees. Importantly, committees cannot authorize distributions, approve mergers or asset transfers, elect or remove directors, or amend governing documents. These limitations ensure that governance decisions remain with the board.

Committee formation and governance are typically addressed in the association’s bylaws. For example, a common provision might read as follows:

The Architectural Control Committee shall be a standing committee of the Association as provided in the Declaration. The Board may establish a nominating committee and any other committee as the Board deems desirable with the powers and duties that the Board shall authorize. Except as otherwise provided herein and in the Declaration, members of any committee shall be appointed by the Board and shall serve at the pleasure of the Board. Any committee member may be removed with or without cause at any time and with or without a successor being named.

This language emphasizes the board’s discretion in forming, appointing, and removing committee members. Committees may be standing (ongoing) or ad hoc (temporary and task-specific), depending on the needs of the association.

A committee charter is a valuable governance tool that defines a committee’s purpose and scope, membership and appointment process, authority and limitations, code of ethics, meeting procedures, and reporting obligations. Charters help prevent confusion and

ensure that committees operate within their intended boundaries. Without clear guidelines, committees may unintentionally—or intentionally—overstep, leading to disputes and creating potential legal issues. For example, an ACC charter might specify that it can review applications but cannot approve variances without board consent. A Finance Committee charter might limit its role to advisory functions, with final decisions reserved for the board. In all circumstances, committee charters must be consistent with the limitations imposed by the covenants and bylaws and must comply with any provisions in the Code.

In recent years, some associations have encountered challenges with rogue committee members who act beyond their authority, disregarding board oversight, or even undermining the board. These situations underscore the importance of a clear charter and active board supervision. Boards should regularly review committee activities and ensure that members understand their roles and limitations.

Committees are important to the effective operation of community associations. By understanding their legal framework, forming them thoughtfully, and equipping them with clear charters, boards can harness their benefits while maintaining proper oversight. As Georgia law evolves, associations must ensure compliance, especially with the new requirement for director involvement in committees.

If your association needs assistance with creating committee charters, please contact your community’s general attorney for further guidance. ❖

So You Have a Judgment, Now What? Cashing-in on Your Legal Victory

by | **Brittany Brock, Esq.**



Assessments are the financial backbone of every community association. Without collecting assessments, the association cannot provide essential services, maintain

common areas, or protect property values. When a community association is awarded a judgment against a homeowner for unpaid assessments, the legal battle is often only half won. While a judgment confirms the debt legally exists, it does not automatically result in recovery. The post-judgment collection process is designed to bridge that gap and ensure the association is made whole. There are a few different strategies that can be employed to successfully collect on a judgment for unpaid assessments.

must be paid before clear title to real property can be transferred at the closing table.

Garnishment is one of the most effective tools in post-judgment collection. Once employment or an asset is located, a garnishment can be filed to collect the judgment balance. Generally, in a wage garnishment action, a portion of the owner's wage would be deposited into the registry of the court until the garnishment is paid. With a bank garnishment, apart from some exclusions, funds in a debtor's bank account would be seized up to the

rare remedy and is subject to some limitations. It is important to have a discussion with experienced legal counsel whether a levy sale would be recommended in a particular situation depending on several factors. For example, unless a creditor can prove to the sheriff that there are no superior liens or other encumbrances on the personal property, the sheriff will not levy upon that piece of property. This is an often arduous task for a judgment creditor to try to prove, and the costs often outweigh the value of the item itself.

Not every case calls for aggressive action. In many circumstances, the debtor is not willfully refusing to pay the assessments but may be dealing with a temporary financial setback. In these types of cases, negotiating a reasonable payment plan can be the fastest and most cost-effective path to collect a judgment. The owner's circumstances should be weighed with the overall financial health of the community when considering the best path forward. Experienced legal counsel and management can be vital in advising a community association board of best practices regarding amicable resolutions to collection disputes.



Once a judgment has been entered, it is prudent to record notice in the public land records. A Writ of Fieri Facias ("Fi.Fa.") can be requested from the Clerk of Court after a judgment has been awarded to a creditor. The Fi.Fa. is then recorded on the general execution docket maintained by the Clerk of the Superior Court for the county. This gives notice to all that the judgment lien

amount awarded in the judgment.

In certain circumstances, the association might seek a sheriff's levy on a piece of personal property to satisfy a judgment. (Think: Paintings, household furnishings, jewelry, etc.) This entails the sheriff's office seizing custody of the property and it being sold on the courthouse steps to satisfy an outstanding Fi.Fa. This is an exceedingly

The post-judgment collection process can be stressful for all parties involved. A strong collection strategy, supported by experienced legal counsel, will help ensure the association is able to efficiently and lawfully recover what it is owed. ❖



Assigning from Peter to Pay Paul: What is Rent Assignment?

by | **Stephen A. Finamore, Esq.**

It is bad enough when a homeowner does not pay assessments when they are due. It adds insult to injury when a homeowner who is collecting rent from a tenant is not

paying assessments. Recognizing the inequity of a homeowner profiting from rental income without paying their fair share of common expenses, many associations' covenants include a provision for assignment of rent which allows the association to collect rent from the tenant to pay unpaid assessments.

Rent assessment provisions typically provide that when a homeowner is delinquent for payment of assessments, the homeowner consents to assign any rent that is due from the tenant to the association. Upon demand by the association to the tenant, the tenant is obligated to pay the amount of the rent owed to the landlord to the association instead of the landlord. If the tenant does not pay the amount of their rent to the association, the tenant becomes personally liable to the association for the assessments owed, late fees, interest, and reasonable attorney's fees and costs to the same extent as the owner.

The typical rent assignment process is for the association to send notice to the

homeowner of the amount owed and to advise that pursuant to the rent assignment provision in the covenants, the association is demanding rent from the tenant to cover the amounts owed. Simultaneously with the notice to the homeowner, the association sends demand to the tenant demanding that the current rent payment due must be sent to the association instead of the landlord. It is helpful to have a copy of the lease because the lease will provide the name of the tenant and the amount of rent due. Including the name of the tenant and the specific amount of rent owed under the lease in the demand letter gives the letter more credibility and makes the process more effective.

There are a few possible outcomes from demanding rent from the tenant. One possible outcome is that the tenant is glad to pay the association instead of the landlord. In that event, the association collects rent from the tenant until the account is brought current. This is not a typical outcome. A more likely outcome is that the tenant ignores the demand letter, and the association has the option of

including the tenant in a lawsuit to collect the amounts owed. The most likely outcome is for the tenant to move out of the property rather than becoming a party to litigation, something they did not sign up for when deciding to rent the property. Regardless of outcome, rent assignment causes friction between the landlord and tenant. The tenant is placed in a no-win situation of either paying the rent demanded to the association and likely being threatened with eviction by the landlord or paying the rent to the landlord and being sued by the association for all amounts owed. The best-case scenario is for the landlord to avoid the necessity of the association interrupting payment of rent by resolving the delinquency before the association takes further action.

It is important when deciding whether to enforce a rent assignment covenant provision to consider the likely outcome given the particular facts of the case. Consult with your attorney to come up with the strategy that makes the most sense given the circumstances. ❖



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