



COMMUNITY MATTERS

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News and Trends in Community Association Law

Article:

- **Georgia's Senate Bill 406: A New Regulatory Era for Community Associations**



Georgia's Senate Bill 406: A New Regulatory Era for Community Associations

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Senate Bill 406, partially codified as O.C.G.A. § 43-17A-1 through O.C.G.A. § 43-17A-9, is the broadest governmental regulation of

community associations in Georgia history, and it has created confusion and concern in the community association industry. The new law is a significant departure from the current scheme of regulation, presenting new challenges for the industry to navigate. While application of the law is uncertain in many respects, the Georgia Secretary of State is currently developing rules and regulations to implement its requirements. Despite uncertainties and ambiguities that still need to be resolved, there are some definitive requirements that will apply to all associations, starting on January 1, 2027. This summary provides an overview of some key obligations and significant changes under the new law.

Additional registration and documentation requirements prior to certain enforcement and collection actions

The new law requires registration by any association wishing to retain its ability to fine, file liens for unpaid assessments, or foreclose its liens for assessments. This registration requirement becomes effective

as of January 1, 2027. The Securities and Charities Division of the Secretary of State's office is charged with creating a process for registration.

Based upon the statute, each owners' association must elect whether it wishes to be a registered association or a non-registered association. If an association decides to be a non-registered association, it may notify the Secretary of State in writing of its intent to do so. In that event, the non-registered association will not be permitted to assess or collect fines, file liens, or initiate foreclosure proceedings against owners. If an owners' association wishes to exercise the enforcement remedies enumerated above, it must register with the Secretary of State each year and update any changes to the association's officers throughout the year. The Secretary of State will charge a \$100.00 annual fee for this registration.

The content of the registration application is being prepared by the Secretary of State. Based on the statute, the minimum requirements for registration will include the name of the association, its address,

and its officers. The application requires inclusion of a financial statement of the association dated no more than one year prior to the filing of the registration application. If the registration is compliant with the statute and the rules and regulations of the Secretary of State, the Secretary of State registers the petitioning association. Upon registration, the association is notified by the Secretary of State of the registration and can proceed with exercising all lawful enforcement and collection remedies. Each registered association must file such registration annually, as each registration expires on December 31st of each year.

The new law requires each association to update the Secretary of State with any changes in its name, address, or its officers, or of any other change which materially affects the business and control of the association. An amended registration statement with this changed information must be filed within 30 days of the change.

Under the new law, registered associations are required to provide the Secretary of



Board Boot Camp is back! Our firm's annual Board Boot Camp will be on the morning of **Saturday, September 12, 2026**. This is a complimentary community association seminar open to all board members (regardless of whether or not your association is a client) and property managers. This year's Board Boot Camp is called **How the HOA Was Won...Addressing the "Not So Tall" Tales in Current Legislation (SB-406)**, Wrangling Best Collection Results, and Going Back to the Future with AI, Electronic Voting, and Meetings. The three-hour presentation will be from **10:00 AM to 1:00 PM** with continuing education credit available. The seminar will be live in-person **ONLY** at the Forsyth Conference Center at Lanier Technical College located at **3410 Ronald Reagan Boulevard, Cumming, Georgia, 30041**. Registration, and a complimentary continental breakfast will begin at **9:00 AM**. Everyone must register!

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State with access to their “governing documents, finances, assessments, fines, fees, liens, and foreclosures.” Registered associations must also maintain all records related to any assessments, fines, fees, liens, and foreclosures for the past 10 years. The location of these records must be disclosed to the Secretary of State in writing.

Hearings related to violations of the new statute

The new law contemplates two types of hearings before the Office of the Secretary of State: (1) hearings related to compliance with the new law’s registration and document requirements and (2) hearings related to owner complaints. Each is discussed below.

(1) Hearings related to registration and record keeping requirements

The Secretary of State may deny, suspend, or revoke an association registration, limit its fining authority, or bar certain individuals from serving as an officer, director, or board member if the Secretary of State determines that the submitted application for registration, as of the date of filing or thereafter, was incomplete in any material respect or contained a statement that was false or misleading with respect to any material fact. These remedies are also available to the Secretary of State for any willful violations of the statute or rules, for failure to pay registration fees, or for failure to comply with a subpoena or order issued by the Secretary of State.

Any association subject to an adverse action by the Secretary of State (such as revocation of the registration, limitation on remedies, etc.) is notified at the registered address of the association. The association is also given an opportunity to attend a hearing before the Secretary of State or a referee appointed by the Secretary of State on the proposed adverse action. If a hearing is not requested, the proposed sanction can be implemented. However, if requested, the hearing must occur within 30 days of the request. A party affected or intended to be affected by an adverse action can appear with or without counsel.

Administrative hearings before the Secretary of State or a designated referee are quasi-judicial proceedings where the designated referee has the power to compel witness attendance, production of documents, make determinations on the admissibility of evidence, and make final determinations regarding disputed facts and application of law to facts. The referee’s decisions are presented to the Secretary of State, along with recommendations of actions to be taken by the Secretary of State. A copy of the referee’s report is also served on all parties or their attorneys by certified mail. Any party to the proceedings may file written objections to the hearing officer’s report within thirty (30) days of service of that report. The recommendations of the hearing officer are advisory, and the Secretary of State may issue an order that adopts or disregards the referee’s recommendations. If the association is the losing party, it must pay \$100.00 to the Secretary of State.

(2) Hearings related to owner complaints

The new statute provides that any person residing in an owners’ development and alleging to be damaged by an owners’ association action may file a complaint with the Secretary of State. This complaint must be filed within 180 days of the occurrence of the alleged damage being claimed. The Secretary of State then appoints a hearing officer to conduct an investigation and hold a hearing. Upon conclusion of the hearing, the hearing officer issues a hearing report with fact findings and conclusions. Each party has 15 days from the date of the report to comply with the findings in the hearing officer’s report. Failure to comply within 15 days may result in an action to enforce the claim. If such a complaint is filed, it operates as an automatic stay prohibiting further collection actions by the association until the hearing officer issues his or her conclusions (following the hearing).

(3) Appeal rights related to Secretary of State or hearing officer decisions

If the owners’ association is dissatisfied with the order of the Secretary of State or with

the hearing officer’s decision as it pertains to an individual owner’s complaint, the decision may be appealed to either the magistrate court or the superior court of the county in which the affected association is located, depending on the amount in controversy. The standard of review for this appeal is de novo, which means that the reviewing court reviews the matter without any deference to the decision of the Secretary of State or the hearing officer. If the Secretary of State’s order is reversed, the issuing court enters an order that is binding on the Secretary of State. The losing party in the appeal may be ordered to pay court costs of the prevailing party to the appeal.

Owners’ Bill of Rights

The Owners’ Bill of Rights (“OBR”) represents the legislature’s effort to establish baseline procedural protections for homeowners across Georgia. While the OBR does not replace an association’s governing documents, it supersedes them whenever a conflict exists. Many of the rights outlined in the OBR already appear in governing documents, other statutes, or reflect common sense best practices that we routinely recommend to our clients.

Under the OBR, owners are guaranteed the right to:

1. Inspect and obtain copies of association records;
2. Obtain a copy of the association’s certificate of insurance;
3. Receive notice of membership meetings;
4. Attend membership meetings, which must be held at least annually;
5. Access common areas, amenities, and common elements, subject to the terms of the governing documents;
6. Ingress, egress, and access their individually owned property;
7. Receive all statutory notices required before an association initiates foreclosure;
8. Amend governing documents in accordance with state law and the governing documents;

9. Expect that directors perform their duties in good faith and with the care of an ordinarily prudent person;
10. Expect directors to disclose conflicts of interest;
11. Be free from governing documents that interfere with a resident's ability to determine the composition of their household (subject to limited exceptions); and
12. Challenge discriminatory practices by associations under state or federal law.

For most associations, these provisions should not come as a surprise and are unlikely to require significant operational changes. One meaningful improvement, however, is the statute's new definition of "accounting records," a term previously undefined under the Georgia Nonprofit Corporation Code. The OBR now clarifies that accounting records include the finalized balance sheet, budget, profit and loss statements, and bank statements for the past three years, eliminating uncertainty about the scope of required disclosures.

Application of payments, acceptance of payments, and ban on acceleration

This new law fundamentally changes the way associations must apply owner payments, reversing the payment application procedures found in most governing documents and accounting systems. Beginning January 1, 2027, associations are required to apply all owner payments according to a fixed statutory priority order, even if their governing documents state otherwise. The mandatory payment priority is as follows:

1. Regular assessments or dues until current
2. Special assessments until current
3. Specific assessments until current
4. Other fees and fines

The new law also prohibits associations

from refusing to accept any payment from an owner toward an assessment. This means partial payments must be accepted and cannot be returned, even if the owner remains delinquent. This does not mean that payments stating "payment in full" or other such language should not be returned.

In addition, the statute bans acceleration—the practice of demanding the full year's assessment immediately when an owner becomes delinquent. Associations that allow owners to pay in monthly or quarterly installments may no longer accelerate future installments due to nonpayment.

Associations should review their collection policies, accounting procedures, and management software to ensure compliance with these new requirements before they take effect.

Changes that apply only to the Georgia Property Owners Association Act ("POA") under Senate Bill 406

The first set of changes to the POA clarify how communities may be submitted to the Act and refine the voting thresholds required to amend covenants to adopt POA governance.

The POA changes also significantly impact liens, collections, and foreclosure practices. Affected associations may no longer foreclose unless the unpaid balance equals at least the lesser of (a) \$4,000 or (b) 12 months of *regular assessments*, but not less than \$2,000. Notably, specific assessments, fines, fees, and other charges are excluded from \$4,000 or 12 months of regular assessments calculation.

In addition, the changes impose additional due process requirements, including a mandatory 60 day pre foreclosure notice with detailed disclosures and an opportunity for the owner to pay within that period. The amendments also extend

the lien expiration period to six years, replacing the prior four year limitation. This change does not impact the statute of limitations of four years for seeking a personal judgment against a delinquent owner.

Finally, effective July 1, 2026, the POA imposes new procedural prerequisites for the recovery of attorney's fees. Before a POA association may recover attorney's fees, it must provide (1) an initial written notice of delinquency by certified mail or statutory overnight delivery, (2) a 30 day opportunity for the owner to cure the delinquency from the receipt of the notice, and (3) an itemized statement of the attorney's fees claimed. Courts are also required to review and determine the reasonableness of such fees in bench trials before awarding them.

Conclusion

As a firm, we are committed to ensuring that our clients' legal rights are protected. We are working on processes to assist our clients in complying with this new law and its regulations. As new rules are adopted and published by the Secretary of State, we will be sending periodic updates. In the meantime, we encourage our clients to continue enforcing their governing documents in accordance with established practices until the new law becomes effective. ❖

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