



COMMUNITY MATTERS

News and Trends in Community Association Law

Articles:

- **'Tis the Season for Annual Meetings:**
Items to consider when preparing for membership meetings
- **Trusting the Trustee**
- **Interesting Things About Interest:**
Determining the amount of interest owed for unpaid assessments
- **Georgia Garnishment Law Update**

'Tis the Season for Annual Meetings:

Items to consider when preparing for membership meetings



by | David C. Boy, IV, Esq.

Football season is in full swing, and Fall is in the air. For our many community associations, Fall is the time to start planning for annual membership meetings set to occur before the end of the calendar year or the start of the next calendar year. The following is a brief discussion of some items to consider in preparation for your association's annual meeting.

The first item to consider is when the annual meeting should occur. First, check the association's bylaws to see if the meeting must occur on specific date or month. If the bylaws do not specify a required date for the annual meeting, the meeting should be scheduled no more than 12 months after the prior annual meeting.

Once a date has been determined for the annual meeting, the board or property manager should set a date for sending notice of the annual meeting to association membership to ensure compliance with notice requirements under the bylaws and Georgia law. Consider what information must (or should) be sent out with the meeting notice, such as a proxy form, agenda, or proposed budget. In preparing the agenda for the meeting, review what should be covered at the annual meeting, such as reports on the activities and financial affairs of the association. Sending additional reminders to the members using emails, newsletters, community message boards, or other communications can assist an association in maximizing attendance at the annual meeting.

If directors are elected at the annual meeting, which is the case for many associations, do the documents contain a nomination process, and should a list of director nominations be sent out with the meeting notice? Do the bylaws for the association

contain any limitations on who is eligible to be elected or serve in a director position? If directors are being elected, remember to print ballots in advance of the meeting, and allow space for write-ins if nominations can be made from the floor at the meeting. The board may also want to consider getting the word out about vacancies even before the meeting notice goes out. This could help encourage recruitment of candidates for the upcoming election.



Prior to the annual meeting, the association should determine who is eligible to vote at the meeting and what number of eligible members are needed to attend (either in person or by proxy) in order to obtain quorum. If the governing documents provide that the board "may" suspend voting rights of delinquent or violating owners, the board will want to ensure that those owners have been notified of such suspension. Preparing a sign-in sheet in advance of the meeting with a discrete method of notating which owners are

ineligible to vote is recommended. Plan on having minutes taken at the meeting, and retain those minutes for approval at the following annual meeting.

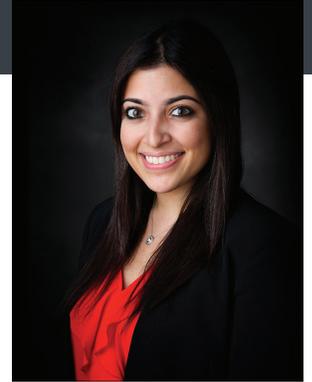
Typically, the board President is in charge of running the annual meeting, unless the bylaws say otherwise. There can be several speakers at the annual meeting, which can be a good thing: it can encourage the participation of other directors and committee members and removes the burden of having only one person present all reports. The board may wish to consider inviting the association's property manager, accountant, or other expert to attend to answer questions on a particular topic that will be on the agenda. Many associations request that an attorney attend the annual meeting to act as a resource for legal questions or to assist in the

parliamentary process (such as the use of *Robert's Rules of Order*). Please be sure to make such a request to your association's attorney far enough in advance so that you will ensure his or her availability to attend.

This is not an exhaustive list of everything that can be done in advance of an annual meeting; but if a community association covers the things listed above, then it is well on its way to having another successful (and compliant) annual meeting. As always, should you have further questions, please contact your association attorney. ❖

Trusting the Trustee

by | Soha Sohrabian, Esq.



We have all seen the situations where an individual conveys property to a corporation in order to avoid being liable for assessments and other obligations that come with the property. What about when a property is in the name of a trustee for a trust? How does a community association collect on the amounts owed?

Much to the trustee's dismay, an association can actually sue the trustee personally. Pursuant to Georgia law, a trustee is not personally liable on a contract unless the contract so provides.

Homeowners associations are governed by the contract language of their Declaration of Covenants. An association's Declaration is a specialized contract that runs with the land. Therefore, the Declaration can provide for personal liability of the trustee. Most Declarations contain language which addresses ownership of the property as well as the liability of each owner. For example, a Declaration may provide language such as the following: "Each Owner, jointly and severally, for himself, his heirs, distributes, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed,

hereby covenants and agrees...to pay to the Association the annual assessments which may or shall be levied by the Association..." This language would obligate the trustee of a trust to pay annual assessments to the association if the deed was, in fact, conveyed to the trust.

Under OCGA § 53-12-25(a), the "[t]ransfer of property to a trust shall require a transfer of legal title to the trustee." This means that in order for a deed to convey property in trust, the trustee must be designated as the grantee of legal title. In other words, when a deed conveys property to a trust, the trustee is personally liable as though they have legal title; the trustee is therefore the legal owner of the property. An important Georgia Court of Appeals decision has helped guide the issue at hand. In the 2012 case of *Ford v. Reddick*, the Court held that the deeds in question were invalid because

they attempted to convey property to a trust instead of to a trustee. The Court stated that a deed that does not properly designate a grantee does not convey title.

What legal rights does an association have when a property that is bound by the Declaration is in the name of a trust? The association can pursue collections against the trustee personally. By accepting the deed to a property "as trustee," the individual simultaneously agrees to be personally liable for assessments and any other obligations that are bound by the Declaration.

For a community association, it is important to be aware of their rights and the law concerning homeowners' liabilities regardless of whether the owner is an individual, corporation, or "trust." ❖



by | Evan Conroy, Esq.

Interesting Things About Interest:

Determining the amount of interest owed for unpaid assessments

Regardless of whether it is mortgages, government bonds, or student loan debt, interest is merely money owed in exchange for either money lent or as a result of delinquent payments. For most community associations, the same generally holds true, provided that the governing documents allow for interest to accrue when owners delay in paying their assessments on time. The amount of interest owed, however, is not always clear. For example, many

governing documents contain a variant of the following language for determining interest for unpaid assessments: Interest at the lower of the highest legal rate or eighteen percent (18%) per annum. Following is a brief analysis of this example to help explain how to determine the amount due for unpaid assessments.

First, how many numbers were there in the above example? Your initial impulse may be to say only one: 18%. There are, however, two, one of which is the legal rate. Unlike the provided 18%, the legal rate varies depending on the underlying law.

Where we find the legal rate depends first on the type of community association. For condominiums, the Georgia Condominium Act governs and provides for a maximum rate of 10%. Similarly, The Georgia Property Owners' Association Act (POA) provides for a maximum interest rate of 10% for homeowners associations that have submitted themselves to the POA. Given our example, since 10% is less than 18%, condominium associations and POA-submitted homeowners associations could seek a maximum interest rate of 10% per annum on unpaid assessments. For homeowners associations that have not submitted to the POA (also known as "common law" HOAs), where the governing document specifically mentions a numerical percentage, then that is the interest rate. If the governing document provides the power to assess interest on

assessments but there is no mention of a specific number, then current Georgia case law allows for a maximum interest rate of 7% for common law HOAs.

Now that we have a general understanding of determining the interest rate, the next issue is determining how to apply it. Correctly applying the interest rate can be challenging. A common formula used in calculating interest is the following: Interest = Principal x Rate x Time. Assuming both a single annual assessment and that interest is applied on an annual basis as found in our example, we can revise the interest formula as follows: Interest = (single annual assessment – amount of payment applied to the assessment) x (applicable interest rate) x (days outstanding / 365 days in a year). In other words, we are taking the unpaid portion of that year's assessment and multiplying it by the applicable rate

and the fraction of time, in years, in which the assessment has gone unpaid. There are, of course, other possible equations that can provide the same result. Also, this is a simple example. Since there are often multiple other factors to consider, such as varying assessment installment amounts, multiple unpaid assessments, partial payments and statute of limitations issues, it may be worthwhile for associations without a management team to hire an accountant to set up their initial spreadsheets.

In summary, calculating the amounts owed in interest for unpaid assessments depends on determining the applicable rate and knowing how to correctly apply it. When qualifying language is present such as "lesser of" and/or "legal rate," determining the applicable rate may require some further research. ❖



Georgia Garnishment Law Update

by Daniel E. Melchi, Esq.

As most people now know, on September 8, 2015, a federal court in Atlanta ruled that Georgia's entire garnishment statute was unconstitutional. This caused garnishments in Georgia, the primary source of collecting judgments, to cease immediately, leaving many creditors such as community associations with far fewer options with which to collect their judgments. The court ruled that the current framework of the bank garnishment law does not provide enough notice of possible exemptions to the debtor and does not provide an adequate framework for asserting those exemptions, thereby

violating a debtor's due process rights under the U.S. Constitution.

With the court's ruling in place, all garnishments were discontinued for approximately one month until that same court, on October 5, 2015, clarified its ruling. The court stated that it had only found Georgia's bank garnishment statute to be unconstitutional. It stated that it had not found Georgia's wage garnishment or other non-bank garnishments to be unconstitutional.

As it stands now, bank garnishments are not being accepted by Georgia courts. Wage and other forms of garnishment, such as rent garnishments, are again being accepted by Georgia courts. The Georgia



Legislature reconvenes in January 2016, and elected representatives appear willing to "fix" Georgia's garnishment statutes in order to get all forms of garnishment back up and running for creditors. It may be several months before the laws are amended to come into compliance with the federal court mandate, so until they are, community associations should contact their attorneys to discuss additional options for collection that may be available in the current absence of bank garnishments. ❖



t: 770.685.7000 f: 770.685.7002

www.luederlaw.com | [email: newsletter@luederlaw.com](mailto:newsletter@luederlaw.com)

Lueder, Larkin & Hunter, LLC now has offices in:
Atlanta/Buckhead | Atlanta/Camp Creek | Buford | Jefferson | Loganville | Northlake/Tucker | Suwanee | Winder | Charleston (SC)

main office:
Alpharetta

The information contained in this newsletter is provided for informational purposes and does not constitute legal advice. The use of this newsletter or other communication with us does not create an attorney-client relationship. We try to provide quality information, but we make no claims, promises, or guarantees about the accuracy, completeness, or adequacy of the information contained in this newsletter or make available on our website. Additionally, laws and opinions are subject to change depending on changes in statutes or case law. As legal advice must be tailored to the specific circumstances of each case and laws are constantly changing, nothing provided herein should be used as a substitute for such advice.