COMMUNITY MATTERS

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News and Trends in Community Association Law

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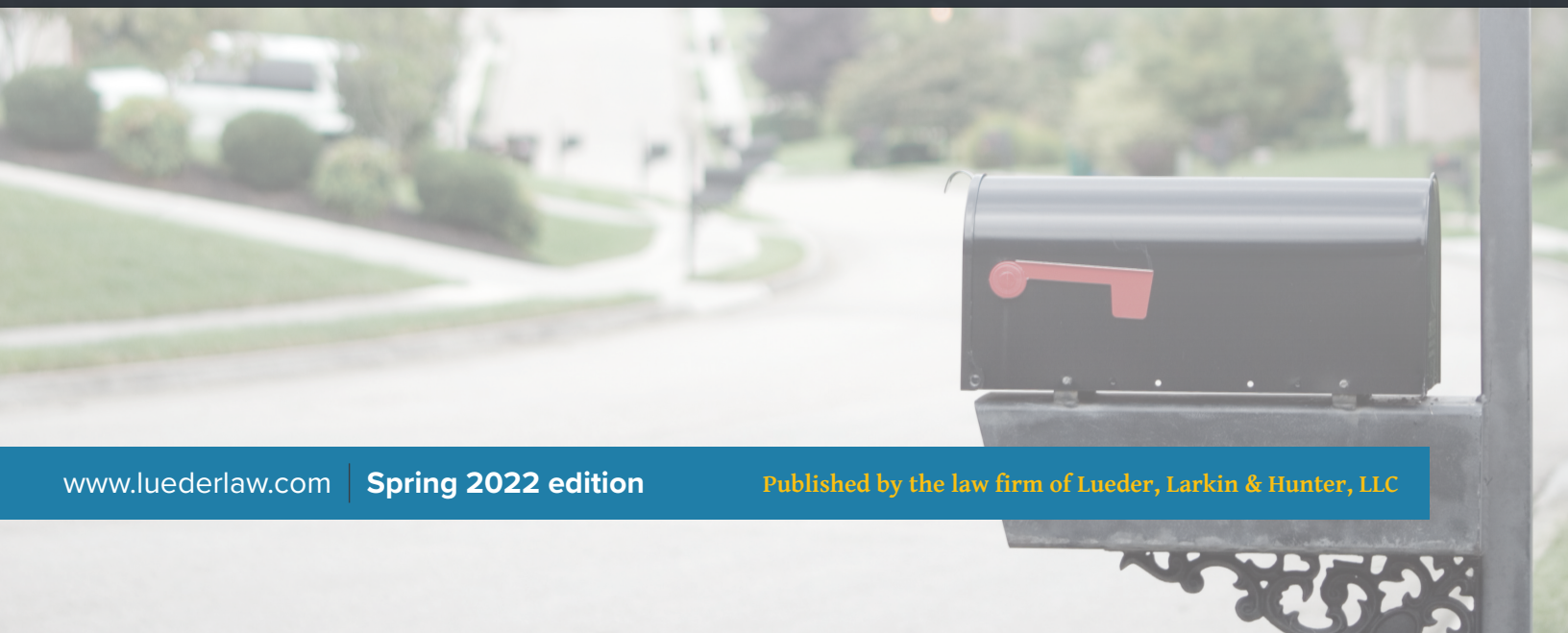

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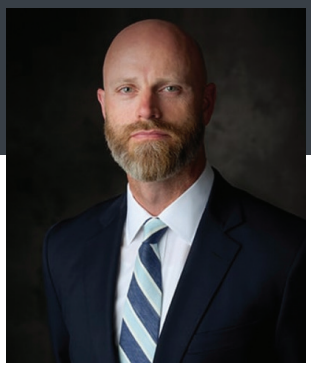


Injunction Junction, What's Your Function?

by | **Brendan R. Hunter, Esq.**

An injunction is a court order that either: A) directs an owner to stop doing certain activities, or B) compels an owner to undertake certain required duties. Generally, when an owner violates a restrictive covenant, the association is entitled to injunctive relief, thereby preventing the owner from continuing to violate the restrictive covenant.

For many years, Georgia courts had determined that when an interest in land is threatened with harm, injunctive relief is appropriate, because such harm is deemed to be irreparable to the unique character of the property interest. In other words, money damages are not adequate compensation to protect the interest harmed. Rather, irreparable harm automatically occurs as a matter of law arising from an owner's violation of a covenant running with the land. No special showing of irreparable harm is necessary other than the violation of a valid restrictive covenant.

However, in 2021, the Georgia Court of Appeals did not follow this standard. In *Deerlake Homeowners Association, Inc. v. Brown*, the owner failed to maintain his property in accordance with the declaration, including failing to maintain and paint his mailbox. The association imposed fines for these maintenance violations over a period of five years. The association ultimately filed a lawsuit against the owner seeking injunctive relief, damages (fines, unpaid assessments, and attorney fees and costs), and foreclosure of the association's statutory lien. At the time of the complaint, the fines exceeded $80,000.

The trial court denied the association's request for injunctive relief as to the maintenance violations because the trial court found that the Association had an adequate remedy at law that did not require the issuance of an injunction, specifically, self-help. The trial court also denied the association's request for fines finding that the association failed to show that the $80,225 in fines for maintenance violations was "reasonable," as required by the association's bylaws. The trial court found it unreasonable that the Association had chosen to fine the owner $25 per day for almost five years for failure to clean and repaint a mailbox rather than simply having the work done and assessing the owner for the cost.

The association appealed the trial court's order on several grounds, including the denial of its request for injunctive relief. The association did not appeal the denial of the fines. The Court of Appeals in *Deerlake* agreed with the trial court's decision to deny injunctive relief. The Court of Appeals found that an injunction is a harsh remedy, and the movant must clearly establish the right to such relief.

The Court of Appeals held that equitable relief is improper if the association has a remedy at law which is 'adequate,' i.e., as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity. Because the association had the ability to exercise self-help and assess all costs against the owner, the Court found that the association did not show that it would suffer irreparable harm if the trial court did not order the owner to remedy the maintenance violations. The association is seeking to have this case reviewed by the Georgia Supreme Court.

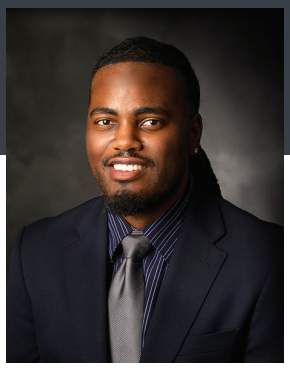
Based upon the holding in *Deerlake*, the association will need to conduct a thorough analysis of its enforcement remedies when dealing with violations. It is also important to understand that exercising self-help is not necessarily appropriate in all situations. In addition, self-help is not always the exclusive remedy available to the association. Self-help can be utilized concurrently with other enforcement remedies, including, for example, fining and suspension of use rights.

The board of directors will need to determine the appropriate enforcement remedy on a case-by-case basis. For example, if an owner's mailbox needs to be cleaned and repainted and the owner has failed or refused to perform the maintenance after the imposition of fines, the association should consider whether it is appropriate to exercise self-help and assess the costs against the owner.

However, if an owner's entire roof needs to be replaced, self-help may not, as a practical matter, be the appropriate remedy even if the association has this authority. The costs associated with a roof replacement would arguably render such remedy inadequate and impractical. Further, the amount of time involved to replace a roof will increase the potential of a confrontation.

Every case is different, and each violation can present unique characteristics. In light of the recent holding in *Deerlake*, the board should consider what enforcement remedies are available to the association and when it is appropriate to utilize those enforcement remedies.

Electric Vehicles and the Condo Association



by | **Brandon D. Wagner, Esq.**

As gas prices continue to hit record highs, more and more consumers are turning to alternative modes of transportation, including electric vehicles. Global sales of electric vehicles are projected to surpass 10.5 million this year, which is about 4 million above 2021 levels. Inevitably, condo associations are going to be confronted with the issue of what to do about electric vehicles and their required charging stations.

In Georgia, condo associations are not required to provide public electric vehicle charging stations, but many communities are opting to provide them as a community amenity. Likewise, for now, Georgia law does not require a condo association to permit an owner to install a private electric vehicle charging station. However, as the law catches up with technology, this may change in the very near future.

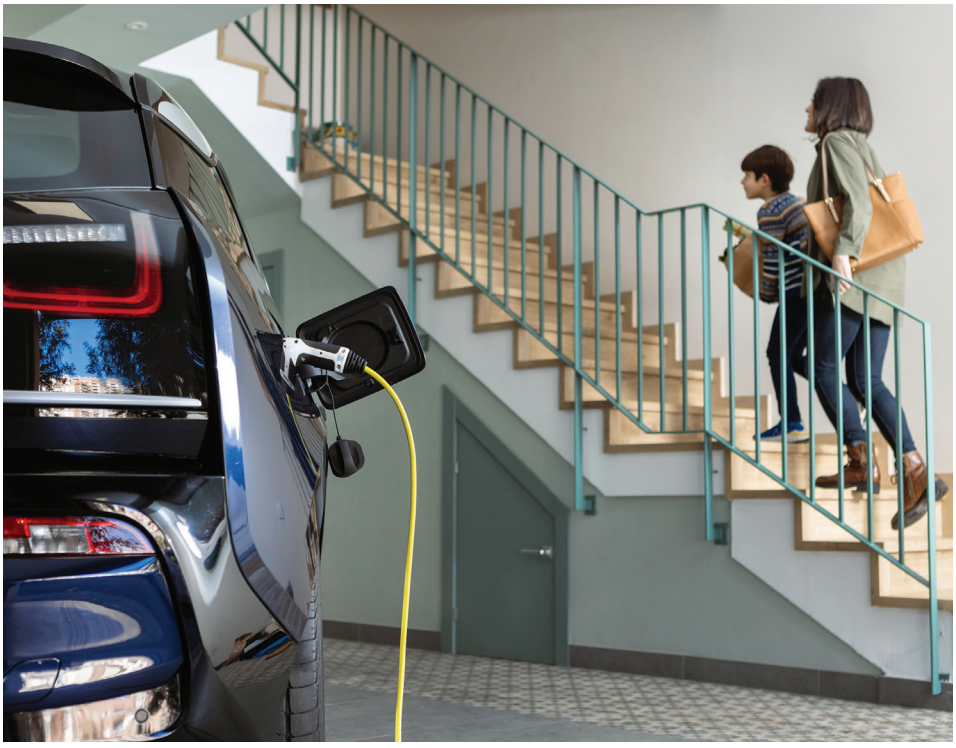
If an association chooses to install a charging station as a common amenity, the association will be responsible for the installation and equipment costs. However, the associated electricity costs should be paid by the user. For many associations, this is accomplished simply by installing a charging station where owners pay as they use it. If the charging station selected does not carry that option, an association may choose to assess a monthly fee to the owner based upon estimated or projected usage.

Once the charging station is installed, the association will generally be responsible for maintaining the system, unless the provider's service agreement specifies otherwise. The association should be sure that the service agreement clearly spells out which party is responsible for damage or destruction of the charging station, and the agreement should give the association the right to require the removal of the system upon request.

Lastly, an association should have its legal counsel draft a written agreement that the association should have all users sign, which disclaims all liability of the association and its members, directors, officers, and managers. This will ensure that the association is protected, in the event that a user is harmed or suffers damage as a result of using the charging station.

While this article specifically addresses whether an association wants to install a charging station as a common amenity, please keep in mind that charging stations could be installed on a limited common element parking space (or assigned common element parking space) for the use and enjoyment of one owner. Such an owner would be required to obtain prior approval from the association to install a private charging station, as this would be an exterior modification to the condominium. Furthermore, all costs would be paid by the individual owner, as well.

In summary, installing an electric vehicle charging station as a common amenity will ultimately give the association a competitive edge and should increase value for all units as a whole. This is an area of law that is slowly developing and will become more and more commonplace.



Have You Ever Wondered ...

What Makes An Amendment Valid As To All Members In The Association, Even Those Who Do Not Consent?

by | **Cynthia C. Hodge, Esq.**

The following discussion attempts to answer this question based upon whether you reside in a condominium, a homeowners association that has submitted to the Georgia Property Owners' Association Act (the "POA Act"), or a homeowners association that has not submitted to the POA Act.

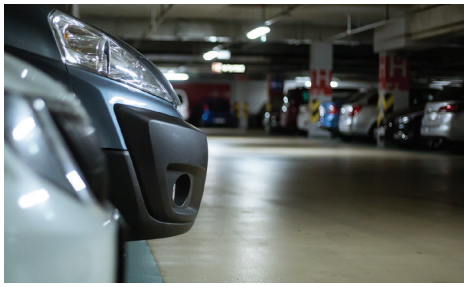
Prior to answering this question, we must first identify one key statutory provision at the heart of this issue, namely O.C.G.A. § 44-5-60(d)(4). We will call this the "Anti-Restriction Law." As an owner of property, this law states that no change in covenants which imposes a greater restriction on the use of land will be enforced unless the owner of the affected property agrees to the change in writing.

What does a "greater restriction on the use of land" mean? A common example would be providing for a vehicle restriction, identifying the types of vehicles that can be parked in the community and where they can park. Put simply, it refers to a limitation or prohibition against something that the owner previously could do. Therefore, the existence of the Anti-Restriction Law coupled with amendments that create a new restriction reveals an interesting response below.

The Georgia Condominium Act ("Condo Act") and the POA Act expressly provide that any limitations provided in the Anti-Restriction Law shall not apply to any covenants contained in any condominium or homeowners association submitted to the POA Act. What does this mean? It means that these two types of associations can amend their covenants and create a new use restriction, so long as the associations obtain at least, if not more than the required percentage of the votes needed to pass an amendment.

Generally speaking, this required percentage would equal two-thirds (2/3) or such larger majority as the governing documents may specify. Once that required percentage has been met, the amendment has been approved and can be executed and recorded in the respective county land records. Even though there may be owners who rejected the amendment, the amendment that imposes new restrictions would still apply to all owners. The Condo Act and POA Act afford these associations with that right.

What about a common law homeowners association that is not submitted to the POA Act? Suppose such an association attempts to amend its covenants to add a new use restriction. Its amendment provision requires approval of owners to which 67% of the votes in the association pertain. Suppose further that the association receives 67% of the votes, even though it also received several rejections.



Can the common law homeowners association move forward with recording the amendment? Certainly.

Is the amendment enforceable against all members? No. It is only enforceable against those that consented to it. That is because the Anti-Restriction Law does apply to homeowners associations that have not submitted to the POA Act.

This then begs the question: How can we fix this for a common law homeowners association, in order for an amendment to apply to all members, even if not all members consented to the amendment? The brief answer is that such an association would need to amend its covenants and submit to the benefits that the POA Act offers. Georgia case law tells us that an association can submit to the POA Act and add additional restrictions, provided that the amendment is approved by at least a two-thirds majority. Once submitted to the POA Act, the Anti-Restriction Law does not apply for future amendments to that community.

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