

CORE ISSUES OF COMMUNITY ASSOCIATION MANAGEMENT FOR THE TRADITIONAL REAL ESTATE INSTRUCTOR - MORNING SESSION

I. Types of Communities with Protective Covenants

- A. Architecture vs. Legal Structure
- B. No Covenants/ No Association
- C. Covenants/No Association
- D. Voluntary Association
- E. Voluntary to Mandatory Hybrid Associations
- F. Mandatory Membership Association
- G. Master Association
- H. Mixed Use Mandatory Communities
- I. Mandatory on Paper, Defunct in Reality

II. Types of Mandatory Membership Community Associations in Georgia

- A. Condominium Associations
 - 1. Units, Common Elements, Limited Common Elements
 - 2. Percentage interest
 - 3. Confirming LCE Assignments
 - 4. Creation of Condominium and Corporation
- B. Homeowner Associations
 - 1. Lots and common property/common area
 - 2. Corporate ownership of common areas
- C. Property Owners Associations
 - 1. Differences between HOA and POAA
 - 2. Upgrading from HOA to POAA
- D. Cooperatives
 - 1. Shares of Stock (not real property)
 - 2. Corporate ownership of entire property
 - 3. Board approval to purchase shares of stock
 - 4. Association right to remove delinquent and violating owners
- E. Master Association
- F. Mixed-Mandatory Communities

III. Preparation and Practice of New Topic Instruction

- A. Students Work Individually/Partners to Identify and Craft Presentation
- B. Students Work with Partners/Small Groups to Develop and Practice new Presentation

Notes: _____

CORE ISSUES OF COMMUNITY ASSOCIATION MANAGEMENT FOR THE TRADITIONAL REAL ESTATE INSTRUCTOR - AFTERNOON SESSION

I. License Law Differences for Community Associations

- A. Solicitation of Business
 - 1. If Community is NOT Working with Broker
 - 2. If Community IS Working with Broker
- B. Board Approval of Management & Traditional Real Estate in Same Community
- C. Trust Accounts
- D. Fidelity Insurance

II. Community Association Hot Topics

- A. FHA Project Approval for Condominiums
- B. Required vs. Elective Insurance
- C. Property/Casualty Insurance for Condominiums
 - 1. Condominium Master Insurance Policy Coverage
 - a. Risks covered by association policy
 - b. Structures covered by association policy
 - c. What is NOT covered by association policy
 - 2. Condominium Owners Individual Coverage
 - a. Master insurance property and water deductibles
 - b. Improvements or betterments inside the unit
 - c. Personal property
 - d. Personal liability inside the unit
- D. FNMA/FDMC Lender Questionnaires After Surfside

III. Preparation and Practice of New Topic Instruction

- A. Students Work Individually/Partners to Identify and Craft Presentation
B. Students Work with Partners/Small Groups to Develop and Practice new Presentation

[illegible]

L&J QUICK FACTS

GEORGIA PROPERTY OWNERS' ASSOCIATION ACT

THE BASICS

The Georgia Property Owners' Association Act (POA) is a Georgia law adopted in 1994, specifically for homeowner associations. L&J attorneys lead the drafting and adoption of the POA.

The POA was created to define the power and authority of homeowner associations, similar to those laws governing condominium associations. The primary purpose of the POA is to strengthen HOA collection powers.

The POA is a VOLUNTARY law. It does not apply automatically to all homeowner associations. Instead, the POA only applies to communities which "opt in" and choose to adopt the POA. The "opt in" process generally takes place either: (i) by the developer when the developer initially creates the declaration of covenants for the community; or (ii) by the members of the association through an amendment to the existing declaration.

The developers of most communities do not submit their communities to the POA, despite the benefits the POA would offer the community. Therefore, most communities are left having to amend their legal documents to submit to the POA.

PRIMARY BENEFITS OF THE POA INCLUDE:

- **AUTOMATIC STATUTORY LIENS** — After submitting to the POA, the association is not required to file liens at the county courthouse for unpaid assessments. Instead, the POA creates an automatic statutory lien against a delinquent owner's lot. The declaration of covenants itself serves as notice to the world that there is a lien for any unpaid assessments or other charges.
- **INCREASED COLLECTION AUTHORITY, INCLUDING:**
 - **Attorneys' Fees and Costs of Collection** — The POA authorizes the recovery of the association's costs of collection of any delinquent assessments and other charges, including reasonable attorneys' fees actually incurred. Without including this specific language in the association's governing documents, some courts improperly reduce the attorneys' fees awarded to the association, thereby leaving the association with a legal bill to pay.
 - **Late Fees and Interest** — Submission to the POA allows an association to charge a late fee of the greater of \$10.00 or 10% of the amount due, and interest at a rate of 10% per annum on unpaid assessments and other charges.
 - **Joint and Several Liability to Pay Assessments** — The POA provides that, unless the declaration of covenants states otherwise, the buyer of a lot is jointly and severally liable with the seller for all unpaid assessments. Therefore, if an association's automatic statutory lien is not paid at closing, the association can proceed against the new owner, who will be personally liable for all amounts owed prior to the closing.
 - **Judicial Foreclosure** — The POA allows an association to judicially foreclose on its liens for assessments or other charges over \$2,000. **This means the association has the right to obtain an order from the court allowing the association to foreclose on its lien without first paying off all superior liens.** The superior liens, usually a first priority mortgage or lien for ad valorem taxes, will remain on the property and become the responsibility of the new owner.
- **TENANT COMPLIANCE** — The POA clarifies all owners and tenants must comply with the declaration of covenants and the association's rules and regulations. Violations of the governing documents by a tenant will be treated, in many instances, as a violation by the owner.
- **ENFORCEABLE AMENDMENTS** — Based on a recent case some covenant amendments might be enforceable only against owners who consented to the amendment. By submitting to the POA, communities can ensure all covenant amendments are enforceable against all owners in the community, including those who did not vote or disapprove the amendment.
- **FINES AND SUSPENSION** — The POA grants the association a statutory power to assess fines against violators of the association's governing documents and to suspend the common area use rights of those violators, provided that the association's ability to fine and suspend are expressly stated in the declaration of covenants. This significantly strengthens the association's powers to enforce its legal documents.
- **PERPETUAL DURATION** — Prior to 1993, Georgia law generally provided that covenants expire after 20 years. In 1994, the law was amended to permit covenants to automatically renew. Yet, Georgia courts have subsequently held that covenants in communities recorded prior to 1994 do not receive the benefit of the 1994 law. The POA, however, provides that the 20-year limitation on covenants does not apply to any covenants submitted to the POA. As a result, a community that adopts the POA can avoid complicated and expensive community votes to renew or extend its covenants because its covenants will last in perpetuity.

QUICK FACTS

FHA APPROVAL FOR CONDOMINIUMS

THE BASICS

- The Federal Housing Administration (FHA) is routinely implementing new approval processes and requirements for FHA loans in condominium communities.
- Under recent guidelines, “spot” approvals are no longer permitted. This means that the FHA will no longer approve a specific loan for a specific unit. The entire condominium project must be approved.
- An FHA approval lasts for two years. At the end of two years, the condominium must be re-approved.
- As part of the FHA approval process, an association must provide several supplementary documents, including, but not limited to, copies of the recorded governing legal documents, the recorded plats and plans, the budget, a complete list of the members, a Federal Emergency Management Agency (FEMA) flood map, delinquency report, reserve study (if necessary), copies of the insurance declaration pages, and a copy of the management agreement if the condominium is professionally managed.

Standard Requirements for FHA Approval:

FHA approval is determined on a case-by-case basis and greatly depends on the individual status of the condominium project seeking approval. The following are some of the main requirements for FHA approval for condominiums:

Delinquent Assessments: No more than 15% of the total units in the condominium can be more than 60 days past due in the payment of assessments (does not include late fees or other administrative expenses). No exceptions will be granted.

Budget: The annual budget must: (a) include allocations/line items to ensure sufficient funds are available to maintain and preserve all amenities and features unique to the condominium; (b) provide for the funding of replacement reserves for capital expenditures and deferred maintenance in reserve account representing at least 10% of the budget; and (c) provide adequate funding for insurance coverage and deductibles.

Owner Occupancy-Ratios: At least 50% of the units in the condominium must be owner-occupied or sold to owners who intend to occupy the unit.

Insurance Requirements: The condominium must be covered by hazard and liability insurance, and, when applicable, flood insurance. Existing condominiums of 20 units or more must also carry a fidelity bond or fidelity insurance covering all officers, directors, employees and agents handling or responsible for association funds, in an amount equal to the greater of: (1) three months' assessments in all units, plus the amount of reserve funds; or (2) the minimum amount required by Georgia law.

Investor Ownership: In general, for condominiums with 20 or more units, no more than 10% of the units may be owned by an individual party or related party.

Commercial Space: No more than 35% of the total floor area of the condominium can be used for commercial purposes. Provided, however, the commercial space can go up to a maximum of 49% if it is determined that the residential character is maintained.

Reserve Study: If 10% of the annual budget is not allocated towards reserves, then, in order to ensure the budget includes sufficient funds to maintain and preserve the amenities, a capital reserve study no more than 36 months old, must be provided.

LJ QUICK FACTS

CONDOMINIUM PROPERTY INSURANCE

THE BASICS

- An association carries property insurance on behalf of all the unit owners. This insurance is primary. This means that, in the event of damage that is covered under an association's policy, the association's insurance is first to cover the damage, regardless of the location of the damage and regardless of maintenance responsibilities for any areas damage.
- In the event of damage that is covered by insurance required under the GCA, to the extent provided in the governing documents, the owner who would otherwise be responsible for maintaining, repairing or replacing the damaged area is responsible for covering the deductible, up to \$5,000.00.
- An association is NOT required under Georgia law to carry water insurance.
- To the extent provided by the governing documents for a condominium, a unit owner can be responsible for the full amount of the deductible applicable to their unit in the event of water damage covered by the association's insurance.

The Georgia Condominium Act (GCA) requires a condominium association to carry property insurance on the units and common elements as follows:

WHAT DAMAGE IS REQUIRED TO BE COVERED: Under the GCA, condominium associations are required to maintain fire and extended coverage, or basic perils insurance, on the condominium building(s). This coverage applies to the building structure itself, including the common elements, the limited common elements and the Units. Fire and extended coverage will cover the damages caused by the following occurrences:

- Fire
- Lightning
- Windstorm
- Hail
- Explosion
- Riot
- Aircraft
- Vehicle Damage
- Smoke
- Vandalism
- Falling Objects
- Weight of ice, snow or sleet
- Collapse

WHAT STRUCTURES ARE REQUIRED TO BE COVERED: Under the GCA, a condominium association is required to cover the following:

- All common elements of the Condominium, including all limited common elements
- Building foundation Building roof and roof structures
- Exterior walls of the building, including windows and doors and framing
- HVAC systems serving each condominium Unit
- All drywall and plaster board comprising the walls and the ceilings of the Units
- The following items in the condominium Unit in the like type and quality as originally installed: floors and subfloors; wall, ceiling and floor coverings;
- plumbing and electrical lines and fixtures; built-in cabinetry and fixtures; and appliances used for cooking, dish washing and laundry.

Personal belongings of an owner or occupant, and any betterment or improvements made by the unit owner are typically NOT covered by the association's insurance.

WHAT AMOUNT OF INSURANCE IS REQUIRED: An association is required to carry enough insurance to cover the full replacement cost of the building, based on the insurance carrier's valuation of the building, less deductibles.

It is imperative for unit owners to maintain an HO-6 policy on their unit. An HO-6 policy should insure the unit to the extent not insured by the association. This means it should cover personal belongings, betterment and improvements, and enough coverage for any applicable deductibles. Owners should be encouraged to work with an insurance professional to ensure proper and adequate coverage.

AMOUNT OF INSURANCE REQUIRED: An association is required to carry enough insurance to cover the full replacement cost of the building, based on the insurance carrier's valuation of the building, less deductibles.

CONDOMINIUM OWNER INSURANCE: It is imperative for unit owners to maintain an HO-6 policy.

- **Real Property** – coverage for damage to the parts of the unit not covered by the association's policy (e.g. owner basements and improvements)
*** Be careful here, owners should confirm that they have special perils coverage to receive payment for water damage;
- **Liability** – coverage for bodily injury and property damage inside a unit because of an owners negligence
- **Personal Property** – coverage for personal property inside the unit (e.g. clothing, televisions, computers, etc.)
- **Association Deductibles** – reimburses a unit owner for deductibles under an association's master policy that are passed along to the unit owners.
*** Be careful here – deductibles coverage in this part of the policy should match the amount of the association's highest insurance deductible.

Responding to the FNMA Lender Questionnaire Addendum

1. When was the last building inspection by a licensed architect, licensed engineer, or any other building inspector?

If you ARE NOT aware of any inspections of the building, the response should be:

Respondent is not aware of any inspections of individual components of the building or of any building-wide inspection completed of the property by a licensed architect, licensed engineer, or other building inspector.

If you ARE aware of an inspection of an INDIVIDUAL BUILDING COMPONENT, the response should be:

Respondent is not aware of any building-wide inspection completed of the property by a licensed architect, licensed engineer, or other building inspector, but there have been inspections of the following individual components of the building:

_____ [name the building component inspected] - _____ [date of inspection] - _____ [name of licensed architect, licensed engineer, or building inspector]. A copy of this building-wide inspection is attached here.

If you ARE aware of a BUILDING-WIDE INSPECTION, the response should be:

The last building inspection was conducted on _____ [date] by _____ [name of licensed architect, licensed engineer, or building inspector]. A copy of this building-wide inspection is attached here.

2. Did the last inspection have any findings related to the safety, soundness, structural integrity, or habitability of the project's building(s)?

***DO NOT CHECK YES OR NO.**

INSTEAD RESPOND: SEE ADDENDUM or SEE ATTACHED COMMENTS

If you ARE NOT aware of any inspections of the building, the response should be:

Respondent is not aware of any inspections of individual components of the building or of any building-wide inspection completed of the property by a licensed architect, licensed engineer, or other building inspector.

If you ARE aware of an inspection of an INDIVIDUAL BUILDING COMPONENT, the response should be:

Respondent is not aware of any building-wide inspection completed of the property by a licensed architect, licensed engineer, or other building inspector, but there has/have been inspection(s) of the following individual component(s) of the building:

_____ [name the building component inspected] - _____ [date of inspection] - _____ [name of licensed architect, licensed engineer, or building inspector]. A copy of this building component inspection is attached here. Neither the Board of Directors nor the managing agent has sufficient knowledge or expertise to provide any evaluation or interpretation as to whether this inspection report includes findings related to the safety, soundness, structural integrity, or habitability of the project's building(s) nor can the Board of Directors or the managing agent make any representations or warranties regarding the same. Such determinations are the responsibility and liability of lenders, appraisers, underwriters, and other governmental regulatory bodies.

If you ARE aware of a BUILDING-WIDE INSPECTION, the response should be:

The last building inspection was conducted on _____ [date] by _____ [name of licensed architect, licensed engineer, or building inspector]. A copy of this building-wide inspection is attached here. Neither the Board of Directors nor the managing agent has sufficient knowledge or expertise to provide any evaluation or interpretation as to whether this inspection report includes findings related to the safety, soundness, structural integrity, or habitability of the project's building(s) nor can the Board of Directors or the managing agent make any representations or warranties regarding the same. Such determinations are the responsibility and liability of lenders, appraisers, underwriters, and other governmental regulatory bodies.

2a. If Yes, have recommended repairs/replacements been completed?

If you identified any building component or building-wide inspections and

If such inspection reports recommended repairs/replacements, the response to 2a should be:

The following work has been completed since the [building component inspection OR building-wide inspection - _____ [date of inspection] - _____ [name of licensed architect, licensed engineer, or building inspector]:

-LIST OF ITEMS COMPLETED

If the repairs/replacements have not been completed:

2b. What repairs/replacement remain to be completed?

-LIST OF ITEM(S) NOT YET COMPLETED (IF ANY)

2c. When will the repairs/replacements be completed?

-INTENDED DATE(S) FOR WORK TO BE DONE (IF ANY)

***Provide a copy of the inspection and HOA or cooperative board meeting minutes to document findings and action plan.**

If the Association has board meeting minutes showing decisions made about getting/approving/paying for bids for repairs/replacements and timing of same, attach those board meeting minutes. The Association attorney should review any documents from the Association's books and records before they are produced to any seller, buyer, lender, real estate agent, etc.

If the Association meeting minutes state that repairs/replacements are NOT going to be made despite recommendations to do so in the reports, you need to have a discussion with the Association's attorney before attaching such information to these responses.

3. Is the HOA/Cooperative Corporation aware of any deficiencies related to the safety, soundness, structural integrity, or habitability of the project's building(s)?

***DO NOT CHECK YES OR NO.**

INSTEAD RESPOND: SEE ADDENDUM or SEE ATTACHED COMMENTS

3a. If Yes, what are the deficiencies?

SEE ADDENDUM or SEE ATTACHED COMMENTS

3b. Of these deficiencies, what repairs/replacements remain to be completed?

SEE ADDENDUM or SEE ATTACHED COMMENTS

3c. Of these deficiencies, when will the repairs/replacements be completed?

SEE ADDENDUM or SEE ATTACHED COMMENTS

In the Addendum or Attached Comments the response should be:

Neither the Board of Directors nor the managing agent has sufficient knowledge or expertise to provide any evaluation or interpretation as to whether there are any deficiencies related to the safety, soundness, structural integrity, or habitability of the project's building(s) nor can the Board of Directors or the managing agent make any representations or warranties regarding the same. Such determinations are the responsibility and liability of lenders, appraisers, underwriters, and other governmental regulatory bodies.

4. Are there any outstanding violations of jurisdictional requirements (zoning ordinances, codes, etc.) related to the safety, soundness, structural integrity, or habitability of the project's building(s)?

***If Yes, provide notice from the applicate jurisdictional entity.**

If you ARE aware of any outstanding violations of jurisdictional requirements (no matter what they are related to), the response should be:

The Association is aware of ____ [number] outstanding violations of jurisdictional requirements. Copies of such violations are attached here. Neither the Board of Directors nor the managing agent has sufficient knowledge or expertise to provide any evaluation or interpretation as to whether these are related to the safety, soundness, structural integrity, or habitability of the project's building(s) nor can the Board of Directors or the managing agent make any representations or warranties regarding the same. Such determinations are the responsibility and liability of lenders, appraisers, underwriters, and other governmental regulatory bodies.

If you ARE NOT aware of any outstanding violations of jurisdictional requirements related to the safety, soundness, structural integrity, or habitability of the project's building(s), the response should be:

Neither the Board of Directors nor the managing agent is aware of any outstanding violations of jurisdictional requirements related to the safety, soundness, structural integrity, or habitability of the project's building(s). Lenders, appraisers, and underwriters may review and evaluate records kept by the relevant governmental agencies to make a determination about this issue for themselves.

5. Is it anticipated the project will, in the future, have such violations?

***If Yes, provide details of the applicable jurisdiction's requirement and the project's plat to remediate the violation.**

If you ARE NOT aware of any anticipated future violations of jurisdictional requirements related to the safety, soundness, structural integrity, or habitability of the project's building(s), the response should be:

Neither the Board of Directors nor the managing agent is aware of any anticipated future violations of jurisdictional requirements related to the safety, soundness, structural integrity, or habitability of the project's building(s). Lenders, appraisers, and underwriters may review and evaluate records kept by the relevant governmental agencies to make a determination about this issue for themselves.

6. Does the project have a funding plan for its deferred maintenance components/items to be repaired or replaced?

If the Association has a reserve study or some other funding plan for deferred maintenance, the response should be:

Yes, a copy of such funding plan is attached here.

7. Does the project have a schedule for the deferred maintenance components/items to be repaired or replaced?

***If Yes, provide the schedule.**

If the Association has a reserve study or some other schedule for deferred maintenance, the response should be:

Yes, a copy of such schedule is attached here.

8. Has the HOA/Cooperative Corporation had a reserve study completed on the project within the past 3 years?

If the Association has never had a reserve study completed on the project, the response should be: No.

If the Association had a reserve study completed on the project more than 3 years ago, the response should be:

No. The Association has a reserve study that was completed on _____ [date].

If the Association had a reserve study completed on the project within the past 3 years, the response should be:

Yes. The Association has a reserve study that was completed on _____ [date].

9. What is the total of the current reserve account balance(s)?

Respond honestly based on the Association's bank account records.

10. Are there any current special assessments unit owners/cooperative shareholders are obligated to pay?

Respond honestly, YES or NO.

If a special assessment has been charged to the membership but it is not yet due, the response should be: YES.

If Yes:

10a. What is the total amount of the special assessment? Respond honestly

10b. What are the terms of the special assessment(s)? Respond honestly

10c. What is the purpose of the special assessment(s)? Respond honestly

11. Are there any planned special assessments that unit owners/cooperative shareholders will be obligated to pay?

If the Board is about to propose a special assessment but has not notified the membership yet or if a special assessment has been proposed to the membership, but the vote has not passed yet, the response should be: YES.

If the Board has started talking about a possible special assessment in addition to other funding options but has not decided to propose a special assessment yet, and/or the Board has not yet determined the proposed amounts or terms of a possible special assessment, the response should be: NO (since there is no "planned" special assessment yet).

If Yes:

11a. What will be the total amount of the special assessment? Respond honestly

11b. What will be the terms of the special assessments? Respond honestly

11c. What will be the purpose of the special assessments? Respond honestly

12. Has the HOA obtained any loans to finance improvements or deferred maintenance?

If the Association has never obtained any loans to finance improvements or deferred maintenance, the response should be:
NO.

If the Association has current outstanding loans to finance improvements or deferred maintenance, the response should be:
YES.

If the Association borrowed money to finance improvements or deferred maintenance in the past, the loan are already paid off, and there are no currently outstanding loans being used to finance improvements or deferred maintenance, the response should be:

Yes, but all such loans have been satisfied in full and no current outstanding loan indebtedness exists.

If Yes:

12a. Amount borrowed? Respond honestly

12b. Terms of repayment? Respond honestly

*Individual situations may vary. This document is not intended to use as specific legal advice.



JAMIE PLATT LYONS, ESQ.

Lazega & Johanson, LLC

Tel: (404) 671-3341
jamieL@LJLaw.com
www.LJLaw.com

Contact Us:

© 2022 Lazega & Johanson LLC
All rights reserved

CONNECT WITH US AT
LJLAW.COM
AND
FOLLOW US ON
SOCIAL MEDIA.





JAMIE PLATT LYONS

PARTNER

COMMUNITY ASSOCIATION
GENERAL SERVICING ATTORNEY

(404) 350-1192 Main Office
(404) 671-3341 Direct Dial
jamiel@ljlaw.com



PO Box 250800
Atlanta, Ga 30325

www.LJLaw.com

Lazega & Johanson

Attorneys at Law

Jamie Platt Lyons is a partner at the law firm of Lazega & Johanson, LLC with a passion for teaching. She is a veteran community association and real estate closing attorney with a sense of humor and energy rarely matched in the legal field!

INDUSTRY EXPERIENCE

Jamie regularly teaches and publishes about timely topics in the community association and residential real estate industries and her classes are engaging, interactive and relevant for all real estate professionals. In addition to teaching, Jamie has an active legal practice working with Boards of Directors, community association managers, and developers/builders. In addition to transactional work, Jamie has practiced in the litigation and collection fields as well, giving her an unusual breadth and depth of legal experience that brings value to her students and clients.

EDUCATION

Cornell University, B.S. 1989
Emory University, J.D. 1993

BAR ADMISSIONS

Georgia
Washington D.C.

RECENT AWARDS

College of Community Association Lawyers,
Community Association Institute
Gold Standard Instructor (2018) National Real Estate
Educators Association
Educator of the Year (2017) Community Association
Institute of Georgia and (2014) Georgia Real Estate
Educators Association
Rita Kennedy Award (2015) Community Association
Institute of Georgia
Dedicated Service Award (2015) Georgia Real Estate
Educators Association

IN THE COMMUNITY

Georgia Association of Women Lawyers
GREC Education Advisory Committee
Georgia and National Real Estate Educators
Association
Community Association Institute of Georgia