



Instructor:
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CORE ISSUES OF COMMUNITY ASSOCIATION MANAGEMENT FOR THE TRADITIONAL REAL ESTATE INSTRUCTOR

An aerial photograph of a suburban neighborhood. The image shows several houses with grey and blue roofs, green lawns, and some trees. The houses are arranged in a grid-like pattern, with streets visible between them. The overall scene is a typical suburban residential area.

TYPES OF COMMUNITIES WITH PROTECTIVE COVENANTS

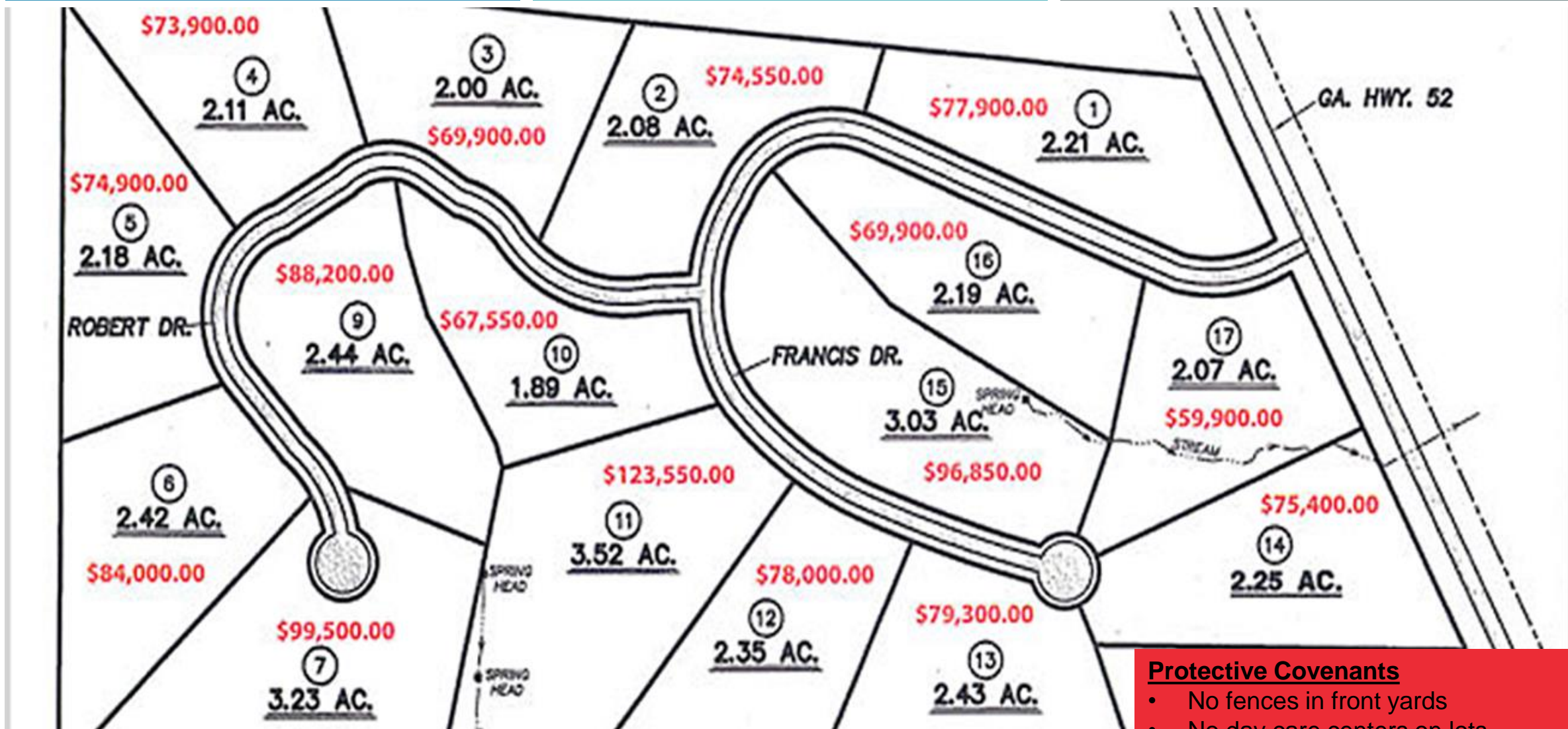
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Architecture vs. Legal Structure

NO COVENANTS/ NO ASSOCIATION





COVENANTS, BUT NO ASSOCIATION

Protective Covenants

- No fences in front yards
- No day care centers on lots
- No structures detached from main dwelling on lots



VOLUNTARY

VOLUNTARY— MANDATORY HYBRID

Record and Return to: Index in Grantor Index under Association and Owner's Name(s):

Lazega & Johanson LLC

(Owner)

(Owner)

STATE OF GEORGIA
COUNTY OF XXX

XXXX Association, Inc.

Cross-Reference to Owner's Deed: Deed Book: _____

Page: _____

Cross-Reference to Declarations:

Deed Book _____

Page: _____

OWNER CONSENT FORM TO THE DECLARATION OF PROTECTIVE COVENANTS FOR XXXX AND OWNER SUBMISSION TO MANDATORY PERMANENT MEMBERSHIP IN XXXX

THIS CONSENT is made and entered into on the day and year written below by ("Owner").

W I T N E S S E T H

WHEREAS, the undersigned owner(s) (hereinafter referred to as "Owner") is the record owner and holder of title in fee simple to a Lot as defined in the Declaration of Protective Covenants for XXX ("Declaration") recorded in Deed Book _____, Page _____, *et seq.*, in XXX County, Georgia, located at the address described below, and more particularly shown as Lot _____, as located in Land Lot _____, 16th District, 2nd Section, as shown on the plat of survey for XXX Subdivision recorded in Plat Book _____, Page _____, XXX County, Georgia records such plat being incorporated herein by this reference (hereinafter "Owner's Property"); and

WHEREAS, Owner desires to submit Owner's Property as a Homeowner/Recreation Member or Homeowner Member, of the Association (as circled below), as such terms are defined in the Declaration;

NOW THEREFORE, Owner does hereby consent, on behalf of Owner, Owner's successors, successors-in-title, heirs, and assigns, that from and after the date of this Consent, Owner's Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all the terms, provisions, covenants, and restrictions contained in this Declaration, as a Participating Member of the Association, all of which shall run within the title to Owner's Property and shall be binding upon all persons having any right, title, or interest in Owner's Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Owner understands and acknowledges that, by submitting Owner's Property to either Homeowner/Recreation Membership or Homeowners Membership as defined in the Declaration and as set forth below, Owner is hereby subjecting Owner's Property to mandatory assessments in favor of the Association, with lien rights afforded therefor, in accordance with the Declaration.

Owner does further consent to the submission of the Common Property (as defined in the Declaration) to the Declaration.

CIRCLE ONE*

HOMEOWNER/RECREATION MEMBER OR HOMEOWNER MEMBER

IN WITNESS WHEREOF, the undersigned Owner has executed this Consent on this ____ day of _____, 20__.

OWNER:

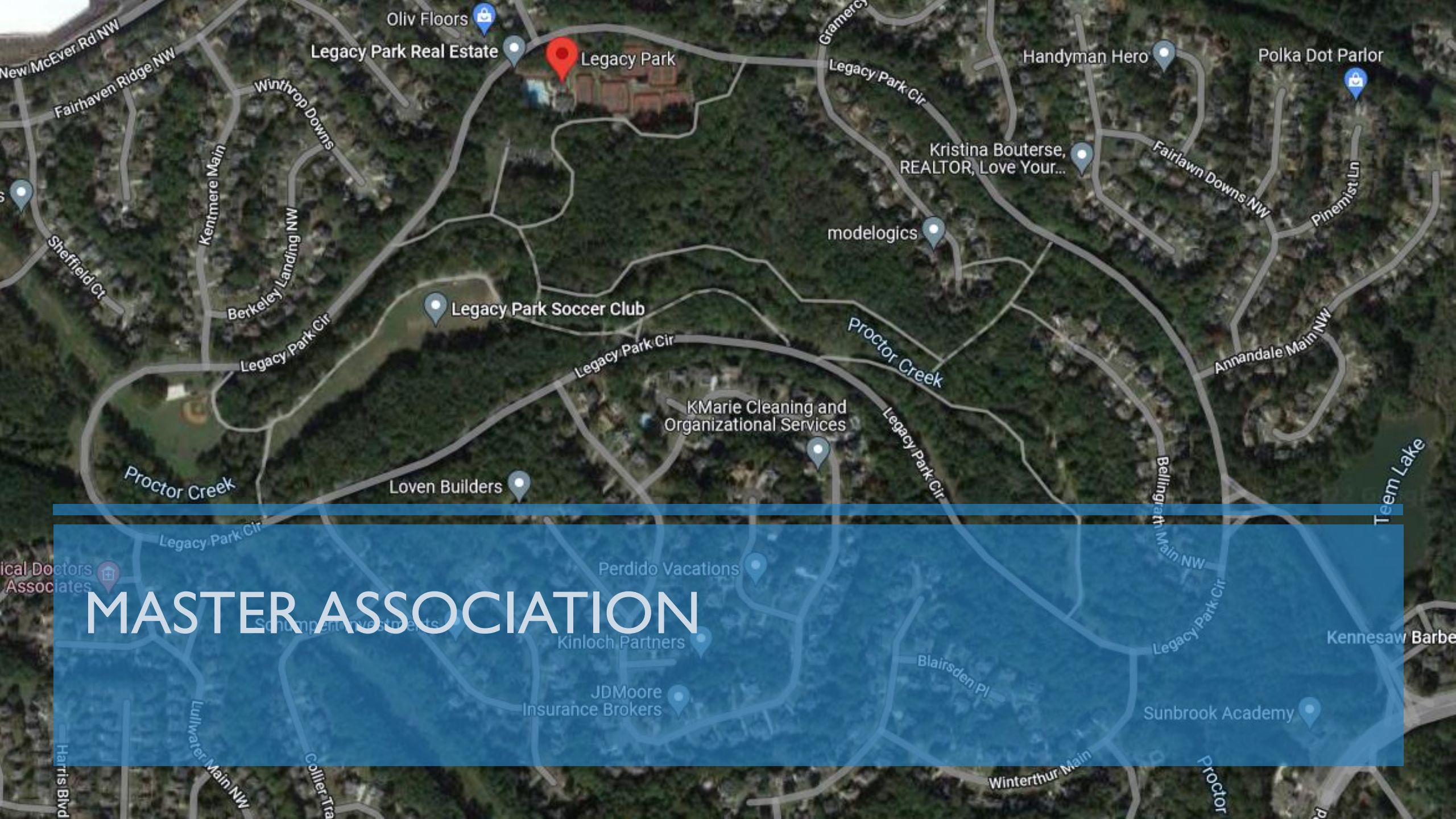
Name

Signature

Address



MANDATORY MEMBERSHIP



MASTER ASSOCIATION



MIXED-USE

MANDATORY BUT DEFUNCT

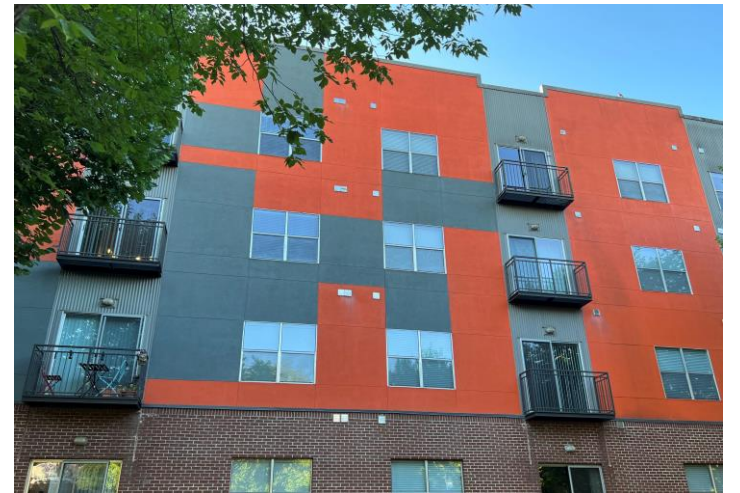


TYPES OF MANDATORY MEMBERSHIP COMMUNITY ASSOCIATIONS IN GEORGIA

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CONDOMINIUMS



Condominiums

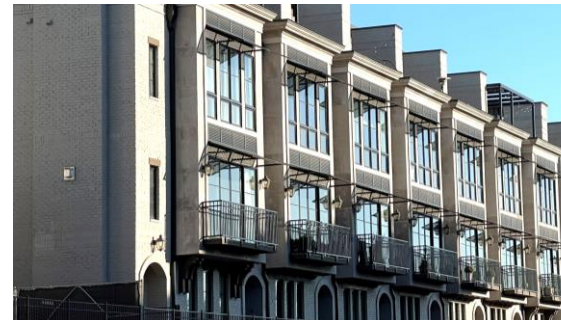
Units



Common Elements



Limited Common Elements



PERCENTAGE INTEREST

EXHIBIT “B”

UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS AND LIABILITIES FOR COMMON EXPENSES

<u>Unit Number</u>	<u>Unit Type</u>	<u>Ownership Percentage</u>
51	1 Bedroom/Den	.25
52	1 Bedroom/Den	.25
53	2 Bedroom	.30
54	2 Bedroom	.30
55	1 Bedroom	.20
56	1 Bedroom	.19

LCE ASSIGNMENTS

EXHIBIT "C" PARKING SPACE ASSIGNMENTS (Continued)

<u>UNIT NUMBER</u>	<u>PARKING SPACE ASSIGNED #1</u>	<u>PARKING SPACE ASSIGNED #2</u>	<u>PARKING SPACE ASSIGNED #3</u>
1012	267		
1013	261	477	
1014	306**		
1015	238	239	293
1016	289**		
1017	A51	A52	
1018	152	307	
1019	244**	245**	
1020	288**		

11. PARKING AND STORAGE:	YES	NO
(a) Are there any limited common element parking spaces assigned to the Unit and reserved for the Owner's exclusive use?		
If yes, please identify the number and location of the same:		
(b) Are there any limited common element storage rooms, lockers or bins assigned to the Unit and reserved for the Owner's exclusive use?		
If yes, please identify the number and location of the same:		

GCA – Recorded Documents

Item 1

Item 2

Item 3

GCA – Recorded Documents

(Answer Key)

Item 1

Declaration

Item 2

Floor Plans

Item 3

Plat

Georgia NPCC

Articles of
Incorporation

Bylaws



HOMEOWNERS ASSOCIATION

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HOA VS. POAA

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.



CO-OPS

- Shares of Stock
- Board approval of purchaser



MASTER ASSOCIATION

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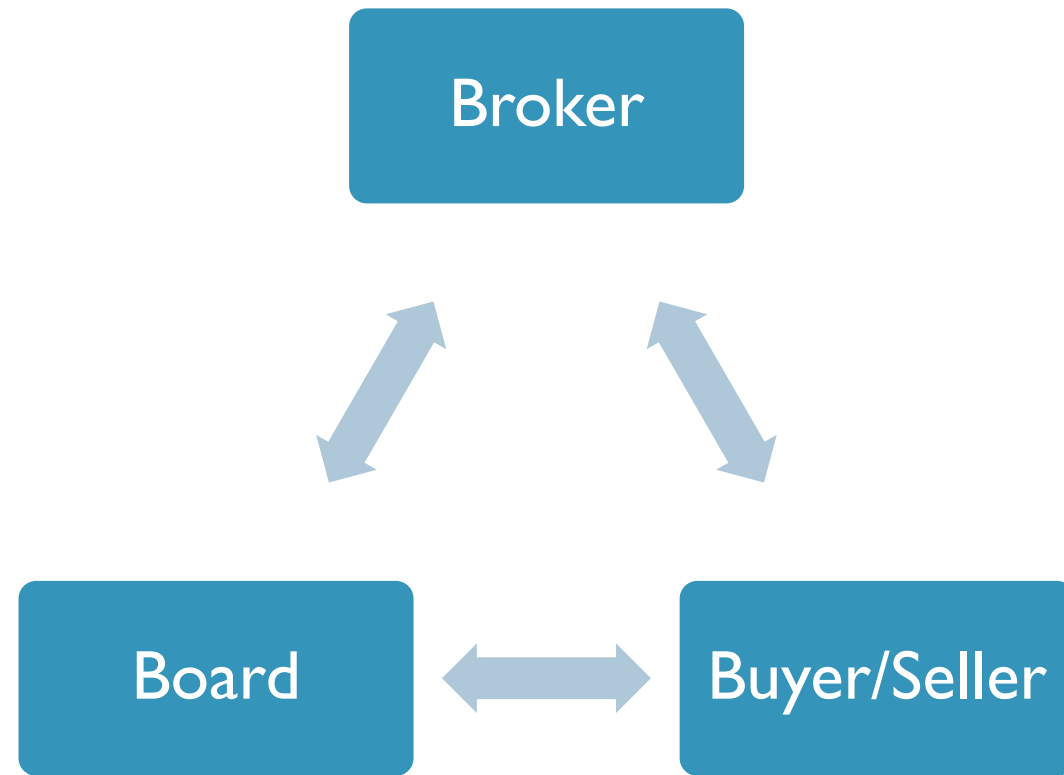


MIXED USE COMMUNITY



LICENSE LAW DIFFERENCES FOR COMMUNITY ASSOCIATIONS

SOLICITATION OF BUSINESS





TRUST ACCOUNTS

FIDELITY BOND/INSURANCE



Does Broker have Access to **MORE THAN \$60K** of **ANY** Assoc. Funds?

Yes

Broker required by License Law
to have fidelity bond/insurance
coverage

No

Broker **NOT** required by License
Law to be covered by fidelity
bond/insurance

How much bond/insurance is required?

Total amount of money
Broker collects,
maintains, controls, has
access to, or disburses at
any time

greater
of

3 months assessments from
ALL members of ALL associations broker manages
PLUS
Amount of reserve funds broker maintains for
ALL of its community associations



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.

L&J QUICK FACTS

FHA Approval for Condominium

<u>Required for Condos</u>	<u>Elective Coverages</u>

Required vs. Elective Insurance

<u>Required for Condos</u>	<u>Elective Coverages</u>
CGL (Liability)	CGL (HOA/POAA)
Basic Perils (Property)	Basic Perils (HOA/POAA)
	Directors & Officers (All)
	Workers Compensation (All)
	Fidelity (All)
	Flood Insurance (All)

Required vs. Elective Insurance (Answer Key)

L&J 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.

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

L&J QUICK FACTS

Condominium Property Insurance

Instructions

Lender: Complete the first table below and enter the date on which the form should be returned to you.

Homeowners' Association (HOA) or Management Company: This form has been sent to you on behalf of an individual seeking mortgage financing to purchase or refinance a unit in this project. The mortgage lender needs this information to determine the eligibility of the project for mortgage financing purposes. Complete and return this form by to the lender listed below. Questions about this form should be directed to the lender contact.

Lender Name:	<input type="text"/>	Lender Phone Number:	<input type="text"/>
Contact Name:	<input type="text"/>	Lender Fax Number:	<input type="text"/>
Lender Address:	<input type="text"/>	Lender Email Address:	<input type="text"/>

I. Basic Project Information

1	Project Legal Name:	<input type="text"/>
2	Project Physical Address:	<input type="text"/>
3	HOA Management Address:	<input type="text"/>
4	HOA Name (if different from Project Legal Name):	<input type="text"/>
5	HOA Tax ID #:	<input type="text"/>
6	HOA Management Company Tax ID #:	<input type="text"/>
7	Name of Master or Umbrella Association (if applicable):	<input type="text"/>
8	Does the project contain any of the following? Check all that apply:	
a	<input type="checkbox"/> Hotel/motel/resort activities, mandatory or voluntary rental-pooling arrangements, or other restrictions on the unit owner's ability to occupy the unit	
b	<input type="checkbox"/> Deed or resale restrictions	
c	<input type="checkbox"/> Manufactured homes	
d	<input type="checkbox"/> Mandatory fee-based memberships for use of project amenities or services	
e	<input type="checkbox"/> Non-incidental income from business operations	
f	<input type="checkbox"/> Supportive or continuing care for seniors or for residents with disabilities	
Provide additional detail here, if applicable (optional):		
<input type="text"/>		

**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.

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