



Change to the Georgia Property Owners' Association Act Restricts Leasing Amendments Beginning in 2021

Effective on January 1, 2021, the Georgia Property Owners' Association Act ("POA") will add language to O.C.G.A. § 44-3-226(a) that restricts prospective leasing amendments for community associations submitted to the POA. The change, however, will not impact condominium associations, and it will not initially impact common law community associations (i.e. community associations that are not submitted to the POA) unless and until they subsequently submit to the POA and amend their covenants to restrict leasing.

The new language for O.C.G.A. § 44-3-226(a) reads as follows:

Notwithstanding any other provisions of this subsection: No amendment shall be made to the instrument so as to prohibit or restrict a nonowner occupied lot from continuing to be leased or rented for an initial term of six months or longer pursuant to the preamended instrument; provided, however, that upon the conveyance for value of such lot, such lot shall be made to conform to the instrument as amended. For purposes of this subparagraph, the term 'conveyance for value' means any transfer of the lot for consideration in the amount of \$100.00 or more or any transfer of an interest in the entity that owns the lot for consideration in the amount of \$100.00 or more.

The foregoing statute essentially precludes POA communities (who amend their covenants to restrict leasing) from restricting a leased lot from continuing to lease until the lot is sold or conveyed to a new owner. In other words, the new language in O.C.G.A. § 44-3-226(a) grandfathers those owners who are currently leasing their lots when a POA community amends its governing documents to restrict leasing after December 31, 2020. It logically follows that owners who are not leasing their lots when the association amends its governing documents would not be grandfathered under O.C.G.A. § 44-3-226(a). This means that owners who are not leasing their lots when the association restricts leasing would be subject to the association's new amended provisions.

Because SB 442 does not go into effect until January 1, 2021, some POA communities may try to amend their covenants to restrict leasing (i.e. without grandfathering) before the end of the year. However, since SB 442 was passed and signed into law during the summer of 2020, boards and property managers may want to err on the side of caution to avoid a potential challenge and incorporate the upcoming change to O.C.G.A. § 44-3-226(a) within any proposed amendment. Either way, any questions or concerns about the new law should be directed to your association's attorney.

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