



# COMMUNITY MATTERS

LUEDER, LARKIN & HUNTER

News and Trends in Community Association Law

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## HB 410 VETOED: Regulations for Community Associations and Closing Statements Vetoed by Governor Deal on May 8, 2018

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

The Georgia Legislature recently passed House Bill 410. House Bill 410 (or “HB 410”) amended the Georgia Condominium Act, the Georgia Property Owners’ Association Act, and added a new code section applicable to common law HOAs.

HB 410 set forth certain requirements for associations to provide statements of account and placed a cap of what associations could charge for providing such statements in the sale and resale of homes in condominium or homeowners associations. The proposed fee cap set forth within HB 410 is below the national average.

HB 410 was sent to the Governor for signature and, on May 8, 2018, Governor Nathan Deal vetoed the bill and issued the following veto statement:

“House Bill 410 provides a list of information that home owners associations, property owners associations, and condominium owners associations would be required to provide to a homeowner upon request and caps the fees the association could charge for producing and transferring that information. First, the cap provided by HB 410 is, to my knowledge, lower than that of any other state in the nation with such a cap and may not be sufficient to cover costs of providing the information required, which could result in increased costs to association members. Second, such associations often contract with private parties to provide these services so that association members need not complete the tasks personally, on behalf of the association. Consequently, it appears that HB 410 could impose burdensome responsibilities on associations and their members and, regardless, absent sufficient justification, parties should generally be left alone to dicker the terms of their private agreements without government intrusion. For the foregoing reasons, I VETO HB 410.”

Consequently, the current law regarding statements of account remains in place in Georgia. That is, both the Georgia Condominium Act and the Georgia Property Owners’ Association Act entitle certain persons and entities to request a statement from the association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable to the owner’s unit/lot. The association is required to provide this statement within five (5) business days from the receipt of the request and could charge a fee not exceeding Ten Dollars (\$10.00) as a prerequisite to issue such a statement. There is no corresponding statute that applied to common law HOAs.

However, for purposes of closings, many closing attorneys and mortgage companies request additional information. This information includes, but was not limited to, the amount of the annual assessments,

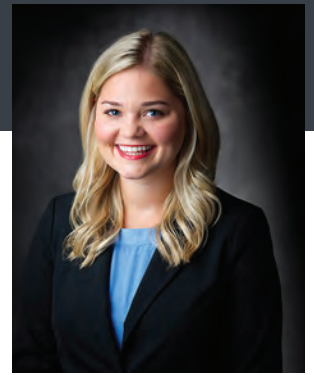
the frequency of installments of the annual assessments, whether there are any special assessments, the amount of any capital contribution assessments, and whether there were any existing violations. For condominiums, closing attorneys and mortgage companies would also request a condominium questionnaire that would request additional information, including, but not limited to, whether there was any active litigation the association was involved in, whether there were any environmental conditions existing at the condominium, delinquency rates, insurance information, and leasing information.

It is imperative that the association provide accurate information, and as such, associations and management companies expend substantial resources to provide accurate information. As a result, associations and management companies charge fees for these disclosures in order to offset these costs. ❖



# Basic Principles of Managing Architectural Modification Applications

by | **Haley H. Bourret, Esq.**



As we move into warmer weather, many homeowners look to make improvements to their property. Such improvements may include changing the exterior color of their home, adding a fence or other landscaping features, or installing a pool.

For most associations, one of the foremost responsibilities of the association is to enforce standards related to such modifications.

Many governing documents will provide that the Board of Directors may, or shall, appoint an Architectural Review Committee or an Architectural Control Committee (“ACC”), upon which non-elected individuals may serve, at the discretion of the Board. Most often, the ACC is empowered to create design standards for the community, and it is primarily responsible for reviewing and issuing decisions on owners’ applications. In most cases though, the authority to enforce the design standards and the decisions of the ACC remains with the Board of Directors. In order to carry out their respective roles, it is important that the ACC and the Board of Directors manage owners’ applications in an organized and consistent manner.

In order to efficiently manage owners’ applications, the ACC and the Board of Directors will benefit from adhering to a few basic principles:

- (1) Adopt rules of procedure
- (2) Adopt design standards and guidelines
- (3) Apply procedures, standards, and guidelines consistently

## **Adopt Rules of Procedure**

In many communities, the governing documents will require that owners submit their applications for modification to the ACC in writing, and that such applications include “such information as the ACC may reasonably require.” Many governing documents will also state that, if the ACC fails to approve, conditionally approve, or deny an application within a specified number of days after the application is submitted, the application will be deemed to be approved. Failure to respond to a complete application can therefore have unattractive consequences, especially if the proposed modification is not aesthetically

consistent with the rest of the community.

Adopting rules of procedure will help ensure that applications are complete, may help reduce the risk that an application is approved by default, and provides owners with a fair opportunity for their applications to be reviewed. Such rules may include detailed requirements for what information the ACC needs in conjunction with the application, the process by which the ACC will review an application, including timelines and methods of approval, and the procedure for an owner to appeal a decision of the ACC.

To implement rules of procedure, it is best for the rules to be published to the members, so that they are aware of the requirements and processes when they wish to submit an application. In addition, it is important that the ACC strive to closely and consistently follow the procedures it has created.

## **Adopt Design Standards and Guidelines**

Most governing documents do not include detailed or exhaustive restrictions and guidelines on what modifications will be acceptable in the community. Instead, most contain a few broad restrictions (for example, a prohibition on chain-link fences and above-ground pools), and provide that the ACC may, or shall, create design standards for the community. There are several benefits of creating design standards and guidelines. Standards and guidelines assist owners in determining the likelihood that their proposed modification will be approved. In addition, having clear, published standards and guidelines helps limit the likelihood that a decision based upon those standards and guidelines will be challenged, and it helps establish that the ACC acted fairly in issuing its decision.

As with any procedural rules, it is important that design standards and guidelines be made available to community members and that the ACC endeavor to follow the design standards and guidelines as closely as

possible. If an approved modification deviates from the standards and guidelines, it is best to make detailed notes of the decision, including why the variance was allowed.

## **Apply Procedures, Standards and Guidelines Consistently**

In order to avoid challenges to the decisions of the ACC, it is imperative that the ACC apply the procedures, standards, and guidelines it has created as consistently as possible.

When owners challenge a decision of the ACC in their community, they often claim that the ACC acted in an arbitrary manner in issuing its decision. Sometimes an owner may claim that the ACC’s decision regarding his or her application was either inconsistent with other similar applications or that the ACC’s decision was inconsistent with the standards for the community. Inconsistent application of the procedures, standards and guidelines created by the ACC may result in a court overturning the ACC’s decision.

To overcome such a challenge, an ACC should have detailed records regarding the application so it can establish that it acted in conformity with its published procedures, standards, and guidelines in issuing that decision. If the ACC is able to establish conformity with its own procedures, standards and guidelines, a court may be more inclined to uphold that decision.

As warmer weather approaches, many communities will see an increase in the number of modification requests. Adopting rules of procedure, adopting design standards and guidelines, and applying those procedures, standards, and guidelines consistently will help the Board of Directors and the ACC for an association effectively and efficiently manage those requests. If your community is interested in adopting rules of procedure or design standards and guidelines, or if you have questions about the application of those procedures, standards, or guidelines, please contact your association attorney. ❖



## Does a Quitclaim Deed Affect Who Owes the Assessments?

by | Brandon D. Wagner, Esq.

A common situation that occurs in the context of community associations is when a property is quitclaimed from one owner to another. Many clients wonder, "Who owes the assessments?"

The answer can be as simple as looking at the *recorded* Quitclaim Deed. In a situation where an owner has recorded a Quitclaim Deed from himself or herself to another person entirely, the simple answer is that the new owner would be liable for the assessments going forward and the former owner would only be liable for the assessments that fell due prior to the Quitclaim Deed's conveyance date. In cases where the association's governing documents provide for joint and several liability, the new owner would also be liable for the amounts owed by the former owner as well as the assessments coming due from the conveyance date and forward.

However, the more complicated question arises in a situation where the Quitclaim

Deed was signed but never recorded. In 2017, the Georgia Court of Appeals, in the case of *Patel v. Kensington Community Association, Inc.*, answered this question. Roshni Patel was sued for unpaid assessments owed to Kensington Community Association. Patel argued that she could not be held liable for assessments because she was not the owner of the property and had executed a Quitclaim Deed on July 18, 2011; however, she did not record it until June 26, 2014. The trial court ultimately granted the Association's Motion for Summary Judgment and entered a judgment against Patel. Patel, dissatisfied with the trial court's judgment, filed an appeal. On appeal, the court found that from January 21, 2011 to January 7, 2014,

Patel was the record owner of the property. The Association's Declaration provided that each owner is liable for payment of assessments. The Declaration went on to define "owner" as the "record owner...of the fee simple title to any Lot located within the community." The court ultimately found that due to the language of the Declaration, Patel remained the owner of the property until the Quitclaim Deed was recorded, and, was correctly found by the lower court to be liable for payment of the assessments becoming due during her period of record ownership.

As always, whenever there is any uncertainty as to who is responsible for assessments, please contact the association's legal counsel for clarification. ❖

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#### SESSION INFORMATION:

**Saturday, August 4th: 9 am - 12 pm**

Registration and complimentary breakfast beginning at 8:00 AM. The three-hour presentation will be from 9:00 AM to 12:00 PM with continuing education credit available.

#### LOCATION:

**Heritage Hall  
in Sandy Springs**

6110 Blue Stone Road  
Sandy Springs, Georgia 30328

**REGISTER** at [www.luederlaw.com](http://www.luederlaw.com)



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