

GEORGIA LEGISLATION PASSES: CLEARLY DEFINES WHAT AN ASSOCIATION MUST INSURE

2007-2008 GEORGIA LEGISLATIVE UPDATE

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With the calling of *Sine Die* on April 4, 2008, the Georgia Legislature concluded the 2007–2008 Legislative Session. CAI's Legislative Action Committee ("LAC"), working in conjunction with the professional lobbyist retained by the Georgia Chapter to monitor pending legislation, actively advanced the interests of community associations throughout the Session. Some of the more important bills that came before the Legislature are discussed below.

- [House Bill 1121](#) ("HB 1121") amends Section 44-3-107 of the Georgia Condominium Act, which sets forth the types and amounts of insurance that a condominium association is required to obtain. Section 44-3-107 has always required that a condominium association insure "all structures" within the condominium. This language has generally been construed by legal practitioners and the insurance industry to require the association to obtain property insurance sufficient to restore all buildings, including the units, to the condition in which they were originally constructed. However, in recent years, some insurance adjusters have taken the position that the association's obligation to provide insurance is limited to those areas which it is required to maintain under the condominium instruments.

In an effort to provide needed clarity to both associations and the insurance industry, the LAC undertook at the beginning of the Session to amend Section 44-3-107 to more clearly define what the association must insure. It was joined in this effort by the Independent Insurance Agents of Georgia, Inc. The result was HB 1121 which amends the statute to expressly require that the association insure all portions of each building which are common elements (including limited common elements), all foundations, roofs, exterior walls, including windows and doors and the framing therefor, and all of the following items, regardless of who is responsible for maintaining them under the condominium instruments: (a) the HVAC system serving the condominium unit; (b) all sheetrock and plaster board apprising the walls and ceilings of the condominium unit; and (c) the following items within the unit of the type and quality originally installed: floors and subfloors, walls, ceilings and floor coverings, plumbing and electrical lines and fixtures, built-in cabinetry and fixtures, and appliances used for refrigeration, cooking, dishwashing and laundry.

HB 1121 passed both the House and Senate and was sent to the Governor April 15 for signature. It was signed May 14, 2008 (effective July 1, 2008), and is Act 763.

- [House Bill 422](#) (“HB 422”) amends Section 44-3-109 of the Condominium Act and Section 44-3-232 of the Georgia Property Owners Association Act (the “POA Act”) to provide that no foreclosure action with respect to an assessment lien shall be permitted unless the amount of the lien is at least \$2,000.00. The bill also amends O.C.G.A. § 44-5-60, which relates to covenants running with the land, to include a provision which states that “to the extent provided in the covenants, the obligation for the payment of assessments and fees arising from covenants shall include the costs of collection, including reasonable attorney’s fees actually incurred.” This latter provision would provide homeowners associations which are not subject to the POA Act with statutory authority to recover all of their attorney’s fees in assessment collection actions.

HB 422 passed both the House and the Senate and was sent to the Governor for signature on April 11, 2008. It was signed May 14, 2008 (effective July 1, 2008), and is Act 776.

A number of bills were introduced during the Session which would have detrimentally impacted community associations. These included bills that would have suspended owner assessment obligations if a Board failed to comply with the association governing documents, a bill that would have limited an association’s ability to regulate the placement of flags, banners, displays or memorials on property subject to restrictive covenants and a bill that would have prevented an association from enforcing rental limitations against any owner who did not approve them. Fortunately, none of these bills made it to the Governor’s desk.

Finally, in an apparent response to current drought conditions, legislation was introduced during the Session that would have prevented associations from enforcing covenants requiring the use of specified grasses, shrubs, trees or bushes unless “xeriscaping principles” were recognized and applied. Xeriscaping refers to landscaping that conserves water and incorporates principles of planning and design, appropriate plant selection, soil analysis and improvement, irrigation efficiency, practical use of turf, appropriate use of mulches and proper maintenance. Although this legislation did not pass the House and the Senate, the LAC anticipates that similar legislation may be introduced during the next Legislative Session, particularly if drought conditions continue.

Michael J. Zenner, Esq. is Chair of the Georgia Legislative Action Committee.