Georgia's New Property Owners' Bill of Rights Act: What Developers and Investors Need to Know

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Georgia's newly enacted Senate Bill 406, titled the "Georgia Property Owners' Bill of Rights Act," (the "Bill of Rights Act"), represents a sweeping overhaul of the state's law governing homeowners' associations for property owners' developments currently subject to the existing Georgia Property Owners' Association Act, enacted in 2004. The Bill of Rights Act was passed during the 2026 Legislative Session, with certain provisions taking effect on July 1, 2026, and other requirements applying beginning on January 1, 2027. Developers, lenders, title insurers, and HOA boards involved in master-planned or other residential projects should take note of the practical implications of Senate Bill 406.

For real estate developers and investors, these changes will affect declaration and covenant drafting during build-out, general due diligence, and lien searches in acquisition and financing transactions for new residential developments or mixed-use residential projects. Developers and investors must understand the new rules, given that the Bill of Rights Act is expected to raise operating costs, impose new— and in some cases duplicative—obligations on HOAs and, in some cases, may disqualify volunteer HOA leaders who have failed to comply with the Bill of Rights Act from continuing to serve.

This article provides a general overview of Georgia Senate Bill 406 and addresses the practical implications and key considerations developers, investors, and similarly situated parties should keep in mind as the remainder of the Bill of Rights Act takes effect.

Bill Overview

The Bill of Rights Act, among other things, creates a new Chapter 17A in Title 43, shifting regulatory authority to the Secretary of State; requires owners' associations formed on or after July 1, 2026, to comply with the Georgia Property Owners' Association Act; requires homeowners' associations to be registered with the Georgia Secretary of State; doubles the minimum delinquency threshold for foreclosure; and imposes a strict payment-application hierarchy and 10-year record-retention mandate.

Key provisions include:

- **Mandatory Registration.** It is now unlawful for a person to operate a property owners' association pursuant to the Georgia Property Owners' Association Act unless the association registers annually with the Georgia Secretary of State, pays a fee, and submits governing documents and financial information.
- **Records Retention.** Registered associations must maintain all records relating to assessments, fines, fees, liens, and foreclosures for at least 10 years, at an office in Georgia or their principal office, in both electronic and other formats.
- **Foreclosure.** The Bill of Rights Act doubles the minimum delinquency required to initiate foreclosure proceedings from $2,000 to $4,000, extends the required notice of foreclosure from

30 to 60 days, and prohibits any specific assessment, fine, or fee from being included in the calculation of the lien total. Additionally, the required notice must specify the number of assessments due and payable, together with authorized late charges and the accruing interest rate, and must state that payment of such amount before the 60th day will eliminate the right of foreclosure.

- **Payment Application Priority.** The Bill of Rights Act requires HOAs to apply homeowner payments in a specific order: first to regular dues, then to outstanding special assessments (costs outside the regular budget), then to specific assessments (costs from repairing or remediating damage caused by that owner), and finally to fees or fines for nonpayment or covenant violations.

- **Attorney's Fees and Judicial Review.** Before attorney's fees can be passed on to a homeowner, the Bill of Rights Act requires an itemized statement and judicial review of the reasonableness of the fees.

- **Dispute Resolution and Oversight.** The Bill of Rights Act creates a State Board for Review of Complaints Regarding Property Owners' Associations, along with a process for hearings, complaint review, appeals, binding arbitration, and a stay of collections of fines or fees during disputes.

- **Owner Rights to Information and Disclosure (Bill of Rights).** The Bill of Rights Act codifies a specific "Bill of Rights" for property owners under OCGA § 43-17A-7, establishing disclosure-related rights that give owners the right:

  (i) to inspect and obtain copies of the association's records, accounting records, and other records upon written demand, in compliance with governing documents and state law;

  (ii) to receive a copy of the association's certificate of insurance for all insurance obtained by the association for the benefit of the owner and that may apply to a potential or submitted claim;

  (iii) to receive notice of member meetings fairly and reasonably consistent with governing documents and state law (the board of directors is required to call and hold meetings of members at least annually, which owners may attend); and

  (iv) to statutory notice and process requirements under Georgia law if the association proceeds with foreclosure against individually owned property.

Effective Date

The attorney's-fee and judicial-review requirements already took effect on July 1, 2026, while most other provisions will take effect on January 1, 2027.

Practical Considerations for Developers

Given that these changes could increase operating costs and may affect how documents are drafted and deals are negotiated, developers and investors involved in subdivided or HOA-run projects, especially developers who create or control an association during the build-out phase, should consider the following during project planning and eventual document drafting:

- **Registration, Renewal, and Compliance.** Associations that fail to register or renew their registration are prohibited from collecting fines, issuing liens, or initiating foreclosure proceedings, and may instead become "nonregistered owners' associations" facing these same limitations. The Georgia Secretary of State may also deny, suspend or revoke a registration statement if it finds that the association, or any person who is an officer, director or employee of the association, willfully violated or failed to comply with the Bill of Rights Act.

- **Disclosure Obligations:** The Bill of Rights Act imposes various novel disclosure obligations on associations, including through its "Bill of Rights" for property owners, its enhanced foreclosure notice requirements, and its conditions on recovery of attorney's fees.

- **Document Drafting.** The Bill of Rights Act affects the drafting of various documents, including formation documents, declarations, and covenants for any new commercial, residential, or mixed-use projects.

A Focus on Document Drafting

Developers should pay special attention to the following documents and specific provisions that will likely be affected by the Bill of Rights Act's new rules and regulations regarding associations' filings, renewals, assessments, document retention, and other administrative matters:

Formation Documents

Since the Bill of Rights Act now requires associations to file an initial registration statement and annual renewals as "owners' associations," separate from standard corporate registration with the Corporations Division, formation documents must be updated to provide for annual registration with the Secretary of State. Governing documents should also reflect the Bill of Rights Act's 10-year record-retention requirement.

Covenants in Declarations

The Bill of Rights Act will affect various processes under the purview of most declarations, including provisions regarding payment-application priority, binding arbitration, and fee abatement during disputes. Declarants should keep in mind that, when drafting declarations, any provisions regarding the collection and use of assessments and the imposition and enforcement of liens should reflect the new rules promulgated under the Bill of Rights Act. Additionally, declarants should ensure they implement a mechanism for reviewing and bringing existing declarations into compliance with the requirements of the Bill of Rights Act.

Conclusion

Senate Bill 406 fundamentally reshapes how Georgia property owners' associations are formed, governed, and enforced—and its phased effective dates leave no room for developers and investors to treat compliance as tomorrow's problem. Registration, record retention, foreclosure, and payment-priority requirements are already in force or approaching quickly, with the next major deadline arriving January 1, 2027. Project teams should begin reviewing formation documents, declarations, and covenants now to confirm they meet the Bill of Rights Act's new standards.

Developers who create or control associations during build-out should build in a mechanism for periodically auditing governing documents against the Bill of Rights Act's evolving requirements, since noncompliance can strip an association of its ability to collect fines, impose liens, or pursue foreclosure altogether.

The fallout for a residential or mixed-use project's association if its registration lapses mid-development could be costly. Ultimately, proactive document drafting and diligence will be essential to managing the increased operating costs, disclosure obligations, and administrative burdens the Bill of Rights Act imposes, while also protecting the enforceability of long-standing covenants against the new statutory framework.

For More Information

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