

Land Use Litigation Practice Group

The Balch & Bingham Land Use Litigation Group brings together attorneys with experience and expertise in the broad array of issues involving real estate, community associations, zoning and development, construction, and commercial litigation. We emphasize a "team approach" to solving particular land use disputes as well as related legal or business issues.

It is our goal to be a proactive "partner" working in conjunction with our clients and their stated goals and mission, not just a reactive legal advisor. We recognize that it is our role and our clients' expectation that we serve as a partner in their business and provide clear, responsive, and efficient legal counsel. We help our clients not only in times of crisis, but also through sound, strategic long-term planning.

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Community Association News

COMMUNITY ASSOCIATION INSTITUTE'S LAW SEMINAR – "BRAVE NEW WORLD."

We recently attended the Community Association Institute's Law Seminar. This annual seminar always provides an excellent program of educational opportunities for any lawyer that serves community associations. This year was no different. The theme was "Brave New World" with the goal of exploring the latest trends in community association law and management in order for lawyers to better represent our association clients.

Animation at Trial

One of the most interesting sessions concerned animation in the courtroom. This is a tool made for major litigation. The presentation made it clear that the cost has come way down and the quality of the animations has gone way up. For trial lawyers handling construction defect disputes, as well as premises liability, nuisance and other issues that arise in community associations, it is difficult to imagine a better tool for educating a judge or jury than an animated recreation of the incident in question. This presentation not only demonstrated how effective animation can be in a courtroom, but also explained the manner in which litigators must enter the evidence at trial.

Our initial reaction was doubt that the cost could justify the benefits of animation. However, the examples at this presentation showed that it could. By showing different points of view, altering the scale and other innovations, animation offers trial lawyers a way to tell their clients' stories in a manner not possible with any previous technology. We encourage you to take two minutes and check out the sample animation here: http://www.mtngraphix.com/animation_real_estate.php, which animates the construction of a building from the architectural drawings. There are several others worth watching, such as the water seep animation on the same page and the roller coaster accident video at the home page. For \$2500, it will change the way a judge or jury sees a community's case.

Recent Georgia Case on Discrimination

The case update session, led by George Nowack and Wilbert Washington, II, is always a highlight the Law Seminar. This year one Georgia case was a particularly important ruling in a growing area of litigation for community associations.

Bailey v. Stonecrest Condominium Association, 696 S.E.2d 462 (Ga. App. 2010), involved a resident's allegations of racial discrimination against a condominium association and the members of the board of

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directors. Discrimination claims are most often brought against associations and boards in connection with covenant enforcement efforts. In this case, it involved the board's passing an amendment targeted at leasing to African Americans.

The Plaintiff claimed that the board passed amendments to the association's bylaws prohibiting leasing after the resident leased to an African American woman. "When [the resident] informed [board member] that the tenant was a young African-American woman, [board member] responded that she thought that might be a problem because she was unsure how other residents would receive an African-American woman." There were other allegations of similar comments from board members.

The Court ruled that these facts presented a claim for a jury to decide. The Court explained, "The Georgia Fair Housing Act, which is nearly identical to the Federal Fair Housing Act ("FHA"), allows aggrieved persons to seek actual and punitive damages for violations of the Act. Under OCGA § 8-3-202(a)(1), it is unlawful: "To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, familial status, or national origin." Under subsection (2) of the Act, it is unlawful: "To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, disability, familial status, or national origin."

Bailey v. Stonecrest also serves as a warning to members of boards. The Court found that the directors had to face a trial on a claim of breach of fiduciary duty to the members. "Bailey also argues that the defendants breached their fiduciary duty to her by passing amendments to prohibit leasing, which violated the Georgia Fair Housing Act ... factual question remain as to whether the defendants' substantive decision to adopt the leasing restriction

amendments was made in good faith, was reasonable, and was not arbitrary and capricious." Further, the Court allowed the case to proceed on claims for fees and punitive damages against the Association.

Recent Georgia Legislation Related to Community Associations

Recent legislative decisions impacted Georgia Community Associations in a couple of areas. On one hand, the legislature passed a new law making service of process easier in gated communities. The legislature did not act, however, on a proposed super lien law.

The legislature passed an amendment to the Georgia service of process statute, O.C.G.A. § 9-11-4. Prior to this law, service on residents of gated communities was nearly impossible if the person wanted to avoid it. Now, the law requires that a gated or otherwise secured community grant access to a process server performing lawful service of process. The law places certain parameters on the access. For example, the process server is allowed into the community for a reasonable amount of time during reasonable hours. The process server must identify the person to be served to the manager or security, have photo id and provide evidence that he is authorized to serve process. The process server must leave after accomplishing service or determining it cannot be accomplished at that time.

The super lien legislation did not pass, but is still on the table this year. The law would provide increased protection for community associations when residents are foreclosed on. More specifically, the law would give an association priority in collecting its assessments over mortgage holders. The proposal in 2010 was that an association's lien would be superior to any mortgage in an amount equal to ½ of the common expense assessments that came due during the 12 months prior to the foreclosure. However, the terms of the new law were not agreed on in time for passage. It is likely that it will pass this year.