



# **LEGAL, LEGISLATIVE & CASE LAW UPDATE**

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February 24, 2018

**2017**  
**LEGISLATIVE**  
**UPDATE**

**BILLS AFFECTING COMMUNITY ASSOCIATIONS IN THE 100<sup>TH</sup> GENERAL ASSEMBLY**  
**INTRODUCED IN 2017**

*Similar to past legislative sessions 2017 has been an active year for legislation affecting common interest communities and condominium associations. CAI Illinois' Legislative Action Committee (ILAC) has, again, had an active year in sponsoring, advising, commenting on and opposing various bills throughout the year. Below is a list of legislation introduced throughout 2017.*

**PUBLIC ACTS**

**PA-100-0292** (formerly HB0189) consolidated several other bills into a single omnibus act.  
**COMMON INTEREST COMMUNITY ASSOCIATION ACT CHANGES**

- Creates a New Section 1-20(e) involving amendments to governing documents. The language provides that approval or consent of a mortgage holder (if required by an association's governing documents) can be implied if the mortgagee or lienholder receives notice of the proposed amendment and fails to respond after 60 days. This change will allow associations whose membership has approved of an amendment to pass their agreed upon changes without being limited by lack of response from mortgagees or lienholders.
- Creates a New Section 1-45 (i) which will require that any association with 100 or more units/homes use "generally accepted accounting principles (GAAP)" in fulfilling any statutory accounting obligations.

**ILLINOIS CONDOMINIUM PROPERTY ACT CHANGES**

- Creates a new Section 9(c)(5). Grants the board the authority (unless there are explicit terms and provisions to the contrary in the declaration and by-laws) at the end of any fiscal year, to dispose of surplus funds of the association by either: (1) contributing the surplus to reserves; (2) crediting the surplus against owners' assessments; (3) returning the surplus as a direct payment to the owners; or (4) maintaining the funds in the operating account and applying such funds to the following year's annual budget. Additionally, the new language provides owners the ability to object to the board's action regarding the surplus, similar to owners' right to reject a budget or special assessment found in Section 18(a)(8) of the Act.
- Amends Section 15 "Sale of property." In the event the sale of the entire condominium property achieves the requisite percentage of vote, any unit owner who opposed such sale, and filed a written objection, would be entitled to the greater of the fair appraised value of the unit or the balance of any outstanding debt (mortgage/liens) against the unit. Further, the new language provides that the objecting owner would also be entitled to receive a reimbursement for "reasonable relocation costs" as determined by federal law. The changes to this section would apply to any pending contracts for sale of the entire property.
- Amends Section 18(a)(8) of the Act. Currently the Act provides that owners shall have the right to object to any regular or special assessment increase, in excess of 115% of the prior year, by a petition signed by twenty percent (20%) of the votes of an association, and

submitted to the board within 14 days of the action. The change increases the amount of time to file such petition to 21 days.

- Amends Section 18(a) (16) of the Act. Currently the Act provides that owners shall have the right to object to any contract entered into with a current board member, a board member's immediate family or a company which the board member has a 25% or greater interest in, by filing a petition within 20 days of such action. The change increases the amount of time to file such petition to 30 days.
- Amends Section 18(b)(9)(C) of the Act. Currently the Act provides if the Board passes a rule eliminating proxies at an election and requiring the owners to vote by ballot, the owners shall have the right to object to such rule by filing a petition within 14 days of such action. The change increases the amount of time to file such petition to 30 days.
- Amends Section 18.4 (a) of the Act. Currently the Act provides that owners shall have the right to object to a capital improvement approved by the board in excess of 5% of the annual budget (not maintenance, repair or replacement of existing portions of the common elements) by petition signed by owners with twenty percent (20%) of the votes of the Association within 14 days of the action. The change increases the amount of time to file such petition to 21 days.
- Creates a new Section 18.10 of the Act which will require that any association with 100 or more units use "generally accepted accounting principles (GAAP)" in fulfilling any statutory accounting obligations.
- Amends Section 19 "Records of the association; availability for examination" of the Act. The amendment is an attempt to permit owners greater access to records of an association. Importantly records of an association must be made available within "10 business days" of receipt of the owner's request to inspect. Additionally, the amendment removed the portion of the statute which required a "proper purpose" to review certain records. Further, the amendment includes permitting the inspection of owners' email addresses and phone numbers, in addition to names and addresses. However, the legislation provides that an association can require any member examining or copying records related to other owners' information to certify that such information will not be used for a "commercial purpose." Finally, the amendment authorizes the board of directors to fine a member who violates the certification.
- Amends Section 27 "Amendments." The language provides that approval or consent of a mortgage holder (if required by the association's governing documents) can be implied if the mortgagee or lienholder receives notice of the proposed amendment and fails to respond after 60 days. This change will allow associations whose membership has approved of an amendment to pass their agreed upon changes without being limited by lack of response from mortgagees or lienholders.
- Amends Section 31. The new language amends Section 31 (subdivision or combination of units) of the Act to define "combination of units." Importantly the new language establishes that in the event of a combination of units, use of limited common elements or common elements is not a diminution of other owners' interest and, despite other language in the Act, shall not require the unanimous consent of all owners.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=0189&GAID=14&GA=100&DocTypeID=HB&LegID=99139&SessionID=91>

### **BILLS WHICH DID NOT PASS**

**HB2400 (Rep. Nekrtiz) ELIMINATION OF CUMMULATIVE VOTING.** This bill amends Section 18 (b) (7) of the Illinois Condominium Property Act and, 1-25 of the Common Interest Community Association Act. The bill proposes changing both the Condominium Property Act and the Common Interest Community Association Act to specify that all voting shall be on a “non-cumulative” basis. The effect of this bill would be to eliminate cumulative voting for all condominium associations and common interest communities. On March 31, 2017 this bill was assigned re-referred to Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2400&GAID=14&GA=100&DocTypeID=HB&LegID=103083&SessionID=91>

**HB2401 (Rep. Nekrtiz) DEFINING “CLASS OF MEMBERSHIP”/AMENDMENT TO SECTION 15 OF CONDO ACT.** This bill started with two distinct changes. The first portion of the bill amends Section 1-30 of the Common Interest Community Association Act, and Section 18 (b)(2) of the Illinois Condominium Property Act. This is a one word change to add "voting" to the "class of membership" sections in both the Condominium Property Act and the Common Interest Community Association Act. This language was amended in the Senate to remove “voting” and instead create two qualifiers of acts which would not be considered creating classes of membership: parking rules and regulations; and rules and regulations related to security.

Additionally, bill proposes a change to Section 15 of the Condo Act which permits the sale of the condominium property, in its entirety, to an outside investor. Currently, the Act permits the sale of the property, based upon the number of units, upon a vote of either a majority of the unit owners (for a 2 unit condo), 2/3 of the unit owners (for a 3 unit condo) or 75% of the unit owners (for a 4 unit condo or larger). The bill proposes a fourth tier of seven (7) units or more to require the vote of 85% of the unit owners. An amendment was added to this provision in the Senate which provide that if less than 25% of the units were owner-occupied the threshold would revert to 75%. Prior to the amendments, on March 9, 2017 this bill passed the House. The bill with amendments passed the Senate on May 29, 2017 – however, did not advance with amendments further in the House and remains referred to Civil Judiciary Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2401&GAID=14&GA=100&DocTypeID=HB&LegID=103084&SessionID=91>

**HB2627 (Rep. Fine) AMENDMENT SECTION 19 RECORDS REQUESTS.** This bill amends Section 19 of the Illinois Condominium Property Act. The bill deletes the existing language of the Act which provides that certain specified records may be inspected but only for a proper purpose (contracts, membership listing, ballots/proxies and books and records of account). Additionally, the bill deletes the language of Section 19 which provides that in an action to compel examination of specified records, the burden of proof is upon the member to establish that the member's request is based on a proper purpose. Effectively, the bills would permit this inspection of all specified records merely upon request. On March 31, 2017 this bill was assigned re-referred to Rules Committee – however portions of this bill were incorporated into PA 100-0292.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2627&GAID=14&GA=100&DocTypeID=HB&LegID=103897&SessionID=91>

**HB2667 (Rep. Cassidy) AMENDMENT TO FORCIBLE ENTRY AND DETAINER ACT.** This bill amends the Illinois Forcible Entry and Detainer Act Sections 9-102 and 9-104.3. The bill Provides that when property is part of a Master Association (as defined in the Illinois Condominium Property Act or a Common Interest Community Association (as defined by the Common Interest Community Association Act) the board may bring a forcible entry and detainer action. Accordingly, the proposed changes would allow only “common interest communities” which are subject to the Common Interest Community Association Act to the use the Forcible Entry and Detainer statute. On March 31, 2017 this bill was assigned re-referred to Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2667&GAID=14&GA=100&DocTypeID=HB&LegID=103954&SessionID=91>

**HB2673 (Rep. Cassidy) SURPLUS CONDOMINIUM FUNDS.** This bills creates a new Section 9 (c)(5) of the Illinois Condominium Property Act. The bill grants the board the authority, despite any terms and provisions in the declaration and by-laws to the contrary, at the end of any fiscal year, to dispose of surplus funds of the association by either: (1) contributing the surplus to reserves; (2) crediting the surplus against owners’ assessments; (3) returning the surplus as a direct payment to the owners; or (4) maintaining the funds in the operating account and applying such funds to the following years annual budget. Additionally, the new language would provide owners’ the ability to object to the board’s action regarding the surplus, similar to owners’ right to reject a budget or special assessment found in Section 18(a)(8) of the Act. On March 31, 2017 this bill was assigned re-referred to Rules Committee – however this bill was incorporated into PA 100-0292.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2673&GAID=14&GA=100&DocTypeID=HB&LegID=103960&SessionID=91>

**HB2696 (Rep. Williams) CLOSED PORTION OF MEETINGS AND BUDGETS.** This bill amends Section 18.5 of the Illinois Condominium Property Act and Section 1-45 of the Common Interest Community Association Act. In the past legislative session changes were made to the Illinois Condominium Property Act regarding condominiums which were not incorporated into similar provisions the Common Interest Community Association Act and Section 18.5 of the Illinois Condominium Property Act regarding Master Associations. Specifically:

(a) Section 18 (a)(6) of the Condo Act was changed in the prior legislative sessions. The current Section 18 (a)(6) is identical to the proposed change to Section 1-45 of CICAA requiring a Common Interest Community to send its budget to members 25 days prior to adoption as opposed to 30 days.

(b) Section 18 (a)(6) is identical to the proposed change to Section 18.5(c)(1) requiring a Master Association to send a budget 25 days prior to its adoption to the members as opposed to 30 days.

(c) Section 18 (a)(9) regarding items which can be discussed by a board of directors in closed portion of a meeting, are identical to the proposed changes to Section 18.5 (c)(4) affecting Master Associations.

On March 31, 2017 this bill was assigned re-referred to Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2696&GAID=14&GA=100&DocTypeID=HB&LegID=103991&SessionID=91>

**HB2844 (Rep. Cassidy) AMENDMENTS TO GOVERNING DOCUMENTS.** The language of the bill proposes a modification to Sec. 27 of the Condominium Property Act and Section 1-20 of the Common Interest Community Association Act (CICAA) involving amendments to governing documents. The proposed language provides that approval or consent (if required) can be implied if the mortgagee or lienholder receives notice of the proposed amendment and fails to respond after 35 days. This change will allow associations whose membership has approved of the amendment to pass their agreed upon changes without being limited by lack of response from mortgagees or lienholders. On March 31, 2017 this bill was assigned re-referred to Rules Committee – however this bill was incorporated into PA 100-0292.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2844&GAID=14&GA=100&DocTypeID=HB&LegID=104265&SessionID=91>

**HB2931 (Rep. Gabel) SURPLUS CONDOMINIUM FUNDS AND COMBINATION OF UNITS.** This bill amends Section 18(a)(7) of the Illinois Condominium Property Act to provide that notwithstanding any provision in the condominium instruments to the contrary, the board of managers has discretion to: (i) address any budget surplus by transferring the surplus funds or portion thereof to the association's capital or operating reserves or applying the surplus funds to any other common expense; and (ii) address any deficit by incorporating the deficit into the following year's annual budget. Additionally, the bill amends Section 31 (subdivision or combination of units) of the Act to define "combination of units" and provide that in the event of a combination of units, use of limited common elements or common elements shall not require the unanimous consent of all owners. On March 31, 2017 this bill was assigned re-referred to Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2931&GAID=14&GA=100&DocTypeID=HB&LegID=104439&SessionID=91>

**HB2932 (Rep. Gabel) ATCHA CLEAN-UP BILL.** This Bill amends various sections of the Condominium Property Act. Primarily, the Bill:

- (a) Deletes obsolete references to common interest communities throughout;
- (b) Deletes obsolete provisions in Section 18.7 due to the Community Association Manager Licensing and Disciplinary Act;
- (c) Relocates provisions related to reserve funds held by a management company in Section 18 to Section 9 where other reserve related provisions are located; and
- (d) Deletes duplicative provisions related to fidelity insurance coverage in Sections 18 and 18.7 to eliminate possible confusion and so that all insurance related provisions are located in Section 12; and
- (e) Conforms Section 18.5 provisions to similar corresponding sections of the Condominium Property Act to establish uniformity among condominiums and maters associations; particularly in light of the last sentence of Section 18.5(b), which provides "In interpreting subsections (c) through (h), the courts should interpret these provisions so that they are interpreted consistently with the similar parallel provisions found in other parts of this Act."

The also adds new text to Section 22.1; specifically:

- (a) The text “that may have a material adverse impact on the financial condition of the association” was inserted at the end of Section 22.1(a)(6) for the purpose of limiting the number and types of lawsuits or judgments that must be disclosed. It appears that the purpose of this provision is provide a prospective buyer information about the financial condition of the association; particularly, whether the association is involved in any proceeding or has a judgment against it that could result in a special assessment. A pending collection action or judgment from a collection action does not seem to be the type of proceeding intended to be covered by this provision; and
- (b) The text “manager, or agent” was inserted in Section 22.1(b) because, in practice, if the association is management, it is the managing agent who prepares and provides the 22.1 disclosure. Thus, this new text is only to conform the Condominium Property Act to how 22.1 disclosures are actually handled.

On March 31, 2017 this bill was assigned re-referred to Rules.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2932&GAID=14&GA=100&DocTypeID=HB&LegID=104440&SessionID=91>

**HB3627 (Rep. Anderson) GAAP ACCOUNTING PROCEDURES FOR ASSOCIATIONS.** This bill amends both the Illinois Condominium Property Act and the Common Interest Community Association Act to create new Sections 18.10 and 1-45 respectively. Both new sections will require that any association (either condominium or common interest communities) with 1,000 or more units shall be required to use “generally accepted accounting principles.” On March 31, 2017 this bill was assigned re-referred to Rules Committee – however the concept, but not the language, of this bill was incorporated into PA 100-0292.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3627&GAID=14&GA=100&DocTypeID=HB&LegID=105547&SessionID=91>

**HB3755 (Rep. Drury) ATTORNEY FEE AWARDS TO UNIT OWNERS/ELIMINATION OF FEES IN DEMAND NOTICES.** The bill amends Section 9.2 “Other remedies” of the Illinois Condominium Property Act. The bill would require that attorney’s fees incurred in sending and serving a collection demands under the Forcible Act be EXCLUDED from an owner’s assessment account. Additionally, contrary to most governing documents, the bill provides that if an owner is the “substantially prevailing party” in any litigation or arbitration (including a collection action) involving an association or its board, the court shall award that owner his or her attorney’s fees and costs. On March April 27, 2017 this bill passed the House with a vote of 60-49-2. On May 26, 2017 this bill was re-referred to Senate Assignments

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3755&GAID=14&GA=100&DocTypeID=HB&LegID=105729&SessionID=91>

**SB 882 (Sen. Mulroe) DEFINING “CLASS OF MEMBERSHIP”/AMENDMENT TO SECTION 15 OF CONDO ACT.**

This bill is the same as HB 2401 referenced above. On April 26, 2017 this bill passed the Senate 54-1-1. On April 27, 2017 this bill was referred to Rules Committee in the House.



<http://www.ilga.gov/legislation/billstatus.asp?DocNum=882&GAID=14&GA=100&DocTypeID=SB&LegID=102425&SessionID=91>

**SB884 (Sen. Mulroe) ELIMINATION OF CUMMULATIVE VOTING.**

This bill is the same as HB 2400 referenced above. On March 17, 2017 this bill was re-referred to Assignments.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=884&GAID=14&GA=100&DocTypeID=SB&LegID=102427&SessionID=91>

**SB927 (Sen. Bertino-Tarrant) RESTRICTIONS ON COMMON INTEREST COMMUNITIES RIGHT TO INSTITUTE COLLECTION ACTIONS.** This bill amends Section 1-30 of the Common Interest Community Association Act and Section 9-102 of the Illinois Forcible Entry and Detainer Act. The bill creates thresholds on common interest communities before they can commence collection proceedings. Specifically, the bill prevents the filing of a lien against a unit until the unpaid assessment total \$500.00 or more, and requires the association to grant the delinquent unit owner notice and an opportunity to be heard. Further, the bill prevents common interest communities from using either the forcible act or the foreclosure statute in collecting unpaid assessments, unless the unit owner's obligation exceeds \$1,000. This bill effectively grant defaulting owners a statutorily-imposed grace period on collection actions. On March 17, 2017 this bill was re-referred to Assignments.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=927&GAID=14&GA=100&DocTypeID=SB&LegID=103063&SessionID=91>

**SB928 (Sen. Bertino-Tarrant) NOTICE TO BUYERS IN COMMON INTEREST COMMUNITIES REGARDING ASSESSMENTS.** This bill amends the Common Interest Community Association Act, to create a new Section 1-37 regarding additional mandatory disclosures in the event of a sale or conveyance of a property. The bill obligates the board of an association to provide a person interested in purchasing the property with documentation detailing the "assessment structure" and any penalties for failure to pay the assessments. Further, the "written documentation" from the association must provide space for signatures of the current owner and purchaser acknowledging receipt and review of the assessment documentation. The acknowledgment must be delivered to the board and kept by the board. These requirements are in addition to the disclosures required under Section 1-35 of the Act. On May 31, 2017 this bill was re-referred to Assignments.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=928&GAID=14&GA=100&DocTypeID=SB&LegID=103064&SessionID=91>

**SB948 (Sen. Hastings) CLOSED PORTION OF MEETINGS AND BUDGETS.**

When originally introduced, this bill was the same as HB 2696 referenced above. On April 26, 2017 this bill passed the Senate 56-0-1. Upon arrival in the House two amendments were filed by Rep. Thapedi striking the original language of the bill and incorporating other language, including SB1818, amended language from SB92, HB3755, portions of HB2932 and other new additional language altering certain timeframes. The bill with amendments passed House Civil Judiciary Committee 6-3. On July 6, 2017 this bill was re-referred to House Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=948&GAID=14&GA=100&DocTypeID=SB&LegID=103116&SessionID=91>

**SB949 (Sen. Hastings) AMENDMENTS TO GOVERNING DOCUMENTS.**

The language of the bill proposes a modification to Sec. 27 of the Condominium Property Act and Section 1-20 of the Common Interest Community Association Act (CICAA) involving amendments to governing documents. The proposed language provides that approval or consent (if required) can be implied if the mortgagee or lienholder receives notice, by certified mail, of the proposed amendment and fails to respond after 60 days. This change will allow associations whose membership has approved of the amendment to pass their agreed upon changes without being limited by lack of response from mortgagees or lienholders. April 26, 2017 this bill passed the Senate 55-0-1. Upon arrival in the House two amendments were filed by Rep. Thapedi striking the original language of the bill and incorporating the language of HB3755. On May 31, 2017 this bill was re-referred to House Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=949&GAID=14&GA=100&DocTypeID=SB&LegID=103117&SessionID=91>

**SB1818 (Sen. Althoff) REPEAL OF MANAGER LICENSING.** This bill would modify Community Association Manager Licensing and Disciplinary Act. The proposed language would eliminate all references to “supervising community association manager” and the requirement of a “supervising manager” licensing. Additionally, the proposed language would eliminate the requirement for a “community association management firm.” On April 27, 2017 this bill passed the Senate 54-0-0. On May 31, 2017 this bill was re-referred to the House Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=1818&GAID=14&GA=100&DocTypeID=SB&LegID=104934&SessionID=91>

***This document provides a general synopsis of various bills that affect community associations. This list is by no means complete. Further, the information contained herein can change throughout the legislative process. Bills can be amended and language originally proposed can be deleted. In order to assure you have the most accurate information about any given bill, please go to [www.ilga.gov](http://www.ilga.gov) and review not only the synopsis but the actual language of the bill and any relevant amendments.***

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**LEGISLATIVE**  
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**BILLS AFFECTING COMMUNITY ASSOCIATIONS IN THE 100<sup>TH</sup> GENERAL ASSEMBLY**  
**INTRODUCED IN 2018**

*This document provides a general synopsis of various bills that affect community associations. This list is by no means complete. Further, the information contained herein can change throughout the legislative process. Bills can be amended and language originally proposed can be deleted. In order to assure you have the most accurate information about any given bill, please go to [www.ilga.gov](http://www.ilga.gov) and review not only the synopsis but the actual language of the bill and any relevant amendments. This information is provided as February 21, 2018.*

**HB2401 (Rep. Feigenholtz) DEFINING “CLASS OF MEMBERSHIP”/AMENDMENT TO SECTION 15 OF CONDO ACT.** This bill started with two distinct changes. The first portion of the bill amends Section 1-30 of the Common Interest Community Association Act, and Section 18 (b)(2) of the Illinois Condominium Property Act. This is a one word change to add "voting" to the "class of membership" sections in both the Condominium Property Act and the Common Interest Community Association Act. This language was amended in the Senate to remove "voting" and instead create two qualifiers of acts which would not be considered creating classes of membership: parking rules and regulations; and rules and regulations related to security.

Additionally, bill proposes a change to Section 15 of the Condo Act which permits the sale of the condominium property, in its entirety, to an outside investor. Currently, the Act permits the sale of the property, based upon the number of units, upon a vote of either a majority of the unit owners (for a 2 unit condo), 2/3 of the unit owners (for a 3 unit condo) or 75% of the unit owners (for a 4 unit condo or larger). The bill proposes a fourth tier of seven (7) units or more to require the vote of 85% of the unit owners. An amendment was added to this provision in the Senate which provides that if less than 25% of the units were owner-occupied the threshold would revert to 75%. Prior to the amendments, on March 9, 2017 this bill passed the House. The bill with amendments passed the Senate on May 29, 2017. On January 24, 2018 the bill with amendments was assigned to the House Civil Judiciary Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2401&GAID=14&GA=100&DocTypeID=HB&LegID=103084&SessionID=91>

**HB4816 (Rep. Feigenholtz) ADDITIONAL CHANGES TO SECTION 19 OF THE CONDOMINIUM ACT.** This bill amends Section 19 of the Illinois Condominium Property Act to create a new Section 19 (g-5). The bill prohibits any person (including a board member) who obtains personal information of the members under the Act from selling or distributing such information to any other entity or for using such information for any purpose other than condominium association matters. On February 14, 2018 this bill was referred to the Rules Committee in the House.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=4816&GAID=14&GA=100&DocTypeID=HB&LegID=110160&SessionID=91>

**HB4910 (Rep. Thapedi) LIMITATION ON UNITS OF LOCAL GOVERNMENT.** This bill amends both the Common Interest Community Association Act and the Illinois Condominium Property Act to create two new sections 1-95 and 18.11, respectively. The bill would prohibit any local government unit, including home rule unit, from regulating any actions inconsistent with the provision of P.A. 100-292 (formerly HB189) which passed into law in 2017. Effectively municipal governments would be prohibited from passing an ordinance "inconsistent" with the

changes in P.A. 100-292 to the Condo Act and CICA. On February 14, 2018 this bill was referred to the Rules Committee in the House.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=4910&GAID=14&GA=100&DocTypeID=HB&LegID=110324&SessionID=91>

**HB4912 (Rep. Thapedi) SERVICE ANIMAL INTEGRITY ACT.** This bill creates the Assistance and Service Animal Integrity Act and amends the Illinois Criminal Code. The bill provides certain instructions and protection for landlords in dealing with requests for service and assistance animals. The bill references the Fair Housing Act and housing providers, which may include associations. The bill provides state (not federal) requirements for submission of certain verifiable information regarding disability, the animal and a requirement of certification from a medical professional. Additionally, the bill criminalizes the submission of false information about one's disability, the training of the animal and medical certification. On February 14, 2018 this bill was referred to the Rules Committee in the House.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=4912&GAID=14&GA=100&DocTypeID=HB&LegID=110326&SessionID=91>

**HB5126 (Reps. Cassidy and Feigenholtz) ADDITIONAL CHANGES TO SECTION 19 OF THE CONDOMINIUM ACT.** This bill amends Sections 18 and 19 of the Illinois Condominium Property Act. The bill amends Section 18 to provide that the By-laws of a condominium association shall provide for the imposition of fines for disclosing personal information of members. The bill amends Section 19 to create a new subsection (g-5) to permit a member to opt out of the disclosure of personal information such as names, address, email address and/or telephone numbers to another member. Additionally, the new subsection would require the association to impose a fine on a member improperly disclosing protected information. On February 16, 2018 this bill was referred to the Rules Committee in the House.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5126&GAID=14&GA=100&DocTypeID=HB&LegID=110746&SessionID=91>

**HB5208 (Rep. Demmer) LOWERING AGE OF COMMUNITY ASSOCIATION MANAGER.** The bill amends the Community Association Manager Licensing and Disciplinary Act to lower the age of a qualified person as a community association manager from 21 to 18. On February 16, 2018 this bill was referred to the Rules Committee in the House.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5208&GAID=14&GA=100&DocTypeID=HB&LegID=110894&SessionID=91>

**HB5276 (Rep. Winger) TERM LIMITS FOR COMMON INTEREST COMMUNITY ASSOCIATION BOARD MEMBERS.** The bill amends Section 1-25 (d) of the Common Interest Community Association Act. The bill strikes the phrase "but officers and directors may succeed themselves" and instead provides that "the succession of the board members shall be determined by the community instruments." Further, the bill provides that community instruments can include term limits. On February 16, 2018 this bill was referred to the Rules Committee in the House.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5276&GAID=14&GA=100&DocTypeID=HB&LegID=111000&SessionID=91>

**HB5348 (Rep. Evans) MANAGER LICENSING.** This bill would modify the Community Association Manager Licensing and Disciplinary Act. The proposed language would eliminate all references to "supervising community association manager" and the requirement of a

“supervising manager” licensing. Additionally, the proposed language would eliminate the requirement for a “community association management firm.” On February 16, 2018 this bill was referred to the Rules Committee in the House.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5348&GAID=14&GA=100&DocTypeID=HB&LegID=111138&SessionID=91>

**HB5744 (Rep. Drury) ATTORNEY FEE AWARDS TO UNIT OWNERS/ELIMINATION OF FEES IN DEMAND NOTICES.** The bill amends Section 9.2 “Other remedies” of the Illinois Condominium Property Act. The bill would require that attorney’s fees incurred in sending and serving a collection demand under the Forcible Act be EXCLUDED from an owner’s assessment account. Additionally, contrary to most governing documents, the bill provides that if an owner is the “substantially prevailing party” in any litigation or arbitration (including a collection action) involving an association or its board, the court shall award that owner his or her attorney’s fees and costs. On February 16, 2018 this bill was referred to the Rules Committee. This bill is identical to HB3755 introduced in 2017 by Representative Drury.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5744&GAID=14&GA=100&DocTypeID=HB&LegID=111835&SessionID=91>

**HB5783 (Rep. Manley) CHANGES TO SECTION 18.10 OF CONDO ACT REGARDING GAAP ACCOUNTING.** This bill amends recently enacted Section 18.10 of the Illinois Condominium Property Act regarding GAAP accounting obligations. The bill would raise the threshold to 200 units before being subject to GAAP accounting obligation until 2019. In 2019 the threshold would be reduced to 176 units; in 2020 to 136 units; and, in 2021 to 101 units. On February 16, 2018 this bill was referred to the Rules Committee

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5783&GAID=14&GA=100&DocTypeID=HB&LegID=111874&SessionID=91>

**SB572 (Sen. Raoul) STRIKING OF EMAILS AND PHONE NUMBERS FROM SEC. 19 REQUESTS UNDER THE CONDO ACT.** Senate Amendment No. 1 of this bill amends Section 19 of the Illinois Condominium Property Act. The bill strikes “email addresses” and “telephone numbers” from records which are permitted to be inspected by members pursuant to a record review request. While a portion of P.A. 100-292 added the requirement to make this information available, this bill would remove part of the information required to be made available for review. On February 14, 2018 this bill passed the Senate Judiciary Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=572&GAID=14&GA=100&DocTypeID=SB&LegID=100516&SessionID=91>

**SB928 (Sen. Bertino-Tarrant) NOTICE TO BUYERS IN COMMON INTEREST COMMUNITIES REGARDING ASSESSMENTS.** This bill amends the Common Interest Community Association Act, to create a new Section 1-37 regarding additional mandatory disclosures in the event of a sale or conveyance of a property. The bill obligates the board of an association to provide a person interested in purchasing the property with documentation detailing the “assessment structure” and any penalties for failure to pay the assessments. Further, the “written documentation” from the association must provide space for signatures of the current owner and purchaser acknowledging receipt and review of the assessment documentation. The acknowledgment must be delivered to the board and kept by the board.



These requirements are in addition to the disclosures required under Section 1-35 of the Act. On January 24, 2018 this bill was referred to the Civil Procedure Subcommittee of the House.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=928&GAID=14&GA=100&DocTypeID=SB&LegID=103064&SessionID=91>

**SB 2485 (Sen. Murphy) REQUIRED NOTICE AND HEARING BEFORE COMMENCING COLLECTION PROCEEDINGS.** The bill amends Sections 9, 9.2, 18 and 18.4 of the Illinois Condominium Property Act. This bill imposes several pre-collection mandates on associations:

(a) The bill amends Sec. 9 (g)(1) of the Act and states that before unpaid common expenses, fines, late charges and fees becomes a statutory lien against a unit, the unit owner must be given written notice and an opportunity to be heard;

(b) The bill amends Section 9.2 (a) of the Act and states that before the association can avail itself of rights and remedies to collect unpaid amounts, the unit owner must be given notice and an opportunity for a hearing;

(c) The bill creates a new Section 18 (r) of the Act and states that an association has no authority to initiate collection proceedings until the board issues a notice of delinquency and grants the owner an opportunity for a hearing; and

(d) The bill amends Section 18.4 (l) of the Act to clarify that the Board only has authority to issue a fine after “written” notice and an opportunity to be heard.

On February 7, 2018 this bill was assigned to the Senate Judiciary Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2485&GAID=14&GA=100&DocTypeID=SB&LegID=109217&SessionID=91>

**SB2556 (Sen. Murphy) ATTORNEY FEE AWARDS TO UNIT OWNERS/ELIMINATION OF FEES IN DEMAND NOTICES.** The bill amends Section 9.2 “Other remedies” of the Illinois Condominium Property Act. The bill would require that attorney’s fees incurred in sending and serving a collection demand under the Forcible Act be EXCLUDED from an owner’s assessment account. Additionally, contrary to most governing documents, the bill provides that if an owner is the “substantially prevailing party” in any litigation or arbitration (including a collection action) involving an association or its board, the court shall award that owner his or her attorney’s fees and costs. On February 14, 2018 this bill was assigned to the Senate Judiciary Committee for hearing on February 27, 2018. This bill is identical to HB3755 introduced in 2017 by Representative Drury.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2556&GAID=14&GA=100&DocTypeID=SB&LegID=109453&SessionID=91>

**SB3165 (Rep. Connelly) ADDITIONAL CHANGES TO SECTION 19 OF THE CONDOMINIUM ACT.** This bill amends Sections 18 and 19 of the Illinois Condominium Property Act. The bill amends Section 18 to provide that the By-laws of a condominium association shall provide for the imposition of fines for disclosing personal information of members. The bill amends Section 19 to create a new subsection (g-5) to permit a member to opt out of the disclosure of personal information such as names, address, email address and/or telephone numbers to another member. Additionally, the new subsection would require the association to impose a fine on a

member improperly disclosing protected information. On February 16, 2018 this bill was referred to Assignments in the Senate.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3165&GAID=14&GA=100&DocTypeID=SB&LegID=110831&SessionID=91>

**SB3394 (Sen. Althoff) LOWERING AGE OF COMMUNITY ASSOCIATION MANAGER.** The bill amends the Community Association Manager Licensing and Disciplinary Act to lower the age of a qualified person as a community association manager from 21 to 18. On February 16, 2018 this bill was referred to Assignments in the Senate.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3394&GAID=14&GA=100&DocTypeID=SB&LegID=111338&SessionID=91>

**IN ORDER TO DETERMINE THE MOST UP-TO-DATE INFORMATION ON ANY PENDING LEGISLATION PLEASE FOLLOW THE ASSOCIATED LINKS. LEGISLATION CAN BE AMENDED OR MODIFIED AT ANY TIME PRIOR TO PASSAGE. FURTHER NEW LEGISLATION MAY BE INTRODUCED.**



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#### **COLLECTIONS**

5510 Sheridan Road Condominium Association v. U.S. Bank, 2017 IL App (1<sup>st</sup>) 160279. The association filed a forcible entry and detainer action against the Defendant bank, who had purchased the unit following a foreclosure sale. In October 2014, the association sent a demand for common expenses representing pre and post foreclosure sale. In January the bank made a payment only for post-foreclosure assessments. Thereafter the association filed suit for assessments and fees. On summary judgment the association argued that both pre and post foreclosure common expenses were owed. Before the trial court ruling, the bank made an additional payment of all claimed post foreclosure expenses. The trial court awarded the association all its pre and post foreclosure amounts. The appellate court reversed, finding that the bank's payment extinguished the pre-foreclosure lien amounts. The court held that Section 9(g) (3) is not a timing requirement but instead a payment timeframe.

Andersonville v. Federal National Mortgage Company, 2017 IL App (1<sup>st</sup>) 161875. The association filed a forcible entry and detainer action against Fannie Mae who had purchased the unit following a foreclosure sale. The association sought all amounts, pre and post foreclosure sale, on the account. Fannie Mae had never made a payment since taking ownership. Relying on 1010 Lakeshore, the appellate court found that Fannie Mae had failed to extinguish any lien and owed the association all the amounts on the account.

County Club Estates Condominium Association v. Bayview Loan Servicing LLC, 2017 IL App (1<sup>st</sup>) 16259. The association filed a forcible entry and detainer action against the Defendant, who had purchased the unit following a foreclosure sale. The association sought all amounts, pre and post foreclosure sale, on the account. Seven months after the sale, following a demand, the defendant had failed and refused to pay any amounts to the association, even post foreclosure amounts. Two months after suit was filed, the defendant made a payment of post foreclosure amounts and contended that it had extinguished the association lien under Section 9(g) (3) of the Act. The trial court granted summary judgment for the defendant. The appellate court reversed finding that 1010 Lakeshore required "prompt payment" of post foreclosure amounts in order to extinguish the lien. The determination of "prompt payment" depended on all the facts and circumstances. The matter was remanded to the trial court.

Newport Condominium Association v. Blackhall Corporation 401(k) PSP, 2017 IL App (1<sup>st</sup>) 161629-U. The association filed a forcible entry and detainer action against a defendant who had acquired the unit by quit claim deed in lieu of foreclosure. The association had previously obtained judgment against prior owner and during those proceedings the defendant had intervened. The association sought all common expenses and fees on the account including those that had accrued prior to the issuance of the quit claim deed. Relying on 1010 Lakeshore, the appellate court found that defendant had failed to extinguish any lien and owed the association all the amounts on the account by failing to make a payment of assessments following the transfer of the property.

Blackstone Condominium Association v. Speights-Carnegie, 2017 IL App (1<sup>st</sup>) 153516. The association filed suit against Defendant, a Unit Owner, in forcible entry and detainer for unpaid assessments and attorney's fees. Meanwhile, Defendant's Unit was foreclosed upon and the Association, no longer able to recover possession of the Unit, decided not to proceed with the

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forcible action. Instead, the Association filed a breach of contract action against Defendant seeking unpaid assessments and attorney fees pursuant to Section 9(a) of the Condominium Property Act. At trial, the Association failed to introduce a written contract (or governing documents) which would have authorized the Association to recover its fees. The appellate court found that since the Association was no longer pursuing its claim in forcible entry and detainer, the language of Section 9 of the Condominium Property Act was not applicable, and it could only recover fees pursuant to a written instrument in its breach of contract action.

Board of Managers of Inverrary Condominium Association v. Karaganis, 2017 IL App (2nd) 160271. In August 2012 the association filed suit against a unit owner in forcible entry and detainer for failure to pay common expenses. Defendant filed an answer, affirmative defenses and counterclaims. While the litigation was pending the Illinois Supreme Court decided Spanish Court II v. Carlson. Thereafter defendant filed an amended answer and affirmative defenses related to failure to maintain the common elements. The trial court rejected the affirmative defenses in lieu of the Carlson holding and entered judgment against the owner and the unit for the association for common expenses and attorneys' fees (at a reduced amount). Defendant argued that the judgment should only be against the unit and not against him personally, since the association could recover amounts owed through possession and leasing of the unit. Additionally, defendant contended that the attorneys' fees were unreasonable, and that he should be awarded sanctions. The appellate court held that the forcible entry and detainer act did not limit the association's mechanism for enforcing its judgment. The court held that the forcible act permitted the entry of a money judgment against the defendant personally. Further, the court found that the defendant's contention that the fees were unreasonable was without merit.

North Spaulding Condominium Association v. Cavanaugh, 2017 IL App (1<sup>st</sup>) 160870. The association filed an action in forcible entry and detainer against a unit owner for unpaid common expenses. In relevant defense of the portion of the case involving the forcible action, defendants argued that as part of its case, the association was required to prove that its board had voted to initiate the collection proceeding at a properly noticed open board meeting. The court stated that neither the forcible act nor the Illinois Condominium Property Act required, as part of its case, that an association must prove that it voted to initiate collection at an open meeting. The court went on to state that the condo act requires a board to collect unpaid assessments and gives the board no discretion to take such an action, and that if the legislature required a vote prior to the initiation, either the forcible act or the condo act could have included such a provision. Finally, the court found that the defendant's contention that the attorneys' fees were unreasonable was without merit.

Lake Point Tower Condominium Association v. Waller, 2017 IL App (1<sup>st</sup>) 162072. The association filed an action in forcible entry and detainer against a unit owner for unpaid common expenses. The defendant moved to dismiss the case arguing the association's board of directors had failed to vote on instituting the action at an open meeting in violation of the court's holding in Palm. Prior to the trial court's ruling, the association's board voted to maintain the action against the defendant. The trial court dismissed the case, over the association's objection, with prejudice. Relying on North Spaulding, the appellate court reversed and found that neither the forcible act nor the Illinois Condominium Property Act required the association to provide that it voted at a properly noticed open meeting to authorize the filing of a forcible case.

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The court further stated that even if the board's failure to vote could constitute a defense, the trial court should have permitted the association leave to amend before dismissing the action with prejudice.

Freemont Junction Condominium Association v. Peisker, 2017 IL App (2<sup>nd</sup>) 151231. The association filed an action in forcible entry and detainer against a unit owner for unpaid common expenses. In addition to several procedure matters, at trial defendant contended that the association lacked standing to pursue the action because it had been dissolved. In response the association entered into evidence a copy of restatement of the declaration and requested the court to take judicial notice of the existence of the recorded declaration. The appellate court found that the trial court could take judicial notice of a recorded document which was part of the public record. Such a document established the association's capacity to collect assessments.

#### **INSURANCE**

Gelinas v. Barry Quadrangle Condominium Association, 2017 IL App (1<sup>st</sup>) 160826-U. A fire originating in Plaintiff's Unit damaged some of the structure and common area in one of the buildings in the Association. The Association filed a claim with its insurer and assessed its \$10,000 deductible back to the Plaintiff's account pursuant to Section 12 of the Condominium Property Act and its Declaration. Plaintiff filed suit seeking a declaration that the Association has received a "windfall" from the insurance company and should not be able to recover its deductible. On appeal, the court agreed with the Association that, by definition, the \$10,000 deductible was not covered by insurance and was properly charged back under Section 12 of the Act and the Declaration. The trial court also dismissed Plaintiff's claim seeking documents pursuant to his document request under Section 19 of the Act. In upholding the trial court's dismissal, the appellate court noted that the Section 19 document requests were made by the Plaintiff after suit was filed, and therefore Illinois discovery rules applied to document requests instead of document requests under Section 19 of the Act.

Astor Plaza Condominium Association v. Travelers Casualty and Surety Company of America, 2017 IL App (1<sup>st</sup>) 152546-U. A unit owner filed an action against the association and its individual officers and directors. The association and the individual officers and directors tendered the defense to Merrimack Mutual Fire under its directors and officer's endorsement. Merrimack counterclaimed alleging that there was no coverage since the individuals were not board members during the alleged wrongful act. The court stated that certain extrinsic evidence should not be considered, and Merrimack had a duty to defend the association. However, the Association, as a legal entity, was not entitled to a defense from Merrimack, as it was not an "insured" under the directors and officer's endorsement.

#### **PERSONAL INJURY**

Dahn v. Regal Chateaux Condominium Association, 2017 IL App (1<sup>st</sup>) 152343-U. The estate of a deceased unit owner brought an action against the association and its managing agent regarding an injury sustained on the property. It was alleged that the unit owner had injured

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herself when falling down a flight of stairs after having a doorknob break off. She was found with her head on the stairs and the doorknob in her hand. There was no evidence of any prior accidents involving doorknobs coming off at the property. The owner's estate alleged that the association had constructive notice of the dangerous condition of the doorknobs. The court held that the owner's estate had failed to demonstrate that injury sustained by the owner was foreseeable in that the association and/or management had actual knowledge of the alleged dangerous condition of the doorknob.

Nuchjare v. Barrington Square V, 2017 IL App (1<sup>st</sup>) 152332-U. Plaintiff filed a personal injury complaint against the association and property management company after falling on snow located on property owned by the association. The trial court granted summary judgment in favor of the association and management holding that even though the snow and ice allegedly remain on the property for some time, there was no liability for a property owner due to the natural accumulation of snow and ice. Plaintiff attempted to amend her complaint to include a claim for breach of contract based upon the alleged duties under the declaration. The trial court denied the leave to amend. The appellate court affirmed this holding.

#### **INTERPRETATION OF GOVERNING DOCUMENTS**

Jaworski v. Skassa, 2017 IL App (2<sup>nd</sup>) 160466. A unit owner filed an action against her neighbor over a garage space at the condominium association. Originally, the neighbor had filed a forcible complaint against the plaintiff seeking possession of the same garage space. The first trial court granted possession and plaintiff did not appeal. The court relied on the plat of survey which designated garage spaces to particular units in determining the superior interest in the garage space. The plaintiff argued that she had purchased the garage space from the prior owner. The court dismissed plaintiff's complaint on the basis of res judicata. On appeal plaintiff argued that a forcible case does not determine ownership merely possession. The appellate court held that ownership of the parking space, based upon the plat, was decided in the prior case and therefore this precluded the issue of ownership from being re-litigated in the present action.

Chiurato v. Dayton Estates Dam & Water Company, 2017 IL App (3<sup>rd</sup>) 160102. Plaintiffs were homeowners in a subdivision known as Dayton Estate which had a dam and lake. In 2007 the dam failed and the lake emptied. Homeowners alleged the Company had breached its contractual duty by failing to rebuild the dam, and that the Company was a "common interest community" with a power and duty to enforce certain covenants for the rebuilding of the dam. The court found that while the contractual duty included an obligation to maintain the dam, that did not extend to a contractual obligation to rebuild the dam. As such there could be no breach of contract. Additionally, the court found that the Company did not meet the definition of a "common interest community" and therefore was not charged with the administration of the property beyond the contract.

Museum Pointe Condominium Association v. Tower Residence Condominium Association, 2017 IL App (1<sup>st</sup>) 152929-U. This suit involves two neighboring condominium associations and a dispute regarding enforcement of an easement. Plaintiff initiated suit against defendant association seeking a declaration that defendant was violating the easement by having garbage

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trucks in excess of 6,000 pounds come across the easement property. Defendant association argued that the weight limitation in the easement agreement was only one of two criteria in determining whether a breach of the agreement occurred (the other being the ability to make necessary turns). The court disagreed and found that easement agreement prohibited the frequent use of 37,000 pound garbage trucks on the easement. In addition, the court affirmed the award of attorneys' fees to the plaintiff association.

Madden v. Scott, 2017 IL App (1<sup>st</sup>) 162149. Parties were owners in a six-unit condominium development. The action involved a dispute over access, ingress and egress to a vestibule located predominantly within one of the two neighboring unit. Although access through the vestibule had been occurring regularly since 1982, the defendant owner decided in 2009 to build a wall thereby prohibiting shared access to the vestibule. Plaintiff owner asserted that it had an easement by implication and an easement by prescription over the vestibule. The appellate court held that plaintiff had met its burden in demonstrating both easements and the neighboring owners were permanently enjoined from denying access through the vestibule.

RRRR, Inc. v. Plaza 440 Private Residence Condominium Association, 2017 IL App (1<sup>st</sup>) 160194-U. Plaintiff was a tenant restaurant located on the ground floor of a mixed-use high-rise building. The obligations and rights of the various owners in the building was subject to an easement agreement. Defendant condominium association (located in the same building) advised tenant that it would be performing certain window replacements on the building which would affect tenant's outdoor patio seating. Tenant filed suit alleging breach of the easement agreement, trespass and tortious interference with its business. The trial court dismissed the suit. The appellate court found that tenant was not a party to the easement agreement, could not enforce its terms and therefore lacked standing on the breach of contract. Further the court would not permit the tenant to raise a new basis for breach of contract on appeal. Additionally, defendant condominium association could not be liable for tortious interference as it was justified – even obligated under the easement agreement – to perform window repairs.

Saluja & Saluja, LLC v. Park 1500 Lofts Condominium Association, 2017 IL App 162328-U. Plaintiff is the owner of commercial space on the first floor of a ten-story building. The condominium association makes up the remaining nine floors. An agreement between the two entities established the rights and obligations of both parties. Plaintiff demanded that, in accordance with the agreement, the association add the plaintiff as an additional insured to the plaintiff's insurance policy. The association rejected the request based upon its current policy and its reading of the obligations under the agreement. Nine months later, plaintiff's counsel sent a second letter making the same demand. Plaintiff then filed suit. The trial court dismissed the case. The appellate court affirmed the dismissal finding that the agreement required that either party asserting any claim or enforcing any rights, institute such claim or action within 120 days. Since the plaintiff had failed to institute such action within the time limitation its claim against the association was barred.

Sarkisian v. Bahramis, 2017 IL App (1<sup>st</sup>) 161483-U. A dispute arose between two commercial condominium owners regarding who had the superior right to first refusal on the sale of units under the terms of the Declaration. Both owners exercised the right of first refusal to purchase two additional units. The declaration provided, in part, that the owner whose "unit" has less



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square feet area had the superior right. Plaintiff argued it had the superior right since he owned only one unit and the defendant owned two separate units. Defendant argued that one of his single units had less square footage than the plaintiff's unit and the documents did not provide for the combined total square footage being a consideration. The court found that the declaration is a contract which is clear and unambiguous. That the operable word was "unit" not "units" or combined total of units. As such the defendant as the owner of a unit with less square footage had the superior right of first refusal.

#### **DEVELOPER ISSUES**

Timber Court, LLC v. Cahnman, 2017 IL App (1<sup>st</sup>) 170356-U. Timber Court developed a 72-unit condominium association in two buildings. Timber Court owned 48 of the 72 units when a dispute arose between the controlling interest of the LLC as to who controlled Timber Court and its right to vote for the 48 units. The trial court entered an order staying the election and keeping the existing (developer controlled) board members in place. 18 individual unit owners filed a petition for leave to intervene in the litigation and lift the stay to proceed with the association's board election. The trial court denied the remaining owners' motion. The appellate court affirmed agreeing that until the court made a final determination as to who could vote for the 48 units, the election should not proceed.

Siena at Old Orchard Condominium Association v. Siena at Old Orchard, LLC, 2017 IL App (1<sup>st</sup>) 151846. The association filed suit against the developer, developer's manager and former president of the Board appointed by developer, regarding construction defects. The suit also alleged that the former president improperly executed releases in favor of the developer, thereby waiving claims of the association. The trial court, upon motion from developer defendants, dismissed the complaint for failure to comply with the mediation and arbitration requirements in the declaration. The appellate court found that the association had not triggered the mediation requirements in the declaration and therefore had not waived such claims. Additionally, the appellate court found that the association had properly amended its declaration removing the mandatory mediation and arbitration provisions. The court stated that the requirement that the developer approve any and all amendments violated Section 27 of the Illinois Condominium Property Act. Finally, the court found that the former president did not have the authority to execute the releases.

#### **CONSTRUCTION**

Sienna Court Condominium Association v. Champion Aluminum Corporation, 2017 IL App (1<sup>st</sup>) 143364. The association filed an action against its developer, architects, engineers, contractors, subcontractors and material suppliers for breach of implied warranty of habitability. The appellate court found that breach of implied warranty of habitability did not extend to design professionals such as architects and engineers. Additionally, the court found that such claims did not extend to material suppliers who were not engaged in any construction or development. Finally, the court held that the association could proceed against a subcontractor engaged in construction, where the general contractor was insolvent, even where the association may have some recourse against the general contractor. The critical determination was insolvency not recourse.

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#### **BREACH OF FIDUCIARY DUTY**

Geraci v. Union Square Condominium Association, 2017 IL App (1<sup>st</sup>) 162856-U. A unit owner filed suit against a dog walker, the association and board members for physical altercation which occurred in an elevator. The dog walker counter-sued. The trial court dismissed the breach of fiduciary duty claims against the association defendants. The appellate court ruled that since the jury found that the unit owner was not battered, the association could not be liable for breach of fiduciary duty, for failure to protect against battery.

Geraci v. Cramer, 2017 IL App (1<sup>st</sup>) 151555-U. Unit owners filed a derivate action against the association, its board members and its attorney. The trial court dismissed the claims. The appellate court found that the board members were able to avail themselves of the business judgment presumption in all of the alleged decisions, and therefore the claims against them individually were properly dismissed. The court stated that the allegations actually demonstrated that the board members exercised judgment on an informed basis in compliance with the condominium instruments. Additionally, the court found that while an owner/member of the association could proceed against the association's attorney on a derivative basis for legal malpractice, all such claims were time barred and properly dismissed.

Bhutani v. Courts of Northbrook Condominium Association, 2017 IL App 162378-U. An owner filed suit against the association and its management company alleging false arrest, breach of fiduciary duty and conversion of personal property, following an eviction at his unit. The association had obtained (in a different case) a judgment for possession of the unit. The association evicted the owner from the unit. After a year following the eviction the association had the owner's personal property removed from the unit. While the eviction was pending the owner was charged with criminal trespass to the unit. The appellate court ruled in favor of the association. As for the false arrest the court found that such claims were barred by the two-year statute of limitations. Regarding breach of fiduciary duty, all of the owner's claims related to the underlying collection case. The court found these claims were barred by res judicata and collateral estoppel. Finally, the conversation claim was properly dismissed since the owner had abandoned the personal property by leaving it within the unit – additionally the owner had been provided with access and had removed other items from the unit.