

From: My Whispering Lake <contactus@mywhisperinglake.com>
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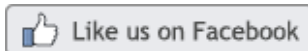
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**Changes to the Common Interest
Community Association Act and the
Illinois Condominium Property Act
(effective January 1, 2018)**



On August 24, 2017, Governor Rauner signed HB0189, and it is now known as Public Act 100-0292. The law amends both the Common Interest Community Association Act and the Illinois Condominium Property Act. The new law will become effective January 1, 2018. Here is a summary of the changes.

COMMON INTEREST COMMUNITY ASSOCIATION ACT

Creates New Section 1-20(e). The section provides that if the community instruments require the approval or consent of any mortgagee or lienholder of record to an amendment to the community instruments, the mortgagee or lienholder of record is deemed to have approved or consented to the request unless a negative response is delivered within sixty (60) days of mailing of a request for approval by certified mail by the Association.

Creates New Section 1-45(h)(i). This section states that an Association subject to CICAA and consisting of one hundred (100) or more units shall use generally accepted accounting principles ("GAAP").

ILLINOIS CONDOMINIUM PROPERTY ACT

Creates New Section 9(c)(5) which states that at the end of the Association's fiscal year, and after the Association has approved any year end fiscal audit, if applicable, if the fiscal year ended with a surplus of funds over actual expenses, including budget reserve fund contributions, then, to the extent that there are not any contrary provisions in the Association's declaration and bylaws, the Board has the authority to dispose of the surplus in one of the following ways:

1. Contribute the surplus to the reserve fund.

2. Return the surplus to Unit Owners as a credit against remaining monthly assessments for the current fiscal year.
3. Return surplus to Unit Owners in the form of a direct payment to Unit Owners.
4. Maintain the funds in the operating account, in which case funds shall be applied as a credit when calculating the following year's annual budget.

If the fiscal year ends in a deficit, then to the extent there are no contrary provisions in the Declaration and bylaws, the Board has the discretion to address the deficit by incorporating it into the budget for the following year.

Unit Owners may object to the Board's decision as follows: If twenty percent (20%) of the Unit Owners object within thirty (30) days after notice to the Unit Owners of the action, the Board shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition. At the meeting, Unit Owners may vote to select a different option than that chosen by the Board. Unless a majority of total votes of the Unit Owners are cast at the meeting to reject the Board's selection and choose a different option, the Board's decision is ratified.

Amends Section 15. If a Unit Owner objects to the sale of the property pursuant to Section 15 of the Act, the Unit Owner may be entitled to receive the greater of:

1. The value of his or her interest, as determined by fair appraisal, less the amount of any unpaid assessments; or
2. (This is the new language) The outstanding balance of bona fide debt secured by the objecting Unit Owner's interest which was incurred by such Unit Owner in connection with the acquisition or refinancing of the Unit Owner's interest, less the amount of any unpaid assessments or charges due and owing from such Unit Owner. The objecting Owner is also entitled to receive from the proceeds of a sale under Section 15, reimbursement for reasonable relocation costs, as determined by the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and as implemented by regulations promulgated under that Act.

Importantly, changes made by this law apply to sales under this Section that are pending, or commenced on and after the effective date of this law.

Amends Section 18(a)(8)(i). The Act permits Owners to object to certain

increases in regular or special assessments in excess of one hundred fifteen percent (115%) of the prior years assessments, by submitting a petition to the Board signed by twenty percent (20%) of the Owners of the Association. The amendment increases the amount of time, previously fourteen (14) days, to submit such a petition to the Board to within twenty-one (21) days of the Board action.

Amends Section 18(a)(16). The Act permits Unit Owners 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 or immediate family member has twenty-five percent (25%) or greater interest in, by filing a petition. The amendment increases the amount of time to file such a petition, previously twenty (20) days, to thirty (30) days of the Board's decision to enter the contract.

Amends Section 18(b)(9)(C). The Act provides that if the Board adopts a rule which permits the use of mail-in absentee ballots or electronic voting for Board elections in lieu of proxies, the Unit Owners may object to such rule by filing a petition to the Board. The amendment increases the amount of time, previously fourteen (14) days), to submit such a petition to the Board to thirty (30) days after the Board's adoption of the rule.

Amends Section 18.4(a). The Act provides that Unit Owners may file a petition, signed by Owners twenty percent (20%) of the percentage of ownership, to contest certain capital improvement projects approved by the Board in excess of five percent (5%) of the annual budget (excluding repair, replacement or restoration of existing portions of the common elements). The amendment increases the amount of time, previously fourteen (14) days, to submit such a petition to the Board, to twenty-one (21) days of the Board action to approve the expenditure.

Creates New Section 18.10. This section states that Associations with one hundred (100) or more units shall use generally accepted accounting principles ("GAAP").

Amends Section 19. Section 19 governs the books and records that must be maintained for examination and copying by Owners. Subsection (a)(7) is amended to provide that the Board must maintain a list of the email addresses and telephone numbers of all members for examination and copying by Unit Owners, if requested for a purpose that relates to the Association. Previously, only names and addresses were required to be maintained. This new language could potentially conflict with, and needs to be read in conjunction with, Section 18.4(s) that permits an owner to consent to receive notices by e-mail, but permits an owner to designate an electronic address or a U.S. Postal Service address, or both, as the Unit Owner's address on any list of members or Unit Owners which an association is required to provide upon request pursuant to any provision of the Act or

any condominium instruments.

Subsection (a)(9) is amended to seemingly make more of a stylistic change than anything else with respect to the books and records of account that the Association must maintain for examination and copying by owners.

Subsection (b) is amended to expand the categories of documents that an Owner is entitled to examine and copy by simply making a request in writing. An owner previously had to recite a proper purpose in order to examine books and records in Section 19(a) (6) and (9). This will make it easier for Owners to obtain the books and records identified in these subsections.

Subsection (d-5) is added to define "commercial purpose" as the use of any part of a record or records described in Section 19(a)(7) and (8), or information derived from such records, in any form for sale, resale, or solicitation or advertisement for sales or services.

Subsection (e) is amended to eliminate the requirement that an owner state a "proper purpose" to examine books and records in Section 19(a)(7) and (8). However, as a condition of exercising this right, the Board may require that the requesting Unit Owner certify in writing that the information will not be used for any commercial purpose or for any purpose that does not relate to the Association.

The amendment also permits the Association to impose a fine against any person who makes a false certification. The amendment removes the provision stating that in any action to compel examination of records, the burden of proof is on the Unit Owner who requested documents to prove they are requesting the records for a proper purpose.

Importantly, the time frame within which the Board must respond to a request for records is reduced to only ten (10) business days; the law previously permitted a Board to respond within thirty (30) business days.

The amendment also makes a change such that the Board may, but is not required to charge the actual cost of retrieving and making records available for inspection and examination, or the actual costs of reproducing the records, to the requesting owner. As a result, charging these costs is no longer mandatory.

Amends Section 27. The section provides that if the condominium instruments require the approval or consent of any mortgagee or lienholder of record to an amendment to the condominium instruments, the mortgagee or lienholder of record is deemed to have approved or consented to the request unless they deliver a negative response within sixty (60) days of mailing of a request for approval by certified mail by the Association.

Amends Section 31. Adds new subsection (a) that defines "combination of any units. Importantly, in an attempt to overcome the 2011 appellate court decision in *Picerno v. 1400 Museum Park Condominium Association*, subsection (a) and new subsection (e) underscores that the combined unit can be granted the exclusive right to use as a limited common element, a portion of the common elements within the building adjacent to the new combined unit (for example, without limitation, the use of a portion of an adjacent common hallway). The language provides that if units are combined, the exclusive right to use, as a limited common element, any portion of the common elements that is not necessary or practical for use by the Owners of any other units is not a diminution of the ownership interests of all other Owners and does not require the unanimous consent of all Unit Owners under Section 4(e).

We are available to assist you in determining the impact of these changes in the law on your association, and/or to assist in amending your governing documents to conform to these changes.

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