



## 2016 End of Session Report

Like past legislative sessions, 2016 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 2016. CAI was active in opposing House Bills, 4489, 4490 and 4491. CAI drafted, sponsored and supported Public Acts 099-0567, 099-0569 and 099-0849.

### Public Acts

**Executive sessions** – [Public Act 099-0567](#) amends Section 1-40 of the Common Interest Community Association Act and Section 18 (a) (9) of the Illinois Condominium Property Act. The new law changes both the Condominium Property Act and the Common Interest Community Association Act to clarify what items may be discussed by a board of directors during the closed portion of a meeting or executive session meetings. Importantly, the new law specifies that board members can meet in a closed portion of a noticed meeting, or separate from a noticed meeting to discuss certain enumerated executive matters. The act details that Boards may discuss engagement, interviewing and dismissal of employees, independent contractors, agent or providers of goods and services. Finally, the law makes it clear the Board members can meet with legal counsel outside to the presence of an open meeting. The effective date is January 1, 2017.

**Successor developers** – [Public Act 099-0569](#) creates a new section 47 of the Common Interest Community Association Act and Section 9.5 of the Illinois Condominium Property Act. The new law changes both the Common Interest Community Association Act and the Condominium Property Act to require successor developers to obtain written assignment of developer (declarant) rights and to require the successor to record the assignment prior to it being effective. This alleviates the situation where a bank or subsequent purchasers of undeveloped portions of an association contends "they are the new declarant" without having anything in writing. The effective date is January 1, 2017.

**Technology** – [Public Act 099-0612](#) amends the definition of "acceptable technological means" in both the Condominium Property Act and the Common Interest Community Association Act to expand its meaning to include "any generally available technology that, by rule of the association, is deemed to provide reasonable, reliability, identification and verifiability." Additionally, the Act makes technical changes to the statutes to create a consistent use of the term "acceptable technological means. The effective date is January 1, 2017.

**Errors and omissions** – [Public Act 099-0627](#) amends the Common Interest Community Association Act to provide that if a provision of the community instruments does not conform to

the Act or to another applicable law because of an error, omission, or inconsistency in the community instruments of the association, the association may correct the error, omission, or inconsistency to conform the community instruments to the Act or to another applicable law by an amendment adopted by vote of two-thirds of the board of directors, without a membership vote. ILAC actively supported the legislation. The effective date is January 1, 2017.

**Ombudsman** – [Public Act 099-0776](#) amends Condominium and Common Interest Community Ombudsperson Act and a small portion of the Freedom of Information Act. The act provides that information under the Ombudsperson Act may not be subject to certain Freedom of Information Act requests. Additionally, the act provides that neither the Department nor the Ombudsperson shall consider charges under the Illinois Human Rights Act. Further, it amends Section 30 of the Ombudsperson Act to, in addition to a website, require the Department to provide a toll-free number for information and resources. Section 35 of the Act has been amended to move the date back upon which associations must enact a written complaint policy from December 28, 2016, to January 1, 2019. Importantly the new law repeals Section 55 of the Act thereby if associations will no longer be required to register with the Department. Finally, it amends Section 50 of the Act to require the Department to submit an annual report to the General Assembly regarding education and training requests received instead of dispute resolution assistance requests and outcomes. ILAC was actively engaged in negotiation this legislation.

**Loans** – [Public Act 099-0849](#) changes the Condominium Property Act to clarify the inconsistency in within Section 18.4 of the Act. The amendment to Section 18.4 (m) of the Act permits boards of directors, by majority vote, to execute various bank documents to secure a loan on behalf of an association. Currently, the language of Section 18.4 (m) has a qualifier relating to the “condominium instruments” and there is a concern that some old condominium declarations and by-laws may require up to two-thirds of the owners to vote when either pledging an association’s assets or assigning future income. This change makes it clear that a board of directors, without owner approval, by majority vote can assign future income of an association and pledge the assets of an association. The effective date is January 1, 2017.

## Bills that did not pass

**Unit owner litigation** – ILAC actively opposed this bill. [HB 4489](#) amends the Illinois Condominium Property Act by creating Section 33 entitled “Unit owner’s right to fairness in litigation.” The bill states that an owner has a right to “fairness” in all litigation between the owner and a condominium association regardless of whether the owner commenced the litigation or the litigation is commenced against the owner. The bill voids any covenant or rule which limits the owner’s right to commence litigation. The bill provides an owner be awarded attorney’s fees if the owner prevails in any litigation or if the unit owner prevails on any affirmative defense against the association. The bill further provides for a judicial reduction of attorney’s fees in litigation (except assessment collection matters) and a complete bar to an association recovering attorney’s fees in an assessment collection matter if the owner prevails on any affirmative defense or counterclaim. Finally, the bill prevents an association from being

represented by counsel of its choosing in any litigation if such counsel “also represents the board of managers either individually or collectively.”

**Attorney’s fees** – ILAC actively opposed this bill. [HB 4490](#) amends Section 9.2 (b) of the Illinois Condominium Property Act. Currently, Section 9.2 provides that attorney’s fees incurred by an association arising out of default by a unit owner, tenant guest or invitee of the governing documents or the Act can be added to the unit owner’s share of the common expense or unit owner’s account. The bill amends the section to prohibit an association from adding attorney’s fees to an owner’s account without a finding by a court. The bills require a court to award attorney’s fees, in every default, before attorney’s fees can be added to the unit owners’ account, thereby requiring a judicial finding on any default.

**Collections** – ILAC actively opposed this bill. [HB 4491](#) amends Sections 9-106 and 9-111 of the Illinois Forcible Entry and Detainer Act. Effectively this bill seeks to overturn the Illinois Supreme Court’s decision in *Spanish Court Two Condominium Ass’n v. Carlson*, 2014 IL 115342 (2104). In *Spanish Court Two* the Supreme Court held that the obligation to pay assessments was an independent covenant and a unit owner’s attempt to raise as a defense a breach of duty by an association was not “germane” to the collection case and thereby not permitted. This bill seeks to amend the Forcible Act to reverse the holding of the Supreme Court and permit an owner to raise, in any delinquent assessment collection case, a “material breach of any duty” in the condominium instruments, rules or statutes, or an “improper motive” by the association in bringing the action. Further, the bill amends the Forcible Act to bar an association in a collection case from recovering any attorney’s fees and costs if the court finds that the association breached an obligation under the governing documents or a fiduciary duty to the unit owner, regardless of non-payment of assessments.

**Manager licensing** – [HB 4959](#) and SB 3275 amend the Community Association and Manager Licensing and Disciplinary Act. The bills make some minor language changes to the Act. The bills modify the initial examination standard to remove the requirement that the initial licensing exam comply with standards set by the National Organization for Competency Assurances. The bills include a reference to limited liability companies.

**Ombudsman** – [HB 5812](#) amends multiple sections of the Condominium and Common Interest Community Ombudsperson Act. The bill makes some minor technical changes to the Act and the terms. Additionally, the bill amends Section 15 of the Act to revise the definition of “Condominium Association” to mirror the definition within the Condominium Property Act. The bill includes a new term in Section 20 to provide that the Ombudsperson has no authority to consider matters which would constitute charges under the Illinois Human Rights Act. The bill amends Section 30 to provide that the Office of Ombudsperson make available a toll-free number to provide information and resources. The bill provides that the Ombudsperson would be named (rather than employed) by the Department and the office would also be situated under the Division of Real Estate instead of the Division of Professional Regulation. The bill retains the existing requirement that, on or before December 27, 2016, associations must establish and adopt written policies for resolving complaints made by unit owners. The bill amends Section 35 by requiring an association to make a final determination on a unit owner’s

complaint within 90 days (versus a reasonable time). The bill removes a provision enabling the unit owner to notify the Department of the association's lack of, or the inadequacy of, a written policy, which could lead to an association losing its legal rights to bring civil actions for the collection of delinquent assessments. The bill repeals Section 55 of the Act thereby if associations will no longer be required to register with the Department. Significantly, the bill mandates associations amend their governing documents to adopt dispute resolution mechanism. The bill provides that no later than July 1, 2019, Associations will be required to adopt a bylaw or declaration amendment to provide for mandatory mediation or arbitration with respect to the clear majority of disputes between associations and unit owners. The parties could choose whether alternative dispute resolution would be binding or non-binding. The bill removes all provisions relating to the Ombudsperson providing "request for assistance." Finally, the bill amends Section 50 of the Act to require the Department to submit an annual report to the General Assembly regarding education and training requests received instead of dispute resolution assistance requests and outcomes.

**Rules** – [HB 5927](#) amends Section 1-30 of the Common Interest Community Association Act to explicitly provide that a board of a Common Interest Community has the statutory authority to adopt rules and regulations. Similar to the Condominium Property Act, the bill sets forth a mechanism of prior notice to the members of the Board meeting whereby rules and regulations will be considered and adopted. The bill prohibits a board from adopting rules which impair First Amendment rights or conflict with the declaration or bylaws.

**Short-term rentals** – [HB 6243](#) creates the Short-Term Residential Rental Property Act. If a short-term residential rental property listed on internet-enabled platforms (such as Airbnb) shall not be regulated by a unit of local government in a manner more restrictive than bed and breakfast establishments are regulated under the Bed and Breakfast Act. Further provides that a short-term residential rental property, platform administrator, rental property host, or guest shall not be taxed by a unit of local government in an amount greater than a hotel, a hotel operator, or hotel guest.

**Smoke detectors** – [SB 2837](#) amends the Smoke Detector Act. It provides that if a smoke detector is battery powered, then the battery must be non-replaceable, non-removable, and capable of powering the detector for a minimum of 10 years. An amendment was filed in the Senate further defining the requirements and providing that it shall apply to smoke detectors which more than 10 years old, fail to respond to testing or are newly installed. Additionally, the amendment provides that the requirements will not apply to centrally monitored systems, low frequency/Wi-Fi devices or those designated by State Fire Marshall. Finally, provides that violating the statute is a petty offense subject to fines.

**Sale of property** – [SB 2863](#) amends Section 15 of the Condominium Property Act "Sale of Property." Section 15 provides a mechanism where the entire condominium property can be sold to a third party. The bill was amended on March 15, 2016. The bill amends a subsection (a) to Section 15 of the Act to provide that if a unit owner has filed a written objection to the sale within 20 days after approval the unit owner shall be entitled to receive reimbursement for relocation costs. This bill will not apply to any pending approved sales.