

## 2014 End of Session Report

Ombudsman-HB 4204 creates the Office of the Condominium and Community Interest Community Ombudsperson within the Department of Financial and Professional Regulation, Division of Professional Regulation. The bill adds provisions concerning: duties of the Ombudsperson; written policies for resolving complaints; requests for assistance; registration requirements; confidentiality; reporting requirements; fees; and penalties for noncompliance. The bill was signed into law, and will go into effect July 1, 2016.

Lease of Units After Possession-HB 4782 amends the Illinois Forcible Entry and Detainer Act regarding leasing of units by associations. The bill provides that an association may enter into a lease at any time within 8 months of expiration of the stay on its possession order. The lease entered into may not exceed 13 months. Currently the statute provides that the term of a lease entered into by an association cannot exceed 13 months following the expiration of the stay of the order of possession. This amendment to the Act will aid association in leasing units by affording more time to complete any necessary repairs and locate tenants. This bill signed into law on August 18, 2014.

VOIDS Certain Developer Provisions in Condominium Instruments-HB 4783 amends Section 9.1 of the Illinois Condominium Property Act. The bill provides that any condition in a condominium instrument which either: (1) requires the prior consent of the unit owners in order for the board to take certain actions, including the institution of any action in court or a demand for a trial by jury; or (2) requires the board to arbitrate or mediate a dispute with a developer, declarant or any person not then a unit owner prior to litigation or a demand for a trial by jury – is void. This bill effectively voids restrictions in governing documents that seek to thwart or place oppressive procedural hurdles upon an association's pursuit of claims against the developer. This bill signed into law on August 26, 2014.

Electronic Notice-HB 4784 amends Section 18.4 of the Illinois Condominium Property Act. The bill grants a board the power to adopt rules and regulations permitting electronic delivery of notices and other communications, but only upon an individual unit owner's authorization. Additionally, the bill permits each unit owner to designate an electronic address, a U.S. Postal Service address, or both, as his or her contact information to be kept on the list of unit owners. This bill signed into law on July 16, 2014.

Electronic Voting, Notice and Use of Technology-HB 5322, introduced by CAI, amends both the Illinois Condominium Property Act and the Common Interest Community Association Act. The bill permits boards to adopt rules and regulations concerning the use of acceptable, verifiable means of technology, including electronic means for unit owner notice, voting, signatures, consents and approvals. The bill establishes that electronic votes are valid and may be used for the purpose of establishing meeting quorums. The bill also provides that a verifiable electronic signature satisfies any requirements for signatures on documents. It acknowledges that if an owner either does not have the capability or desire to conduct business electronically, an association shall make reasonable accommodation, at its expense, for the person to conduct business without the use of electronic or other means. This bill signed into law on August 25, 2014.

Amendments to Insurance Requirements for Condominiums-SB 3014 amends Section 12 of the Illinois Condominium Property Act regarding insurance requirements. Despite passing out of the Insurance

Committee on March 27, 2014 this bill has been re-referred to Assignments. The bill as currently proposed with clarify issues regarding amount of coverage required for replacement costs of the insured property, defense costs obligations of condominium insurance and improvements and betterments coverage. The bill provides greater specificity as to the types of defense coverage required under an association's directors and officer's liability policy. Additionally, the bill will remove the right of an association to purchase mandatory owner insurance and charge the cost of such insurance back to the owner. This bill signed into law on July 16, 2014.

Leasing-SB 3057 amends Section 1-35 of the Common Interest Community Association Act and adds a qualification to which leases must be provided to the association when a unit is not owner occupied. Originally the bill stated that only leases in excess of 30 days must be provided by the owner to the association. This bill was introduced with support of the Illinois Association of Lake Communities. In conjunction with CAI an amendment to the bill has been made which simply provides that "Unless otherwise provided in the community instruments" leases are required to be provided to the association in accordance with Section 1-35, thereby removing the reference to "leases in excess of 30 days." This bill signed into law on August 1, 2014.

Process Servers in Gated Communities-SB 3286 amends Section 2-203 of the Illinois Code of Civil Procedure regarding service of process on individuals. The bill, as amended, requires employees of "gated residential communities" (including condominiums, cooperatives and private communities) to permit entry to a process server (as defined under the Code) for the purposes of serving process on a defendant or witness who resides or is known to be in the community. This bill signed into law on August 15, 2014.

ISBA Foreclosure Bill-The Illinois State Bar Association proposed SB 2664 that amends only the Illinois Condominium Property Act by expanding condominium association's right to collect unpaid regular assessments on foreclosed units from 6 months to 9 months. This expansion would only apply to regular assessments and not to any other unpaid common expense. Further, while attorney fees and costs of collection can be charged to the third-party buyer, in no event can the total balance collected exceed an amount equal to 9 months of regular assessments. The bill amends Section 2 of the Act to include definition of "regular monthly assessments." The bill would remove the "initiation of an action" prerequisite to collecting these amounts. Finally, the bill amends Section 22.1 of the Illinois Condominium Property Act and reduces the days an association (or its management company) has to respond to a request from a purchaser for information from 30 days to 14 days, if the association is managed. If the association is self-managed it has 21 days. Currently the law requires the information to be made available within 30 days. On April 8, 2014 this bill passed the entire Senate and was sent to the House. That following a heated debate, May 22, 2014 this bill passed the House with a slight majority. This bill will be sent to the Governor for signature.

Governor Quinn amendatorily vetoed the bill on August 18, 2014 and recommended certain language located on pages 10 and 12 of the bill to be replaced with the following:

"Following a consent foreclosure, common law strict foreclosure, or the delivery of a deed in lieu of foreclosure, the mortgagee shall have the duty to pay to the association all moneys due to satisfy the lien held by the association, except for the 9 months of unpaid regular monthly assessments and associated attorney's fees which may be collected from the purchaser."

With these changes, SB2664 had Governor Quinn's approval. Governor Quinn respectfully requested the legislators to concur with his amendatory veto language.

Sen. Hastings, as sponsor of the bill, needed to introduce the amendatory veto changes during the fall veto session. CAI-IL respectfully requested Sen. Hastings to approve Governor Quinn's amendatory veto and to submit it to the legislators for concurrence. The bill ultimately died with no favorable action taken on the veto.

Alternative Payment of Delinquent Assessments-HB 4154 proposes the creation a new Sec. 1-47 of the Common Interest Community Association Act which would mandate that common interest communities of more than 14 units adopt "reasonable guidelines" for delinquent owners to pay regular and special assessments. The bill would require the association to adopt and record in the county recorder's office guidelines for a payment plan. The payment plan would need to be a minimum of 3 months and not extend greater than 18 months. The payment plan could not include "additional monetary penalties" but could include costs associated with monitoring the payment plan. An owner would not be entitled to relief under the guidelines if that owner failed to honor the terms of a prior payment plan within the 2 previous years. CAI has voiced concerns regarding this bill because of its mandates on a common interest community's ability to collect unpaid assessments and possibly inconsistency with Section 9-102.1 of the Illinois Forcible Entry and Detainer Act. The bill failed upon adjournment.

Task Force on Fire Prevention-HB 4609 would create a twenty (20) member Fire Safety Task Force (with numerous interests represented on the task force including a statewide organization representing common interest community associations) to investigate, research and analyze the costs and benefits of fire sprinklers and hard-wired smoke detectors in residential and commercial buildings. This bill is in response to State Fire Marshal's prior attempt to enact regulation which would have mandated that numerous condominium associations install expensive sprinkler and upgraded fire alarm systems throughout their buildings. Further, the bill would restrict the State Fire Marshal's ability to push a sprinkler mandate through as an administrative rule. The bill provides, "The Office of the State Fire Marshal may not adopt rules requiring the installation of fire sprinkler systems in any structure." This restriction on the State Fire Marshal's unilateral authority will established that any legislation regarding fire sprinklers will be enacted at the legislative level, after debate and hearings. The bill failed upon adjournment.

Recording of Deeds Following Foreclosure-HB 4761 amended Section Sec. 15-1509 of the Illinois Mortgage Act. The bill adds a requirement to the Act that a party acquiring property through a judicial foreclosure must record the deed within 60 days of its delivery. The bill failed upon adjournment.

Minutes, Executive Session and Exemptions of Common Interest Communities-HB 4796 amends the Common Interest Community Association Act in three distinct ways. First, the bill would require that following any closed portion of a board meeting of a common interest community, the board would be required to "note" any matter discussed in the closed portion of the meeting. Secondly, the bill would require that all minutes of meetings of members, the board or committees with decision making authority (even those only in draft form) be made available to members within 30 days of the meeting. Finally, the bill removes the \$100,000 budget threshold from the exemption requirements under CICAA but maintains the exemption for ten (10) units or less. The bill failed upon adjournment.

Elimination of Payments to a Condominium Association Following Foreclosure-HB 5511 amends Section 9 of the Illinois Condominium Property Act by removing most of Subsection (g)(4) and all of Subsection (g)(5) thereby eliminating the obligation of a third party purchaser, following a foreclosure, to pay six (6) months of common expenses to a condominium association. This bill denies any association the ability to recover any portion of common expense following a foreclosure from a third-party purchaser. This bill effectively repeals portions of the Illinois Condominium Property Act that have been in place since 2007. The bill failed upon adjournment.

Private Road Transfer-HB 5645 provides that a residential neighborhood within the unincorporated boundaries of a township road district whose private roadways are maintained by a homeowner's association, and whose neighborhood was platted before 1970 may vote to turn authority and control over its roadways to the township road district. This bill failed to obtain the necessary votes in the Counties and Township Committee on both March 25, 2014 and March 27, 2014. The bill failed upon adjournment.

No Authority Over Single Family Homes-HB 5870 creates new Section 1-85 of the Common Interest Community Association Act. The bill provides that seeks specifically provides that a Common Interest Community, that has "single family homes" (an undefined term), has no authority over the single-family home or the property upon which the home is located. Additionally, the bill provides that any term or provision in a declaration to the contrary is void. Effectively, this bill provides that all restrictive covenants, rules, restrictions or regulations imposed against single family homes, are void. This would apply to covenants and rules regarding fences, pools, sheds, architectural control, outbuildings, swing sets, additions, dog runs, pets, pigeon aviaries, chicken coops, etc., on single family home lots. Basically this provision would invalidate almost every restrictive covenant in a HOA declaration. In addition, it would invalidate any restrictions regarding operating a business, such as a daycare, at a single family home lot. The bill failed upon adjournment.

Voids Certain Developer Provisions in Condominium Instruments-SB 2892 is similar to HB 4783. It creates a new Section 18.8 of the Illinois Condominium Property Act and states that any condition in the condominium instruments is void and unenforceable if: (1) it restricts the right of a board to represent the association in legal matters which affect the common elements by requiring consent of unit owners; (2) requires arbitration, or mediation prior to the filing of an action in a court, or (3) restricts or delays a board's ability to bring an action affecting the common elements in court and/or to demand a trial by jury. Additionally, the bill provides that any of the foregoing restrictions could be valid and enforceable but only if approved by 75% of the unit ownership. The bill failed upon adjournment.

Electronic Voting, Notice and Use of Technology-SB 3040, introduced by CAI and identical to HB 5511, amends both the Illinois Condominium Property Act and the Common Interest Community Association Act. The bill permits boards to adopt rules and regulations concerning the use of acceptable, verifiable means of technology, including electronic means for unit owner notice, voting, signatures, consents and approvals. The bill establishes that electronic votes are valid and may be used for the purpose of establishing meeting quorums. The bill also provides that a verifiable electronic signature satisfies any requirements for signatures on documents. It acknowledges that if an owner either does not have the capability or desire to conduct business electronically, an association shall make reasonable accommodation, at its expense, for the person to conduct business without the use of electronic or other means. The bill failed upon adjournment.

Exemptions Under the Common Interest Community Association Act-SB 3537 amends Section 1-75 of the Common Interest Community Association Act. The bill modifies the \$100,000 annual budget exemption. Under the language of the bill an association with an annual budget of less than \$100,000.00 would only be exempt from the provisions of the Act if, a majority of owners voted to exempt the association. Otherwise only an association of less than 10 units would be automatically exempt for the binding provision in the Act. The bill failed upon adjournment.