

BILLS AFFECTING COMMUNITY ASSOCIATIONS IN THE 99TH GENERAL ASSEMBLY
INTRODUCED IN 2016

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 and review not only the synopsis but the actual language of the bill and any relevant amendments. This information is provided as April 4, 2016.

HB4489 (Rep. Drury) – UNIT OWNER LITIGATION. This bill 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 it’s choosing in any litigation if such counsel “**also represents the board of managers either individually or collectively.**” On February 4, 2016 this bill was assigned to Judiciary - Civil Committee. On March 2, 2016 this bill lost in Judiciary by a vote of 3-8.

CAI ILLINOIS OPPOSES THIS LEGISLATION

<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=88&GA=99&DocTypeId=HB&DocNum=4489&GAID=13&LegID=93465&SpecSess=&Session=>

HB4490 (Rep. Drury) ATTORNEY’S FEES IN THE EVENT OF AN OWNER DEFAULT. This bill 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. On February 4, 2016 this bill was assigned to Judiciary - Civil Committee.

CAI ILLINOIS OPPOSES THIS LEGISLATION

<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=88&GA=99&DocTypeId=HB&DocNum=4490&GAID=13&LegID=93467&SpecSess=&Session=>

HB4491 (Rep. Drury) EXPANSION OF UNIT OWNER DEFENSES IN COLLECTION CASES UNDER THE FORCIBLE ACT. This bill amended 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. On February 4, 2016 this bill was assigned to Judiciary - Civil Committee.

CAI ILLINOIS OPPOSES THIS LEGISLATION

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=4491&GAID=13&GA=99&DocTypeID=HB&LegID=93468&SessionID=88>

HB4658 (Rep. Nekritz) AMENDMENT TO OMBUDSPERSON ACT. This bill amends Section 35 of the Condominium and Common Interest Community Ombudsperson Act. Section 35 entitled "Written Policy for Resolving Complaints" requires associations to adopt a formula written policy for resolving complaints by owners. This bill removes references to requiring associations to register with the Department of Financial and Professional Regulations. The bill repeals Section 55 of the Act thereby providing that associations will no longer be required to register with the Department. On February 5, 2016 this bill was referred to Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=4658&GAID=13&GA=99&DocTypeID=HB&LegID=93903&SessionID=88>

HB4959 (Rep. Batinick) AMENDMENT TO MANAGER LICENSING ACT. This bill amends the Community Association and Manager Licensing and Disciplinary Act. The bill makes some minor language changes to the Act. The bill modifies 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 bill includes a reference to limited liability companies. On February 5, 2016 this bill was referred to Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=4959&GAID=13&GA=99&DocTypeID=HB&LegID=94257&SessionID=88>

HB5812 (Rep. Breen) MORE AMENDMENTS TO OMBUDSPERSON ACT. This bill 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 providing that 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 vast 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.

On March 23, 2016 this bill was assigned to Judiciary Civil.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5812&GAID=13&GA=99&DocTypeID=HB&LegID=95276&SessionID=88>

HB5927 (Rep. Fine) CODIFIES A COMMON INTEREST COMMUNITY'S ABILITY TO ENACT RULES. This bill 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. On March 23, 2016 this bill was assigned to Judiciary Civil.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5927&GAID=13&GA=99&DocTypeID=HB&LegID=95414&SessionID=88>

HB5696 (Rep. Cassidy) AMENDMENT TO DEFINITION OF ACCEPTABLE TECHNOLOGY.

The bill 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 bill makes technical changes to the Act to create a consistent use of the term “acceptable technological means. On March 23, 2016 this bill was assigned to Judiciary Civil.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5696&GAID=13&GA=99&DocTypeID=HB&LegID=95150&SessionID=88>

HB6243 (Rep. Jesiel) CREATES SHORT-TERM RESIDENTIAL RENTAL PROPERTY ACT.

The bill creates the Short-Term Residential Rental Property Act. It provided that 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. On February 11, 2016 this bill was referred to Rules Committee.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=6243&GAID=13&GA=99&DocTypeID=HB&LegID=95784&SessionID=88>

SB2354 (Sen. Haine) EXECUTIVE SESSION/CLOSED PORTION OF MEANINGS. This bill amends Section 1-40 of the Common Interest Community Association Act and Section 18 (a) (9) of the Illinois Condominium Property Act. The bill changes both Acts to clarify what items may be discussed by the Board of Directors during the closed portion of a meeting or executive session meetings. The bill details that Board’s may discuss engagement, interviewing and dismissal of employees and third party contractors. Additionally, the bill specifies that Board members can meet separately only for the specific enumerated matters. Finally, the bill makes it clear the Board members can meet with legal counsel outside to the presence of an open meeting. On March 9, 2016 this bill passed Senate Judiciary.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2354&GAID=13&GA=99&DocTypeID=SB&LegID=93705&SessionID=88>

SB2358 (Sen. Mulroe) SUCCESSOR DEVELOPERS. This bill creates a new section 47 of the Common Interest Community Association Act and Section 9.5 of the Illinois Condominium Property Act. Both Act are amended to provide that successor developers’ rights are only effective in the event a written assignment, which is recorded. On March 16, 2016 this bill passed the Senate Judiciary.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2358&GAID=13&GA=99&DocTypeID=SB&LegID=93712&SessionID=88>

SB2359 (Sen. Mulroe) BOARD'S ABILITY TO APPROVE A LOAN. The bill changes the Act to clarify the inconsistency in within Section 18.4 of the Illinois Condominium Property Act. The bill would allow elected Boards of Directors, by majority vote, to execute various bank documents to secure a loan on behalf of the Association. Currently the language 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 incurring "expenses" in excess of a certain capped dollar amount This bill makes it clear that the limits in the "condominium instruments" do not apply to loans approve by majority vote of the Board of Directors to perform such necessary maintenance, replacement and repairs to the Common Elements. On March 16, 2016 this bill passed the Senate Judiciary.

<http://www.ilga.gov/legislation/fulltext.asp?DocName=09900SB2359sam001&GA=99&LegID=93713&SessionId=88&SpecSess=0&DocTypeId=SB&DocNum=2359&GAID=13&Session=>

SB2837 (Sen. Silverstein) AMENDMENT TO SMOKE DETECTORS ACT. This bill 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, the bill creates an exemption for dwelling units and hotels within municipalities with a population over 1,000,000 inhabitants. On March 1, 2016 this bill was referred to Public Health.

<http://www.ilga.gov/legislation/fulltext.asp?DocName=09900SB2837sam001&GA=99&SessionId=88&DocTypeId=SB&LegID=96149&DocNum=2837&GAID=13&Session=>

SB2863 (Sen. Connelly) AMENDMENT TO SECTION 15 OF THE CONDO ACT. This bill 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. On March 2, 2016 this bill was assigned to Judiciary.

<http://www.ilga.gov/legislation/BillStatus.asp?GA=99&DocTypeID=SB&DocNum=2863&GAID=13&SessionID=88&LegID=96180>

SB2741 (Sen. Haines) ERRORS AND OMISSIONS CORRECTIONS UNDER CICAA. This bill 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. On March 2, 2016 this bill passed 11-0 out of Senate Judiciary.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2741&GAID=13&GA=99&DocTypeID=SB&LegID=96048&SessionID=88>

SB 2898 (Sen. Althoff) MORE AMENDMENTS TO OMBUDSPERSON ACT.

This bill is the same as HB 5812 referenced above. On March 2, 2016 this bill was assigned to Judiciary.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2898&GAID=13&GA=99&DocTypeID=SB&LegID=96220&SessionID=88>

SB3275 (Sen. Connelly) AMENDMENTS TO MANAGER LICENSING ACT. This bill amends Community Association Manager Licensing and Disciplinary Act. The bill removes the requirements that any examination for obtaining a license utilize “psychometric measurement” and employ standards set forth by “National Organization for Competency Assurances.” Additionally the bill makes other technical changes to the Act. The bill was assigned to Licensed Activities and Pensions on March 8, 2016.

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3275&GAID=13&GA=99&DocTypeID=SB&LegID=96626&SessionID=88>

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.