



October 1, 2019

Report of the Condominium and Common Interest Community Ombudsperson to the Illinois General Assembly



**REPORT OF THE CONDOMINIUM AND COMMON INTEREST COMMUNITY OMBUDSPERSON TO THE
ILLINOIS GENERAL ASSEMBLY
OCTOBER 1, 2019**

The Condominium and Common Interest Community Ombudsperson Act (765 ILCS 615/1, et. seq. (“Act”)), which took effect January 1, 2017, created, in the Division of Real Estate within the Department of Financial and Professional Regulation (“Department”), the Office of the Condominium and Common Interest Community Ombudsperson (“Office”). Among its charges, the Act required the Department to name an Ombudsperson and other persons as necessary to discharge the Act’s requirements. On January 1, 2017, the Director of the Department’s Division of Real Estate, appointed Adrienne M. Levatino as Ombudsperson, whose mission is to provide information to unit owners, condominium and common interest community associations and their respective boards in order that they all may better understand their rights and obligations under the Condominium Property Act and the Common Interest Community Association Act.

Section 50 of the Act (765 ILCS 615/50) requires that the Department submit an annual written report on the activities of the Office to the General Assembly; the first report, pursuant to the terms of the Act, was filed on July 1, 2018. Beginning in 2019, the Act requires the Department to submit the report no later than October 1 of each year. In accordance with this requirement, the Office is hereby submitting this Report, which provides the information required by the Act.

Workload and Performance Data:

The Act requires that this Report set forth the following:

- (1) Annual workload and performance data, including (i) the number of requests for information; (ii) training, education, or other information provided; (iii) the manner in which education and training was conducted; and (iv) the staff time required to provide the training, education, or other information. For each category of data, the report shall provide subtotals based on the type of question or dispute involved in the request.

On January 1, 2017, the Office established its website at <https://www.idfpr.com/CCICO/>. This website is contained within the Division of Real Estate's section of the Illinois Department of Financial and Professional Regulations website in addition to being independently accessible. Among its other content, the website contains an inquiry form for use by persons seeking information from the Office. The inquiry form is a useful tool for collecting complete contact and geographic information pertaining to those seeking information from the Ombudsperson.

During the period beginning July 1, 2018 and ending August 30, 2019, the Ombudsperson received 150 written inquiries. Of the persons submitting inquiries, 104 provided his or her address and 147 identified their “status” (attorney, board member, property manager, unit owner or “other”). The vast majority of those submitting inquiries (91%) were unit owners, while only 7 (approximately 0.5%) identified themselves as board members. Among those who submitted written inquiries, only 103 (70%) identified the municipality within which they resided. Of these, 38 (36%) lived in an association within the City of Chicago; 28 (27%) lived in an association in Cook County outside the City of Chicago. The following is a breakdown by county of the number of inquiries received from individuals providing an address and residing outside of the City of Chicago:

<u>County</u>	<u>Number of Inquiries</u>
Cook	28
DeKalb	1
DuPage	11
Kane	5
Lake	6
Macoupin	2
Madison	1
Sangamon	2
St. Clair	2
Will	5
Winnebago	1
Out of State	1
Total	65

The Ombudsperson was able to categorize 146 inquiries by specific subject matter. More than one-quarter of the inquiries raised governance issues—whether a board provided adequate notice of meetings, whether the board improperly conducted business in closed session and other claimed instances of lack of adherence to the Condominium Property Act or an association’s governance documents, for instance. A number of these inquiries sought detailed responses involving an interpretation of an association’s declaration and/or bylaws and the persons seeking responses of this nature were advised to carefully read their associations’ governing documents. Twelve percent of the inquiries involved unit owner’s rights to access records of an association. The Ombudsperson received seven inquiries concerning deconversion, and five questions relating to the imposition or collection of regular or special assessments. Fourteen questions related to the adoption or enforcement of rules.

In response to the inquiries received by the Ombudsperson’s Office, individuals were provided with citations to the General Not for Profit Corporation Act, the Condominium Property Act or the Common Interest Community Association Act, as appropriate, and provided with generally responsive information. Persons submitting inquiries were informed that the Ombudsperson is prohibited from providing legal advice, has no power to enforce any laws or regulations, including the regulation or registration of professions, association, companies or people, and cannot hear, mediate or resolve issues between unit owners and associations. Persons making inquiries were also informed about the availability of educational documents on the Ombudsperson’s website.

The Ombudsperson has developed and posted a robust library of publications available on its website. These include the following eleven FAQs (“Frequently Asked Questions”):

What Are The Documents That Govern An Association?
How Do You Adopt Rules and Regulations?
What Are The Benefits Of Incorporation For Associations?
What Insurance Is An Association Required To Maintain?
How Does An Association Adopt A Budget?
What Are The Requirements For Meetings?
What Is Closed Session And What Can Be Decided There?
How Are Declarations and Rules Enforced?
How Does A Condo Association Adopt A Special Assessment?
Which Law Governs My Association?
How Does a Deconversion Work?

In addition, the Ombudsperson has prepared two publications: “Condominium Unit Owners Rights and Responsibilities Handbook” and “Rights and Responsibilities of Association Board Members.” The Ombudsperson’s website also contains the full text of the:

Condominium Property Act
Common Interest Community Association Act
Condominium and Common Interest Community Ombudsperson Act
Illinois General Not for Profit Corporation Act
Community Association Manager Licensing and Disciplinary Act
Community Association Manager Administrative Rules
Illinois Human Rights Act

In addition, links to the following federal and local laws are accessible from the Ombudsperson’s website:

Americans with Disabilities Act
Federal Fair Housing Laws
Federal Fair Debt Collection Practices Act
Federal U.S. Flag Code
Federal Over-the-Air Reception Devices Rule (“OTARD”)
HUD Final Rule: Project Approval for Single-Family Condominiums (08/15/2019)
City of Chicago Condominium Ordinance

Section 35 of the Act requires that “[E]ach association, except for those outlined in subsection (b) of this Section, shall adopt a written policy for resolving complaints made by unit owners. The association shall make the policy available to all unit owners upon request.” Subsection (b) exempts common interest community associations exempt from the Common Interest Community Association Act. To assist associations in complying with this requirement, the Ombudsperson’s Office prepared a sample Association Complaint Procedure and Sample Complaint Form and posted these to the Ombudsperson’s website in September 2018. Both publications appear at the end of this Report.

During the period covered by this Report, the Ombudsperson participated in a town hall meeting in the 12th House District and delivered presentations to the Chicago Bar Association and the Association of Condominiums, Townhouses and Homeowners’ Associations. The Ombudsperson looks forward to participating in other such forums.

The Ombudsperson role is not a full-time position and the Ombudsperson also serves as the Associate General Counsel in the Department’s Division of Real Estate. The Ombudsperson has no additional staff. Approximately twenty-five percent of her time is devoted to serving as Ombudsperson.

Unit Owner Concerns

The Act further requires that this Report set forth the following:

- (2) Where relevant information is available, analysis of the most common and serious types of concerns within condominiums and common interest communities, along with any recommendations for statutory reform to reduce the frequency or severity of those disputes.

The Ombudsperson received a relatively modest number of inquiries during the period covered by this Report and approximately 300 total inquiries¹ since establishment of the Ombudsperson's Office. Many of these consisted of lengthy narratives portraying dissatisfaction with boards allegedly ignoring the requirements of either the Condominium Property Act or the Common Interest Community Association Act. Numerous other of these narratives evidenced confusion as to how the Condominium Property Act is enforced and by whom. Unit owners also sought advice as to what constituted a "common element" in their association and who, therefore, was responsible for the making of and cost of repairs, whether special assessments had been properly adopted and what documents a condominium association must make available to unit owners for inspection and copying.

The Ombudsperson believes that because the Office of the Ombudsperson is relatively new and the amount of anecdotal information available from the inquiries received to date, it is premature to make any recommendations for statutory reform at this time. It is clear, however, even from the limited amount of data and questions raised at the forums in which the Ombudsperson participated, that both unit owners and associations would benefit from more effective and timely communication.

¹ Approximately 20 individuals submitted numerous inquiries on the same or related topics; in the last reporting period, for instance, one person submitted nine inquiries.

ASSOCIATION COMPLAINT PROCEDURE

WHEREAS, the Illinois Condominium and Common Interest Community Ombudsperson Act (765 ILCS 615/1, *et. seq.* (“Ombudsperson Act”)) requires that each condominium and common interest community association (“Association”) which is not exempt from the Common Interest Community Association Act (765 ILCS 160/1, *et. seq.*) adopt a written policy for resolving complaints made by unit owners; and

WHEREAS, on or before January 1, 2019, each association described above must adopt a complaint resolution policy which meets the requirements of Section 35 of the Ombudsperson Act;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Association, acting through its Board of Directors, hereby adopts and establishes the following Ombudsperson Act-mandated Association policy for resolving complaints:

A. Definitions. The following terms shall have the following meanings:

1. “Association” means the unit owners association of a condominium or common interest community.
2. “Association complaint” means a written complaint filed by a unit owner of the association pursuant to the association complaint procedure. An association complaint (a dispute between a unit owner and an association) shall concern a matter which is not pending in any court of law or equity or administrative tribunal, regarding the alleged or perceived action, inaction or decision by the Board of Directors, managing agent or association inconsistent with applicable laws and regulations, including but not limited to the association governing documents and rules and regulations, if any, of the association.
3. “Association governing documents” means all documents and authorized amendments thereto recorded by a developer or condominium or common interest community association, including, but not limited to, the declaration, bylaws, articles of organization, operating agreement, plat of survey, and rules and regulations.
4. “Board” means the duly elected board of managers or board of directors of an association.
5. “Complainant” means a unit owner who makes a written complaint pursuant to this association complaint procedure.
6. “Final determination” means the final decision issued by the association pursuant to this association complaint procedure that shall (1) be made in writing within 180 days after the association received the unit owner’s original complaint; and (2) be marked clearly and conspicuously as “final.”
7. “Record of complaint” means all documents, correspondence, and other materials related to a decision made pursuant to this association complaint procedure.

8. "Acceptable technological means" includes, without limitation, electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the association, is deemed to provide reasonable security, reliability, identification, and verifiability.

B. General Provisions

1. The association complaint procedure shall be readily available to all unit owners of the association.
2. The association complaint procedure shall be distributed to all unit owners using the association's established reasonable, effective and free method for communicating with the Board.

C. Procedures

1. The association complaint must be in writing.
2. A sample of the form on which to submit an association complaint is available upon request from the association office at [address], or by telephone at [phone number] or by electronic mail at [email address].
3. The completed complaint form shall be hand-delivered, mailed by registered or certified mail, return receipt requested, or if consistent with the association's established procedure, delivered by acceptable technological means, provided the sender retains sufficient proof of delivery. Delivery shall be made to the President or Secretary of the association or to the manager at the principal office of the association.
4. The association shall provide written acknowledgement of the receipt of the complaint to the complainant within seven (7) days or receipt. Such acknowledgement shall be hand-delivered to the complainant, mailed by registered or certified mail, return receipt requested, or if consistent with the association's established procedure, delivered by acceptable technological means, provided the sender retains sufficient proof of the electronic delivery.

D. Contents of association complaint

1. The complainant shall provide, with the association complaint, copies of all documents that the complainant believes the Board of Directors should consider in connection with the association complaint. In addition, to the extent the complainant has knowledge of the law, rule or regulation applicable to the association complaint, the complainant shall provide that reference, as well as the requested action or resolution.
2. If the association identifies additional information necessary for the association to continue processing the association complaint, then, no later than 30 days after the association's receipt of the association complaint, the association shall request such information from the complainant. The request shall be hand-delivered to the complainant or mailed by registered or certified mail, return receipt requested.

3. The request for additional information shall bear a reasonable relationship to the association complaint and not be used to overburden the complainant or frustrate a complainant's efforts to have an association complaint considered by the Board. If the additional information requested is not received within the time frame stated in the association's request (such date to be reasonably determined based on the nature of the information requested), and the time frame has not been extended by consent of the Board, but in no event shall be beyond thirty (30) days after the request was made or the extended time has expired whichever is later, the association complaint will be deemed withdrawn and the process will terminate.

E. Consideration of association complaint and final determination

1. The association's Board of Directors shall hold a hearing on the association complaint no less than 30 nor more than 60 days after receiving the association complaint and any additional information it has requested. The Board or complainant, or both, may record the hearing by tape, film or other means.
2. Within a reasonable time prior to the consideration of the association complaint, the complainant shall be notified of the date, time and location on and at which the hearing will be held. "Reasonable time" shall not be less than 14 prior to the hearing date. Notice of the date, time, and location for the hearing shall be hand-delivered, mailed by registered or certified mail, return receipt requested, or if consistent with the association's established procedure, delivered by acceptable technological means, provided the sender retains sufficient proof of the electronic delivery.
3. A complainant may, but is not required to be, represented by an attorney. If the complainant chooses to be represented by an attorney, then s/he must notify the Board of Directors that s/he intends to be represented by an attorney no later than 7 days prior to the hearing date.
4. A complainant may bring witnesses or documents to the hearing in support of his or her association complaint.
5. The final determination of the association shall be contained in a Resolution adopted by the Board at an open meeting in conformance with the association's governing documents. The final determination of the association must be made in writing within 180 days after the association received the complainant's association complaint and marked clearly and conspicuously as "final."
6. Written notice of the Board's final determination shall be hand-delivered or mailed by registered or certified mail, return receipt requested within 7 days of the Board's final determination.
7. The association shall maintain a record of each association complaint it receives for at least 7 years following adoption of the Board's Resolution setting forth the final determination with respect to that association complaint.

**[Name of Association]
Written Complaint Form**

The Board of Directors has adopted this association complaint form for association members (e.g. unit owners) to file written complaints with the Board about violations of the Association’s Declaration, Bylaws, Rules and Regulations or applicable Illinois law.

1. Name the document and the paragraph number violated. Please select all that apply. If “Other,” please specify.

Declaration Click or tap here to enter text.

Bylaws Click or tap here to enter text.

Rules Click or tap here to enter text.

Condominium Property Act Click or tap here to enter text.

Common Interest Community Association Act Click or tap here to enter text.

Illinois General Not for Profit Corporation Act Click or tap here to enter text.

Other (please specify) Click or tap here to enter text.

2. Legibly describe the Complaint (e.g. denied access to records, violation of bylaws), as well as the requested action or resolution of the issues described in the Complaint. Please include references to the specific facts and circumstances at issue and the provisions of the Association’s Declaration, Bylaws, Rules and Regulations and/or the provisions of Illinois laws that support the Complaint. If there is insufficient space, please attach a separate sheet of paper to this Complaint form. Also, attach any supporting documents, correspondence and other materials related to the Complaint.

3. Explain in what way anyone violated the section, in the order that things happened, starting from the beginning. If there is insufficient space, please attach a separate sheet of paper to this Complaint form.

4. Describe, explain and attach any documents or other evidence that supports your Complaint. If there is insufficient space, please attach a separate sheet of paper to this Complaint form.

5. Please describe what you want the Board to do to solve your Complaint. If there is insufficient space, please attach a separate sheet of paper to this Complaint form.

Printed Name Click or tap here to enter text. Email Address Click or tap here to enter text.

Mailing Address Click or tap here to enter text.

Unit/Lot Address Click or tap here to enter text.

Phone Click or tap here to enter text. Cell Click or tap here to enter text.

Contact Preference: Phone Cell Phone Email

Signature _____ Date _____

2019



The Condo Unit Owner's Rights and Responsibilities Handbook



Since the first Declaration of Condominium Ownership in Illinois was recorded on January 31, 1963, condominiums have become a very popular form of home ownership in Illinois. By one estimate, 3.7 million Illinoisans resided within a condominium development in 2015 – a number equal to nearly thirty percent of the State’s population that year.

“Condominium” refers to a method of ownership and not a physical style or type of building. New and existing high-rise buildings, townhouses, duplexes and three-flats can all be condominiums. Home ownership in a condominium association is decidedly different compared to a single family home.

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Condominium living is accompanied by distinct duties and responsibilities, as well as certain rights for unit owners. As pleasant and convenient as living in a condominium association can be, this type of housing presents its unique set of challenges.

A condominium association is, after all, a sort of highly-local mini-government with its own set of internal “laws.” But just as there are rules with which condominium unit owners (“unit owners”) must comply, so, too, do unit owners have rights. The purpose of this publication is to discuss the basic rights and responsibilities of unit owners.

The information contained in this publication is a brief overview of the duties, rights and responsibilities of unit owners in condominium developments. The information is intended to provide general information and is not a substitute for obtaining legal advice to address specific situations. Since this publication may not contain subsequent changes in the law, it should only be used as a general source of information. The complete text of the Illinois Condominium Property Act (“Act”) (765 ILCS 605/1, *et. seq.*) as well as the General Not for Profit Corporation Act (805 ILCS 105/1, *et. seq.*) can be obtained on the website of the Illinois Condominium and Common Interest Community Ombudsperson at :

<http://www.idfpr.com/CCICO>.

The General Not for Profit Corporation Act is relevant to those associations that have elected to become not-for-profit corporations and have registered with the Illinois Secretary of State; associations, whether or not incorporated, have those powers and responsibilities specified in the General Not For Profit Corporation Act that are not inconsistent with this Act or the condominium instruments.

Legal Basis for the Condominium

The Illinois Condominium Property Act provides the framework for the creation and governance of condominium associations. Condominium associations may choose to incorporate as Illinois not-for-profit corporations, pursuant to Section 18.1 of the Act, but are not required to do so. An association, whether or not it is incorporated, has the powers and responsibilities specified in the General Not for Profit Corporation Act of 1986 that are not inconsistent with the Act or the condominium instruments (as defined in the Act).

In the context of associations, the terms “board of directors” and “board of managers” are frequently used interchangeably. “Board of Directors” is the usual name for the group of unit owners governing an association that has corporation status, including a not-for-profit condominium association. “Board of Managers” is the usual name for the group of unit owners governing an association that is unincorporated.

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Every unit owner automatically becomes a member of the unit owners’ association --the association of all the unit owners, acting pursuant to bylaws through its duly elected board of managers. Throughout this publication, the term “unit owner” and “member” will be used interchangeably, “association” will refer to the condominium association and “board” will refer to the board of managers or board of directors, whichever is applicable.

Governance Documents

Just as the operator of a motor vehicle must be knowledgeable about the “rules of the road,” so must unit owners become familiar with the documents that control the operation and administration of the condominium association. These are:

Declaration: The declaration is the document which creates and defines the association. It essentially contains the “ground rules” for the association. It is recorded against the entire property so that all owners who buy property in the association after the date on which the declaration is recorded will be bound by its

provisions. Thus, the declaration “runs with the land,” i.e., is found in the chain of title to the property, and affects all subsequent owners of the property. The declaration will also commonly contain various restrictions against owners using the property or the units in a certain way. The declaration may be considered the “constitution” for the operation and administration of the condominium association. As a general rule, if there is a conflict between the provisions of the declaration and the bylaws or other condominium instruments, the declaration prevails except to the extent it is inconsistent with the Act.

Bylaws: The Bylaws, often an exhibit to the declaration or incorporated within the body of the declaration, contain the procedural framework under which the association/corporation will run. The bylaws tell the board of directors how to run the corporation, i.e. how many people should sit on the Board, how often to meet, notice requirements, the power of the Board, the manner in which board members may participate in a board meeting and the method of filling vacancies on the board, for example. An association’s bylaws must set forth the method by which the association adopts and amends rules and regulations governing the use and operation of the common elements.

Rules and Regulations: Rules (or “rules and regulations”) are sometimes referred to as the “dos and don’ts” of a community association. The rules assist the association in meeting obligations and terms imposed by or restrictions within an association’s declaration. It is a board function to adopt or amend rules.

There is a hierarchy of authority between the association’s governing documents and the Act. In any situation where the governing documents and the Act conflict (for instance, where the governing documents limit the Board’s ability to pass special assessments or make certain expenditures), the Act will control and trump any inconsistent provision within the governing documents.

All persons who use or occupy a condominium unit are subject to the Act, as well as the declaration, bylaws and rules and regulations. (Act, Section 18(n)).

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Unit Owners' Rights and Responsibilities

Availability of Condominium Documents:

Any member of an association has the right to inspect, examine, and make copies of: (1) the association's declaration, bylaws, and plats of survey and all amendments to these documents; (2) the association's rules and regulations, if any; (3) if the association is incorporated, the association's articles of incorporation and all amendments to the articles; (4) minutes of all meetings of the board for the immediately preceding 7 years; (5) all current policies of insurance of the association; (6) all contracts, leases and other agreements then in effect to which the association is a party or under which the association or the unit owners have obligations or liabilities; and (7) the books and records for the association's current and ten immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts, expenditures and accounts. In order to exercise this right, an association member must submit a written request to the board or its authorized agent, stating "with particularity" the records being requested. An association must generally provide such records within 10 business days.

The Act also gives association members the right to inspect, examine, and make copies of another subset of documents, but with respect to these, the member must not only identify the records "with particularity" but also state "a purpose that relates to the association" for requesting them. These documents are (1) a current listing of the names, addresses, email addresses, telephone numbers and weighted vote of all members entitled to vote; and (2) ballots and proxies related to ballots for all matters and voted on by the members of the association during the immediately preceding 12 months, including but not limited to the election of members of the board. An association must generally provide such records within 10 business days. The board may require the member to certify in writing that s/he will not use the information for any commercial purpose (that is, for sale, resale or solicitation or advertisement for sales or services) or any purpose that does not relate to the association and may impose a fine upon any person who makes a false certification.



The association may charge the requesting member the actual cost to the association of retrieving and making requested records available for inspection and examination and, if a member requests copies of the records, the association shall charge its actual costs of reproducing the records to the requesting member.

Anti-Discrimination: Federal law prohibits discrimination in housing by associations and their agents and employees on the basis of race, color, national origin, sex, religion, disability, and familial status (children in the

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family). In addition, the Illinois Human Rights Act prohibits discrimination on the basis of ancestry, marital status, sexual orientation or order of protection status. Examples of discriminatory rules are those that prohibit children from using recreational areas or other services, such as using the swimming pool.

Just as it is illegal to discriminate against persons because of their race, it is illegal to discriminate against them because they have children. Also, physically disabled unit owners may have a right to install physical accommodations (at the disabled person's own expense) such as ramps, handrails and similar improvements to enable them to have full use of the condominium property or their unit.

An association with rules limiting pets must generally exempt "assistance animals" – a broad term used by the U.S. Department of Urban and Housing Development ("HUD") to encompass not only "service animals" which are exclusively dogs that have been specially trained to perform specific tasks or do work for the benefit of a disabled individual, but also "emotional support animals" which includes any animal (including, but not limited to, dogs, cats, birds, reptiles, etc.) which provides disability-related assistance to its owner but need not have been specifically trained or certified in any way. HUD makes clear that all

assistance animals in any housing context including private residential associations, must be considered under the Federal Fair Housing act's "reasonable accommodation" requirements.

Boards have a responsibility to reasonably accommodate the needs of a unit owner who is a person with a disability as required by the federal Civil Rights Act of 1968, the Illinois Human Rights Act and any applicable local ordinances in the exercise of its powers with respect to the use of the common elements or approval of modifications in an individual unit. The individual whose needs are being thus accommodated may be asked to pay the costs of any such modifications.



Association Meetings: There are two types of meetings: board meetings and membership meetings. Membership meetings are often referred to as unit owner meetings. Unit owners have the right to attend both types of meeting.

Board Meetings

An association board must meet at least four times annually and a quorum (as defined in the by-laws) of board members is required, but board members may participate in and act at any meeting of the board in person, by telephonic means, or by use of acceptable technological means enabling all persons participating in the meeting to communicate with each other.

Notice of every board meeting must be posted in entranceways, elevators or other conspicuous places in the condominium at least 48 hours prior to the meeting; if there is no common entranceway for 7 or more units, the board may designate alternate locations; and provide by mail or delivery to each unit owner, if required by the bylaws or otherwise required by the Act. If a unit owner has provided written authorization, such delivery may be made by acceptable technological means.

Meetings must be open to all unit owners. At the option of board members, others may be invited, such as the management company representative or others presenting information about association business. Unit Owners do not have the right to comment at board meetings.

However, many condominium association boards have a unit owner comment period, subject to the discretion of the board. Any unit owner may record a board meeting by tape, film, or other means. The board may adopt reasonable rules to govern the making of such recordings.

Membership/Association Meetings

A membership meeting must be held at least once a year and requires a quorum of unit owners which, by default under the Act, is defined as 20% of the unit owners. Written notice must be mailed or delivered to all unit owners, giving no less than 10 days and no more than 30 days' notice of the time, place and purpose of the meeting. If the unit owner has provided written authorization, such delivery may be made by acceptable technological means. If a proposed rule is to be discussed at a membership meeting called for that specific purpose, the notice must contain the full text of the proposed rule.

Special meetings of the members can be called by the president, the board or by 20% of unit owners.

Closed Meetings

A "closed session" is a portion of an open board meeting during which the board discusses – but does not vote on – certain sensitive matters specified by Illinois law, without any owners present. A closed session occurs when the board votes to go into closed session at any time during a board meeting or when a quorum of board directors meeting privately outside of a board meeting to discuss one (1) of the following six (6) matters that may lawfully be addressed in closed session: (1) discussing pending or likely litigation by or against the association; (2)

discussing the appointment, employment, engagement, or dismissal of an employee, independent contractor, agent, or other provider of goods and services; (3) interviewing a potential employee, independent contractor, agent, or other provider of goods and services; (4) discussing violations of the association's rules and regulations; (5) discussing an owner's unpaid assessments; and (6) consultation with the association's legal counsel. Minutes of the board meeting should not reflect the matters discussed in closed session, and any vote on matters discussed in closed session must take place in an open portion of a board meeting. Some or all of the members of a condominium association board may also meet privately (that is, without holding a board meeting) for those same six purposes.

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Assessments: Members of a condominium association are legally obligated to collect assessments from the unit owners. Each unit owner has a duty to pay his share of common expenses in a timely manner. This share of common expenses is collected through the process of "assessment" and arises from the fact that every unit owner shares common element ownership in an undivided manner. Unit owners are responsible for paying "assessments" including both assessments for day to day operating expenses, reserve assessments for expenses relating to long-term maintenance and any "special assessments." Assessments are determined according to the percentage of ownership in the common elements set forth in the association's declaration.

Each association's bylaws must specify the method of estimating the amount of the annual budget, and the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses.

They must also explicitly provide that the association has no authority to forbear the payment of assessments by any unit owner—to permit a unit owner to refrain from paying assessments. Therefore, unit owners may not either withhold assessments or pay them into an escrow account.

If there are unplanned repairs or other situations where additional funds are needed to support the association, then the primary tool at the board's disposal is a special assessment. A special assessment allows the Board to collect additional funds from the unit owners above and beyond the normal monthly assessments.

Each unit owner has a duty to pay his share of common expenses in a timely manner.

Special assessments can be arranged in whatever manner the board would like in terms of timing and number of payments. For example, a special assessment may call for a single lump payment or may require smaller payments over months or even years. Owners may be issuing two payments each month; one for their normal monthly assessment and another for the special assessment. The unit owners **are not** included in the vote and *may not* veto the board's decision if the special assessment has been adopted for emergency or legally mandated purposes (discussed further herein). Unit owners do have recourse to reject special assessments adopted by the board for all other expenditures.

If the board of directors adopts a special assessment that results in the total assessments (regular and special) in a given year exceeding one hundred and fifteen percent (115%) of the total assessments in the prior year, then owners can petition the board for a meeting of owners to vote on such special assessment. The petition must be signed by owners with at least twenty percent (20%) of the total votes and presented to the board within fourteen (14) days of the board's approval of the special assessment. If such a petition is presented, the board must call a meeting of owners within thirty (30) days, and at the meeting owners with a majority of the total votes in the association must vote to reject the special assessment, or else it is ratified.

Pursuant to Section 18(a)(8) of the Act, separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the board of managers without being subject to unit owner approval. "Emergency" is defined as an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners.

The Act provides that all special assessments related to emergencies (defined as "an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners") or mandated by law are not subject to veto by the owners. Assessments for additions and alterations to the common elements or to association-owned property not included in the adopted annual budget, must be separately assessed and are subject to approval of two-thirds of the total votes of all unit owners.

Condo unit owners may not withhold assessments even if the condo association fails to make repairs and perform maintenance. If a unit owner does not pay his or her assessment (or of any other expenses lawfully agreed upon or any unpaid fine) to the association, the association may file for relief under the Forcible Entry and Detainer Act. (735 ILCS 5/9-101).

This law allows the association to ask a court for a money judgment and possession of the unit for which assessments have not been paid. The law only allows the association to take possession of the unit; the owner will still own the unit. Once the association has possession of the unit, it may rent out the unit and use the rental income to pay the past due assessments.

Each year the board must prepare and distribute a proposed annual budget

A full discussion of the Forcible Entry and Detainer Act is beyond the scope of this publication and any unit owner against whom such an action is filed is encouraged to promptly seek legal advice.

Budget: Each year the board must prepare and distribute a proposed annual budget indicating with particularity: all anticipated common expenses by category (line item); capital expenditures or repairs; payment of real estate taxes, if any; the amount designated for reserves; each unit owner's anticipated assessments; and other anticipated income.

Unit owners must be provided with a copy of the proposed annual budget at least 25 days before the date of the board meeting at which the board will adopt the proposed annual budget. Notice of the board meeting at which the board will adopt the proposed annual budget must be mailed or delivered to all unit owners not less than 10 days and not more than 30 days before the date of that board meeting. Notice of the board meeting must also be posted at least 48 hours before the date of that board meeting. "Notice" means, with certain



exceptions, posting in entranceways, elevators or other conspicuous places in the condominium. Notice must also be given to: (i) each unit owner who has provided the association with written authorization to conduct business by acceptable technological means, and (ii) to the extent that the condominium instruments of an association require, to each other unit owner by mail or delivery.

The budget must be approved by at least a majority of the board members present at a properly noticed open board meeting, at which a quorum of the board is present during the entire meeting.

Unless an association has expressly waived the Act's reserve requirements by a vote of 2/3 of the total votes of the association, all budgets must provide for "reasonable reserves" for capital expenditures and deferred maintenance for repair or replacement of the common elements. To determine the amount of reserves appropriate for an association, the board must consider the following: (i) the repair and replacement cost, and the estimated useful life, of the property which the association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the buildings and common elements, and energy systems and equipment; (ii) the current and anticipated return on investment of association funds; (iii) any independent professional reserve study which the association may obtain; (iv) the financial impact on unit owners, and the market value of the condominium units, of any assessment increase needed to fund reserves; and (v) the ability of the association to obtain financing or refinancing.

Each unit owner has the right to receive an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payments of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves.

An association that consists of 100 or more units must use generally accepted accounting principles in fulfilling any accounting obligations under the Act.

Disclosures to prospective purchasers:

The Act grants rights not only to unit owners, but to prospective purchasers buying a condominium unit from an owner other than the developer (who are subject to more rigorous disclosure requirements). If the prospective purchaser asks for them, the unit owner/seller is required to obtain from the board and make available for inspection, the following: (1) a copy of the declaration, bylaws, other condominium instruments and any rules and regulation; (2) a statement of any liens, including a statement of the account of the unit setting forth the amounts

***The Act grants rights
not only to unit owners,
but to prospective
purchasers***

of unpaid assessments and other charges due and owing; (3) a statement of any capital expenditures anticipated by the unit owner’s association within the current or succeeding two fiscal years; (4) a statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the board; (5) a copy of the statement of financial condition of the unit owner’s association for the last fiscal year for which such a statement is available; (6) a statement of the status of any pending suits or judgments in which the unit owner’s association is a party; (7) a statement setting forth what insurance coverage is provided for all unit owners by the unit owner’s association; (8) a statement that any improvement or alterations made to the unit, or the limited common elements assigned to the unit, by the prior (selling) unit owners are in good faith believed to be in compliance with the condominium instruments; and (9) the identity and mailing address of the principal officer of the unit owner’s association or of the other officer or agent as is specifically designated to receive notices.

The association must provide this information when requested to do so in writing and within 30 days of the request. These are often referred to as “Section 22.1 Disclosures,” referring to the Section of the Act which requires them.

Elections: The most important role and right of a unit owner is electing directors to the association’s board, which has a great deal of power over the day-to-day operations of the association.

The bylaws of every condominium association must provide for the election from among the unit owners of a board of managers. Once elected, board members have broad authority to act on behalf of the association and its members subject to the Act, the declaration and bylaws including filling vacancies on the board until the next annual meeting of unit owners and electing the association’s officers.



The Act requires that the members hold an annual meeting, one of the purposes of which is the election of board members from among the unit owners. The Act generally provides unit owners the right to vote in person or by a proxy executed in writing by the unit owner or his duly authorized attorney. However, it is important for unit owners to be familiar with the declaration, bylaws and rules of their association, which may prohibit the use of proxies or provide for alternative voting methods (i.e. electronic voting or absentee ballots).

The board may distribute to unit owners biographical and background information about candidates for election to the board if reasonable efforts are made to identify all candidates, all candidates are given an opportunity to include this information in the materials to be distributed to unit owners, and the board does not express a preference in favor of any candidate.

Written notice of the meeting at which the election will be conducted must be mailed or delivered to all unit owners, giving no less than 10 days and no more than 30 days' notice of the time, place and purpose of the meeting. If the unit owner has provided written authorization to receive delivery by acceptable technological means (most often, email), such delivery may be made by an Association.

Fiduciary Duties: Unit owners have a right to expect that members of the board will “do right by them” or in legal terms, fulfill their fiduciary duties. The Act specifically requires the officers and members of the board (the directors) to exercise the care required of a fiduciary of the unit owners. In general, these fiduciary duties require undivided loyalty and the exercise of reasonable business judgment in conducting

A unit owner may not do anything in his or her unit that will jeopardize other property in the condominium

the business affairs of the association. Even if a unit owner doesn't believe that the board has made the “right” decision, if the board and its members follow the correct procedures and act in the interest of the association, they generally will not be personally liable for their actions on behalf of the association.

Improvements and Alterations: A unit owner has the right to “make his home his castle” but must do so in accordance with the association's governing documents. Generally speaking, a unit owner may not do anything in his or her unit that will jeopardize other property in the condominium or interfere with the use and enjoyment of the property by other unit owners.

Moreover, the association's declaration generally prohibits unit owners from making alterations to any common limited common element (including those located within the unit owner's unit) without written board approval, thereby limiting the unit owner's ability to take unilateral action in certain cases. The board also has the right, under the Act, to access any unit if necessary for the maintenance, repair or replacement of common elements or for making emergency repairs necessary to prevent damage to the common elements or to other units.

"Emergency" is defined in the Act to mean an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners. To the extent possible, it is a good practice for associations to notify unit owners if it plans to make access for non-emergency purposes.

Leases: A properly adopted declaration provision can restrict renters within an association. If the association does permit renters, the unit owner leasing the unit must deliver a copy of the signed lease to the board or if the lease is oral, a memorandum of the lease, not later than the date of occupancy or 10 days after the lease is signed. All persons who use or occupy a condominium unit are subject to the Act, as well as the declaration, bylaws and rules and regulations. Since the renter will be required to comply with the provisions of these documents, the unit owner should provide the renter with a copy of those documents or, at minimum, of the rules and regulations. Pursuant to Section 9.2(a) of the Act, unit owners are liable for any damage caused to the association by their tenants, and the board, in certain cases, will have recourse against both the unit owner and tenant for violations of the declaration, bylaws or rules.



Since non-compliance with the association's rules and regulations may have an effect on the association and unit owners, it is a good idea for associations themselves to provide renters with the most recent copy of its rules and regulations.

Reserve Study: A “reserve study” is a sort of “business plan” for the maintenance of the association’s assets. As a general rule, a reserve study includes a physical analysis and a financial analysis and assesses the state of the common elements. A “reserve study” is often used by boards to help determine whether the association is maintaining reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the common elements as required by the Act.

A board may not adopt rules or regulations that impair any rights protected by First Amendment to the United States Constitution or the freedom of speech provisions contained in the Illinois Constitution.



***Unit owners have
the right to
participate in
the association’s
rulemaking process***

The association may not enact any rule or regulation that prohibits any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium unit.



Rules and Regulations: Unit owners have the right to participate in the association’s rulemaking process by attending and participating in any membership meeting called for the specific purpose of discussing proposed rules and regulation. Written notice of such meeting must be mailed or delivered giving members no less than 10 and no more than 30 days’ notice of the time, place and purpose of the meeting. If the unit owner has provided written authorization, such delivery may be made by acceptable technological means. The notice must contain the full text of the proposed rule. Unless an association’s declaration or bylaws provide otherwise, no quorum is required at the meeting.

A board may also not prohibit the display of the American flag or a military flag, or both, on or within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located.

Unit owners have a responsibility to obey their association's rules and regulations.

The Act gives associations the ability to, following notice and an opportunity to be heard, to levy reasonable fines for violation of the declaration in, bylaws and rules and regulations of the association. No specific form of notice is required, but the notice should inform the unit owner of the rule he or she has allegedly violated, along with the time, date and location of the violation.

The notice should also inform the owner that he or she has the right to request a hearing before the board by notifying the association in writing of the request. In other words, a unit owner has a right to some level of due process before an association levies a fine against him. Unit owners have a responsibility to pay any fines levied against them.

The Act provides that if a unit owner fails to pay a fine when it is due, the amount of the fine together with any interest, late charges, reasonable attorney fees incurred enforcing the condominium instruments or rules and regulations constitute a lien on the interest of the unit owner in the property.

Unit owners have a responsibility to obey their association's rules and regulations.

Surplus or Deficit of Funds:

If an association's fiscal year ends with a surplus of funds over actual expenses, including budgeted reserve fund contributions, the board of managers has the authority (unless the declaration or bylaws provide otherwise), in its discretion, to dispose of the surplus in one or more of the following ways:

(i) contribute the surplus to the association's reserve fund;

(ii) return the surplus to the unit owners as a credit against the remaining monthly assessments for the current fiscal year;

(iii) return the surplus to the unit owners in the form of a direct payment to the unit owners; or

(iv) maintain the funds in the operating account, in which case the funds shall be applied as a credit when calculating the following year's annual budget.



If the fiscal year ends in a deficit, the board of managers has the authority (unless the declaration or bylaws provide otherwise), in its discretion, to address the deficit by incorporating it into the following year's annual budget.

If 20% of the unit owners of the association deliver a petition objecting to the board's action within 30 days after notice to the unit owners of the action, the board of managers shall call a meeting of the unit owners within 30 days of the date of delivery of the petition.

At the meeting, the unit owners may vote to select a different option than the option selected by the board of managers. Unless a majority of the total votes of the unit owners are cast at the meeting to reject the board's selection and select a different option, the board's decision is ratified.

Units, Common Elements and Limited Common Elements:

The inner space of a unit owner's residence, the "unit" in which the owner resides, is the owner's to decorate, maintain and live in. All space and other fixtures and improvements within the boundaries of a unit are usually considered to be a part of that unit.

As a general principle, unit owners have the "right of quiet enjoyment" of their residence. However, the declaration often sets forth restrictions on activities that may interfere with the use and enjoyment of an individual unit owner's residence or the common elements.

An association may not adopt rules or regulations that impair any rights protected by First Amendment to the United States Constitution...

To the extent these are not set forth in the declaration, the bylaws must contain restrictions and requirements regarding the use and maintenance of the units and the common elements that are designed to prevent "unreasonable interference" with the use of their respective units and of the common elements.

"Common Elements" is defined in the Act to mean all portions of the property except the units, including limited common elements unless otherwise specified. "Limited Common Elements" is defined by the Act to mean a portion of the common elements so

designated in the declaration as being reserved for the use of a certain unit or units to the exclusion of other units, including but not limited to balconies, terraces, patios and parking spaces or facilities. The Condominium Act expressly states the board shall administer the common elements, which includes maintenance, repair and replacement. An association's bylaws must provide for the maintenance, repair and replacement of the common elements. All unit owners share the right to use the common elements subject to reasonable regulations as well as responsibility for their maintenance (through the payment of assessments).

Unit owners should carefully review the contents of the declaration to which their association is subject. Generally, the Declarations define the common elements as all of the property except for the dwelling units. This means common elements could include recreation facilities foundations, hallways, stairways, entrances and exits, common parking areas, storage areas, basement, roof, electrical wiring and conduits, central heating and air, public utility lines, floors, ceilings, outside walks and driveways, landscaping. Limited common elements are generally defined as those common elements which are appurtenant to or for the exclusive use of some, but not all, unit owners. common or limited common elements in any way. Some examples of limited common elements are balconies, plumbing fixtures and related pipes, terraces, patios and parking spaces. Generally, a unit owner must obtain written board approval before modifying the common or limited common elements in any way.

Unit Owner Rights quick reference guide

Acceptable Technological Means

The right to perform any obligation or exercise any right under any condominium instrument or the Act by use of acceptable technological means including electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the association, is deemed to provide reasonable security, reliability, identification, and verifiability. 765 ILCS 605/18.8(b)

Board Matters

The right to receive notice of every board meeting at least 48 hours prior to the meeting. 765 ILCS 605/18(a)(9)(E)

The right to attend every board meeting (except those portions thereof that may properly be closed). 765 ILCS 605/18(a)(9)(A)

The right to record the proceedings and meetings of the board, subject to reasonable rules and regulations prescribed by the board. 765 ILCS 605/18(a)(9)(C)

The right to know how administrative rules and regulations governing operation of and use of the common elements are adopted and amended. 765 ILCS 605/18(b)(l)

The right to receive notice of the board's intent to enter into a contract with a current board member or with a corporation or partnership in which a board member or member of his or her immediate family has 25% or more interest within 20 days after a decision is made to enter into the contract. 765 ILCS 605/18(a)(16). (The Act contains provisions pursuant to which unit owners may petition for a meeting to be held for an election to approve or disapprove the contract.)

Budgets

The right to receive a detailed proposed annual budget prepared by the Board and distributed to all unit owners. 754 ILCS 605/9(c)(1)

The right to receive a copy of the proposed annual budget at least 25 days prior to the adoption thereof by the board. 765 ILCS 605/18(a)(7)

The right to receive notice of any board meeting concerning the adoption of the budget or to adopt a special assessment. 765 ILCS 605/18(a)(8). Unit owners must be given at least 10 but not more than 30 days' notice of the meeting. 765 ILCS 605/18(b)(6)

The right to an association budget that provides for reasonable reserves for repair or replacement of the common elements (unless waived by the association if the condominium instruments do not include a reserve requirement). 765 ILCS 605/9(c)(2)

Unit Owner Rights (continued)

Displays

The right to reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium unit. 765 ILCS 605/18(h)

The right to display the American flag or a military flag, or both, on or within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located. 765 ILCS 605/18.6

Elections

The right to elect a board of managers or board of directors. 765 ILCS 605/18(a)(1)

The right to express a preference for any of the known candidates for election to the board or to write in a name. 765 ILCS 605/18(a)(18)

Inspection of Records

The right to inspect, examine and make copies, at any reasonable time, of the following records: The association's declaration, bylaws, plats of survey and all amendments of these; the rules and regulations of the association; the articles of incorporation of the association and all amendments to the articles of incorporation; minutes of all meetings of the association for the immediately preceding 7 years; and all current policies of insurance of the association. 765 ILCS 605/19(b)

The right to submit a written request, stating with particularity the records sought to be examined and a proper purpose, to inspect, examine and make copies of all contracts, leases and other agreements then in effect to which the association is a party or under which the association is a party or under which the association of the unit owners have obligations or liabilities; a current listing of the names, addresses and weighted vote of all members entitled to vote; ballots and proxies related to ballots for all matters voted on by the members of the association during the immediately preceding 12 months, including but not limited to the election of members of the board; and the books and records of account for the association's current and 10 immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts and expenditures. 765 ILCS 605/19(c)

Quiet Enjoyment

The right to use his or her unit and the common elements without unreasonable interference subject to restrictions imposed in either or both of the governing documents or the rules and regulations. 765 ILCS 605/18(b)(13)(k)

Statements of Account

The right to receive a statement of the unit owner's account setting forth the amount of any unpaid assessments or other charges due and owing from such unit owner upon 10 days' notice and payment of a reasonable fee. 765 ILCS 605/18(b)(i)

The right to receive notice of the board's intent to enter into a contract with a current board member or with a corporation or partnership in which a board member or member of his or her immediate family has 25% or more interest within 20 days after a decision is made to enter into the contract. 765 ILCS 605/18(a)(16). (The Act contains provisions pursuant to which unit owners may petition for a meeting to be held for an election to approve or disapprove the contract.)

2019



Rights and Responsibilities of Association Board Members



Condominium and common interest community properties are sometimes likened to small, self-contained towns. Or, in some cases, not so small. In March, 2018, fifteen percent of Illinois' 1400 local governments had a population of 250 or less and one-third of the State's local governments had a population of 600 or less. Many associations have similar and even much larger numbers of members. In Chicago alone, there are numerous condominium properties with upwards of 800 units. Based on Illinois' average household occupancy of 2.63 persons, those condominium properties would have populations that exceed those in almost sixty percent of Illinois' local governments.

Associations are like "mini-governments" which provide quasi-public services

Associations, which are first and foremost corporations, can also be big businesses, with budgets in some large residential associations exceeding \$5 million. They make substantial purchases of goods and services, must prudently invest what often amounts to tens of thousands of dollars in their reserve funds, and direct the management and maintenance of properties with intricate mechanical and other operating systems. In addition, associations are like "mini-governments" which provide quasi-public services (e.g. trash removal, maintenance, snow removal), levy mandatory fees (e.g. assessments), and regulate resident behavior. Little wonder, then, that managing the affairs of an association is such a complex and important undertaking.

Members of association boards must be well-prepared and well-informed to "govern" their respective communities. We hope that this publication will help prepare and inform board members to effectively carry out their duties and promote civility and cooperation between association boards and association members.

Condominium and common interest community associations (which will be collectively referred to in this publication as "associations," unless the context dictates otherwise) are governed by a board of managers (more commonly referred to as "directors") elected by the unit owners to represent them in governing and managing the association. The Board is responsible for the overall management, oversight and control of the association. Boards have statutory rights and duties, largely derived from the Condominium Property Act (765 ILCS 605/1, *et. seq.* ("CPA")), the Common Interest Community Association Act (765 ILCS 160/1, *et. seq.* ("CICAA")) and the Illinois General Not for Profit Corporation Act (805 ILCS 105/1 *et. seq.*), as well as common law duties governing their fiduciary relationship with the association and its members.

It's incumbent on directors to run their association like a business, with high standards of trust and responsibility. Board members must respond timely and thoughtfully to changes in the economic environment, the unit owner population and the physical and financial status of the property. Specifically, Section 18.4 of the Illinois Condominium Property Act states that a condominium board must "exercise the care required of a fiduciary of the unit owners." This duty is also set out in the Illinois General Not for Profit Corporation Act. In general, those fiduciary duties require undivided loyalty and the exercise of reasonable business judgment in conducting the business affairs of the association.

Board members must put the interests of the association before their own personal interests and preferences, must studiously avoid conflicts of interest, and must demonstrate undivided loyalty to the association. Even if a unit owner doesn't believe that the board has made the "right" decision, if the board and its members follow the law and the correct procedures and act in the interest of the association, they generally will not be personally liable for their actions on behalf of the association. If, on the other hand, board members ignore or knowingly fail to follow the law and/or the association's governance documents, or act in their own self-interest, they may be personally liable for the consequences of their action(s).

The information contained in this publication is a brief overview of the responsibilities and rights of association board members. The information is intended to provide general information and is not a substitute for obtaining legal advice to address specific situations. Since this publication may not contain subsequent changes in the law, it should only be used as a general source of information. The complete text of the Illinois Condominium Property Act ("Act") (765 ILCS 605/1, *et. seq.*), the Common Interest Community Association Act (765 ILCS 160/1, *et. seq.*) as well as the General Not for Profit Corporation Act (805 ILCS 105/1, *et. seq.*) can be obtained on the website of the Illinois Condominium and Common Interest Community Ombudsperson at:

<http://www.idfpr.com/CCICO>

The General Not for Profit Corporation Act is relevant to those associations that have elected to become not-for-profit corporations and have registered with the Illinois Secretary of State; associations, whether or not incorporated, have those powers and responsibilities specified in the General Not For Profit Corporation Act that are not inconsistent with the CPA or the condominium instruments.

Governance Documents

Just as the elected leaders of a small town must be knowledgeable about the laws defining their authority and governing their actions, so must board members become familiar with the documents that control the operation and administration of the association (also called "community instruments" in CICAA). These are:

Declaration: The declaration is the document which creates and defines the association. It essentially contains the "ground rules" for the association. It is recorded against the entire property so that all owners who buy property in the association after the date on which the declaration is recorded will be bound by its provisions. Thus, the declaration "runs with the land," i.e., is found in the chain of title to the property, and affects all subsequent owners of the property. The declaration will also commonly contain various restrictions against owners using the property or the units in a certain way. The declaration may be considered the "constitution" for the operation and administration of the condominium association. As a general rule, if there is a conflict between the provisions of the declaration and the bylaws or other condominium instruments, the declaration prevails except to the extent it is inconsistent with the CPA or CICAA.

Bylaws: The bylaws, often an exhibit to the declaration or incorporated within the body of the declaration, contain the procedural framework under which the association/corporation will run. The bylaws tell the board of directors how to run the corporation, i.e. how many people should sit on the board, how often to meet, notice requirements, the power of the board, the manner in which board members may participate in a board meeting and the method of filling vacancies on the board, for example. An association's bylaws must set forth the method by which the association adopts and amends rules and regulations governing the use and operation of the common elements.

Rules and Regulations: Rules (or “rules and regulations”) are sometimes referred to as the “dos and don’ts” of a community association. The rules expand the terms or restrictions within an association’s declaration. Rules are the tool of an association which allow a board to enforce the restrictions within the declaration and bylaws. Without rules, a board is often left asking itself what it can do about an owner who is violating the declaration. It is a board function to adopt or amend rules.



There is a hierarchy of authority between the association's governing documents and the CPA and CICA. In any situation where the governing documents and those statutes conflict (for instance, where the governing documents limit the Board's ability to pass special assessments or make certain expenditures), the CPA or CICA will control and trump any inconsistent provision within the governing documents.

There is a hierarchy of authority between the association's governing documents and the CPA and CICA.

All persons who use or occupy a unit in a condominium or common interest community are subject to the CPA or CICA, as applicable, as well as the declaration, bylaws and rules and regulations. (CPA, Section 18(n); CICA, Sec. 1-35)).

Board Structure

The CPA requires that an association’s bylaws provide for at least the following: (1) the election from among the unit owners of a board of managers; (2) the number of persons constituting such board; (3) that the terms of at least one-third of the members of the board shall expire annually and that all members of the board shall be elected at large; (4) that if there are multiple owners of a single unit, only one of the multiple owners shall be eligible to serve as a member of the board at any one time and (5) that no member of the board or officer may be elected for a term of more than 2 years, but that officers and board members may succeed themselves. The bylaws must also specify the powers and duties of the board and the compensation, if any, of the board members.

The CICA provides that elections must be held in accordance with the community instruments, provided that an election for the board of managers or board of directors must be held no less frequently than once every 24 months from among the membership of a common interest community association. Furthermore, the members of the board serve without compensation unless the community instruments indicate otherwise. No member of the board or officer may be elected for a term of more than 4 years, but officers and board members may succeed themselves.

The Illinois General Not for Profit Corporation Act, which governs the vast majority of associations, requires that the board of directors of a corporation consist of three or more directors with the number of directors established in the bylaws. In practice, the number of directors will vary depending on the preference of the original developer and the size of the association, with boards typically ranging in composition from three to nine members. One Illinois association in a property of 700+ units, however, has a Board comprised of 44 members!

Both the CPA and CICA require that the board elect, from among its members, a (1) president, who presides over the meetings of the board and of the membership; (2) secretary, who keeps the minutes of all meetings of the board and of the membership; and (3) treasurer, who is responsible for keeping the association's financial records and books of account.

Both the CPA and CICA authorize the remaining members of the board to fill a vacancy on the board by a two-thirds vote of the remaining board members until the next annual meeting of the membership or until members holding 20% of the votes of the association request a meeting of the members to fill the vacancy for the balance of the term. A meeting of the members shall be called for purposes of filling a vacancy on the board no later than 30 days following the filing of a petition signed by membership holding 20% of the votes of the association requesting such a meeting of the unit owners to fill the vacancy for the balance of the term.

The CICA provides that two-thirds of the membership (unit owners) may remove a board member as a director at a duly called special meeting; the CPA requires that an association's bylaws provide for the method of removal from office of members of the board.

Under both the CPA and CICA, an association's board must meet at least 4 times annually. Notice of every board of managers meeting must be placed in entranceways, elevators, or other conspicuous places in the condominium or common interest community at least 48 hours prior to the meeting. The CPA further requires that notice of every meeting of the board of managers be given at least 48 hours prior to the meeting to: (i) each unit owner who has provided the association with written authorization to conduct business by acceptable technological means, and, (ii) to the extent that the condominium instruments of an association require, to each other unit owner by mail or delivery.

In addition to meetings of the board of managers, associations are required to hold membership meetings. Most often, these are "annual meetings" called for, among other things, the election of directors. The CPA provides that written notice of any membership meeting must be mailed or delivered to members no less than 10 and no more than 30 days' prior to the meeting and that the notice specify the time, place and purpose of such meeting. If a condominium association has adopted rules providing for electronic communication, then notice of a membership meeting may be given to a unit owner who has consented to the receipt of such notice by electronic transmission. Notice of any membership meeting of a common interest community must also be given through a prescribed delivery method no less than 10 and no more than 30 days prior to the meeting and detail the time, place and purpose of the meeting.

Elections

Conducting well-run elections with scrupulous integrity and honesty is an essential function of every association. It's of utmost importance that every association "follow the rules" for conducting an election that complies with Illinois law. If owners are going to trust the members of the boards that govern the affairs of their association, they first must have confidence that their election was fair and lawful.

Condominium Associations

The bylaws of every condominium association must provide for the election from among the unit owners of a board of managers.

Once elected, board members have broad authority to act on behalf of the association and its members subject to the Act, the declaration and bylaws including filling vacancies on the board until the next annual meeting of unit owners and electing the association's officers.

The CPA requires that the members hold an annual meeting, one of the purposes of which is the election of board members from among the unit owners. The CPA generally provides unit owners the right to vote in person or by a proxy executed in writing by the unit owner or his duly authorized attorney. However, it is important for unit owners to be familiar with the declaration, bylaws and rules of their association, which may prohibit the use of proxies.

The board may distribute to unit owners biographical and background information about candidates for election to the board if reasonable efforts are made to identify all candidates, all candidates are given an opportunity to include this information in the materials to be distributed to unit owners, and the board does not express a preference in favor of any candidate.

Written notice of the meeting at which the election will be conducted must be mailed or delivered to all unit owners, giving no less than 10 days and no more than 30 days' notice of the time, place and purpose of the meeting. If the unit owner has provided written authorization to receive delivery by acceptable technological means (most often, email), such form of delivery may be used by an Association.

Common Interest Community Associations

The CICA requires that elections for the board from among the membership be held in accordance with the community instruments. An election must be held at least once every 24 months. If no election is held to elect board members within the time period specified in the bylaws, or within 90 days thereafter, then 20% of the members may bring a civil action to compel compliance with the election requirements specified in the bylaws or operating agreement.



If the court finds that an election was not held to elect members of the board within the required period due to the bad faith acts or omissions of the board of managers or the board of directors, the members are entitled to recover their reasonable attorney's fees and costs from the association. However, this remedy does not apply if the relevant notice requirements were met and an election was not held solely due to a lack of a quorum.

A member may vote:
(1) by proxy executed in writing by the member or by his or her duly authorized attorney in fact, provided that the proxy bears the date of execution.



Unless the community instruments or the written proxy itself provide otherwise, proxies are not valid for more than 11 months after the date of execution; or (2) by submitting an association-issued ballot in person at the election meeting; or (3) by submitting an association-issued ballot to the association or its designated agent by mail or other means of delivery specified in the declaration or bylaws; or (4) by any electronic or acceptable technological means.

The association may, if its rules permit, conduct elections by electronic or acceptable technological means. Instructions regarding the use of electronic means or acceptable technological means for voting must be distributed to all members not less than 10 and not more than 30 days before the election meeting. The instruction notice must include the names of all candidates who have given the board or its authorized agent timely written notice of their candidacy and must give the person voting through electronic or acceptable technological means the opportunity to cast votes for candidates whose names do not appear on the ballot.

The board rules shall provide, and the instructions provided to the member shall state, that a member who submits a vote using electronic or acceptable technological means may request and cast a ballot in person at the election meeting, and thereby void any vote he or she previously submitted.

General Powers

Illinois law invests association boards with broad obligations and authority. Boards, for instance, have the power to sue and be sued; to purchase, lease and own real or personal property; to sell, mortgage and lease all or part of the association's property or assets; to borrow money for their corporate purposes; to invest the association's funds; and, in general "to have and exercise" all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed." (805 ILCS 105/103.10).

Association law makes clear the board is responsible for the operation and administration of the association. Board members make the final decisions, although they can and often do hire expert help such as managers, attorneys, accountants and engineers. The CPA conveys a broad grant of authority to the board of managers: "[t]he board of managers shall exercise for the association all powers, duties and authority vested in the association by law or the condominium instruments except for such powers, duties and authority reserved by law to the members of the association." Among the duties of the board of managers enumerated in the Section 18.4 of the CPA are:

- To provide for the operation, care, upkeep, maintenance, replacement and improvement of the common elements.
- To prepare, adopt and distribute the annual budget for the property.
- To prepare, adopt and distribute the annual budget.
- To levy and expend assessments.
- To collect assessments from unit owners.

- To provide for the employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common elements.
- To obtain adequate and appropriate kinds of insurance (an association with 30 or more units is required to obtain and maintain fidelity insurance covering persons who control or disburse funds of the association for the maximum amount of coverage available to protect funds in the custody or control of the association plus the association reserve fund).
- To own, convey, encumber, lease, and otherwise deal with units conveyed to or purchased by it.
- To adopt and amend rules and regulations covering the details of the operation and use of the property, after a meeting of the unit owners called for the specific purpose of discussing the proposed rules and regulations.
- To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the property.
- To have access to each unit for the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or to other units.
- To pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof.
- To impose charges for late payment of a unit owner's proportionate share of the common expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, to levy reasonable fines for violation of the declaration, by-laws, and rules and regulations of the association.



The CICA does not enumerate the duties of boards and their members as extensively or specifically as does the CPA. The CICA does provide, among other things, that:

- The board shall meet at least four times annually.
- The association may engage the services of a manager or management company.
- The board shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from members or unit owners for violations of the declaration, bylaws, operating agreement, and rules and regulations of the association.
- The board shall maintain certain specified records and make them available, subject to statutory requirements, for examination and copying.
- The bylaws or operating agreement shall provide for the maintenance, repair, and replacement of the common areas and payments therefor, including the method of approving payment vouchers.



Meetings

Board Meetings

As mentioned above, boards of managers in both common interest and condominium communities must meet at least four times each year. Board meetings are held to enable board members to transact the association's business.

Board meetings also provide an excellent opportunity to communicate the current status of projects, provide budget and financial summaries, report on items addressed and resolved since the last meeting, report on open action items that need discussion and approvals, and address long-term planning, including the status of any reserve or other studies. Although a board need not provide an encyclopedic or exhaustive report on the business of the association at every meeting, openness and transparency can go a long way in assuring members that the affairs of the association are everyone's business and are being conducted capably and responsibly—that fiduciary obligations are being satisfied and their monies are being prudently spent.

Board meetings are open to all unit owners, who must have received appropriate prior notice of the meeting as set forth earlier in this publication. Condominium unit owners do not have the right to comment at board meetings. However, many condominium association boards permit a unit owner comment period, subject to the board's discretion. Members in common interest communities do have the right to comment at board meetings; the duration and meeting order for member comments is within the discretion of the board. Any unit owner in a condominium association may record a board meeting by tape, film or other means, and the board may adopt reasonable rules to govern the making of such recordings. Recording is neither expressly allowed nor expressly prohibited by the CICA. However, under the Illinois General Not For Profit Corporation Act of 1986, members have a right to record board meetings, which would apply to any common interest community association incorporated as a not-for-profit corporation.

Meetings Regarding Budgets and Assessments

Condominium associations must provide a copy of the proposed annual budget to all unit owners at least 25 days prior to the board meeting at which the budget will be adopted.

Common interest community associations must provide a copy of the annual budget to all unit owners at least 30 days but not more than 60 days prior to the board meeting at which the budget will be adopted. In common interest communities, assessments for additions and alterations to the common areas or to association-owned property not included in the annual budget must be assessed separately and are subject to approval of a simple majority of the total members at a meeting called for that purpose.

Minutes of all meetings of association boards must be kept and maintained for seven (7) years.

Minutes of all meetings (open and closed) of both condominium and common interest community association boards must be kept by the secretary of the board and maintained for seven (7) years.

Membership Meetings

Condominium and common interest community associations must hold a meeting of the unit owners (membership meeting) at least one time per year for the purpose of electing the members of the board. A quorum of unit owners (generally, 20%) is required for that purpose. Recording of membership meetings is neither allowed nor prohibited by the CPA or CICA. Written notice of the membership meeting must be mailed or delivered to all unit owners, giving no less than 10 days' and no more than 30 days' notice of the time, place and purpose of the meeting. If a unit owner has provided written authorization, then such delivery may be made by acceptable technological means including email.

Meetings Regarding Rules

In a condominium association, any proposed rule must be discussed at a membership meeting called for that specific purpose. The CPA provides that the board of directors has the sole authority to adopt or amend rules and regulations covering the operation and use of the property, after a meeting of the unit owners called for the specific purpose of discussing the proposed rules. Notice of the meeting must be sent to all owners not less than 10 and not more than 30 days' of the date of the meeting; a copy of the proposed rules or amendments thereto must be attached to the notice to all owners. No rule may prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium unit.

There is no parallel requirement for common interest community associations, as the CICA does not provide for general rule making authority. The association's declaration may provide guidance with respect to rule making.

The CPA expressly provides that no rule adopted by the board may impair any right guaranteed by the First Amendment of the United States Constitution or Section 4 of the Illinois Constitution including, but not limited to, the free exercise of religion. There is no parallel provision in the CICA. Under both the CPA and CICA, a board may not prohibit the display of the American flag or a military flag, or both, on or within the limited common areas and facilities of a unit owner or on the immediacy adjacent exterior of the building in which the unit of a unit owner is located. Proposed rules may not conflict with the provision of the CPA or the condominium instruments.

Special Meetings

In condominium associations, special meetings of the board of managers can be called by the president or 25% of the members of the board. Special meetings of the members can be called by the president, board of managers, or by 20% of unit owners.

In common interest community associations, special meetings of the board may be called by the president, by 25% of the members of the board, or by any other method that is prescribed in the community instruments. Special meetings of the membership may be called by the president, the board, 20% of the membership, or any other method that is prescribed in the community instruments.

Closed Sessions

Generally, a “closed session” is a portion of an open board meeting during which the board discusses – but does not vote on – certain sensitive matters specified by Illinois law, without any owners present. A closed session generally occurs when the board votes to go into closed session at any time during a board meeting.

There are only six matters that may lawfully be addressed in closed session.

There are only six matters that may lawfully be addressed in closed session: (1) pending or likely litigation by or against the association; (2) the appointment, employment, engagement or dismissal of any employee, independent contractor, agent or other provider of goods and services; (3) interviewing a potential employee, independent contractor, agent or other provider of goods and services; (4) violations of the association’s rules and regulations; (5) an owner’s unpaid assessments; and (6) consultation with the association’s legal counsel. Minutes of the open board meeting should not reflect the matters discussed in closed session (although the board must keep and maintain minutes of the closed meeting); however, any vote on matters discussed in the closed session must take place in an open portion of a board meeting.

The board of a condominium or common interest community association board may also meet privately (that is, separately from a noticed meeting) for the same six purposes listed above.



Budgets

One of the most important responsibilities of an association board is to develop and enact a budget for the association. To this end, board members must thoughtfully consider their fiduciary duties—their responsibility to consider budget matters in a businesslike manner and perform due diligence to make good decisions on behalf of the community as a whole. The annual budget calculates the total amount of assessment payments required to support the association’s expenses and savings. Since adopting a new budget typically results in an increase to the monthly assessment requirements of the association’s members, the budget proposing increased assessments can often be met with resistance. It is therefore important to make sure that boards follow all of the requirements of the CPA or CICA and their governance documents.

Condominium Associations

Each year, the board must prepare and distribute a proposed annual budget indicating with particularity: all anticipated common expenses by category (line item); capital expenditures or repairs; payment of real estate taxes, if any; the amount designated for reserves; each unit owner’s anticipated assessments; and other anticipated income. Unit owners are to receive a copy of the proposed annual budget at least 25 days before the date of the board meeting at which the board will adopt the proposed annual budget. Notice of the board meeting at which the board will adopt the proposed annual budget must be mailed or delivered to all unit owners not less than 10 and not more than 30 days before the date of that board meeting.

Notice of the board meeting must also be posted at least 48 hours before the date of that board meeting. The budget must be approved by at least a majority of the board members present at a properly noticed open board meeting, at which a quorum of the board is present during the entire meeting.

Notice of the board meeting must also be posted at least 48 hours before the date of the board meeting.

Section 9(c)(2) of the CPA requires that all budgets provide for reasonable reserves to pay for capital expenditures, deferred maintenance and repair or replacement of the common elements. The CPA sets forth the various items the board must take into consideration to determine the amount of reserves appropriate for the association. These are:

- The repair and replacement cost, and the estimated useful life, of the property the association is obligated to maintain, including but not limited to: structural and mechanical components, surfaces of the buildings and common elements, and energy systems and equipment.
- The current and anticipated return on investment of association funds.
- Any independent professional reserve study that the association has obtained.
- The financial impact on unit owners, and the market value of the condominium units, of any assessment increase needed to fund reserves.
- The ability of the association to obtain financing or refinancing.

The reserve study is thus an important tool for determining the amount of reserves. While the reserve study is not the only component to consider in establishing the amount of reserves, if a board is going to deviate from the recommendations set forth in the reserve study, it should consider having a discussion at the budget adoption meeting as to the criteria set forth in the CPA, and to reflect in the minutes that the board considered the criteria in determining the amount of reserves.

The CPA provides that if an adopted budget or any separate assessment adopted by the board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments from the preceding fiscal year, unit owners with 20% of the votes of the association may deliver a written petition to the board of managers within 14 days of the board action. The board must then call a meeting of the unit owners within 30 days of the date of delivery of the petition to consider the budget or separate assessment. Unless a majority of the total votes of the unit owners are cast at the meeting to reject the budget or separate assessment, it is ratified.

A condominium association has no authority to forbear the payment of assessments by any unit owner. In other words, condominium associations are required by law to collect all assessments from all unit owners in the same manner and without prejudice or consideration of “special circumstances” and without affording preferential treatment to any unit owner.

Budget Surplus or Deficit

Effective January 1, 2018, the CPA was amended with the effect of adding a new layer of complexity to the treatment of any year-end budget surplus or deficit.

Unless the association's declaration or bylaws provide otherwise, then the board may, at its discretion, dispose of the surplus in one or more of the following ways: (i) contribute the surplus to the association's reserve fund; (ii) return the surplus to the unit owners as a credit against the remaining monthly assessments for the current fiscal year; (iii) return the surplus to the unit owners in the form of a direct payment to the unit owners; or (iv) maintain the funds in the operating account, applying the funds as a credit when calculating the following year's annual budget

Unless the association's declaration or bylaws provide otherwise, then the board may, at its discretion, dispose of the surplus in one or more of four ways.

If the fiscal year ends in a deficit, then, unless the declaration or bylaws provide otherwise, the board may, at its discretion, address the deficit by incorporating it into the following year's annual budget.

If 20% of the unit owners of the association deliver a petition objecting to the board's action in regard to either a surplus or a deficit within 30 days after being notified of the board's action, the board of managers must call a meeting of the unit owners within 30 days of the date of delivery of the petition. At the meeting, the unit owners may vote to select a different option than the option selected by the board of managers. Unless a majority of the total votes of the unit owners are cast at the meeting to reject the board's selection and select a different option, the board's decision is ratified.

Master Associations

Each year the board must prepare and distribute a proposed annual budget. Unit owners are to receive a copy of the proposed annual budget at least 30 days before the date of the board meeting at which the board will adopt the proposed annual budget. Notice of the board meeting at which the board will adopt the proposed annual budget must be mailed or delivered to all unit owners not less than 10 and not more than 30 days before the date of that board meeting. Notice of the board meeting must also be posted at least 48 hours before the date of that board meeting. The budget must be approved by at least a majority of the board members present at a properly noticed open board meeting, at which a quorum of the board is present during the entire meeting.

Common Interest Community Associations

If a common interest community association is not exempt from the CICAA, then each year the board must prepare and distribute a proposed annual budget indicating the portions intended for reserves, capital expenditures or repairs or payment of real estate taxes. Members are to receive a copy of the proposed annual budget at least 30 days, but not more than 60 days, before the date of the meeting at which the board will adopt the proposed annual budget. Notice of the board meeting at which the board will adopt the proposed annual budget must be given to all members not less than 10 and not more than 60 days before the date of that board meeting. The budget must be approved by at least a majority of the board members present at a properly noticed open board meeting, at which a quorum of the board is present during the entire meeting.

If total common expenses exceed the total amount of the approved and adopted budget, the common interest community association must disclose this variance to all its members and specifically identify the subsequent assessments needed to offset this variance in future budgets.

If a common interest community association is exempt from the CICAA, then the procedure for adopting a budget will be set forth in its declaration and bylaws.

Special Assessments

Condominium Associations

The CPA provides, at Section 18(a)(8), that unless a special assessment is for an addition or alteration to the common elements or to association-owned property not included in the adopted annual budget, which requires 2/3 unit owner approval, a condominium board of directors – without unit owner approval – may adopt a special assessment. However, in the event the special assessment adopted by the board without unit owner approval exceeds 115% of the sum of all regular or special assessments from the preceding year, the unit owners may commence the series of actions set forth below to reject a special assessment.

Generally, the board votes during open session of a properly called board meeting to adopt a special assessment, after which point the unit owners have the option of initiating time-sensitive procedures to attempt to reject the special assessment via following steps:

1. Twenty percent (20%) of the unit owners (by unit percentage as stated in the association's governing documents) must sign a petition that is submitted to the board to reject the special assessment within 14 days of the date the board adopts the special assessment;
2. Provided the requisite 20% of unit owners have properly petitioned the board, the board must call a meeting of the unit owners within 30 days of the date of delivery of the petition; and

3. Unless a majority of the total votes of the unit owners are cast at the meeting to reject the special assessments, the special assessment is ratified.

Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the board of managers without being subject to unit owner approval or the procedures for rejecting a special assessment. The CPA defines “emergency” to mean “an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners.”



Assessments for additions and alterations to the common elements or to association-owned property not included in the adopted annual budget must be separately assessed and are subject to approval of two-thirds of the total votes of all unit owners.

Common Interest Community Associations

A common interest community association board must give members notice of any board meeting concerning the adoption of a special assessment, through a prescribed delivery method, within 10 to 60 days prior to the meeting.



If an adopted budget or any separate assessment adopted by the board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments payable during the preceding fiscal year, the common interest community association, upon written petition by members with 20% of the votes of the association delivered to the board within 14 days of the board action, must call a meeting of the members within 30 days of the date of delivery of the petition to consider the budget or separate assessment; unless a majority of the total votes of the members are cast at the meeting to reject the budget or separate assessment, it shall be deemed ratified.

Each year, the board of managers must provide all unit owners with an itemized accounting of the common expenses.

Financial Disclosures

Condominium Associations

Each year, the board of managers must provide all unit owners with an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs, or payment of real estate taxes, and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves.

Common Interest Community Associations

Common interest community associations must provide all members with a reasonably detailed summary of the receipts, common expenses, and reserves for the preceding budget year. The board is required to (i) make available for review to all members an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves or (ii) provide a consolidated annual independent audit report of the financial status of all fund accounts within the association.

Insurance

Association boards must be vigilant in protecting the association's real and personal property and other assets. This is a fundamental obligation to owners and an essential part of fulfilling the board members' fiduciary duties.

Condominium Associations

A condominium association is required by Section 12 of the CPA to have the following insurance:

(1) **Property Insurance:** The association must maintain property insurance (i) on the common elements and the units, including the limited common elements and except as otherwise determined by the board of managers, the bare walls, floors, and ceilings of the unit, (ii) providing coverage for special form causes of loss, and (iii) providing coverage, at the time the insurance is purchased and at each renewal date,

in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage sufficient to rebuild the insured property in compliance with building code requirements subsequent to an insured loss, including: Coverage B, demolition costs; and Coverage C, increased cost of construction coverage. The combined total of Coverage B and Coverage C cannot be less than 10% of each insured building value, or \$500,000, whichever is less.

(2) **General Liability Insurance:** The association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the board, insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer must be included as an additional insured in its capacity as a unit owner, manager, board member, or officer. The unit owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance must cover claims of one or more insured parties against other insured parties.

(3) **Fidelity Bond:** An association with 6 or more dwelling units must obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, for the maximum amount of coverage available to protect funds in the custody or control of the association, plus the association reserve fund. The fidelity bond must be in the full amount of association funds and reserves in the custody of the association or the management company.

(4) **Director and Officers Coverage:** The board of directors must obtain directors and officers liability coverage at a level deemed

reasonable by the board, if not otherwise established by the declaration or bylaws. Directors and officer's liability coverage must extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the General Not For Profit Corporation Act of 1986 or the declaration and bylaws of the association. The coverage shall include, but not be limited to, coverage of: defense of non-monetary actions; defense of breach of contract; and defense of decisions related to the placement or adequacy of insurance. The coverage shall include as an insured: past, present, and future board members while acting in their capacity as members of the board of directors; the managing agent; and employees of the board of directors and the managing agent.

Common Interest Community Associations

The CICAA clearly anticipates that an association will purchase insurance coverage, but a common interest community association's board members should review the association's community instruments to determine what level of insurance the association is responsible for maintaining.

Enforcement

Most declarations for both condominium and common interest associations provide for the enforcement of covenants and restrictions if there has been a violation. Similarly, most associations have adopted rules and regulations and procedures for enforcing them. Associations are authorized by law, after affording alleged violators notice and an opportunity to be heard, to levy and collect reasonable fines for violation of the declaration, by-laws, operating agreement (in the case of common interest communities) and rules and regulations of the association.

Notice to the owner should include (1) the substance of the violation; (2) the right to be heard before the board if the owner contests the violation; (3) the opportunity to cross-examine the witness who brought the violation to the attention of the board or who saw the violation occur; and (4) the right to be represented by an attorney.

The hearing may take place in closed session, in front of the board or a hearing panel, and need not take place at an open board meeting. However, any decision by the board on the alleged violation must occur at an open and properly noticed board meeting. Should an owner elect to contest the violation, the owner and/or his attorney should have the opportunity to cross-examine the witness who brought the violation to the attention of the board or who saw the violation occur and, if applicable, to review any documentation relied upon by the board.

Collection of fines can be accomplished in the same manner as collection of delinquent assessments.

The board, after considering the testimony and information presented at a hearing, can levy and collect a reasonable fine against the owner. Collection of fines can be accomplished in the same manner as collection of delinquent assessments.

Any attorneys' fees incurred by the condominium association arising out of a default by any unit owner, his or her tenant, invitee or guest in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense.

Attorneys' fees and court or arbitration costs fees pertaining to a common interest community's collection of a member's or unit owner's financial obligation to the association may be added to and deemed a part of a member's or unit owner's respective share of the common expenses.

Access to Records

Access to association records can be one of the most contentious areas of disagreement between association boards and association members. In the recent past, the law governing this issue has been fluid, and since penalties for board non-compliance with records access requirements can be steep, boards are well-advised to seek legal counsel and to remain abreast of the relevant law in this area.

Condominium Associations

Any member of an association has the right to inspect, examine, and make copies of:

- The association's declaration, bylaws, and plats of survey and all amendments to these documents;
- The association's rules and regulations, if any;
- If the association is incorporated, the association's articles of incorporation and all amendments to the articles;
- Minutes of all meetings of the board for the immediately preceding 7 years;
- All current policies of insurance of the association;
- All contracts, leases and other agreements then in effect to which the association is a party or under which the association or the unit owners have obligations or liabilities; and
- The books and records for the association's current and ten immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts, expenditures and accounts.

In order to exercise their rights with respect to any of these documents, an association member must submit a written request to the board or its authorized agent, stating "with particularity" the records being requested. An association must generally provide such records within 10 business days.

The CPA also gives association members the right to inspect, examine, and make copies of another subset of documents, but with respect to these, the member must not only identify the records “with particularity” but also state “a purpose that relates to the association” for requesting them.

These documents are:

- A current listing of the names, addresses, email addresses, telephone numbers and weighted vote of all members entitled to vote; and
- Ballots and proxies related to ballots for all matters and voted on by the members of the association during the immediately preceding 12 months, including but not limited to the election of members of the board.

An association must generally provide such records within 10 business days. The board may require the member to certify in writing that he or she will not use the information for any commercial purpose (that is, for sale, resale or solicitation or advertisement for sales or services) or any purpose that does not relate to the association and may impose a fine upon any person who makes a false certification.

The association may charge the requesting member the actual cost to the association of retrieving and making requested records available for inspection and examination and, if a member requests copies of the records, the association shall charge its actual costs of reproducing the records to the requesting member.

Any member who prevails in an enforcement action to compel examination of (1) records containing the current listing of the names, addresses, email addresses, telephone numbers and weighted vote of all members entitled to vote; or (2) ballots and proxies related to ballots for all matters voted on by the members of the association during the immediately preceding 12 months, including but not limited to the election of members of the board of managers, is entitled as a matter of law to recover reasonable attorney's fees and costs from the association if the court finds that the board of directors acted in bad faith in denying the member's request.

Unless otherwise directed by a court order, associations are not required to make the following records available for a member’s inspection, examination or copying:

- (1) Documents relating to appointment, employment, discipline or dismissal of association employees;
- (2) Documents relating to actions pending against or on behalf of the association or its board of managers in a court or administrative tribunal;
- (3) Documents relating to actions threatened against, or likely to be asserted on behalf of, the association or board in a court or administrative tribunal;
- (4) Documents relating to common expenses or other charges owed by a member other than the requesting member; and
- (5) Documents provided by an association in connection with the lease, sale or other transfer of a unit by a member other than the requesting member.

The “Chicago Exception”

An amendment to the City of Chicago’s Condominium Ordinance which became effective June 27, 2018 specifically exempts condominium associations within the City of Chicago from certain of the records access requirements of the CPA.

The Ordinance now provides that no unit owner, other than a unit owner who is a member of an association’s board of managers, shall have the right to inspect, examine or make copies of the association’s records containing the unit owners’ email addresses and telephone numbers. A condominium association may choose to “opt out” of this prohibition against inspection and examination of records containing email addresses and telephone numbers by a 2/3 vote of all unit owners.



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Common Interest Community Associations

The CICAA requires that boards maintain specific records of the association and, within 30 days' of receiving a member's written request make them available for examination and copying at convenient hours on weekdays by any member or unit owner. These are:

- Copies of the recorded declaration, other community instruments, other duly recorded covenants and bylaws and any amendments, articles of incorporation, articles of organization, annual reports, and any rules and regulations adopted by the board;
- Detailed and accurate records in chronological order of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the board;
- The minutes of all meetings of the board (which must be maintained for not less than seven years).

If a member provides a written statement of a "proper purpose", the following documents must be made available to members for inspection and copying:

- Ballots and proxies related thereto, if any, for any election held for the board and for any other matters voted on by the members, (which must be maintained for not less than one year);
- Such other records of the board as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986.

An association may charge a reasonable fee for the cost of retrieving and copying records. The board's failure to provide properly requested records or to respond to a written request for records within 30 days is deemed to be a denial by the board.

If the board fails to provide properly requested records within 30 days of receiving a written request, the member may seek appropriate relief and is entitled to an award of reasonable attorney's fees and costs if the member prevails and the court finds that such failure is due to the acts or omissions common interest community's of the board of managers.

Disclosures to Prospective Purchasers

Condominium Associations

The CPA grants rights to certain documents (commonly referred to as "Section 22.1 Disclosures", referring to the Section of the CPA which requires them) not only to unit owners, but to prospective purchasers buying a condominium unit from an owner other than the developer (who are subject to more rigorous disclosure requirements).

If the prospective purchaser asks for them, the unit owner/seller is required to obtain from the board and make available for inspection, the following: (1) a copy of the declaration, bylaws, other condominium instruments and any rules and regulation; (2) a statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing; (3) a statement of any capital expenditures anticipated by the unit owner's association within the current or succeeding two fiscal years; (4) a statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the board; (5) a copy of the statement of financial condition of the unit owner's association for the last fiscal year for which such a statement is available; (6) a statement of the status of any pending suits or judgments in which the unit owner's association is a party; (7) a statement setting forth what insurance coverage is provided for all unit owners by the unit owner's association; (8) a statement that any improvement or alterations made to the unit, or the limited common elements assigned to the unit, by the prior(selling) unit owners are in good faith believed to be in compliance with the condominium instruments; and

(9) the identity and mailing address of the principal officer (generally the president of the board) of the unit owner's association or of the other officer or agent as is specifically designated to receive notices.

The association must provide this information when requested to do so in writing and within 30 days of the request. A reasonable charge covering the direct out-of-pocket costs of providing and copying this information may be charged by the association or its board to the unit owner/seller for providing this information.

Common Interest Community Associations

The CICAA, like the CPA, also grants rights to prospective purchasers. If the prospective purchaser asks for them, the board must make the following documents available for inspection to the prospective purchaser: (1) A copy of the declaration, other instruments, and any rules and regulations; (2) a statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing; (3) a statement of any capital expenditures anticipated by the association within the current or succeeding 2 fiscal years; (4) a statement of the status and amount of any reserve or replacement fund and any other fund specifically designated for association projects; (5) a copy of the statement of financial condition of the association for the last fiscal year for which such a statement is available; (6) a statement of the status of any pending suits or judgments in which the association is a party; and (7) statement setting forth what insurance coverage is provided for all members or unit owners by the association for common properties.

The principal officer (generally, the president) of the board or such other officer as is specifically designated must furnish the above information within 30 days after receiving a member's written request for such information. The board may charge the unit seller a reasonable fee covering the direct out-of-pocket cost of copying and providing such information.



Anti-Discrimination and "Reasonable Accommodation"

Federal law prohibits discrimination in housing by associations and their agents and employees on the basis of race, color, national origin, sex, religion, disability, and familial status (children in the family). In addition, the Illinois Human Rights Act prohibits discrimination on the basis of ancestry, marital status, sexual orientation or order of protection status.

Examples of discriminatory rules are those that prohibit children from using recreational areas or other services, such as using the swimming pool.

Section 18.4(q) of the CPA specifically requires condominium boards to "reasonably accommodate the needs of a unit owner who is a person with a disability as required by the federal Civil Rights Act of 1968, the Human Rights Act and any applicable local ordinances in the exercise of its powers with respect to the use of common elements or approval of modifications in an individual unit."

Just as it is illegal for any association to discriminate against persons because of their race, it is illegal to discriminate against them because they have children. Also, physically disabled unit owners may have a right to install physical accommodations (at the disabled person's own expense) such as ramps, handrails and similar improvements to enable them to have the full use of the condominium property or their unit.

An association with rules limiting pets must generally accept “assistance animals” – a broad term used by the U.S. Department of Housing and Urban Development (“HUD”) to encompass not only “service animals” which are exclusively dogs that have been specially trained to perform specific tasks or do work for the benefit of a disabled individual, but also “emotional support animals” which includes any animal (including, but not limited to, dogs, cats, birds, reptiles, etc.) which provides disability-related assistance to its owner but need not have been specifically trained or certified in any way. HUD makes clear that all assistance animals in any housing context, including private residential associations, must be considered under the Federal Fair Housing Act’s “reasonable accommodation” requirements. All boards have a responsibility to reasonably accommodate the needs of a unit owner who is a person with a disability as required by the Civil Rights Act of 1968, the Illinois Human Rights Act and any applicable local ordinances in the exercise of its powers with respect to the use of the common elements or approval of modifications in an individual unit. The individual whose needs are being accommodated may be asked to pay the costs of any such modifications.

Rights and Responsibilities of the Board

Summary

Condominium association and common interest community association board members owe a fiduciary duty to the association and its members. Board members’ fiduciary duties include acting with undivided loyalty in the best interests of the association. Board members must exercise reasonable business judgment and make decisions on an informed basis with a good faith belief that their decisions reflect the association’s best interests. Boards must exercise for their association all powers, duties and authority vested in the association’s governing instruments except for such powers reserved by law to the members of the association.

The following is a non-exclusive list of the duties condominium and common interest community association boards are responsible for performing:

- Providing for the operation, care, upkeep, maintenance, replacement and improvement of the common elements.
- Preparing, adopting and distributing the annual budget for the property.
- Levying and expending assessments.
- Collecting assessments from unit owners.
- Providing for the employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common elements.
- Obtaining adequate and appropriate kinds of insurance.
- Owning, conveying, encumbering, leasing, and otherwise dealing with units conveyed to or purchased by it.
- Adopting and amending rules and regulations covering the details of the operation and use of the property.
- Keeping detailed, accurate records of the receipts and expenditures affecting the use and operation of the property.
- Having access to each unit from time to time as may be necessary for the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or to other units.
- Paying real property taxes or other special assessments.
- Imposing charges for late payment of a unit owner’s proportionate share of the common expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levying reasonable fines for violation of the declaration, by-laws, and rules and regulations of the association.

Common Interest Community Associations (CICAA Section 1-30)

(a) The board shall meet at least 4 times annually.

(c) The bylaws or operating agreement shall provide for the maintenance, repair, and replacement of the common areas and payments therefor, including the method of approving payment vouchers.

(e) The association may engage the services of a manager or management company.

(g) The board shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from members or unit owners for violations of the declaration, bylaws, operating agreement, and rules and regulations of the common interest community association.

Acceptable Technological Means

Technological means including electronic transmission over the internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the association, is deemed to provide reasonable security, reliability, identification, and verifiability. (CPA, Sec. 18.8(b); CICAA Sec. 1-5)).



Assessments

Association board members are legally obligated to collect assessments from the unit owners. Each unit owner has a duty to pay his or her share of common expenses in a timely manner. This obligation is generally derived from those provisions of the CICAA at Secs. 1-40(b)(4); 1-40(b)(5); and 1-45(a) and specifically set forth in Sec. 18.4(d) of the CPA.

Board Matters

Association boards must meet at least four times a year; board meetings are open to all unit owners, who must be given least 48 hours prior to the meeting by sending notice by using a prescribed delivery method or by posting copies of notices of meetings in entranceways, elevators, or other conspicuous places in the common areas of the common interest community at least 48 hours prior to the meeting (condominium associations must also give notice to: (i) each unit owner who has provided the association with written authorization to conduct business by acceptable technological means, and (ii) to the extent that the condominium instruments of an association require, to each other unit owner by mail or delivery). (CPA Secs. 18(a)(8)(D), 19(a)(10)) CICAA Secs. 1-40(b)(4), 1-30).

Budgets

Both the CPA and the CICAA require that each year, a board must prepare and distribute a detailed proposed annual budget to all association members. These detailed proposed annual budgets must conform to the provisions of Sec. 9(c)(1) of the CPA and Sec. 1-45 of the CICAA, respectively.

The CPA requires that the board provide unit owners with a copy of the detailed proposed annual budget at least 25 days before the date of the board meeting at which the board will adopt the proposed budget. (CPA Sec. 18(a)(6)).

Common interest community association boards are required by the CICAA to provide members with a copy of the proposed annual budget at least 30 days but not more than 60 days prior to the adoption thereof by the board. (CICAA, Sec. 1-45).

Common Elements

“Common elements” is defined in the CPA to mean all portions of the property except the units, including limited common elements unless otherwise specified. The CPA expressly states that the board shall administer the common elements.

All unit owners share the right to use the common elements subject to reasonable regulations as well as responsibility for their maintenance through the payment of assessments. (CPA, Secs. 2(e); 18(k)). An analogous provision of the CICAA defines "common areas" to mean the portion of the property other than a unit. The bylaw of a common interest community, or its operating agreement, must provide for the maintenance, repair, and replacement of the common areas and payments therefor, including the method of approving payment vouchers. (CICAA, Secs. 1-5 and 1-30(c)).

Contracts

Condominium and common interest community associations are prohibited from entering into a contract with a current board member, or with a corporation, limited liability company, or partnership in which a board member or a member of his or her immediate family (defined to mean the board's member's spouse, parents, siblings and children) has 25% or more interest, unless it provides members notice of intent to enter into the contract within 20 days after a decision is made to enter into the contract and the members are afforded an opportunity by filing a petition, signed by 20% of the membership, for an election to approve or disapprove the contract. Any such petition must be filed within 20 days after such notice and such election shall be held within 30 days after filing the petition. (CPA Sec. 18(a)(16); CICAA Sec. 1-30(b)).

Elections

The CPA requires that association members hold an annual meeting, one of the purposes of which is to elect board members from among the unit owners. (CPA Sections 18(a)(1); 18(21)(b)(3)).

The CICAA requires that elections for the board from among the membership be held in accordance with the community instruments; an election must be held at least once each 24 months. (CICAA Sec. 1-25(a)).

Elections must be conducted in accordance with the provisions of Sec. 18 of the CPA (condominium associations) or Sec. 1-25 of the CICAA (common interest community associations).

Inspection of Documents

Boards must make records identified in the CPA and CICAA available for inspection and copying by members of condominium and common interest community associations, respectively. Unit owners must make a written request conforming to statutory requirements to inspect and copy documents and may be charged a reasonable fee for doing so. (CPA Secs. 19(b) and 19(c); CICAA Secs. 1-30(i)(1)).

Reserve Study

A "reserve study" is a sort of "business plan" for the maintenance of an association's assets. As a general rule, a reserve study includes a physical analysis and a financial analysis and assesses the state of the common elements. A "reserve study" is often used by association boards to help determine whether the association is maintaining reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the common elements as required by Sec. 9(c)(2) of the CPA and, in general, at Secs. 1-5 and 1-45 of the CICAA.

Statements of Account

The CPA requires boards, upon 10 days' notice to the manager or board of managers and payment of a reasonable fee, to furnish any unit owner a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner. (CPA, Sec. 18(b)(13)(i)).

Unit Owner Use and Enjoyment

Condominium boards have the right to access individual units as may be necessary to facilitate the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or other units. (CPA Sec. 18.4(j)).

The mission of the CCIC Ombudsperson is to provide information to unit owners, condominium and common interest community associations and their respective boards in order that they all may better understand their rights and obligations under the Condominium Property Act and the Common Interest Community Association Act.

www.idfpr.com/CCICO/

You may submit your inquiry to the CCIC Ombudsperson by completing the Inquiry Form, a fillable PDF, and then emailing it to

FPR.CCICO@illinois.gov.

Call the Toll Free Number

You may call the CCIC Ombudsperson on its toll free number at 844.856.5193. However, please note that you will simply be directed back to this website and will not be able to leave a voice message.

