

SB2817



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2817

Introduced 1/18/2012, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

765 ILCS 605/9

from Ch. 30, par. 309

Amends the Condominium Property Act. Deletes provisions stating that: (1) an association's waiver of reserve requirements for capital expenditures and deferred maintenance must be disclosed by the association after the meeting at which the waiver occurs in the financial statements of the association and in bold print in its responses to requests for information by certain prospective purchasers; and (2) members of the board of managers and the managing agent of an association are not liable for the lack or inadequacy of reserve funds in the association budget and no cause of action may be brought against them for damages for the lack or inadequacy of reserve funds.

LRB097 15946 AJO 61093 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Condominium Property Act is amended by
5 changing Section 9 as follows:

6 (765 ILCS 605/9) (from Ch. 30, par. 309)

7 Sec. 9. Sharing of expenses - Lien for nonpayment.

8 (a) All common expenses incurred or accrued prior to the
9 first conveyance of a unit shall be paid by the developer, and
10 during this period no common expense assessment shall be
11 payable to the association. It shall be the duty of each unit
12 owner including the developer to pay his proportionate share of
13 the common expenses commencing with the first conveyance. The
14 proportionate share shall be in the same ratio as his
15 percentage of ownership in the common elements set forth in the
16 declaration.

17 (b) The condominium instruments may provide that common
18 expenses for insurance premiums be assessed on a basis
19 reflecting increased charges for coverage on certain units.

20 (c) Budget and reserves.

21 (1) The board of managers shall prepare and distribute
22 to all unit owners a detailed proposed annual budget,
23 setting forth with particularity all anticipated common

1 expenses by category as well as all anticipated assessments
2 and other income. The initial budget and common expense
3 assessment based thereon shall be adopted prior to the
4 conveyance of any unit. The budget shall also set forth
5 each unit owner's proposed common expense assessment.

6 (2) All budgets adopted by a board of managers on or
7 after July 1, 1990 shall provide for reasonable reserves
8 for capital expenditures and deferred maintenance for
9 repair or replacement of the common elements. To determine
10 the amount of reserves appropriate for an association, the
11 board of managers shall take into consideration the
12 following: (i) the repair and replacement cost, and the
13 estimated useful life, of the property which the
14 association is obligated to maintain, including but not
15 limited to structural and mechanical components, surfaces
16 of the buildings and common elements, and energy systems
17 and equipment; (ii) the current and anticipated return on
18 investment of association funds; (iii) any independent
19 professional reserve study which the association may
20 obtain; (iv) the financial impact on unit owners, and the
21 market value of the condominium units, of any assessment
22 increase needed to fund reserves; and (v) the ability of
23 the association to obtain financing or refinancing.

24 (3) Notwithstanding the provisions of this subsection
25 (c), an association without a reserve requirement in its
26 condominium instruments may elect to waive in whole or in

1 part the reserve requirements of this Section by a vote of
2 2/3 of the total votes of the association. Any association
3 having elected under this paragraph (3) to waive the
4 provisions of subsection (c) may by a vote of 2/3 of the
5 total votes of the association elect to again be governed
6 by the requirements of subsection (c).

7 (4) (Blank). ~~In the event that an association elects to~~
8 ~~waive all or part of the reserve requirements of this~~
9 ~~Section, that fact must be disclosed after the meeting at~~
10 ~~which the waiver occurs by the association in the financial~~
11 ~~statements of the association and, highlighted in bold~~
12 ~~print, in the response to any request of a prospective~~
13 ~~purchaser for the information prescribed under Section~~
14 ~~22.1; and no member of the board of managers or the~~
15 ~~managing agent of the association shall be liable, and no~~
16 ~~cause of action may be brought for damages against these~~
17 ~~parties, for the lack or inadequacy of reserve funds in the~~
18 ~~association budget.~~

19 (d) (Blank).

20 (e) The condominium instruments may provide for the
21 assessment, in connection with expenditures for the limited
22 common elements, of only those units to which the limited
23 common elements are assigned.

24 (f) Payment of any assessment shall be in amounts and at
25 times determined by the board of managers.

26 (g) Lien.

1 (1) If any unit owner shall fail or refuse to make any
2 payment of the common expenses or the amount of any unpaid
3 fine when due, the amount thereof together with any
4 interest, late charges, reasonable attorney fees incurred
5 enforcing the covenants of the condominium instruments,
6 rules and regulations of the board of managers, or any
7 applicable statute or ordinance, and costs of collections
8 shall constitute a lien on the interest of the unit owner
9 in the property prior to all other liens and encumbrances,
10 recorded or unrecorded, except only (a) taxes, special
11 assessments and special taxes theretofore or thereafter
12 levied by any political subdivision or municipal
13 corporation of this State and other State or federal taxes
14 which by law are a lien on the interest of the unit owner
15 prior to preexisting recorded encumbrances thereon and (b)
16 encumbrances on the interest of the unit owner recorded
17 prior to the date of such failure or refusal which by law
18 would be a lien thereon prior to subsequently recorded
19 encumbrances. Any action brought to extinguish the lien of
20 the association shall include the association as a party.

21 (2) With respect to encumbrances executed prior to
22 August 30, 1984 or encumbrances executed subsequent to
23 August 30, 1984 which are neither bonafide first mortgages
24 nor trust deeds and which encumbrances contain a statement
25 of a mailing address in the State of Illinois where notice
26 may be mailed to the encumbrancer thereunder, if and

1 whenever and as often as the manager or board of managers
2 shall send, by United States certified or registered mail,
3 return receipt requested, to any such encumbrancer at the
4 mailing address set forth in the recorded encumbrance a
5 statement of the amounts and due dates of the unpaid common
6 expenses with respect to the encumbered unit, then, unless
7 otherwise provided in the declaration or bylaws, the prior
8 recorded encumbrance shall be subject to the lien of all
9 unpaid common expenses with respect to the unit which
10 become due and payable within a period of 90 days after the
11 date of mailing of each such notice.

12 (3) The purchaser of a condominium unit at a judicial
13 foreclosure sale, or a mortgagee who receives title to a
14 unit by deed in lieu of foreclosure or judgment by common
15 law strict foreclosure or otherwise takes possession
16 pursuant to court order under the Illinois Mortgage
17 Foreclosure Law, shall have the duty to pay the unit's
18 proportionate share of the common expenses for the unit
19 assessed from and after the first day of the month after
20 the date of the judicial foreclosure sale, delivery of the
21 deed in lieu of foreclosure, entry of a judgment in common
22 law strict foreclosure, or taking of possession pursuant to
23 such court order. Such payment confirms the extinguishment
24 of any lien created pursuant to paragraph (1) or (2) of
25 this subsection (g) by virtue of the failure or refusal of
26 a prior unit owner to make payment of common expenses,

1 where the judicial foreclosure sale has been confirmed by
2 order of the court, a deed in lieu thereof has been
3 accepted by the lender, or a consent judgment has been
4 entered by the court.

5 (4) The purchaser of a condominium unit at a judicial
6 foreclosure sale, other than a mortgagee, who takes
7 possession of a condominium unit pursuant to a court order
8 or a purchaser who acquires title from a mortgagee shall
9 have the duty to pay the proportionate share, if any, of
10 the common expenses for the unit which would have become
11 due in the absence of any assessment acceleration during
12 the 6 months immediately preceding institution of an action
13 to enforce the collection of assessments, and which remain
14 unpaid by the owner during whose possession the assessments
15 accrued. If the outstanding assessments are paid at any
16 time during any action to enforce the collection of
17 assessments, the purchaser shall have no obligation to pay
18 any assessments which accrued before he or she acquired
19 title.

20 (5) The notice of sale of a condominium unit under
21 subsection (c) of Section 15-1507 of the Code of Civil
22 Procedure shall state that the purchaser of the unit other
23 than a mortgagee shall pay the assessments and the legal
24 fees required by subdivisions (g) (1) and (g) (4) of Section
25 9 of this Act. The statement of assessment account issued
26 by the association to a unit owner under subsection (i) of

1 Section 18 of this Act, and the disclosure statement issued
2 to a prospective purchaser under Section 22.1 of this Act,
3 shall state the amount of the assessments and the legal
4 fees, if any, required by subdivisions (g)(1) and (g)(4) of
5 Section 9 of this Act.

6 (h) A lien for common expenses shall be in favor of the
7 members of the board of managers and their successors in office
8 and shall be for the benefit of all other unit owners. Notice
9 of the lien may be recorded by the board of managers, or if the
10 developer is the manager or has a majority of seats on the
11 board of managers and the manager or board of managers fails to
12 do so, any unit owner may record notice of the lien. Upon the
13 recording of such notice the lien may be foreclosed by an
14 action brought in the name of the board of managers in the same
15 manner as a mortgage of real property.

16 (i) Unless otherwise provided in the declaration, the
17 members of the board of managers and their successors in
18 office, acting on behalf of the other unit owners, shall have
19 the power to bid on the interest so foreclosed at the
20 foreclosure sale, and to acquire and hold, lease, mortgage and
21 convey it.

22 (j) Any encumbrancer may from time to time request in
23 writing a written statement from the manager or board of
24 managers setting forth the unpaid common expenses with respect
25 to the unit covered by his encumbrance. Unless the request is
26 complied with within 20 days, all unpaid common expenses which

1 become due prior to the date of the making of such request
2 shall be subordinate to the lien of the encumbrance. Any
3 encumbrancer holding a lien on a unit may pay any unpaid common
4 expenses payable with respect to the unit, and upon payment the
5 encumbrancer shall have a lien on the unit for the amounts paid
6 at the same rank as the lien of his encumbrance.

7 (k) Nothing in Public Act 83-1271 is intended to change the
8 lien priorities of any encumbrance created prior to August 30,
9 1984.

10 (Source: P.A. 94-1049, eff. 1-1-07.)