



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2673

by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

765 ILCS 605/9

from Ch. 30, par. 309

Amends the Condominium Property Act. Provides that at the end of an association's fiscal year and after the association has approved any end-of-year fiscal audit, if applicable, if the fiscal year ended with a surplus of funds over actual expenses, including budgeted reserve fund contributions, then, notwithstanding any contrary provision in the association's declaration and bylaws, the board of managers has the authority, 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. Provides that if 20% of the unit owners of the association deliver a petition objecting to the action of the board of managers within 14 days after notice to the unit owners of the action, the board shall call a meeting of the unit owners within 30 days of the date of delivery of the petition. Provides that the unit owners may vote to select a different option than the option selected by the board of managers; however, if a majority of the total votes of the unit owners are not cast at the meeting to reject the board's selection and select a different option, the board's decision is ratified.

LRB100 08833 HEP 18974 b

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) In the event that an association elects to waive
8 all or part of the reserve requirements of this Section,
9 that fact must be disclosed after the meeting at which the
10 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 (5) At the end of an association's fiscal year and
20 after the association has approved any end-of-year fiscal
21 audit, if applicable, if the fiscal year ended with a
22 surplus of funds over actual expenses, including budgeted
23 reserve fund contributions, then, notwithstanding any
24 contrary provision in the association's declaration and
25 bylaws, the board of managers has the authority, in its
26 discretion, to dispose of the surplus in one or more of the

1 following ways: (i) contribute the surplus to the
2 association's reserve fund; (ii) return the surplus to the
3 unit owners as a credit against the remaining monthly
4 assessments for the current fiscal year; (iii) return the
5 surplus to the unit owners in the form of a direct payment
6 to the unit owners; or (iv) maintain the funds in the
7 operating account, in which case the funds shall be applied
8 as a credit when calculating the following year's annual
9 budget. If 20% of the unit owners of the association
10 deliver a petition objecting to the action under this
11 paragraph (5) within 14 days after notice to the unit
12 owners of the action, the board of managers shall call a
13 meeting of the unit owners within 30 days of the date of
14 delivery of the petition. At the meeting, the unit owners
15 may vote to select a different option than the option
16 selected by the board of managers. Unless a majority of the
17 total votes of the unit owners are cast at the meeting to
18 reject the board's selection and select a different option,
19 the board's decision is ratified.

20 (d) (Blank).

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

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

1 (g) Lien.

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

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

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

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

1 a prior unit owner to make payment of common expenses,
2 where the judicial foreclosure sale has been confirmed by
3 order of the court, a deed in lieu thereof has been
4 accepted by the lender, or a consent judgment has been
5 entered by the court.

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

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

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

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

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

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

1 complied with within 20 days, all unpaid common expenses which
2 become due prior to the date of the making of such request
3 shall be subordinate to the lien of the encumbrance. Any
4 encumbrancer holding a lien on a unit may pay any unpaid common
5 expenses payable with respect to the unit, and upon payment the
6 encumbrancer shall have a lien on the unit for the amounts paid
7 at the same rank as the lien of his encumbrance.

8 (k) Nothing in Public Act 83-1271 is intended to change the
9 lien priorities of any encumbrance created prior to August 30,
10 1984.

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