

SB1915



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB1915

Introduced 2/25/2005, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

765 ILCS 605/18

from Ch. 30, par. 318

Amends the Condominium Property Act. Permits condominium bylaws to provide for late fees for the delinquent payment of condominium assessments. Provides that the late fees may not exceed the greater of \$25 or 10% of the amount due and may not be charged more than once for the same late payment.

LRB094 09024 LCB 39245 b

1 AN ACT concerning condominiums.

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 18 as follows:

6 (765 ILCS 605/18) (from Ch. 30, par. 318)

7 Sec. 18. Contents of bylaws. The bylaws shall provide for
8 at least the following:

9 (a) (1) The election from among the unit owners of a board
10 of managers, the number of persons constituting such board,
11 and that the terms of at least one-third of the members of
12 the board shall expire annually and that all members of the
13 board shall be elected at large. If there are multiple
14 owners of a single unit, only one of the multiple owners
15 shall be eligible to serve as a member of the board at any
16 one time.

17 (2) the powers and duties of the board;

18 (3) the compensation, if any, of the members of the
19 board;

20 (4) the method of removal from office of members of the
21 board;

22 (5) that the board may engage the services of a manager
23 or managing agent;

24 (6) that each unit owner shall receive, at least 30
25 days prior to the adoption thereof by the board of
26 managers, a copy of the proposed annual budget together
27 with an indication of which portions are intended for
28 reserves, capital expenditures or repairs or payment of
29 real estate taxes;

30 (7) that the board of managers shall annually supply to
31 all unit owners an itemized accounting of the common
32 expenses for the preceding year actually incurred or paid,

1 together with an indication of which portions were for
2 reserves, capital expenditures or repairs or payment of
3 real estate taxes and with a tabulation of the amounts
4 collected pursuant to the budget or assessment, and showing
5 the net excess or deficit of income over expenditures plus
6 reserves;

7 (8) (i) that each unit owner shall receive notice, in
8 the same manner as is provided in this Act for membership
9 meetings, of any meeting of the board of managers
10 concerning the adoption of the proposed annual budget and
11 regular assessments pursuant thereto or to adopt a separate
12 (special) assessment, (ii) that except as provided in
13 subsection (iv) below, if an adopted budget or any separate
14 assessment adopted by the board would result in the sum of
15 all regular and separate assessments payable in the current
16 fiscal year exceeding 115% of the sum of all regular and
17 separate assessments payable during the preceding fiscal
18 year, the board of managers, upon written petition by unit
19 owners with 20 percent of the votes of the association
20 delivered to the board within 14 days of the board action,
21 shall call a meeting of the unit owners within 30 days of
22 the date of delivery of the petition to consider the budget
23 or separate assessment; unless a majority of the total
24 votes of the unit owners are cast at the meeting to reject
25 the budget or separate assessment, it is ratified, (iii)
26 that any common expense not set forth in the budget or any
27 increase in assessments over the amount adopted in the
28 budget shall be separately assessed against all unit
29 owners, (iv) that separate assessments for expenditures
30 relating to emergencies or mandated by law may be adopted
31 by the board of managers without being subject to unit
32 owner approval or the provisions of item (ii) above or item
33 (v) below. As used herein, "emergency" means an immediate
34 danger to the structural integrity of the common elements
35 or to the life, health, safety or property of the unit
36 owners, (v) that assessments for additions and alterations

1 to the common elements or to association-owned property not
2 included in the adopted annual budget, shall be separately
3 assessed and are subject to approval of two-thirds of the
4 total votes of all unit owners, (vi) that the board of
5 managers may adopt separate assessments payable over more
6 than one fiscal year. With respect to multi-year
7 assessments not governed by items (iv) and (v), the entire
8 amount of the multi-year assessment shall be deemed
9 considered and authorized in the first fiscal year in which
10 the assessment is approved;

11 (9) that meetings of the board of managers shall be
12 open to any unit owner, except for the portion of any
13 meeting held (i) to discuss litigation when an action
14 against or on behalf of the particular association has been
15 filed and is pending in a court or administrative tribunal,
16 or when the board of managers finds that such an action is
17 probable or imminent, (ii) to consider information
18 regarding appointment, employment or dismissal of an
19 employee, or (iii) to discuss violations of rules and
20 regulations of the association or a unit owner's unpaid
21 share of common expenses; that any vote on these matters
22 shall be taken at a meeting or portion thereof open to any
23 unit owner; that any unit owner may record the proceedings
24 at meetings or portions thereof required to be open by this
25 Act by tape, film or other means; that the board may
26 prescribe reasonable rules and regulations to govern the
27 right to make such recordings, that notice of such meetings
28 shall be mailed or delivered at least 48 hours prior
29 thereto, unless a written waiver of such notice is signed
30 by the person or persons entitled to such notice pursuant
31 to the declaration, bylaws, other condominium instrument,
32 or provision of law other than this subsection before the
33 meeting is convened, and that copies of notices of meetings
34 of the board of managers shall be posted in entranceways,
35 elevators, or other conspicuous places in the condominium
36 at least 48 hours prior to the meeting of the board of

1 managers except where there is no common entranceway for 7
2 or more units, the board of managers may designate one or
3 more locations in the proximity of these units where the
4 notices of meetings shall be posted;

5 (10) that the board shall meet at least 4 times
6 annually;

7 (11) that no member of the board or officer shall be
8 elected for a term of more than 2 years, but that officers
9 and board members may succeed themselves;

10 (12) the designation of an officer to mail and receive
11 all notices and execute amendments to condominium
12 instruments as provided for in this Act and in the
13 condominium instruments;

14 (13) the method of filling vacancies on the board which
15 shall include authority for the remaining members of the
16 board to fill the vacancy by two-thirds vote until the next
17 annual meeting of unit owners or for a period terminating
18 no later than 30 days following the filing of a petition
19 signed by unit owners holding 20% of the votes of the
20 association requesting a meeting of the unit owners to fill
21 the vacancy for the balance of the term, and that a meeting
22 of the unit owners shall be called for purposes of filling
23 a vacancy on the board no later than 30 days following the
24 filing of a petition signed by unit owners holding 20% of
25 the votes of the association requesting such a meeting, and
26 the method of filling vacancies among the officers that
27 shall include the authority for the members of the board to
28 fill the vacancy for the unexpired portion of the term;

29 (14) what percentage of the board of managers, if other
30 than a majority, shall constitute a quorum;

31 (15) provisions concerning notice of board meetings to
32 members of the board;

33 (16) the board of managers may not enter into a
34 contract with a current board member or with a corporation
35 or partnership in which a board member or a member of the
36 board member's immediate family has 25% or more interest,

1 unless notice of intent to enter the contract is given to
2 unit owners within 20 days after a decision is made to
3 enter into the contract and the unit owners are afforded an
4 opportunity by filing a petition, signed by 20% of the unit
5 owners, for an election to approve or disapprove the
6 contract; such petition shall be filed within 20 days after
7 such notice and such election shall be held within 30 days
8 after filing the petition; for purposes of this subsection,
9 a board member's immediate family means the board member's
10 spouse, parents, and children;

11 (17) that the board of managers may disseminate to unit
12 owners biographical and background information about
13 candidates for election to the board if (i) reasonable
14 efforts to identify all candidates are made and all
15 candidates are given an opportunity to include
16 biographical and background information in the information
17 to be disseminated; and (ii) the board does not express a
18 preference in favor of any candidate;

19 (18) any proxy distributed for board elections by the
20 board of managers gives unit owners the opportunity to
21 designate any person as the proxy holder, and gives the
22 unit owner the opportunity to express a preference for any
23 of the known candidates for the board or to write in a
24 name;

25 (19) that special meetings of the board of managers can
26 be called by the president or 25% of the members of the
27 board; and

28 (20) that the board of managers may establish and
29 maintain a system of master metering of public utility
30 services and collect payments in connection therewith,
31 subject to the requirements of the Tenant Utility Payment
32 Disclosure Act.

33 (b) (1) What percentage of the unit owners, if other than
34 20%, shall constitute a quorum provided that, for
35 condominiums with 20 or more units, the percentage of unit
36 owners constituting a quorum shall be 20% unless the unit

1 owners holding a majority of the percentage interest in the
2 association provide for a higher percentage;

3 (2) that the association shall have one class of
4 membership;

5 (3) that the members shall hold an annual meeting, one
6 of the purposes of which shall be to elect members of the
7 board of managers;

8 (4) the method of calling meetings of the unit owners;

9 (5) that special meetings of the members can be called
10 by the president, board of managers, or by 20% of unit
11 owners;

12 (6) that written notice of any membership meeting shall
13 be mailed or delivered giving members no less than 10 and
14 no more than 30 days notice of the time, place and purpose
15 of such meeting;

16 (7) that voting shall be on a percentage basis, and
17 that the percentage vote to which each unit is entitled is
18 the percentage interest of the undivided ownership of the
19 common elements appurtenant thereto, provided that the
20 bylaws may provide for approval by unit owners in
21 connection with matters where the requisite approval on a
22 percentage basis is not specified in this Act, on the basis
23 of one vote per unit;

24 (8) that, where there is more than one owner of a unit,
25 if only one of the multiple owners is present at a meeting
26 of the association, he is entitled to cast all the votes
27 allocated to that unit, if more than one of the multiple
28 owners are present, the votes allocated to that unit may be
29 cast only in accordance with the agreement of a majority in
30 interest of the multiple owners, unless the declaration
31 expressly provides otherwise, that there is majority
32 agreement if any one of the multiple owners cast the votes
33 allocated to that unit without protest being made promptly
34 to the person presiding over the meeting by any of the
35 other owners of the unit;

36 (9) (A) that unless the Articles of Incorporation or the

1 bylaws otherwise provide, and except as provided in
2 subparagraph (B) of this paragraph (9) in connection with
3 board elections, a unit owner may vote by proxy executed in
4 writing by the unit owner or by his duly authorized
5 attorney in fact; that the proxy must bear the date of
6 execution and, unless the condominium instruments or the
7 written proxy itself provide otherwise, is invalid after 11
8 months from the date of its execution;

9 (B) that if a rule adopted at least 120 days before a
10 board election or the declaration or bylaws provide for
11 balloting as set forth in this subsection, unit owners may
12 not vote by proxy in board elections, but may vote only (i)
13 by submitting an association-issued ballot in person at the
14 election meeting or (ii) by submitting an
15 association-issued ballot to the association or its
16 designated agent by mail or other means of delivery
17 specified in the declaration, bylaws, or rule; that the
18 ballots shall be mailed or otherwise distributed to unit
19 owners not less than 10 and not more than 30 days before
20 the election meeting, and the board shall give unit owners
21 not less than 21 days' prior written notice of the deadline
22 for inclusion of a candidate's name on the ballots; that
23 the deadline shall be no more than 7 days before the
24 ballots are mailed or otherwise distributed to unit owners;
25 that every such ballot must include the names of all
26 candidates who have given the board or its authorized agent
27 timely written notice of their candidacy and must give the
28 person casting the ballot the opportunity to cast votes for
29 candidates whose names do not appear on the ballot; that a
30 ballot received by the association or its designated agent
31 after the close of voting shall not be counted; that a unit
32 owner who submits a ballot by mail or other means of
33 delivery specified in the declaration, bylaws, or rule may
34 request and cast a ballot in person at the election
35 meeting, and thereby void any ballot previously submitted
36 by that unit owner;

1 (C) that if a written petition by unit owners with at
2 least 20% of the votes of the association is delivered to
3 the board within 14 days after the board's approval of a
4 rule adopted pursuant to subparagraph (B) of this paragraph
5 (9), the board shall call a meeting of the unit owners
6 within 30 days after the date of delivery of the petition;
7 that unless a majority of the total votes of the unit
8 owners are cast at the meeting to reject the rule, the rule
9 is ratified;

10 (10) that the association may, upon adoption of the
11 appropriate rules by the board of managers, conduct
12 elections by secret ballot whereby the voting ballot is
13 marked only with the percentage interest for the unit and
14 the vote itself, provided that the board further adopt
15 rules to verify the status of the unit owner issuing a
16 proxy or casting a ballot; and further, that a candidate
17 for election to the board of managers or such candidate's
18 representative shall have the right to be present at the
19 counting of ballots at such election;

20 (11) that in the event of a resale of a condominium
21 unit the purchaser of a unit from a seller other than the
22 developer pursuant to an installment contract for purchase
23 shall during such times as he or she resides in the unit be
24 counted toward a quorum for purposes of election of members
25 of the board of managers at any meeting of the unit owners
26 called for purposes of electing members of the board, shall
27 have the right to vote for the election of members of the
28 board of managers and to be elected to and serve on the
29 board of managers unless the seller expressly retains in
30 writing any or all of such rights. In no event may the
31 seller and purchaser both be counted toward a quorum, be
32 permitted to vote for a particular office or be elected and
33 serve on the board. Satisfactory evidence of the
34 installment contract shall be made available to the
35 association or its agents. For purposes of this subsection,
36 "installment contract" shall have the same meaning as set

1 forth in Section 1 (e) of "An Act relating to installment
2 contracts to sell dwelling structures", approved August
3 11, 1967, as amended;

4 (12) the method by which matters subject to the
5 approval of unit owners set forth in this Act, or in the
6 condominium instruments, will be submitted to the unit
7 owners at special membership meetings called for such
8 purposes; and

9 (13) that matters subject to the affirmative vote of
10 not less than 2/3 of the votes of unit owners at a meeting
11 duly called for that purpose, shall include, but not be
12 limited to:

13 (i) merger or consolidation of the association;

14 (ii) sale, lease, exchange, or other disposition
15 (excluding the mortgage or pledge) of all, or
16 substantially all of the property and assets of the
17 association; and

18 (iii) the purchase or sale of land or of units on
19 behalf of all unit owners.

20 (c) Election of a president from among the board of
21 managers, who shall preside over the meetings of the board of
22 managers and of the unit owners.

23 (d) Election of a secretary from among the board of
24 managers, who shall keep the minutes of all meetings of the
25 board of managers and of the unit owners and who shall, in
26 general, perform all the duties incident to the office of
27 secretary.

28 (e) Election of a treasurer from among the board of
29 managers, who shall keep the financial records and books of
30 account.

31 (f) Maintenance, repair and replacement of the common
32 elements and payments therefor, including the method of
33 approving payment vouchers.

34 (g) An association with 30 or more units shall obtain and
35 maintain fidelity insurance covering persons who control or
36 disburse funds of the association for the maximum amount of

1 coverage available to protect funds in the custody or control
2 of the association plus the association reserve fund. All
3 management companies which are responsible for the funds held
4 or administered by the association shall maintain and furnish
5 to the association a fidelity bond for the maximum amount of
6 coverage available to protect funds in the custody of the
7 management company at any time. The association shall bear the
8 cost of the fidelity insurance and fidelity bond, unless
9 otherwise provided by contract between the association and a
10 management company. The association shall be the direct obligee
11 of any such fidelity bond. A management company holding reserve
12 funds of an association shall at all times maintain a separate
13 account for each association, provided, however, that for
14 investment purposes, the Board of Managers of an association
15 may authorize a management company to maintain the
16 association's reserve funds in a single interest bearing
17 account with similar funds of other associations. The
18 management company shall at all times maintain records
19 identifying all moneys of each association in such investment
20 account. The management company may hold all operating funds of
21 associations which it manages in a single operating account but
22 shall at all times maintain records identifying all moneys of
23 each association in such operating account. Such operating and
24 reserve funds held by the management company for the
25 association shall not be subject to attachment by any creditor
26 of the management company.

27 For the purpose of this subsection a management company
28 shall be defined as a person, partnership, corporation, or
29 other legal entity entitled to transact business on behalf of
30 others, acting on behalf of or as an agent for a unit owner,
31 unit owners or association of unit owners for the purpose of
32 carrying out the duties, responsibilities, and other
33 obligations necessary for the day to day operation and
34 management of any property subject to this Act. For purposes of
35 this subsection, the term "fiduciary insurance coverage" shall
36 be defined as both a fidelity bond and directors and officers

1 liability coverage, the fidelity bond in the full amount of
2 association funds and association reserves that will be in the
3 custody of the association, and the directors and officers
4 liability coverage at a level as shall be determined to be
5 reasonable by the board of managers, if not otherwise
6 established by the declaration or by laws.

7 Until one year after the effective date of this amendatory
8 Act of 1985, if a condominium association has reserves plus
9 assessments in excess of \$250,000 and cannot reasonably obtain
10 100% fidelity bond coverage for such amount, then it must
11 obtain a fidelity bond coverage of \$250,000.

12 (h) Method of estimating the amount of the annual budget,
13 and the manner of assessing and collecting from the unit owners
14 their respective shares of such estimated expenses, and of any
15 other expenses lawfully agreed upon.

16 (i) That upon 10 days notice to the manager or board of
17 managers and payment of a reasonable fee, any unit owner shall
18 be furnished a statement of his account setting forth the
19 amount of any unpaid assessments or other charges due and owing
20 from such owner.

21 (j) Designation and removal of personnel necessary for the
22 maintenance, repair and replacement of the common elements.

23 (k) Such restrictions on and requirements respecting the
24 use and maintenance of the units and the use of the common
25 elements, not set forth in the declaration, as are designed to
26 prevent unreasonable interference with the use of their
27 respective units and of the common elements by the several unit
28 owners.

29 (l) Method of adopting and of amending administrative rules
30 and regulations governing the operation and use of the common
31 elements.

32 (m) The percentage of votes required to modify or amend the
33 bylaws, but each one of the particulars set forth in this
34 section shall always be embodied in the bylaws.

35 (n) (i) The provisions of this Act, the declaration,
36 bylaws, other condominium instruments, and rules and

1 regulations that relate to the use of the individual unit or
2 the common elements shall be applicable to any person leasing a
3 unit and shall be deemed to be incorporated in any lease
4 executed or renewed on or after the effective date of this
5 amendatory Act of 1984. (ii) With regard to any lease entered
6 into subsequent to the effective date of this amendatory Act of
7 1989, the unit owner leasing the unit shall deliver a copy of
8 the signed lease to the board or if the lease is oral, a
9 memorandum of the lease, not later than the date of occupancy
10 or 10 days after the lease is signed, whichever occurs first.
11 In addition to any other remedies, by filing an action jointly
12 against the tenant and the unit owner, an association may seek
13 to enjoin a tenant from occupying a unit or seek to evict a
14 tenant under the provisions of Article IX of the Code of Civil
15 Procedure for failure of the lessor-owner to comply with the
16 leasing requirements prescribed by this Section or by the
17 declaration, bylaws, and rules and regulations. The board of
18 managers may proceed directly against a tenant, at law or in
19 equity, or under the provisions of Article IX of the Code of
20 Civil Procedure, for any other breach by tenant of any
21 covenants, rules, regulations or bylaws.

22 (o) The association shall have no authority to forbear the
23 payment of assessments by any unit owner.

24 (p) That when 30% or fewer of the units, by number, possess
25 over 50% in the aggregate of the votes in the association, any
26 percentage vote of members specified herein or in the
27 condominium instruments shall require the specified percentage
28 by number of units rather than by percentage of interest in the
29 common elements allocated to units that would otherwise be
30 applicable.

31 (q) That a unit owner may not assign, delegate, transfer,
32 surrender, or avoid the duties, responsibilities, and
33 liabilities of a unit owner under this Act, the condominium
34 instruments, or the rules and regulations of the Association;
35 and that such an attempted assignment, delegation, transfer,
36 surrender, or avoidance shall be deemed void.

1 The provisions of this Section are applicable to all
2 condominium instruments recorded under this Act. Any portion of
3 a condominium instrument which contains provisions contrary to
4 these provisions shall be void as against public policy and
5 ineffective. Any such instrument which fails to contain the
6 provisions required by this Section shall be deemed to
7 incorporate such provisions by operation of law.

8 The by-laws may also provide that late fees may be charged
9 for delinquent payment of condominium assessments. If late fees
10 are charged, they may not exceed the greater of \$25 or 10% of
11 the amount due and may not be charged more than once for the
12 same late payment.

13 (Source: P.A. 93-243, eff. 1-1-04.)