



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB0688

Introduced 2/6/2009, by Rep. Marlow H. Colvin

#### SYNOPSIS AS INTRODUCED:

765 ILCS 605/14.5 new

Amends the Condominium Property Act. Provides legislative findings concerning the importance of municipalities reclaiming housing stock that was used in fraudulent schemes. Provides procedures for addressing distressed condominium property that is a danger, blight, or nuisance to the surrounding community or the public and that is substantially unoccupied, without utilities, or in a serious negative condition. Provides definitions of "distressed condominium property", "owner", and "other party in interest". Provides that a municipality may file a petition in the circuit court and that if the court finds that a property is a distressed condominium property, the court may appoint a receiver to manage the property. Provides also that if a court finds that the property is not viable as a condominium, the court may deem that the entire property is owned in common by the unit owners and may authorize the receiver to sell the entire property without the consent of the unit owners. Provides that if the receiver sells the property pursuant to court authorization, the sale proceeds shall be paid to unit owners according to their respective shares, after sale expenses, taxes, and liens have been paid. Provides that the receiver has the power and authority to secure and insure the premises, make repairs, and otherwise manage the premises. Provides that other parties in interest shall be provided written notice and a copy of the petition or complaint either by United States certified mail, return receipt requested, within 30 days of the issuance of the summons or by personal service of the complaint. Provides that the court may authorize a receiver to enter into a sales contract for the property upon a motion, with notice to all owners and other parties in interest and those parties having an opportunity to be heard. Makes other changes.

LRB096 04159 AJO 14201 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 1. Legislative findings. The General Assembly  
5 finds that it is imperative for municipalities to reclaim  
6 certain housing stock that has been used in various fraudulent  
7 schemes and that now creates a nuisance to the municipality.  
8 Distressed condominiums create a hazard and blight to the  
9 general public and community, diminish the local tax base,  
10 distort the true value of property in the community (thereby  
11 creating illusory market values that harm innocent developers  
12 and buyers), and remove housing from the rental market,  
13 especially for low and moderate income renters. While normal  
14 conservation and building code enforcement methods can  
15 adequately deal with housing code violations found in  
16 legitimately created condominium buildings which are managed  
17 by functioning condominium associations, this Act is necessary  
18 because those normal code enforcement procedures are not  
19 effective in dealing with distressed condominiums, because  
20 there often is no functioning condominium board which can take  
21 responsibility for the necessary code repairs. In that  
22 situation the repairs may take years to complete, and the delay  
23 can result in a property with such serious problems that the  
24 property cannot be restored and instead must be demolished.

1 Section 5. The Condominium Property Act is amended by  
2 adding Section 14.5 as follows:

3 (765 ILCS 605/14.5 new)

4 Sec. 14.5. Distressed condominium property.

5 (a) As used in this Section:

6 (1) "Distressed condominium property" means a parcel  
7 containing condominium units which are operated in a manner  
8 or have conditions which may constitute a danger, blight,  
9 or nuisance to the surrounding community or to the general  
10 public, including but not limited to 2 or more of the  
11 following conditions:

12 (A) 50% or more of the condominium units are not  
13 occupied by persons with a legal right to reside in the  
14 units;

15 (B) the building has serious violations of any  
16 applicable local building code or zoning ordinance;

17 (C) 60% or more of the condominium units are in  
18 foreclosure or are units against which a judgment of  
19 foreclosure was entered within the last 18 months;

20 (D) there has been a recording of more condominium  
21 units on the parcel than physically exist;

22 (E) any of the essential utilities to the parcel or  
23 to 40% or more of the condominium units is either  
24 terminated or threatened with termination; or

1           (F) there is a delinquency on the property taxes  
2           for at least 60% of the condominium units.

3           (2) "Owner" means any unit owner or owner of record of  
4           the condominium property.

5           (3) "Other party in interest" means any mortgagee of  
6           record, lien holder of record, judgment creditor, tax  
7           purchaser, or other party of record, other than the owner,  
8           having legal or equitable title or other interest in the  
9           distressed condominium property or in a unit of the  
10           property.

11           (4) "Municipality" means a city, village, or  
12           incorporated town in which the distressed condominium  
13           property is located.

14           (b) A proceeding under this Section shall be commenced by a  
15           municipality filing a verified petition or verified complaint  
16           in the circuit court in the county in which the property is  
17           located. The petition or complaint shall allege conditions  
18           specified in paragraph (1) of subsection (a) of this Section  
19           and shall request the relief available under this Section. All  
20           owners shall be named as defendants in the petition or  
21           complaint and summons shall be issued and service shall be had  
22           as in other civil cases. All known other parties in interest  
23           shall be provided written notice and a copy of the petition or  
24           complaint either by United States certified mail, return  
25           receipt requested, within 30 days of the issuance of the  
26           summons or by personal service of the complaint. The hearing

1 upon the suit shall be expedited by the court and shall be  
2 given precedence over other actions.

3 (c) If a court finds that the property is a distressed  
4 condominium property:

5 (1) the court may order the appointment of a receiver  
6 for the property with the powers specified in this Section;  
7 or

8 (2) the court, after a hearing held upon giving notice  
9 to all interested parties as provided in subsection (b),  
10 may appoint a receiver for the property and if the court  
11 further finds that the property is not viable as a  
12 condominium, then the court may declare:

13 (A) that the property is no longer a condominium;

14 (B) that the property shall be deemed to be owned  
15 in common by the unit owners;

16 (C) that the undivided interest in the property  
17 which shall appertain to each unit owner shall be the  
18 percentage of undivided interest previously owned by  
19 the owner in the common elements; and

20 (D) that any liens affecting any unit shall be  
21 deemed to be attached to the undivided interest of the  
22 unit owner in the property as provided herein.

23 A copy of the court's declaration under paragraph (2) of  
24 this subsection (c) shall be recorded by the municipality in  
25 the office of the recorder of deeds in the county where the  
26 property is located against both the individual units and

1 owners and the general property. The court's declaration shall  
2 be forwarded to the county assessor's office in the county  
3 where the property is located.

4 (d) If a court finds that property is subject to paragraph  
5 (2) of subsection (c) of this Section, the court may upon a  
6 motion filed, notice given to all owners and other parties in  
7 interest as provided in subsection (b) and those parties having  
8 an opportunity to be heard, authorize the receiver to enter  
9 into a sales contract and transfer the title of the property on  
10 behalf of the owners of the property. In the event of such a  
11 sale, the net proceeds of the sale, after payment of all the  
12 receiver's costs, time, expenses, and fees as approved by the  
13 court, shall be deposited into an escrow account. Proceeds in  
14 the escrow account shall be segregated into the respective  
15 shares of each unit owner as determined under subparagraph (C)  
16 of paragraph (2) of subsection (c) of this Section and shall be  
17 distributed from each respective share as follows: (1) to pay  
18 taxes attributable to the unit owner; then (2) to pay other  
19 liens attributable to the unit owner; and then (3) to pay each  
20 unit owner any remaining sums from his or her respective share.

21 (e) A receiver appointed under this Section shall have  
22 possession of the property and shall have full power and  
23 authority to operate, manage, and conserve the property. A  
24 receiver appointed pursuant to this Section must manage the  
25 property as would a prudent person. A receiver may, without an  
26 order of the court, delegate managerial functions to a person

1 in the business of managing real estate of the kind involved  
2 who is financially responsible and prudently selected.

3 Without limiting the foregoing, a receiver during such time  
4 shall have the power and authority to:

5 (1) secure, clean, board and enclose, and keep secure,  
6 clean, boarded and enclosed, the property or any portion of  
7 the property;

8 (2) secure tenants and execute leases for the property,  
9 the duration and terms of which are reasonable and  
10 customary for the type of use involved, and the leases  
11 shall have the same priority as if made by the owner of the  
12 property;

13 (3) collect the rents, issues, and profits, including  
14 assessments which have been or may be levied;

15 (4) insure the property against loss by fire or other  
16 casualty;

17 (5) employ counsel, custodians, janitors, and other  
18 help;

19 (6) pay taxes which may have been or may be levied  
20 against the property;

21 (7) maintain or disconnect, as appropriate, any  
22 essential utility to the property;

23 (8) make repairs and improvements necessary to comply  
24 with building, housing, and other similar codes;

25 (9) hold receipts as reserves as reasonably required  
26 for the foregoing purposes; and

1           (10) exercise the other powers as are granted to the  
2           receiver by the appointing court.

3           (f) If the court orders the appointment of a receiver, the  
4           receiver may use the rents and issues of the property toward  
5           maintenance, repair, and rehabilitation of the property prior  
6           to and despite any assignment of rents; and the court may  
7           further authorize the receiver to recover the cost of any  
8           feasibility study, sale, management, maintenance, repair, and  
9           rehabilitation by the issuance and sale of notes or receiver's  
10           certificates bearing such interest as the court may fix, and  
11           the notes or certificates, after their initial issuance and  
12           transfer by the receiver, shall be freely transferable and when  
13           sold or transferred by the receiver in return for a valuable  
14           consideration in money, material, labor, or services shall be a  
15           first lien upon the real estate and the rents and issues  
16           thereof and shall be superior to all prior assignments of rents  
17           and all prior existing liens and encumbrances, except taxes;  
18           provided, that within 90 days of the sale or transfer for value  
19           by the receiver of a note or certificate, the holder thereof  
20           shall file notice of the lien in the office of the recorder in  
21           the county in which the real estate is located. The notice of  
22           the lien filed shall set forth (i) a description of the real  
23           estate affected sufficient for the identification thereof,  
24           (ii) the face amount of the receiver's note or certificate,  
25           together with the interest payable thereon, and (iii) the date  
26           when the receiver's note or certificate was sold or transferred



1 for value by the receiver. Upon payment to the holder of the  
2 receiver's note or certificate of the face amount thereof  
3 together with any interest thereon to the date of payment, and  
4 upon the filing of record of a sworn statement of such payment,  
5 the lien of such certificate shall be released. The lien may be  
6 enforced by proceedings to foreclose as in the case of a  
7 mortgage or a mechanics lien, and the action to foreclose the  
8 lien may be commenced at any time after the date of default.  
9 For the purposes of this subsection, the date of default shall  
10 be deemed to occur 30 days from the date of issuance of the  
11 receiver's certificate if at that time the certificate remains  
12 unpaid in whole or in part. The receiver's lien shall be paid  
13 upon the sale of the property as set forth in subsection (d) of  
14 this Section.

15 (g) The court may remove a receiver upon a showing of good  
16 cause, in which case a new receiver may be appointed in  
17 accordance with this Section.