



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1972

Introduced 2/10/2011, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

765 ILCS 605/18.5

from Ch. 30, par. 318.5

Amends the Condominium Property Act. Provides, in provisions concerning master associations, that a purchaser of a unit at a judicial foreclosure sale, other than a mortgagee who takes possession pursuant to a court order or a purchaser who acquires title from a mortgagee, has the duty to pay the proportionate share of the common expenses for the unit during the 6 months immediately before the filing of an action to collect assessments and the association's costs of collection, including reasonable attorney's fees, (instead of collect assessments) that remain unpaid by the prior owner. Provides that if the outstanding assessments and the association's costs of collection, including reasonable attorney's fees (instead of outstanding assessments) are paid during an action to collect assessments, the purchaser shall have no obligation to pay any assessments or costs (instead of any assessments) that accrued before he or she acquired title. Makes related changes.

LRB097 10092 AJ0 50271 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 18.5 as follows:

6 (765 ILCS 605/18.5) (from Ch. 30, par. 318.5)

7 Sec. 18.5. Master Associations.

8 (a) If the declaration, other condominium instrument, or
9 other duly recorded covenants provide that any of the powers of
10 the unit owners associations are to be exercised by or may be
11 delegated to a nonprofit corporation or unincorporated
12 association that exercises those or other powers on behalf of
13 one or more condominiums, or for the benefit of the unit owners
14 of one or more condominiums, such corporation or association
15 shall be a master association.

16 (b) There shall be included in the declaration, other
17 condominium instruments, or other duly recorded covenants
18 establishing the powers and duties of the master association
19 the provisions set forth in subsections (c) through (h).

20 In interpreting subsections (c) through (h), the courts
21 should interpret these provisions so that they are interpreted
22 consistently with the similar parallel provisions found in
23 other parts of this Act.

1 (c) Meetings and finances.

2 (1) Each unit owner of a condominium subject to the
3 authority of the board of the master association shall
4 receive, at least 30 days prior to the adoption thereof by
5 the board of the master association, a copy of the proposed
6 annual budget.

7 (2) The board of the master association shall annually
8 supply to all unit owners of condominiums subject to the
9 authority of the board of the master association an
10 itemized accounting of the common expenses for the
11 preceding year actually incurred or paid, together with a
12 tabulation of the amounts collected pursuant to the budget
13 or assessment, and showing the net excess or deficit of
14 income over expenditures plus reserves.

15 (3) Each unit owner of a condominium subject to the
16 authority of the board of the master association shall
17 receive written notice mailed or delivered no less than 10
18 and no more than 30 days prior to any meeting of the board
19 of the master association concerning the adoption of the
20 proposed annual budget or any increase in the budget, or
21 establishment of an assessment.

22 (4) Meetings of the board of the master association
23 shall be open to any unit owner in a condominium subject to
24 the authority of the board of the master association,
25 except for the portion of any meeting held:

26 (A) to discuss litigation when an action against or

1 on behalf of the particular master association has been
2 filed and is pending in a court or administrative
3 tribunal, or when the board of the master association
4 finds that such an action is probable or imminent,

5 (B) to consider information regarding appointment,
6 employment or dismissal of an employee, or

7 (C) to discuss violations of rules and regulations
8 of the master association or unpaid common expenses
9 owed to the master association.

10 Any vote on these matters shall be taken at a meeting or
11 portion thereof open to any unit owner of a condominium
12 subject to the authority of the master association.

13 Any unit owner may record the proceedings at meetings
14 required to be open by this Act by tape, film or other
15 means; the board may prescribe reasonable rules and
16 regulations to govern the right to make such recordings.
17 Notice of meetings shall be mailed or delivered at least 48
18 hours prior thereto, unless a written waiver of such notice
19 is signed by the persons entitled to notice before the
20 meeting is convened. Copies of notices of meetings of the
21 board of the master association shall be posted in
22 entranceways, elevators, or other conspicuous places in
23 the condominium at least 48 hours prior to the meeting of
24 the board of the master association. Where there is no
25 common entranceway for 7 or more units, the board of the
26 master association may designate one or more locations in

1 the proximity of these units where the notices of meetings
2 shall be posted.

3 (5) If the declaration provides for election by unit
4 owners of members of the board of directors in the event of
5 a resale of a unit in the master association, the purchaser
6 of a unit from a seller other than the developer pursuant
7 to an installment contract for purchase shall, during such
8 times as he or she resides in the unit, be counted toward a
9 quorum for purposes of election of members of the board of
10 directors at any meeting of the unit owners called for
11 purposes of electing members of the board, and shall have
12 the right to vote for the election of members of the board
13 of directors and to be elected to and serve on the board of
14 directors unless the seller expressly retains in writing
15 any or all of those rights. In no event may the seller and
16 purchaser both be counted toward a quorum, be permitted to
17 vote for a particular office, or be elected and serve on
18 the board. Satisfactory evidence of the installment
19 contract shall be made available to the association or its
20 agents. For purposes of this subsection, "installment
21 contract" shall have the same meaning as set forth in
22 subsection (e) of Section 1 of the Dwelling Unit
23 Installment Contract Act.

24 (6) The board of the master association shall have the
25 authority to establish and maintain a system of master
26 metering of public utility services and to collect payments

1 in connection therewith, subject to the requirements of the
2 Tenant Utility Payment Disclosure Act.

3 (7) The board of the master association or a common
4 interest community association shall have the power, after
5 notice and an opportunity to be heard, to levy and collect
6 reasonable fines from members for violations of the
7 declaration, bylaws, and rules and regulations of the
8 master association or the common interest community
9 association. Nothing contained in this subdivision (7)
10 shall give rise to a statutory lien for unpaid fines.

11 (8) Other than attorney's fees, no fees pertaining to
12 the collection of a unit owner's financial obligation to
13 the Association, including fees charged by a manager or
14 managing agent, shall be added to and deemed a part of an
15 owner's respective share of the common expenses unless: (i)
16 the managing agent fees relate to the costs to collect
17 common expenses for the Association; (ii) the fees are set
18 forth in a contract between the managing agent and the
19 Association; and (iii) the authority to add the management
20 fees to an owner's respective share of the common expenses
21 is specifically stated in the declaration or bylaws of the
22 Association.

23 (d) Records.

24 (1) The board of the master association shall maintain
25 the following records of the association and make them
26 available for examination and copying at convenient hours

1 of weekdays by any unit owners in a condominium subject to
2 the authority of the board or their mortgagees and their
3 duly authorized agents or attorneys:

4 (i) Copies of the recorded declaration, other
5 condominium instruments, other duly recorded covenants
6 and bylaws and any amendments, articles of
7 incorporation of the master association, annual
8 reports and any rules and regulations adopted by the
9 master association or its board shall be available.
10 Prior to the organization of the master association,
11 the developer shall maintain and make available the
12 records set forth in this subdivision (d)(1) for
13 examination and copying.

14 (ii) Detailed and accurate records in
15 chronological order of the receipts and expenditures
16 affecting the common areas, specifying and itemizing
17 the maintenance and repair expenses of the common areas
18 and any other expenses incurred, and copies of all
19 contracts, leases, or other agreements entered into by
20 the master association, shall be maintained.

21 (iii) The minutes of all meetings of the master
22 association and the board of the master association
23 shall be maintained for not less than 7 years.

24 (iv) Ballots and proxies related thereto, if any,
25 for any election held for the board of the master
26 association and for any other matters voted on by the

1 unit owners shall be maintained for not less than one
2 year.

3 (v) Such other records of the master association as
4 are available for inspection by members of a
5 not-for-profit corporation pursuant to Section 107.75
6 of the General Not For Profit Corporation Act of 1986
7 shall be maintained.

8 (vi) With respect to units owned by a land trust,
9 if a trustee designates in writing a person to cast
10 votes on behalf of the unit owner, the designation
11 shall remain in effect until a subsequent document is
12 filed with the association.

13 (2) Where a request for records under this subsection
14 is made in writing to the board of managers or its agent,
15 failure to provide the requested record or to respond
16 within 30 days shall be deemed a denial by the board of
17 directors.

18 (3) A reasonable fee may be charged by the master
19 association or its board for the cost of copying.

20 (4) If the board of directors fails to provide records
21 properly requested under subdivision (d)(1) within the
22 time period provided in subdivision (d)(2), the unit owner
23 may seek appropriate relief, including an award of
24 attorney's fees and costs.

25 (e) The board of directors shall have standing and capacity
26 to act in a representative capacity in relation to matters

1 involving the common areas of the master association or more
2 than one unit, on behalf of the unit owners as their interests
3 may appear.

4 (f) Administration of property prior to election of the
5 initial board of directors.

6 (1) Until the election, by the unit owners or the
7 boards of managers of the underlying condominium
8 associations, of the initial board of directors of a master
9 association whose declaration is recorded on or after
10 August 10, 1990, the same rights, titles, powers,
11 privileges, trusts, duties and obligations that are vested
12 in or imposed upon the board of directors by this Act or in
13 the declaration or other duly recorded covenant shall be
14 held and performed by the developer.

15 (2) The election of the initial board of directors of a
16 master association whose declaration is recorded on or
17 after August 10, 1990, by the unit owners or the boards of
18 managers of the underlying condominium associations, shall
19 be held not later than 60 days after the conveyance by the
20 developer of 75% of the units, or 3 years after the
21 recording of the declaration, whichever is earlier. The
22 developer shall give at least 21 days notice of the meeting
23 to elect the initial board of directors and shall upon
24 request provide to any unit owner, within 3 working days of
25 the request, the names, addresses, and weighted vote of
26 each unit owner entitled to vote at the meeting. Any unit

1 owner shall upon receipt of the request be provided with
2 the same information, within 10 days of the request, with
3 respect to each subsequent meeting to elect members of the
4 board of directors.

5 (3) If the initial board of directors of a master
6 association whose declaration is recorded on or after
7 August 10, 1990 is not elected by the unit owners or the
8 members of the underlying condominium association board of
9 managers at the time established in subdivision (f)(2), the
10 developer shall continue in office for a period of 30 days,
11 whereupon written notice of his resignation shall be sent
12 to all of the unit owners or members of the underlying
13 condominium board of managers entitled to vote at an
14 election for members of the board of directors.

15 (4) Within 60 days following the election of a majority
16 of the board of directors, other than the developer, by
17 unit owners, the developer shall deliver to the board of
18 directors:

19 (i) All original documents as recorded or filed
20 pertaining to the property, its administration, and
21 the association, such as the declaration, articles of
22 incorporation, other instruments, annual reports,
23 minutes, rules and regulations, and contracts, leases,
24 or other agreements entered into by the association. If
25 any original documents are unavailable, a copy may be
26 provided if certified by affidavit of the developer, or

1 an officer or agent of the developer, as being a
2 complete copy of the actual document recorded or filed.

3 (ii) A detailed accounting by the developer,
4 setting forth the source and nature of receipts and
5 expenditures in connection with the management,
6 maintenance and operation of the property, copies of
7 all insurance policies, and a list of any loans or
8 advances to the association which are outstanding.

9 (iii) Association funds, which shall have been at
10 all times segregated from any other moneys of the
11 developer.

12 (iv) A schedule of all real or personal property,
13 equipment and fixtures belonging to the association,
14 including documents transferring the property,
15 warranties, if any, for all real and personal property
16 and equipment, deeds, title insurance policies, and
17 all tax bills.

18 (v) A list of all litigation, administrative
19 action and arbitrations involving the association, any
20 notices of governmental bodies involving actions taken
21 or which may be taken concerning the association,
22 engineering and architectural drawings and
23 specifications as approved by any governmental
24 authority, all other documents filed with any other
25 governmental authority, all governmental certificates,
26 correspondence involving enforcement of any

1 association requirements, copies of any documents
2 relating to disputes involving unit owners, and
3 originals of all documents relating to everything
4 listed in this subparagraph.

5 (vi) If the developer fails to fully comply with
6 this paragraph (4) within the 60 days provided and
7 fails to fully comply within 10 days of written demand
8 mailed by registered or certified mail to his or her
9 last known address, the board may bring an action to
10 compel compliance with this paragraph (4). If the court
11 finds that any of the required deliveries were not made
12 within the required period, the board shall be entitled
13 to recover its reasonable attorneys' fees and costs
14 incurred from and after the date of expiration of the
15 10 day demand.

16 (5) With respect to any master association whose
17 declaration is recorded on or after August 10, 1990, any
18 contract, lease, or other agreement made prior to the
19 election of a majority of the board of directors other than
20 the developer by or on behalf of unit owners or underlying
21 condominium associations, the association or the board of
22 directors, which extends for a period of more than 2 years
23 from the recording of the declaration, shall be subject to
24 cancellation by more than 1/2 of the votes of the unit
25 owners, other than the developer, cast at a special meeting
26 of members called for that purpose during a period of 90

1 days prior to the expiration of the 2 year period if the
2 board of managers is elected by the unit owners, otherwise
3 by more than 1/2 of the underlying condominium board of
4 managers. At least 60 days prior to the expiration of the 2
5 year period, the board of directors, or, if the board is
6 still under developer control, then the board of managers
7 or the developer shall send notice to every unit owner or
8 underlying condominium board of managers, notifying them
9 of this provision, of what contracts, leases and other
10 agreements are affected, and of the procedure for calling a
11 meeting of the unit owners or for action by the underlying
12 condominium board of managers for the purpose of acting to
13 terminate such contracts, leases or other agreements.
14 During the 90 day period the other party to the contract,
15 lease, or other agreement shall also have the right of
16 cancellation.

17 (6) The statute of limitations for any actions in law
18 or equity which the master association may bring shall not
19 begin to run until the unit owners or underlying
20 condominium board of managers have elected a majority of
21 the members of the board of directors.

22 (g) In the event of any resale of a unit in a master
23 association by a unit owner other than the developer, the owner
24 shall obtain from the board of directors and shall make
25 available for inspection to the prospective purchaser, upon
26 demand, the following:

1 (1) A copy of the declaration, other instruments and
2 any rules and regulations.

3 (2) A statement of any liens, including a statement of
4 the account of the unit setting forth the amounts of unpaid
5 assessments and other charges due and owing.

6 (3) A statement of any capital expenditures
7 anticipated by the association within the current or
8 succeeding 2 fiscal years.

9 (4) A statement of the status and amount of any reserve
10 for replacement fund and any portion of such fund earmarked
11 for any specified project by the board of directors.

12 (5) A copy of the statement of financial condition of
13 the association for the last fiscal year for which such a
14 statement is available.

15 (6) A statement of the status of any pending suits or
16 judgments in which the association is a party.

17 (7) A statement setting forth what insurance coverage
18 is provided for all unit owners by the association.

19 (8) A statement that any improvements or alterations
20 made to the unit, or any part of the common areas assigned
21 thereto, by the prior unit owner are in good faith believed
22 to be in compliance with the declaration of the master
23 association.

24 The principal officer of the unit owner's association or
25 such other officer as is specifically designated shall furnish
26 the above information when requested to do so in writing,

1 within 30 days of receiving the request.

2 A reasonable fee covering the direct out-of-pocket cost of
3 copying and providing such information may be charged by the
4 association or its board of directors to the unit seller for
5 providing the information.

6 (g-1) The purchaser of a unit of a common interest
7 community at a judicial foreclosure sale, other than (i) a
8 mortgagee, who takes possession of a unit of a common interest
9 community pursuant to a court order or (ii) a purchaser who
10 acquires title from a mortgagee shall have the duty to pay the
11 proportionate share, if any, of the common expenses for the
12 unit that would have become due in the absence of any
13 assessment acceleration during the 6 months immediately
14 preceding institution of an action to enforce the collection of
15 assessments, and the association's costs of collection,
16 including reasonable attorney's fees, and that remain unpaid by
17 the owner during whose possession the assessments accrued. If
18 the outstanding assessments and the association's costs of
19 collection, including reasonable attorney's fees, are paid at
20 any time during any action to enforce the collection of
21 assessments, the purchaser shall have no obligation to pay any
22 assessments or costs that accrued before he or she acquired
23 title. The notice of sale of a unit of a common interest
24 community under subsection (c) of Section 15-1507 of the Code
25 of Civil Procedure shall state that the purchaser of the unit
26 other than a mortgagee shall pay the assessments and costs

1 required by this subsection (g-1).

2 (h) Errors and omissions.

3 (1) If there is an omission or error in the declaration
4 or other instrument of the master association, the master
5 association may correct the error or omission by an
6 amendment to the declaration or other instrument, as may be
7 required to conform it to this Act, to any other applicable
8 statute, or to the declaration. The amendment shall be
9 adopted by vote of two-thirds of the members of the board
10 of directors or by a majority vote of the unit owners at a
11 meeting called for that purpose, unless the Act or the
12 declaration of the master association specifically
13 provides for greater percentages or different procedures.

14 (2) If, through a scrivener's error, a unit has not
15 been designated as owning an appropriate undivided share of
16 the common areas or does not bear an appropriate share of
17 the common expenses, or if all of the common expenses or
18 all of the common elements in the condominium have not been
19 distributed in the declaration, so that the sum total of
20 the shares of common areas which have been distributed or
21 the sum total of the shares of the common expenses fail to
22 equal 100%, or if it appears that more than 100% of the
23 common elements or common expenses have been distributed,
24 the error may be corrected by operation of law by filing an
25 amendment to the declaration, approved by vote of
26 two-thirds of the members of the board of directors or a

1 majority vote of the unit owners at a meeting called for
2 that purpose, which proportionately adjusts all percentage
3 interests so that the total is equal to 100%, unless the
4 declaration specifically provides for a different
5 procedure or different percentage vote by the owners of the
6 units and the owners of mortgages thereon affected by
7 modification being made in the undivided interest in the
8 common areas, the number of votes in the unit owners
9 association or the liability for common expenses
10 appertaining to the unit.

11 (3) If an omission or error or a scrivener's error in
12 the declaration or other instrument is corrected by vote of
13 two-thirds of the members of the board of directors
14 pursuant to the authority established in subdivisions
15 (h) (1) or (h) (2) of this Section, the board, upon written
16 petition by unit owners with 20% of the votes of the
17 association or resolutions adopted by the board of managers
18 or board of directors of the condominium and common
19 interest community associations which select 20% of the
20 members of the board of directors of the master
21 association, whichever is applicable, received within 30
22 days of the board action, shall call a meeting of the unit
23 owners or the boards of the condominium and common interest
24 community associations which select members of the board of
25 directors of the master association within 30 days of the
26 filing of the petition or receipt of the condominium and

1 common interest community association resolution to
2 consider the board action. Unless a majority of the votes
3 of the unit owners of the association are cast at the
4 meeting to reject the action, or board of managers or board
5 of directors of condominium and common interest community
6 associations which select over 50% of the members of the
7 board of the master association adopt resolutions prior to
8 the meeting rejecting the action of the board of directors
9 of the master association, it is ratified whether or not a
10 quorum is present.

11 (4) The procedures for amendments set forth in this
12 subsection (h) cannot be used if such an amendment would
13 materially or adversely affect property rights of the unit
14 owners unless the affected unit owners consent in writing.
15 This Section does not restrict the powers of the
16 association to otherwise amend the declaration, bylaws, or
17 other condominium instruments, but authorizes a simple
18 process of amendment requiring a lesser vote for the
19 purpose of correcting defects, errors, or omissions when
20 the property rights of the unit owners are not materially
21 or adversely affected.

22 (5) If there is an omission or error in the declaration
23 or other instruments that may not be corrected by an
24 amendment procedure set forth in subdivision (h)(1) or
25 (h)(2) of this Section, then the circuit court in the
26 county in which the master association is located shall

1 have jurisdiction to hear a petition of one or more of the
2 unit owners thereon or of the association, to correct the
3 error or omission, and the action may be a class action.
4 The court may require that one or more methods of
5 correcting the error or omission be submitted to the unit
6 owners to determine the most acceptable correction. All
7 unit owners in the association must be joined as parties to
8 the action. Service of process on owners may be by
9 publication, but the plaintiff shall furnish all unit
10 owners not personally served with process with copies of
11 the petition and final judgment of the court by certified
12 mail, return receipt requested, at their last known
13 address.

14 (6) Nothing contained in this Section shall be
15 construed to invalidate any provision of a declaration
16 authorizing the developer to amend an instrument prior to
17 the latest date on which the initial membership meeting of
18 the unit owners must be held, whether or not it has
19 actually been held, to bring the instrument into compliance
20 with the legal requirements of the Federal National
21 Mortgage Association, the Federal Home Loan Mortgage
22 Corporation, the Federal Housing Administration, the
23 United States Veterans Administration or their respective
24 successors and assigns.

25 (i) The provisions of subsections (c) through (h) are
26 applicable to all declarations, other condominium instruments,

1 and other duly recorded covenants establishing the powers and
2 duties of the master association recorded under this Act. Any
3 portion of a declaration, other condominium instrument, or
4 other duly recorded covenant establishing the powers and duties
5 of a master association which contains provisions contrary to
6 the provisions of subsection (c) through (h) shall be void as
7 against public policy and ineffective. Any declaration, other
8 condominium instrument, or other duly recorded covenant
9 establishing the powers and duties of the master association
10 which fails to contain the provisions required by subsections
11 (c) through (h) shall be deemed to incorporate such provisions
12 by operation of law.

13 (j) The provisions of subsections (c) through (h) are
14 applicable to all common interest community associations and
15 their unit owners for common interest community associations
16 which are subject to the provisions of Section 9-102(a)(8) of
17 the Code of Civil Procedure. For purposes of this subsection,
18 the terms "common interest community" and "unit owners" shall
19 have the same meaning as set forth in Section 9-102(c) of the
20 Code of Civil Procedure.

21 (Source: P.A. 96-1045, eff. 7-14-10.)