

SB2954



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2954

Introduced 2/1/2012, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

765 ILCS 605/9

from Ch. 30, par. 309

Amends the Condominium Property Act. Provides that the condominium instruments may provide an alternative formula for assessment of common expenses that are specifically enumerated in the condominium instruments if use of the alternative formula is approved by a three-fifths vote of the owners.

LRB097 14771 AJO 59796 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 (a-5) The condominium instruments may provide an
18 alternative formula for assessment of common expenses that are
19 specifically enumerated in the condominium instruments if use
20 of the alternative formula is approved by a three-fifths vote
21 of the owners.

22 (b) The condominium instruments may provide that common
23 expenses for insurance premiums be assessed on a basis

1 reflecting increased charges for coverage on certain units.

2 (c) Budget and reserves.

3 (1) The board of managers shall prepare and distribute
4 to all unit owners a detailed proposed annual budget,
5 setting forth with particularity all anticipated common
6 expenses by category as well as all anticipated assessments
7 and other income. The initial budget and common expense
8 assessment based thereon shall be adopted prior to the
9 conveyance of any unit. The budget shall also set forth
10 each unit owner's proposed common expense assessment.

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

1 increase needed to fund reserves; and (v) the ability of
2 the association to obtain financing or refinancing.

3 (3) Notwithstanding the provisions of this subsection
4 (c), an association without a reserve requirement in its
5 condominium instruments may elect to waive in whole or in
6 part the reserve requirements of this Section by a vote of
7 2/3 of the total votes of the association. Any association
8 having elected under this paragraph (3) to waive the
9 provisions of subsection (c) may by a vote of 2/3 of the
10 total votes of the association elect to again be governed
11 by the requirements of subsection (c).

12 (4) In the event that an association elects to waive
13 all or part of the reserve requirements of this Section,
14 that fact must be disclosed after the meeting at which the
15 waiver occurs by the association in the financial
16 statements of the association and, highlighted in bold
17 print, in the response to any request of a prospective
18 purchaser for the information prescribed under Section
19 22.1; and no member of the board of managers or the
20 managing agent of the association shall be liable, and no
21 cause of action may be brought for damages against these
22 parties, for the lack or inadequacy of reserve funds in the
23 association budget.

24 (d) (Blank).

25 (e) The condominium instruments may provide for the
26 assessment, in connection with expenditures for the limited

1 common elements, of only those units to which the limited
2 common elements are assigned.

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

5 (g) Lien.

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

26 (2) With respect to encumbrances executed prior to

1 August 30, 1984 or encumbrances executed subsequent to
2 August 30, 1984 which are neither bonafide first mortgages
3 nor trust deeds and which encumbrances contain a statement
4 of a mailing address in the State of Illinois where notice
5 may be mailed to the encumbrancer thereunder, if and
6 whenever and as often as the manager or board of managers
7 shall send, by United States certified or registered mail,
8 return receipt requested, to any such encumbrancer at the
9 mailing address set forth in the recorded encumbrance a
10 statement of the amounts and due dates of the unpaid common
11 expenses with respect to the encumbered unit, then, unless
12 otherwise provided in the declaration or bylaws, the prior
13 recorded encumbrance shall be subject to the lien of all
14 unpaid common expenses with respect to the unit which
15 become due and payable within a period of 90 days after the
16 date of mailing of each such notice.

17 (3) The purchaser of a condominium unit at a judicial
18 foreclosure sale, or a mortgagee who receives title to a
19 unit by deed in lieu of foreclosure or judgment by common
20 law strict foreclosure or otherwise takes possession
21 pursuant to court order under the Illinois Mortgage
22 Foreclosure Law, shall have the duty to pay the unit's
23 proportionate share of the common expenses for the unit
24 assessed from and after the first day of the month after
25 the date of the judicial foreclosure sale, delivery of the
26 deed in lieu of foreclosure, entry of a judgment in common

1 law strict foreclosure, or taking of possession pursuant to
2 such court order. Such payment confirms the extinguishment
3 of any lien created pursuant to paragraph (1) or (2) of
4 this subsection (g) by virtue of the failure or refusal of
5 a prior unit owner to make payment of common expenses,
6 where the judicial foreclosure sale has been confirmed by
7 order of the court, a deed in lieu thereof has been
8 accepted by the lender, or a consent judgment has been
9 entered by the court.

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

25 (5) The notice of sale of a condominium unit under
26 subsection (c) of Section 15-1507 of the Code of Civil

1 Procedure shall state that the purchaser of the unit other
2 than a mortgagee shall pay the assessments and the legal
3 fees required by subdivisions (g) (1) and (g) (4) of Section
4 9 of this Act. The statement of assessment account issued
5 by the association to a unit owner under subsection (i) of
6 Section 18 of this Act, and the disclosure statement issued
7 to a prospective purchaser under Section 22.1 of this Act,
8 shall state the amount of the assessments and the legal
9 fees, if any, required by subdivisions (g) (1) and (g) (4) of
10 Section 9 of this Act.

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

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

1 (j) Any encumbrancer may from time to time request in
2 writing a written statement from the manager or board of
3 managers setting forth the unpaid common expenses with respect
4 to the unit covered by his encumbrance. Unless the request is
5 complied with within 20 days, all unpaid common expenses which
6 become due prior to the date of the making of such request
7 shall be subordinate to the lien of the encumbrance. Any
8 encumbrancer holding a lien on a unit may pay any unpaid common
9 expenses payable with respect to the unit, and upon payment the
10 encumbrancer shall have a lien on the unit for the amounts paid
11 at the same rank as the lien of his encumbrance.

12 (k) Nothing in Public Act 83-1271 is intended to change the
13 lien priorities of any encumbrance created prior to August 30,
14 1984.

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