



## 97TH GENERAL ASSEMBLY

### State of Illinois

### 2011 and 2012

### SB3572

Introduced 2/10/2012, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

765 ILCS 160/1-15  
765 ILCS 160/1-20  
765 ILCS 160/1-25  
765 ILCS 160/1-30  
765 ILCS 160/1-35  
765 ILCS 160/1-45

Amends the Common Interest Community Association Act. Provides that the board of directors of a common interest community association has the authority to revise all severed community instruments independent of the membership. Provides that no action to incorporate a common interest community as a municipality shall begin until two-thirds of the members sign an incorporation document. Provides that routine scheduled elections (instead of annual elections) shall be held for the board of managers or the board of directors. Provides for the elimination of voting by proxy in elections. Provides that if there are multiple owners of a single unit only one of the multiple owners is eligible to serve as a board member at any one time, unless the member owns another unit independently. Provides that the Board shall approve a budget including reserves, capital expenses, and operating expenses which shall be assessed equally to the membership. Provides that if total common expenses exceed the budget, the board shall disclose this to all members and identify subsequent assessments that will be made to offset this variance in future budgets. Provides that assessments for additions and alterations to common areas or to association-owned property not in the budget, shall be separately assessed and are subject to approval of a simple majority (instead of two-thirds) of the total members at a meeting called for that purpose. Makes other changes.

LRB097 18505 AJO 63736 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 Common Interest Community Association Act is  
5 amended by changing Sections 1-15, 1-20, 1-25, 1-30, 1-35, and  
6 1-45 as follows:

7 (765 ILCS 160/1-15)

8 Sec. 1-15. Construction, interpretation, and validity of  
9 community instruments.

10 (a) Except to the extent otherwise provided by the  
11 declaration or other community instruments, the terms defined  
12 in Section 1-5 of this Act shall be deemed to have the meaning  
13 specified therein unless the context otherwise requires.

14 (b) All provisions of the declaration, bylaws, and other  
15 community instruments are severable. The board of directors has  
16 the authority to revise all severed community instruments  
17 independent of the membership.

18 (c) A provision in the declaration limiting ownership,  
19 rental, or occupancy of a unit to a person 55 years of age or  
20 older shall be valid and deemed not to be in violation of  
21 Article 3 of the Illinois Human Rights Act provided that the  
22 person or the immediate family of a person owning, renting, or  
23 lawfully occupying such unit prior to the recording of the

1 initial declaration shall not be deemed to be in violation of  
2 such age restriction so long as they continue to own or reside  
3 in such unit.

4 (d) Every common interest community association shall  
5 define a member and its relationship to the units or unit  
6 owners in its community instruments.

7 (Source: P.A. 96-1400, eff. 7-29-10; 97-605, eff. 8-26-11.)

8 (765 ILCS 160/1-20)

9 Sec. 1-20. Amendments to the declaration or bylaws.

10 (a) The administration of every property shall be governed  
11 by the declaration and bylaws, which may either be embodied in  
12 the declaration or in a separate instrument, a true copy of  
13 which shall be appended to and recorded with the declaration.  
14 No modification or amendment of the declaration or bylaws shall  
15 be valid unless the same is set forth in an amendment thereof  
16 and such amendment is duly recorded. An amendment of the  
17 declaration or bylaws shall be deemed effective upon  
18 recordation, unless the amendment sets forth a different  
19 effective date.

20 (b) Unless otherwise provided by this Act, amendments to  
21 community instruments authorized to be recorded shall be  
22 executed and recorded by the president of the board or such  
23 other officer authorized by the common interest community  
24 association or the community instruments.

25 (c) If an association that currently permits leasing amends

1 its declaration, bylaws, or rules and regulations to prohibit  
2 leasing, nothing in this Act or the declarations, bylaws, rules  
3 and regulations of an association shall prohibit a unit owner  
4 incorporated under 26 USC 501(c)(3) which is leasing a unit at  
5 the time of the prohibition from continuing to do so until such  
6 time that the unit owner voluntarily sells the unit; and no  
7 special fine, fee, dues, or penalty shall be assessed against  
8 the unit owner for leasing its unit.

9 (d) No action to incorporate a common interest community as  
10 a municipality shall commence until an instrument agreeing to  
11 incorporation has been signed by two-thirds of the members.

12 (Source: P.A. 96-1400, eff. 7-29-10; 97-605, eff. 8-26-11.)

13 (765 ILCS 160/1-25)

14 Sec. 1-25. Board of managers, board of directors, duties,  
15 elections, and voting.

16 (a) Routine scheduled elections shall be held for ~~There~~  
17 ~~shall be an annual election of~~ the board of managers or board  
18 of directors from among the membership of a common interest  
19 community association.

20 (b) (Blank).

21 (c) The members of the board shall serve without  
22 compensation, unless the community instruments indicate  
23 otherwise.

24 (d) No member of the board or officer shall be elected for  
25 a term of more than 3 years, but officers and board members may

1 succeed themselves.

2 (e) If there is a vacancy on the board, the remaining  
3 members of the board may fill the vacancy by a two-thirds vote  
4 of the remaining board members until the next annual meeting of  
5 the membership or until members holding 20% of the votes of the  
6 association request a meeting of the members to fill the  
7 vacancy for the balance of the term. A meeting of the members  
8 shall be called for purposes of filling a vacancy on the board  
9 no later than 30 days following the filing of a petition signed  
10 by membership holding 20% of the votes of the association  
11 requesting such a meeting.

12 (f) There shall be an election of a:

13 (1) president from among the members of the board, who  
14 shall preside over the meetings of the board and of the  
15 membership;

16 (2) secretary from among the members of the board, who  
17 shall keep the minutes of all meetings of the board and of  
18 the membership and who shall, in general, perform all the  
19 duties incident to the office of secretary; and

20 (3) treasurer from among the members of the board, who  
21 shall keep the financial records and books of account.

22 (g) If no election is held to elect board members within  
23 the time period specified in the bylaws, or within a reasonable  
24 amount of time thereafter not to exceed 90 days, then 20% of  
25 the members may bring an action to compel compliance with the  
26 election requirements specified in the bylaws. If the court

1 finds that an election was not held to elect members of the  
2 board within the required period due to the bad faith acts or  
3 omissions of the board of managers or the board of directors,  
4 the unit owners shall be entitled to recover their reasonable  
5 attorney's fees and costs from the association. If the relevant  
6 notice requirements have been met and an election is not held  
7 solely due to a lack of a quorum, then this subsection (g) does  
8 not apply.

9 (h) Where there is more than one owner of a unit and there  
10 is only one member vote associated with that unit, if only one  
11 of the multiple owners is present at a meeting of the  
12 membership, he or she is entitled to cast the member vote  
13 associated with that unit.

14 (h-5) A member may vote:

15 (1) by proxy executed in writing by the member or by  
16 his or her duly authorized attorney in fact, provided,  
17 however, that the proxy bears the date of execution. Unless  
18 the community instruments or the written proxy itself  
19 provide otherwise, proxies will not be valid for more than  
20 11 months after the date of its execution; or

21 (2) by submitting an association-issued ballot in  
22 person at the election meeting; or

23 (3) by submitting an association-issued ballot to the  
24 association or its designated agent by mail or other means  
25 of delivery specified in the declaration or bylaws.

26 (i) The association may, upon adoption of the appropriate

1 rules by the board, conduct elections by secret ballot,  
2 distributed by the association, whereby the voting ballot is  
3 marked only with the voting interest for the member and the  
4 vote itself, provided that the association shall further adopt  
5 rules to verify the status of the member ~~issuing a proxy or~~  
6 casting a ballot. A candidate for election to the board or such  
7 candidate's representative shall have the right to be present  
8 at the counting of ballots at such election.

9 (j) Upon proof of purchase, the purchaser of a unit from a  
10 seller other than the developer pursuant to an installment  
11 contract for purchase shall, during such times as he or she  
12 resides in the unit, be counted toward a quorum for purposes of  
13 election of members of the board at any meeting of the  
14 membership called for purposes of electing members of the  
15 board, shall have the right to vote for the members of the  
16 board of the common interest community association and to be  
17 elected to and serve on the board unless the seller expressly  
18 retains in writing any or all of such rights.

19 (Source: P.A. 96-1400, eff. 7-29-10; 97-605, eff. 8-26-11.)

20 (765 ILCS 160/1-30)

21 Sec. 1-30. Board duties and obligations; records.

22 (a) The board shall meet at least 4 times annually.

23 (b) A member of the board of the common interest community  
24 association may not enter into a contract with a current board  
25 member, or with a corporation or partnership in which a board

1 member or a member of his or her immediate family has 25% or  
2 more interest, unless notice of intent to enter into the  
3 contract is given to unit owners within 20 days after a  
4 decision is made to enter into the contract and the unit owners  
5 are afforded an opportunity by filing a petition, signed by 20%  
6 of the membership, for an election to approve or disapprove the  
7 contract; such petition shall be filed within 20 days after  
8 such notice and such election shall be held within 30 days  
9 after filing the petition. For purposes of this subsection, a  
10 board member's immediate family means the board member's  
11 spouse, parents, and children.

12 (c) The bylaws shall provide for the maintenance, repair,  
13 and replacement of the common areas and payments therefor,  
14 including the method of approving payment vouchers.

15 (d) (Blank).

16 (e) The association may engage the services of a manager or  
17 management company.

18 (f) The association shall have one class of membership  
19 unless the declaration or bylaws provide otherwise; however,  
20 this subsection (f) shall not be construed to limit the  
21 operation of subsection (c) of Section 1-20 of this Act.

22 (g) The board shall have the power, after notice and an  
23 opportunity to be heard, to levy and collect reasonable fines  
24 from unit owners for violations of the declaration, bylaws, and  
25 rules and regulations of the common interest community  
26 association.



1 (h) Other than attorney's fees and court or arbitration  
2 costs, no fees pertaining to the collection of a unit owner's  
3 financial obligation to the association, including fees  
4 charged by a manager or managing agent, shall be added to and  
5 deemed a part of a unit owner's respective share of the common  
6 expenses unless: (i) the managing agent fees relate to the  
7 costs to collect common expenses for the association; (ii) the  
8 fees are set forth in a contract between the managing agent and  
9 the association; and (iii) the authority to add the management  
10 fees to a unit owner's respective share of the common expenses  
11 is specifically stated in the declaration or bylaws of the  
12 association.

13 (i) Board records.

14 (1) The board shall maintain the following records of  
15 the association and make them available for examination and  
16 copying at convenient hours of weekdays by any unit owner  
17 in a common interest community subject to the authority of  
18 the board, their mortgagees, and their duly authorized  
19 agents or attorneys:

20 (i) Copies of the recorded declaration, other  
21 community instruments, other duly recorded covenants  
22 and bylaws and any amendments, articles of  
23 incorporation, annual reports, and any rules and  
24 regulations adopted by the board shall be available.  
25 Prior to the organization of the board, the developer  
26 shall maintain and make available the records set forth

1 in this paragraph (i) for examination and copying.

2 (ii) Detailed and accurate records in  
3 chronological order of the receipts and expenditures  
4 affecting the common areas, specifying and itemizing  
5 the maintenance and repair expenses of the common areas  
6 and any other expenses incurred, and copies of all  
7 contracts, leases, or other agreements entered into by  
8 the board shall be maintained.

9 (iii) The minutes of all meetings of the board  
10 which shall be maintained for not less than 7 years.

11 (iv) With a written statement of a proper purpose,  
12 ballots and proxies related thereto, if any, for any  
13 election held for the board and for any other matters  
14 voted on by the unit owners, which shall be maintained  
15 for not less than one year.

16 (v) With a written statement of a proper purpose,  
17 such other records of the board as are available for  
18 inspection by members of a not-for-profit corporation  
19 pursuant to Section 107.75 of the General Not For  
20 Profit Corporation Act of 1986 shall be maintained.

21 (vi) With respect to units owned by a land trust, a  
22 living trust, or other legal entity, the trustee,  
23 officer, or manager of the entity may designate, in  
24 writing, a person to cast votes on behalf of the unit  
25 owner and a designation shall remain in effect until a  
26 subsequent document is filed with the association.

1           (2) Where a request for records under this subsection  
2           is made in writing to the board or its agent, failure to  
3           provide the requested record or to respond within 30 days  
4           shall be deemed a denial by the board.

5           (3) A reasonable fee may be charged by the board for  
6           the cost of retrieving and copying records properly  
7           requested.

8           (4) If the board fails to provide records properly  
9           requested under paragraph (1) of this subsection (i) within  
10          the time period provided in that paragraph (1), the unit  
11          owner may seek appropriate relief and shall be entitled to  
12          an award of reasonable attorney's fees and costs if the  
13          unit owner prevails and the court finds that such failure  
14          is due to the acts or omissions of the board of managers or  
15          the board of directors.

16          (j) The board shall have standing and capacity to act in a  
17          representative capacity in relation to matters involving the  
18          common areas or more than one unit, on behalf of the unit  
19          owners as their interests may appear.

20          (Source: P.A. 96-1400, eff. 7-29-10; 97-605, eff. 8-26-11.)

21           (765 ILCS 160/1-35)

22           Sec. 1-35. Unit owner powers, duties, and obligations.

23           (a) The provisions of this Act, the declaration, bylaws,  
24           other community instruments, and rules and regulations that  
25           relate to the use of an individual unit or the common areas

1 shall be applicable to any person leasing a unit and shall be  
2 deemed to be incorporated in any lease executed or renewed on  
3 or after the effective date of this Act. With regard to any  
4 lease entered into subsequent to the effective date of this  
5 Act, the unit owner leasing the unit shall deliver a copy of  
6 the signed lease to the association or if the lease is oral, a  
7 memorandum of the lease, not later than the date of occupancy  
8 or 10 days after the lease is signed, whichever occurs first.

9 (b) If there are multiple owners of a single unit, only one  
10 of the multiple owners shall be eligible to serve as a member  
11 of the board at any one time unless the member owns another  
12 unit independently.

13 (c) Two-thirds of the membership may remove a board member  
14 as a director at a duly called special meeting.

15 (d) In the event of any resale of a unit in a common  
16 interest community association by a unit owner other than the  
17 developer, the board shall make available for inspection to the  
18 prospective purchaser, upon demand, the following:

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

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

24 (3) A statement of any capital expenditures  
25 anticipated by the association within the current or  
26 succeeding 2 fiscal years.

1 (4) A statement of the status and amount of any reserve  
2 or replacement fund and any other fund specifically  
3 designated for association projects.

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

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

9 (7) A statement setting forth what insurance coverage  
10 is provided for all members ~~unit owners~~ by the association  
11 for common properties.

12 The principal officer of the board or such other officer as  
13 is specifically designated shall furnish the above information  
14 within 30 days after receiving a written request for such  
15 information.

16 A reasonable fee covering the direct out-of-pocket cost of  
17 copying and providing such information may be charged by the  
18 association or the board to the unit seller for providing the  
19 information.

20 (Source: P.A. 96-1400, eff. 7-29-10; 97-605, eff. 8-26-11.)

21 (765 ILCS 160/1-45)

22 Sec. 1-45. Finances.

23 (a) The board shall approve a budget including reserves,  
24 capital expenses, and operating expenses which shall be  
25 assessed equally to the membership. Each unit owner shall

1 receive through a prescribed delivery method, at least 30 days  
2 but not more than 60 days prior to the adoption thereof by the  
3 board, a copy of the proposed annual budget together with an  
4 indication of which portions are intended for reserves, capital  
5 expenditures or repairs or payment of real estate taxes.

6 (b) The board shall provide all members ~~unit owners~~ with a  
7 reasonably detailed summary of the receipts, common expenses,  
8 and reserves for the preceding budget year. The board shall (i)  
9 make available for review to all unit owners an itemized  
10 accounting of the common expenses for the preceding year  
11 actually incurred or paid, together with an indication of which  
12 portions were for reserves, capital expenditures or repairs or  
13 payment of real estate taxes and with a tabulation of the  
14 amounts collected pursuant to the budget or assessment, and  
15 showing the net excess or deficit of income over expenditures  
16 plus reserves or (ii) provide a consolidated annual independent  
17 audit report of the financial status of all fund accounts  
18 within the association.

19 (c) If an adopted budget or any separate assessment adopted  
20 by the board would result in the sum of all regular and  
21 separate assessments payable in the current fiscal year  
22 exceeding 115% of the sum of all regular and separate  
23 assessments payable during the preceding fiscal year, the  
24 common interest community association, upon written petition  
25 by unit owners with 20% of the votes of the association  
26 delivered to the board within 14 days of the board action,

1 shall call a meeting of the unit owners within 30 days of the  
2 date of delivery of the petition to consider the budget or  
3 separate assessment; unless a majority of the total votes of  
4 the unit owners are cast at the meeting to reject the budget or  
5 separate assessment, it shall be deemed ratified.

6 (d) If total common expenses exceed the total amount of the  
7 approved and adopted budget, the common interest community  
8 association shall disclose this variance to all its members and  
9 specifically identify the subsequent assessments needed to  
10 offset this variance in future budgets. ~~Any common expense not~~  
11 ~~set forth in the budget or any increase in assessments over the~~  
12 ~~amount adopted in the budget shall be separately assessed~~  
13 ~~against all unit owners.~~

14 (e) Separate assessments for expenditures relating to  
15 emergencies or mandated by law may be adopted by the board  
16 without being subject to member ~~unit owner~~ approval or the  
17 provisions of subsection (c) or (f) of this Section. As used  
18 herein, "emergency" means a danger or to otherwise compromise  
19 the structural integrity of the common areas or any of the  
20 common assets of the common interest community. This may also  
21 include decisions that affect the life, health, safety, and  
22 welfare of the membership ~~an immediate danger to the structural~~  
23 ~~integrity of the common areas or to the life, health, safety,~~  
24 ~~or property of the unit owners.~~

25 (f) Assessments for additions and alterations to the common  
26 areas or to association-owned property not included in the

1 adopted annual budget, shall be separately assessed and are  
2 subject to approval of a simple majority ~~two-thirds~~ of the  
3 total members at a meeting called for that purpose.

4 (g) The board may adopt separate assessments payable over  
5 more than one fiscal year. With respect to multi-year  
6 assessments not governed by subsections (e) and (f) of this  
7 Section, the entire amount of the multi-year assessment shall  
8 be deemed considered and authorized in the first fiscal year in  
9 which the assessment is approved.

10 (h) The board of a common interest community association  
11 shall have the authority to establish and maintain a system of  
12 master metering of public utility services to collect payments  
13 in conjunction therewith, subject to the requirements of the  
14 Tenant Utility Payment Disclosure Act.

15 (Source: P.A. 96-1400, eff. 7-29-10; 97-605, eff. 8-26-11.)