



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB2646

Introduced 2/21/2013, by Rep. Emily McAsey

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Condominium Property Act. Provides that the purchaser of a condominium unit at a judicial foreclosure sale, other than a mortgagee, or a purchaser of a condominium unit from a mortgagee who acquired title through a judicial foreclosure, a consent foreclosure, a common law strict foreclosure, or the delivery of a deed in lieu of foreclosure (instead of the purchaser of a condominium unit at a judicial foreclosure sale, other than a mortgagee, who takes possession of a condominium unit pursuant to a court order or a purchaser who acquires title from a mortgagee) shall have the duty to pay to the association an amount not to exceed the total of the regular monthly assessments for the condominium unit for the 9-month period immediately preceding the relevant event. Provides that the amount due may include any attorney's fees and court costs, but may not exceed 9 months of regular assessments due over the same 9-month period. Deletes language providing that the purchaser shall have the duty to pay the proportionate share, if any, of the common expenses for the unit which would have become due in the absence of any assessment acceleration for the 6 months immediately preceding the institution of an action to enforce the collection of assessments, and which remain unpaid. Deletes language providing that if the outstanding assessments are paid at any time during an action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title. Provides that the notice of a foreclosure sale of a condominium unit shall state that a purchaser, other than a mortgagee, shall pay to the association any unpaid monthly assessments for the 9-month period preceding the sale, including attorney's fees and court costs. Provides that each offer of sale or contract for the sale of a condominium unit under the new provisions shall state that the purchaser of the unit shall pay to the association the fees required by the new provisions, and that each disclosure statement issued to a prospective purchaser shall list the required fees. Provides that in certain situations, the owner or owner's agent of a condominium unit must make specified information available within 10 days of the request (instead of "upon demand"). Effective immediately.

LRB098 09267 HEP 39406 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 Sections 9 and 22.1 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 (b) The condominium instruments may provide that common  
18 expenses for insurance premiums be assessed on a basis  
19 reflecting increased charges for coverage on certain units.

20 (c) Budget and reserves.

21 (1) The board of managers shall prepare and distribute  
22 to all unit owners a detailed proposed annual budget,  
23 setting forth with particularity all anticipated common

1 expenses by category as well as all anticipated assessments  
2 and other income. The initial budget and common expense  
3 assessment based thereon shall be adopted prior to the  
4 conveyance of any unit. The budget shall also set forth  
5 each unit owner's proposed common expense assessment.

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

24 (3) Notwithstanding the provisions of this subsection  
25 (c), an association without a reserve requirement in its  
26 condominium instruments may elect to waive in whole or in

1 part the reserve requirements of this Section by a vote of  
2 2/3 of the total votes of the association. Any association  
3 having elected under this paragraph (3) to waive the  
4 provisions of subsection (c) may by a vote of 2/3 of the  
5 total votes of the association elect to again be governed  
6 by the requirements of subsection (c).

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

19 (d) (Blank).

20 (e) The condominium instruments may provide for the  
21 assessment, in connection with expenditures for the limited  
22 common elements, of only those units to which the limited  
23 common elements are assigned.

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

26 (g) Lien.

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

21          (2) With respect to encumbrances executed prior to  
22          August 30, 1984 or encumbrances executed subsequent to  
23          August 30, 1984 which are neither bonafide first mortgages  
24          nor trust deeds and which encumbrances contain a statement  
25          of a mailing address in the State of Illinois where notice  
26          may be mailed to the encumbrancer thereunder, if and

1           whenever and as often as the manager or board of managers  
2           shall send, by United States certified or registered mail,  
3           return receipt requested, to any such encumbrancer at the  
4           mailing address set forth in the recorded encumbrance a  
5           statement of the amounts and due dates of the unpaid common  
6           expenses with respect to the encumbered unit, then, unless  
7           otherwise provided in the declaration or bylaws, the prior  
8           recorded encumbrance shall be subject to the lien of all  
9           unpaid common expenses with respect to the unit which  
10          become due and payable within a period of 90 days after the  
11          date of mailing of each such notice.

12           (3) The purchaser of a condominium unit at a judicial  
13          foreclosure sale, or a mortgagee who receives title to a  
14          unit by deed in lieu of foreclosure or judgment by common  
15          law strict foreclosure or otherwise takes possession  
16          pursuant to court order under the Illinois Mortgage  
17          Foreclosure Law, shall have the duty to pay the unit's  
18          proportionate share of the common expenses for the unit  
19          assessed from and after the first day of the month after  
20          the date of the judicial foreclosure sale, delivery of the  
21          deed in lieu of foreclosure, entry of a judgment in common  
22          law strict foreclosure, or taking of possession pursuant to  
23          such court order. Such payment confirms the extinguishment  
24          of any lien created pursuant to paragraph (1) or (2) of  
25          this subsection (g) by virtue of the failure or refusal of  
26          a prior unit owner to make payment of common expenses,

1 where the judicial foreclosure sale has been confirmed by  
2 order of the court, a deed in lieu thereof has been  
3 accepted by the lender, or a consent judgment has been  
4 entered by the court.

5 (4) The purchaser of a condominium unit at a judicial  
6 foreclosure sale, other than a mortgagee, or a purchaser of  
7 a condominium unit from a mortgagee who acquired title  
8 through a judicial foreclosure, a consent foreclosure, a  
9 common law strict foreclosure, or the delivery of a deed in  
10 lieu of foreclosure ~~who takes possession of a condominium~~  
11 ~~unit pursuant to a court order or a purchaser who acquires~~  
12 ~~title from a mortgagee~~ shall have the duty to pay to the  
13 association an amount not to exceed the total of the  
14 regular monthly assessments for the condominium unit for  
15 the 9-month period immediately preceding any of these  
16 events. The amount due may include any attorney's fees and  
17 court costs incurred by the association during this same  
18 9-month period caused by the nonpayment of these  
19 assessments along with unpaid regular monthly assessments  
20 for the same period. However, the total amount may not  
21 exceed 9 months of regular assessments due over the same  
22 9-month period ~~the proportionate share, if any, of the~~  
23 ~~common expenses for the unit which would have become due in~~  
24 ~~the absence of any assessment acceleration during the 6~~  
25 ~~months immediately preceding institution of an action to~~  
26 ~~enforce the collection of assessments, and which remain~~

1 ~~unpaid by the owner during whose possession the assessments~~  
2 ~~accrued. If the outstanding assessments are paid at any~~  
3 ~~time during any action to enforce the collection of~~  
4 ~~assessments, the purchaser shall have no obligation to pay~~  
5 ~~any assessments which accrued before he or she acquired~~  
6 ~~title.~~

7 (5) The notice of sale of a condominium unit under  
8 subsection (c) of Section 15-1507 of the Code of Civil  
9 Procedure shall state that the purchaser of the unit other  
10 than a mortgagee shall pay to the association amounts ~~the~~  
11 ~~assessments and the legal fees~~ required by subdivisions  
12 (g) (1) and (g) (4) of Section 9 of this Act. The statement  
13 of assessment account issued by the association to a unit  
14 owner under subsection (i) of Section 18 of this Act, and  
15 the disclosure statement issued to a prospective purchaser  
16 under Section 22.1 of this Act, shall state the amount ~~of~~  
17 ~~the assessments and the legal fees, if any,~~ required by  
18 subdivisions (g) (1) and (g) (4) of Section 9 of this Act.

19 (h) A lien for common expenses shall be in favor of the  
20 members of the board of managers and their successors in office  
21 and shall be for the benefit of all other unit owners. Notice  
22 of the lien may be recorded by the board of managers, or if the  
23 developer is the manager or has a majority of seats on the  
24 board of managers and the manager or board of managers fails to  
25 do so, any unit owner may record notice of the lien. Upon the  
26 recording of such notice the lien may be foreclosed by an



1 action brought in the name of the board of managers in the same  
2 manner as a mortgage of real property.

3 (i) Unless otherwise provided in the declaration, the  
4 members of the board of managers and their successors in  
5 office, acting on behalf of the other unit owners, shall have  
6 the power to bid on the interest so foreclosed at the  
7 foreclosure sale, and to acquire and hold, lease, mortgage and  
8 convey it.

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

20 (k) Nothing in Public Act 83-1271 is intended to change the  
21 lien priorities of any encumbrance created prior to August 30,  
22 1984.

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

24 (765 ILCS 605/22.1) (from Ch. 30, par. 322.1)

25 Sec. 22.1. (a) In the event of any resale of a condominium

1 unit by a unit owner other than the developer, the Board of  
2 Managers shall, within 10 days of a request from the owner or  
3 owner's agent, make available the following for inspection by  
4 the prospective purchaser: ~~such owner shall obtain from the~~  
5 ~~Board of Managers and shall make available for inspection to~~  
6 ~~the prospective purchaser, upon demand, the following:~~

7 (1) A copy of the Declaration, by-laws, other  
8 condominium instruments and any rules and regulations.

9 (2) A statement of any liens, including a statement of  
10 the account of the unit setting forth the amounts ~~of unpaid~~  
11 ~~assessments and other charges~~ due and owing as authorized  
12 and limited by the provisions of Section 9 of this Act or  
13 the condominium instruments.

14 (3) A statement of any capital expenditures  
15 anticipated by the unit owner's association within the  
16 current or succeeding two fiscal years.

17 (4) A statement of the status and amount of any reserve  
18 for replacement fund and any portion of such fund earmarked  
19 for any specified project by the Board of Managers.

20 (5) A copy of the statement of financial condition of  
21 the unit owner's association for the last fiscal year for  
22 which such statement is available.

23 (6) A statement of the status of any pending suits or  
24 judgments in which the unit owner's association is a party.

25 (7) A statement setting forth what insurance coverage  
26 is provided for all unit owners by the unit owner's

1 association.

2 (8) A statement that any improvements or alterations  
3 made to the unit, or the limited common elements assigned  
4 thereto, by the prior unit owner are in good faith believed  
5 to be in compliance with the condominium instruments.

6 (9) The identity and mailing address of the principal  
7 officer of the unit owner's association or of the other  
8 officer or agent as is specifically designated to receive  
9 notices.

10 (10) If ownership of the condominium unit was  
11 transferred by either a judicial foreclosure sale, a  
12 consent foreclosure, a common law strict foreclosure, or a  
13 deed in lieu of foreclosure, a statement setting forth the  
14 total due and owing under subsection (g) of Section 9 of  
15 this Act.

16 (b) The principal officer of the unit owner's association  
17 or such other officer as is specifically designated shall  
18 furnish the above information when requested to do so in  
19 writing and within 30 days of the request.

20 (c) Within 15 days of the recording of a mortgage or trust  
21 deed against a unit ownership given by the owner of that unit  
22 to secure a debt, the owner shall inform the Board of Managers  
23 of the unit owner's association of the identity of the lender  
24 together with a mailing address at which the lender can receive  
25 notices from the association. If a unit owner fails or refuses  
26 to inform the Board as required under subsection (c) then that

1 unit owner shall be liable to the association for all costs,  
2 expenses and reasonable attorneys fees and such other damages,  
3 if any, incurred by the association as a result of such failure  
4 or refusal.

5 A reasonable fee covering the direct out-of-pocket cost of  
6 providing such information and copying may be charged by the  
7 association or its Board of Managers to the unit seller for  
8 providing such information.

9 (Source: P.A. 87-692.)

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 765 ILCS 605/9 from Ch. 30, par. 309

4 765 ILCS 605/22.1 from Ch. 30, par. 322.1