

HB2646



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2646

by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

765 ILCS 605/18

from Ch. 30, par. 318

Amends the Condominium Property Act. Provides that the bylaws of a condominium shall provide for the ratification and confirmation by the board of managers of actions taken by the board without a meeting. Provides that the action shall be deemed not approved if specified procedural requirements relating to the ratification and confirmation are not met.

LRB099 07613 HEP 27744 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 18 as follows:

6 (765 ILCS 605/18) (from Ch. 30, par. 318)

7 Sec. 18. Contents of bylaws. The bylaws shall provide for
8 at least the following:

9 (a)(1) The election from among the unit owners of a board
10 of managers, the number of persons constituting such board, and
11 that the terms of at least one-third of the members of the
12 board shall expire annually and that all members of the board
13 shall be elected at large. If there are multiple owners of a
14 single unit, only one of the multiple owners shall be eligible
15 to serve as a member of the board at any one time.

16 (2) the powers and duties of the board;

17 (3) the compensation, if any, of the members of the board;

18 (4) the method of removal from office of members of the
19 board;

20 (5) that the board may engage the services of a manager or
21 managing agent;

22 (6) that each unit owner shall receive, at least 30 days
23 prior to the adoption thereof by the board of managers, a copy

1 of the proposed annual budget together with an indication of
2 which portions are intended for reserves, capital expenditures
3 or repairs or payment of real estate taxes;

4 (7) that the board of managers shall annually supply to all
5 unit owners an itemized accounting of the common expenses for
6 the preceding year actually incurred or paid, together with an
7 indication of which portions were for reserves, capital
8 expenditures or repairs or payment of real estate taxes and
9 with a tabulation of the amounts collected pursuant to the
10 budget or assessment, and showing the net excess or deficit of
11 income over expenditures plus reserves;

12 (8) (i) that each unit owner shall receive notice, in the
13 same manner as is provided in this Act for membership meetings,
14 of any meeting of the board of managers concerning the adoption
15 of the proposed annual budget and regular assessments pursuant
16 thereto or to adopt a separate (special) assessment, (ii) that
17 except as provided in subsection (iv) below, if an adopted
18 budget or any separate assessment adopted by the board would
19 result in the sum of all regular and separate assessments
20 payable in the current fiscal year exceeding 115% of the sum of
21 all regular and separate assessments payable during the
22 preceding fiscal year, the board of managers, upon written
23 petition by unit owners with 20 percent of the votes of the
24 association delivered to the board within 14 days of the board
25 action, shall call a meeting of the unit owners within 30 days
26 of the date of delivery of the petition to consider the budget

1 or separate assessment; unless a majority of the total votes of
2 the unit owners are cast at the meeting to reject the budget or
3 separate assessment, it is ratified, (iii) that any common
4 expense not set forth in the budget or any increase in
5 assessments over the amount adopted in the budget shall be
6 separately assessed against all unit owners, (iv) that separate
7 assessments for expenditures relating to emergencies or
8 mandated by law may be adopted by the board of managers without
9 being subject to unit owner approval or the provisions of item
10 (ii) above or item (v) below. As used herein, "emergency" means
11 an immediate danger to the structural integrity of the common
12 elements or to the life, health, safety or property of the unit
13 owners, (v) that assessments for additions and alterations to
14 the common elements or to association-owned property not
15 included in the adopted annual budget, shall be separately
16 assessed and are subject to approval of two-thirds of the total
17 votes of all unit owners, (vi) that the board of managers may
18 adopt separate assessments payable over more than one fiscal
19 year. With respect to multi-year assessments not governed by
20 items (iv) and (v), the entire amount of the multi-year
21 assessment shall be deemed considered and authorized in the
22 first fiscal year in which the assessment is approved;

23 (9) that meetings of the board of managers shall be open to
24 any unit owner, except for the portion of any meeting held (i)
25 to discuss litigation when an action against or on behalf of
26 the particular association has been filed and is pending in a

1 court or administrative tribunal, or when the board of managers
2 finds that such an action is probable or imminent, (ii) to
3 consider information regarding appointment, employment or
4 dismissal of an employee, or (iii) to discuss violations of
5 rules and regulations of the association or a unit owner's
6 unpaid share of common expenses; that any vote on these matters
7 shall be taken at a meeting or portion thereof open to any unit
8 owner; that any unit owner may record the proceedings at
9 meetings or portions thereof required to be open by this Act by
10 tape, film or other means; that the board may prescribe
11 reasonable rules and regulations to govern the right to make
12 such recordings, that notice of such meetings shall be mailed
13 or delivered at least 48 hours prior thereto, unless a written
14 waiver of such notice is signed by the person or persons
15 entitled to such notice pursuant to the declaration, bylaws,
16 other condominium instrument, or provision of law other than
17 this subsection before the meeting is convened, and that copies
18 of notices of meetings of the board of managers shall be posted
19 in entranceways, elevators, or other conspicuous places in the
20 condominium at least 48 hours prior to the meeting of the board
21 of managers except where there is no common entranceway for 7
22 or more units, the board of managers may designate one or more
23 locations in the proximity of these units where the notices of
24 meetings shall be posted;

25 (9-5) notwithstanding the provisions of subdivision (a)(9)
26 of this Section, that any action which may be taken at a

1 meeting of the board of managers may be taken without a meeting
2 if a consent, in writing and setting forth the action taken, is
3 approved in writing by all members of the board of managers
4 then in office; that the writing shall state the date of
5 consent to the action; that the consent must be ratified and
6 confirmed at the first occurring meeting of the board of
7 managers, which must be held within 30 days after the date of
8 approval of the action at either a regular or special board
9 meeting; that a copy of the unanimous written consent shall be
10 attached to, and made a part of, the minutes of the meeting;
11 that consent sent by any acceptable technological means to or
12 from the director or management company representative
13 requesting the consent shall be deemed consent in writing; that
14 failure to timely ratify and confirm the consent shall result
15 in the action being deemed not approved by the board of
16 managers; that the notice of the board of managers meeting at
17 which the consent to the action is to be ratified and confirmed
18 shall describe the action taken and state that the board of
19 managers will vote to ratify and confirm the action at that
20 meeting; that at the board of managers meeting, at least one of
21 the members of the board of managers shall be required to state
22 his or her reasons for consenting to the action and that a
23 summary of the statement or statements shall be made a part of
24 the minutes of the board meeting; that if the number of members
25 of the board of managers in office at the time of the
26 ratification and confirmation consent is fewer than the number

1 required for a quorum of the board of managers, the action
2 shall be deemed not the action of the board of managers;

3 (10) that the board shall meet at least 4 times annually;

4 (11) that no member of the board or officer shall be
5 elected for a term of more than 2 years, but that officers and
6 board members may succeed themselves;

7 (12) the designation of an officer to mail and receive all
8 notices and execute amendments to condominium instruments as
9 provided for in this Act and in the condominium instruments;

10 (13) the method of filling vacancies on the board which
11 shall include authority for the remaining members of the board
12 to fill the vacancy by two-thirds vote until the next annual
13 meeting of unit owners or for a period terminating no later
14 than 30 days following the filing of a petition signed by unit
15 owners holding 20% of the votes of the association requesting a
16 meeting of the unit owners to fill the vacancy for the balance
17 of the term, and that a meeting of the unit owners shall be
18 called for purposes of filling a vacancy on the board no later
19 than 30 days following the filing of a petition signed by unit
20 owners holding 20% of the votes of the association requesting
21 such a meeting, and the method of filling vacancies among the
22 officers that shall include the authority for the members of
23 the board to fill the vacancy for the unexpired portion of the
24 term;

25 (14) what percentage of the board of managers, if other
26 than a majority, shall constitute a quorum;

1 (15) provisions concerning notice of board meetings to
2 members of the board;

3 (16) the board of managers may not enter into a contract
4 with a current board member or with a corporation or
5 partnership in which a board member or a member of the board
6 member's immediate family has 25% or more interest, unless
7 notice of intent to enter the contract is given to unit owners
8 within 20 days after a decision is made to enter into the
9 contract and the unit owners are afforded an opportunity by
10 filing a petition, signed by 20% of the unit owners, for an
11 election to approve or disapprove the contract; such petition
12 shall be filed within 20 days after such notice and such
13 election shall be held within 30 days after filing the
14 petition; for purposes of this subsection, a board member's
15 immediate family means the board member's spouse, parents, and
16 children;

17 (17) that the board of managers may disseminate to unit
18 owners biographical and background information about
19 candidates for election to the board if (i) reasonable efforts
20 to identify all candidates are made and all candidates are
21 given an opportunity to include biographical and background
22 information in the information to be disseminated; and (ii) the
23 board does not express a preference in favor of any candidate;

24 (18) any proxy distributed for board elections by the board
25 of managers gives unit owners the opportunity to designate any
26 person as the proxy holder, and gives the unit owner the

1 opportunity to express a preference for any of the known
2 candidates for the board or to write in a name;

3 (19) that special meetings of the board of managers can be
4 called by the president or 25% of the members of the board; and

5 (20) that the board of managers may establish and maintain
6 a system of master metering of public utility services and
7 collect payments in connection therewith, subject to the
8 requirements of the Tenant Utility Payment Disclosure Act.

9 (b)(1) What percentage of the unit owners, if other than
10 20%, shall constitute a quorum provided that, for condominiums
11 with 20 or more units, the percentage of unit owners
12 constituting a quorum shall be 20% unless the unit owners
13 holding a majority of the percentage interest in the
14 association provide for a higher percentage, provided that in
15 voting on amendments to the association's bylaws, a unit owner
16 who is in arrears on the unit owner's regular or separate
17 assessments for 60 days or more, shall not be counted for
18 purposes of determining if a quorum is present, but that unit
19 owner retains the right to vote on amendments to the
20 association's bylaws;

21 (2) that the association shall have one class of
22 membership;

23 (3) that the members shall hold an annual meeting, one of
24 the purposes of which shall be to elect members of the board of
25 managers;

26 (4) the method of calling meetings of the unit owners;

1 (5) that special meetings of the members can be called by
2 the president, board of managers, or by 20% of unit owners;

3 (6) that written notice of any membership meeting shall be
4 mailed or delivered giving members no less than 10 and no more
5 than 30 days notice of the time, place and purpose of such
6 meeting except that notice may be sent, to the extent the
7 condominium instruments or rules adopted thereunder expressly
8 so provide, by electronic transmission consented to by the unit
9 owner to whom the notice is given, provided the director and
10 officer or his agent certifies in writing to the delivery by
11 electronic transmission;

12 (7) that voting shall be on a percentage basis, and that
13 the percentage vote to which each unit is entitled is the
14 percentage interest of the undivided ownership of the common
15 elements appurtenant thereto, provided that the bylaws may
16 provide for approval by unit owners in connection with matters
17 where the requisite approval on a percentage basis is not
18 specified in this Act, on the basis of one vote per unit;

19 (8) that, where there is more than one owner of a unit, if
20 only one of the multiple owners is present at a meeting of the
21 association, he is entitled to cast all the votes allocated to
22 that unit, if more than one of the multiple owners are present,
23 the votes allocated to that unit may be cast only in accordance
24 with the agreement of a majority in interest of the multiple
25 owners, unless the declaration expressly provides otherwise,
26 that there is majority agreement if any one of the multiple

1 owners cast the votes allocated to that unit without protest
2 being made promptly to the person presiding over the meeting by
3 any of the other owners of the unit;

4 (9) (A) except as provided in subparagraph (B) of this
5 paragraph (9) in connection with board elections, that a unit
6 owner may vote by proxy executed in writing by the unit owner
7 or by his duly authorized attorney in fact; that the proxy must
8 bear the date of execution and, unless the condominium
9 instruments or the written proxy itself provide otherwise, is
10 invalid after 11 months from the date of its execution; to the
11 extent the condominium instruments or rules adopted thereunder
12 expressly so provide, a vote or proxy may be submitted by
13 electronic transmission, provided that any such electronic
14 transmission shall either set forth or be submitted with
15 information from which it can be determined that the electronic
16 transmission was authorized by the unit owner or the unit
17 owner's proxy;

18 (B) that if a rule adopted at least 120 days before a board
19 election or the declaration or bylaws provide for balloting as
20 set forth in this subsection, unit owners may not vote by proxy
21 in board elections, but may vote only (i) by submitting an
22 association-issued ballot in person at the election meeting or
23 (ii) by submitting an association-issued ballot to the
24 association or its designated agent by mail or other means of
25 delivery specified in the declaration, bylaws, or rule; that
26 the ballots shall be mailed or otherwise distributed to unit

1 owners not less than 10 and not more than 30 days before the
2 election meeting, and the board shall give unit owners not less
3 than 21 days' prior written notice of the deadline for
4 inclusion of a candidate's name on the ballots; that the
5 deadline shall be no more than 7 days before the ballots are
6 mailed or otherwise distributed to unit owners; that every such
7 ballot must include the names of all candidates who have given
8 the board or its authorized agent timely written notice of
9 their candidacy and must give the person casting the ballot the
10 opportunity to cast votes for candidates whose names do not
11 appear on the ballot; that a ballot received by the association
12 or its designated agent after the close of voting shall not be
13 counted; that a unit owner who submits a ballot by mail or
14 other means of delivery specified in the declaration, bylaws,
15 or rule may request and cast a ballot in person at the election
16 meeting, and thereby void any ballot previously submitted by
17 that unit owner;

18 (B-5) that if a rule adopted at least 120 days before a
19 board election or the declaration or bylaws provide for
20 balloting as set forth in this subparagraph, unit owners may
21 not vote by proxy in board elections, but may vote only (i) by
22 submitting an association-issued ballot in person at the
23 election meeting; or (ii) by any acceptable technological means
24 as defined in Section 2 of this Act; instructions regarding the
25 use of electronic means for voting shall be distributed to all
26 unit owners not less than 10 and not more than 30 days before

1 the election meeting, and the board shall give unit owners not
2 less than 21 days' prior written notice of the deadline for
3 inclusion of a candidate's name on the ballots; the deadline
4 shall be no more than 7 days before the instructions for voting
5 using electronic or acceptable technological means is
6 distributed to unit owners; every instruction notice must
7 include the names of all candidates who have given the board or
8 its authorized agent timely written notice of their candidacy
9 and must give the person voting through electronic or
10 acceptable technological means the opportunity to cast votes
11 for candidates whose names do not appear on the ballot; a unit
12 owner who submits a vote using electronic or acceptable
13 technological means may request and cast a ballot in person at
14 the election meeting, thereby voiding any vote previously
15 submitted by that unit owner;

16 (C) that if a written petition by unit owners with at least
17 20% of the votes of the association is delivered to the board
18 within 14 days after the board's approval of a rule adopted
19 pursuant to subparagraph (B) or subparagraph (B-5) of this
20 paragraph (9), the board shall call a meeting of the unit
21 owners within 30 days after the date of delivery of the
22 petition; that unless a majority of the total votes of the unit
23 owners are cast at the meeting to reject the rule, the rule is
24 ratified;

25 (D) that votes cast by ballot under subparagraph (B) or
26 electronic or acceptable technological means under

1 subparagraph (B-5) of this paragraph (9) are valid for the
2 purpose of establishing a quorum;

3 (10) that the association may, upon adoption of the
4 appropriate rules by the board of managers, conduct elections
5 by secret ballot whereby the voting ballot is marked only with
6 the percentage interest for the unit and the vote itself,
7 provided that the board further adopt rules to verify the
8 status of the unit owner issuing a proxy or casting a ballot;
9 and further, that a candidate for election to the board of
10 managers or such candidate's representative shall have the
11 right to be present at the counting of ballots at such
12 election;

13 (11) that in the event of a resale of a condominium unit
14 the purchaser of a unit from a seller other than the developer
15 pursuant to an installment contract for purchase shall during
16 such times as he or she resides in the unit be counted toward a
17 quorum for purposes of election of members of the board of
18 managers at any meeting of the unit owners called for purposes
19 of electing members of the board, shall have the right to vote
20 for the election of members of the board of managers and to be
21 elected to and serve on the board of managers unless the seller
22 expressly retains in writing any or all of such rights. In no
23 event may the seller and purchaser both be counted toward a
24 quorum, be permitted to vote for a particular office or be
25 elected and serve on the board. Satisfactory evidence of the
26 installment contract shall be made available to the association

1 or its agents. For purposes of this subsection, "installment
2 contact" shall have the same meaning as set forth in Section 1
3 (e) of "An Act relating to installment contracts to sell
4 dwelling structures", approved August 11, 1967, as amended;

5 (12) the method by which matters subject to the approval of
6 unit owners set forth in this Act, or in the condominium
7 instruments, will be submitted to the unit owners at special
8 membership meetings called for such purposes; and

9 (13) that matters subject to the affirmative vote of not
10 less than 2/3 of the votes of unit owners at a meeting duly
11 called for that purpose, shall include, but not be limited to:

12 (i) merger or consolidation of the association;

13 (ii) sale, lease, exchange, or other disposition
14 (excluding the mortgage or pledge) of all, or substantially
15 all of the property and assets of the association; and

16 (iii) the purchase or sale of land or of units on
17 behalf of all unit owners.

18 (c) Election of a president from among the board of
19 managers, who shall preside over the meetings of the board of
20 managers and of the unit owners.

21 (d) Election of a secretary from among the board of
22 managers, who shall keep the minutes of all meetings of the
23 board of managers and of the unit owners and who shall, in
24 general, perform all the duties incident to the office of
25 secretary.

26 (e) Election of a treasurer from among the board of

1 managers, who shall keep the financial records and books of
2 account.

3 (f) Maintenance, repair and replacement of the common
4 elements and payments therefor, including the method of
5 approving payment vouchers.

6 (g) An association with 30 or more units shall obtain and
7 maintain fidelity insurance covering persons who control or
8 disburse funds of the association for the maximum amount of
9 coverage available to protect funds in the custody or control
10 of the association plus the association reserve fund. All
11 management companies which are responsible for the funds held
12 or administered by the association shall maintain and furnish
13 to the association a fidelity bond for the maximum amount of
14 coverage available to protect funds in the custody of the
15 management company at any time. The association shall bear the
16 cost of the fidelity insurance and fidelity bond, unless
17 otherwise provided by contract between the association and a
18 management company. The association shall be the direct obligee
19 of any such fidelity bond. A management company holding reserve
20 funds of an association shall at all times maintain a separate
21 account for each association, provided, however, that for
22 investment purposes, the Board of Managers of an association
23 may authorize a management company to maintain the
24 association's reserve funds in a single interest bearing
25 account with similar funds of other associations. The
26 management company shall at all times maintain records

1 identifying all moneys of each association in such investment
2 account. The management company may hold all operating funds of
3 associations which it manages in a single operating account but
4 shall at all times maintain records identifying all moneys of
5 each association in such operating account. Such operating and
6 reserve funds held by the management company for the
7 association shall not be subject to attachment by any creditor
8 of the management company.

9 For the purpose of this subsection a management company
10 shall be defined as a person, partnership, corporation, or
11 other legal entity entitled to transact business on behalf of
12 others, acting on behalf of or as an agent for a unit owner,
13 unit owners or association of unit owners for the purpose of
14 carrying out the duties, responsibilities, and other
15 obligations necessary for the day to day operation and
16 management of any property subject to this Act. For purposes of
17 this subsection, the term "fiduciary insurance coverage" shall
18 be defined as both a fidelity bond and directors and officers
19 liability coverage, the fidelity bond in the full amount of
20 association funds and association reserves that will be in the
21 custody of the association, and the directors and officers
22 liability coverage at a level as shall be determined to be
23 reasonable by the board of managers, if not otherwise
24 established by the declaration or by laws.

25 Until one year after the effective date of this amendatory
26 Act of 1985, if a condominium association has reserves plus

1 assessments in excess of \$250,000 and cannot reasonably obtain
2 100% fidelity bond coverage for such amount, then it must
3 obtain a fidelity bond coverage of \$250,000.

4 (h) Method of estimating the amount of the annual budget,
5 and the manner of assessing and collecting from the unit owners
6 their respective shares of such estimated expenses, and of any
7 other expenses lawfully agreed upon.

8 (i) That upon 10 days notice to the manager or board of
9 managers and payment of a reasonable fee, any unit owner shall
10 be furnished a statement of his account setting forth the
11 amount of any unpaid assessments or other charges due and owing
12 from such owner.

13 (j) Designation and removal of personnel necessary for the
14 maintenance, repair and replacement of the common elements.

15 (k) Such restrictions on and requirements respecting the
16 use and maintenance of the units and the use of the common
17 elements, not set forth in the declaration, as are designed to
18 prevent unreasonable interference with the use of their
19 respective units and of the common elements by the several unit
20 owners.

21 (l) Method of adopting and of amending administrative rules
22 and regulations governing the operation and use of the common
23 elements.

24 (m) The percentage of votes required to modify or amend the
25 bylaws, but each one of the particulars set forth in this
26 section shall always be embodied in the bylaws.

1 (n) (i) The provisions of this Act, the declaration, bylaws,
2 other condominium instruments, and rules and regulations that
3 relate to the use of the individual unit or the common elements
4 shall be applicable to any person leasing a unit and shall be
5 deemed to be incorporated in any lease executed or renewed on
6 or after the effective date of this amendatory Act of 1984.

7 (ii) With regard to any lease entered into subsequent to the
8 effective date of this amendatory Act of 1989, the unit owner
9 leasing the unit shall deliver a copy of the signed lease to
10 the board or if the lease is oral, a memorandum of the lease,
11 not later than the date of occupancy or 10 days after the lease
12 is signed, whichever occurs first. In addition to any other
13 remedies, by filing an action jointly against the tenant and
14 the unit owner, an association may seek to enjoin a tenant from
15 occupying a unit or seek to evict a tenant under the provisions
16 of Article IX of the Code of Civil Procedure for failure of the
17 lessor-owner to comply with the leasing requirements
18 prescribed by this Section or by the declaration, bylaws, and
19 rules and regulations. The board of managers may proceed
20 directly against a tenant, at law or in equity, or under the
21 provisions of Article IX of the Code of Civil Procedure, for
22 any other breach by tenant of any covenants, rules, regulations
23 or bylaws.

24 (o) The association shall have no authority to forbear the
25 payment of assessments by any unit owner.

26 (p) That when 30% or fewer of the units, by number, possess

1 over 50% in the aggregate of the votes in the association, any
2 percentage vote of members specified herein or in the
3 condominium instruments shall require the specified percentage
4 by number of units rather than by percentage of interest in the
5 common elements allocated to units that would otherwise be
6 applicable and garage units or storage units, or both, shall
7 have, in total, no more votes than their aggregate percentage
8 of ownership in the common elements; this shall mean that if
9 garage units or storage units, or both, are to be given a vote,
10 or portion of a vote, that the association must add the total
11 number of votes cast of garage units, storage units, or both,
12 and divide the total by the number of garage units, storage
13 units, or both, and multiply by the aggregate percentage of
14 ownership of garage units and storage units to determine the
15 vote, or portion of a vote, that garage units or storage units,
16 or both, have. For purposes of this subsection (p), when making
17 a determination of whether 30% or fewer of the units, by
18 number, possess over 50% in the aggregate of the votes in the
19 association, a unit shall not include a garage unit or a
20 storage unit.

21 (q) That a unit owner may not assign, delegate, transfer,
22 surrender, or avoid the duties, responsibilities, and
23 liabilities of a unit owner under this Act, the condominium
24 instruments, or the rules and regulations of the Association;
25 and that such an attempted assignment, delegation, transfer,
26 surrender, or avoidance shall be deemed void.

1 The provisions of this Section are applicable to all
2 condominium instruments recorded under this Act. Any portion of
3 a condominium instrument which contains provisions contrary to
4 these provisions shall be void as against public policy and
5 ineffective. Any such instrument which fails to contain the
6 provisions required by this Section shall be deemed to
7 incorporate such provisions by operation of law.

8 (Source: P.A. 98-1042, eff. 1-1-15.)