



Association Law Update

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Chatt & Prince P.C.

New Bills Introduced Affecting Condos and HOAs

We are right at the beginning of the legislative season. However, a few bills have already been introduced of note to condominiums and homeowners associations statewide.

Sale of Condominiums/ One Class of Membership (House Bill 2401) (Rep Nekritz)

Clarifies that common interest community associations subject to CICAA have one class of voting membership unless the declaration, bylaws or operating agreement state otherwise. This gives more flexibility to documents creating multiple classes of membership. Condominiums can only have one class of voting membership, but could, theoretically, have additional classes of

membership under this bill.

This bill would also modify the number of owners that must vote to sell a condominium, likely as part of a deconversion. The below chart shows the change. This bill will make it harder to deconvert condominiums that have at least seven units.

Cumulative Voting (House Bill 2400) (Rep Nekritz)

Units	Current Percentage	Modified Percentage
2	Majority	Majority
3	66 2/3	66 2/3
4 to 6	75	75
7 +	75	85

Cumulative voting allows a member to vote multiple times for a single candidate in the annual election provided that they only cast the total number of votes allotted to them. While cumulative voting can be confusing for members, it does have a purpose - it provides minority blocs of the association with the chance to elect one or more members to the board of directors. In the absence of cumulative voting, the majority bloc of voters present at a meeting will always win.

HB 2400 seeks to completely eliminate cumulative voting in condominium associations and common interest community

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Q&A Question: Who's insurance is responsible for a pipe burst or other insurable loss in a condo?

Answer: The Condo Act requires condominium associations to carry insurance cover-

ing both the common elements and the units. Many condo declarations require owners to carry insurance covering their personal possessions and any upgrades made to the unit.

When disaster strikes, the As-

sociation's insurance should cover damage to the common elements and unit. The owners insurance covers damage to the owner's personal possessions. However, the Association can charge the deductible back to the owner.

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associations subject to CICAA. Unfortunately, the bill drafters did not address cumulative voting for master associations and common interest community associations that are not subject to CICAA. Thus, we will still have to occasionally address cumulative voting at elections.

Service of Demands to Evict Tenants (Senate Bill 758) (Sen Barickman)

This bill will allow landlords (including associations) to serve a five day notice to evict its tenant by posting through the local sheriff's office in the

event they are unable to serve the 5 day on the tenant. This should provide some flexibility to remove bad tenants when associations lease out units after a collections case.

Leasing Units With Toxic Mold (HB2911) (Rep. Pellock)

This bill limits a landlord's (including associations acting as landlords) ability to bring a lawsuit under the Forcible Entry and Detainer Act if the landlord knows or should reasonably know that toxic mold is in the unit. It allows the tenant to terminate the lease or to withhold rent until the mold is remediated. The land-

lord is responsible for the costs of remediation.

Large Association Accounting Methods (HB3627) (Rep. Anderson)

Associations with 1,000 or more units are required to use generally accepted accounting principles when fulfilling their financial obligations under the Act.

Condo Associations Ability To Recover Attorneys' Fees (HB3755) (Rep. Drury)

This bill would allow a unit owner to recover his or her attorneys' fees if he or she

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Negotiating and Signing a Lease On Behalf of an Association After a Forcible Case? Beware!

Most associations pursue collections utilizing the Forcible Entry and Detainer Act. Under the Forcible Act, an association seeks a judgment for past due assessments, attorneys fees and costs and also seeks the right to take possession of the owner's home. Assuming the association takes possession, it has the option, but not the duty to lease the unit to a tenant. Many do not exercise that option. For those that do, they will need to find a tenant and a lease will have to be executed on behalf of the association. The question is who finds the tenant and arranges for the

lease? Do you think a property manager should? Under most cases they cannot.

Associations are used to property managers doing much of the heavy lifting for them. Under the Real Estate License Act, a person must have a managing broker, broker or licensing agent license in order to properly show or lease property for leasing purposes. Furthermore, the company the person is doing business under must also be licensed under the Real Estate License Act. There is also an specific prohibition in the Manager Licensing Act (See 225 ILCS 472/20(b)) preventing man-

agers from performing functions requiring a license under the Real Estate License Act. This means that unless the association's property manager and management company are registered under the Real Estate License Act, they cannot show or lease a unit on behalf of the association.

The penalty for violations of the Act? Up to \$25,000 in fines for each violation. Every single act that is in violation of the Real Estate Licensing Act would constitute a separate violation.

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substantially prevails in a lawsuit involving a violation, defending against a charge on their account or a board's failure to comply with documents or law. It also modifies what attorneys fees could be included in a collections demand. This bill would have drastic effects on condominium associations.

Small Common Interest Communities Must Opt-In To CICAA Or Cannot Use Forcible Act (HB2667) (Rep. Cassidy)

This bill modifies the Forcible Entry and Detainer Act to specifically allow master associations and associations subject to CICAA to use the Act. However, it excludes non-condo, non-master associations that are not subject to CICAA from being able to use the Act. This would require those associations that are 10 units or less or that have a budget of \$100,000 or less to opt-in to CICAA or lose their best method to collect.

Manager Licensing Repealed? (SB1818) (Sen. Althoff)

This bill would completely eliminate the Community association Manager Licensing and Disciplinary Act., which would remove the any licensure requirements under the law. We expect mixed reviews about this bill.

CICAA Collections Getting Harder, Protracted? (SB927) (Sen. Bertino-Tarrant)

This bill changes how associations subject to the Common interest Community Association Act can utilize the Forcible En-

try and Detainer Act and Foreclosure Act. It requires that a lien be filed against an owner before a forcible case is filed. However, the lien can only be filed after \$500.00 of unpaid assessments is owed. Additionally, the case could only be filed after \$1,000.00 of unpaid assessments remain due.

Amendments to Declaration and By-Laws (SB949) (Sen. Hastings)

This bill amends CICAA and Condo Act to provide that, if a CICAA or condo association's declaration requires approval by mortgagees (banks) of any amendment to the community instruments, then the approval is deemed implied if a response is not received within 35 days of the request for approval having been mailed to the mortgagee.

Signed Disclosures Related To Assessments At Every Sale Of CICAA Home (SB928) (Bertino-Tarrant)

This bill contains a disclosure requirement for the sale of units within a common interest community association subject to CICAA. It requires the owner to notify the association of the intent to sell the unit. The association must then provide a disclosure statement that contains:

- The association's assessment structure (monthly, quarterly or annually);
- The penalties for failure to pay assessments;
- Blanks for the owner and

the prospective purchasers to sign indicating that the disclosure was provided and reviewed.

The association would be required to retain the signed disclosure. There is no indication on what happens if the form is not kept.

Owners' Records Requests Are Getting Easier To Make In Condos (HB2627) (Rep. Fine)

Under current law, an owner of a condominium association who wants certain records from the association have to make a written request and state a proper purpose for the request. This bill would eliminate the requirement that the owner state a proper purpose. Additionally, if an owner sues the association for those records, the owner would no longer have to prove that he or she made a proper purpose.

People With Criminal Records More Likely To Get Manager Licenses (HB3822)

This bill adds a new provision to the Community Association Manager Licensing and Disciplinary Act concerning criminal convictions and arrest records. Particularly, the bill prohibits the Department from requiring applicants to disclose criminal convictions when they were convicted as delinquent minors, law enforcement records, court records and convictions when they were 17, unless they had

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to be tried as an adult, arrest records not resulting in a conviction, overturned criminal convictions and convictions or arrests that have been sealed or expunged. The Department must also consider certain mitigating factors when considering arrests and convictions. If the Department is going to deny a n applicant a license, it must notify the applicant in writing as to the reasons why and the appeal process.

CICAA And Master Associations Have Same Budget Deadline And Closed Meeting Rights As Condos (HB2696) (Rep. Williams)

Under this bill, both master associations and CICAA associations would have to send a budget out at least 25 days in advance of the budget approval meeting, avoiding the dreaded counting of the days. Additionally, master association boards can meet in closed ses-

sions or separately from a notice meeting to discuss the same items that condo and CICAA associations can, most notably to discuss contracts and meet with the association's counsel.

Condos Gain Flexibility With Surpluses (HB2673) (Rep. Cassidy)

This bill states that if a condo association has a surplus at the end of the year or after an audit, the board can: 1) move the funds to its reserves, 2) return the excess to the members as a credit for this year, 3) return the assessments via direct payment to members, or 4) keep funds in operating and use as a credit towards next year's expenses. The members can try to reject the board's decision but 20% of them have to submit a petition within 14 days. A meeting would then need to be called within 30 days. Unless a majority of all votes are cast against the board's decision

and in favor of a different option, it is ratified.

Financial And Management Changes (HB2392) (Rep. Gabel)

This bill allows management to hold all of its condo associations' funds in one account with approval of the boards. It also removes provisions governing community association managers and fidelity insurance from the Condo Act (they remain in licensing act), incorporates condo provisions on records into master association section of Condo Act, allows condo and master associations to not disclose lawsuits in 22.1 disclosures if the lawsuits will not have a material adverse impact on the financial condition of the association and requires owners in a common interest community to disclose the name and address of their mortgage companies within 15 days.

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