COMPLYING WITH THE CHICAGO CONDOMINIUM ORDINANCE ON INSPECTION OF FINANCIAL BOOKS AND RECORDS

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In light of the recent Illinois Supreme Court Decision in Palm v. 2800 Lakeshore Drive Condominium Association, there has been renewed attention focused on the Chicago Condominium Ordinance and, in particular, the Ordinance’s provision with regard to a unit owner’s right to inspect a Chicago condominium association’s financial books and records.

The Ordinance Provision

Specifically, Section 13-72-080 of the Ordinance entitled “Examination of records by unit owners” provides that “no person shall fail to allow unit owners to inspect the financial books and records of the condominium association within 10 business days of the time written request for examination of the records is received.”

If there is a refusal or failure to allow inspection, under Section 13-72-100 of the Ordinance, the unit owner may bring a private lawsuit seeking to enforce compliance with the Ordinance and the “prevailing plaintiff” (unit owner) shall be entitled to recover damages and reasonable attorney’s fees.

Also, Section 13-72-110 of the Ordinance provides that such a violation will be punishable by a fine of not less than $100 nor more than $300 for the first offense and not less than $300 nor more than $500 for the second and each subsequent offense within any 180 day period. Repeated offenses in excess of 3 within any 180 day period may also be punishable as a misdemeanor by incarceration for a term not to exceed 180 days. Each failure to comply with the Ordinance shall be considered a separate offense and separate and distinct offenses shall be regarded as committed each day on which a person continues or permits any violation. Note that only the City of Chicago can enforce Section 13-72-110.

The potential liability for violation of the Ordinance would fall on both the Board of Directors as well as the management agent, inasmuch as those are the likely “persons” who may be guilty of failing to allow inspection of books and records.

No “Proper Purpose” Required

To begin with, note that unlike the requirements of the Illinois Condominium Property Act (“Condo Act”) or General Not for Profit Corporation Act (“Not for Profit Act”), the Ordinance does not require that a unit owner state “a proper purpose” for inspection of the financial books and records of the Association. In other words, the requesting unit owner need not state any purpose or reason, but simply that he/she wants to inspect the financial books and records. Clearly, there is a significant prospect for abuse and harassment.
10 Business Days to Comply

The Ordinance requires that the requesting owner must be allowed to inspect the financial books and records within 10 business days “of the time written request for examination of the records is received”. In that regard, the requesting unit owner should submit a written request, which should be date stamped on the day of receipt by the association or its agent. If the unit owner makes a verbal request, then the unit owner should be requested to fill out a form (prepared in advance by the association) which would then be signed by that requesting owner and date stamped. The importance of the date stamping is to establish the beginning of the time frame for the 10 business days of compliance. “Business days” is not defined in the Ordinance. “Business days” typically refer to weekdays (Monday through Friday) and would exclude Saturdays, Sundays and legal holidays. Of course, there are Federal, State and City holidays; in all likelihood, it would be safe to rely upon exclusion of Federal holidays, but it is arguable that excluding State and City holidays would also be appropriate.

No Limit on How Far Back

There is no time limit as to how far back the requested records can cover; unlike the Condo Act. Consequently, the unit owner can request records extending all the way back to the establishment of the condominium, assuming that such records are even available. However, since this is an unlimited timeframe for unit owner’s requests, it is arguable that the Association must now keep all such records “forever” and not discard any documents no matter how old or irrelevant to current operations. While compliance with the Ordinance will require Associations to maintain unlimited financial books and records, such record keeping may be facilitated by having older documents archived in some digital format as opposed to hard copies.

Inspection, Not Copies

The Ordinance requires that the unit owner be allowed to “inspect” the financial books and records. There is no reference to copying or having copies made of the records. Thus, under the Ordinance, there is a no right to have copies made or produced of those records. However, the right to receive copies may be sought under the Condo Act or Not for Profit Act under their respective provisions and timeframes.

Only Financial Books and Records

Finally, with regard to the “financial books and records”, that category does not include all books and records of the Association, but only those that reflect or are relevant to the financial affairs of the Association. Financial statements, copies of invoices and receipts, check registers and ledgers of account, and individual unit owner accounts would be clearly covered. There may be documents which could have financial implications, such as leases of common elements (for example, laundry rooms, valet/receiving rooms, garages, and the like). It is also arguable that contracts could be considered financially relevant documents, inasmuch as they relate to financial obligations of the Association to and from third parties. Similarly, it is arguable that certain litigation records (such as engagement or retainer agreements) and invoices would be financially relevant and therefore subject to inspection, although it is probable that any
attorney/client or attorney work product confidential documents would not be subject to inspection (although this is a presumption not expressed in the Ordinance). On the other hand, a unit owners’ list, the plat of survey, and election materials would not be covered. Copies of the declaration, by-laws and rules and regulations are probably not covered, except to the extent of any provisions which relate to any financial obligations of unit owners as a whole, such as budgeting procedures, user fees, and the like. Minutes of meetings would not be covered unless they contained information regarding financial matters (such as authorization for payment of invoices). Personnel files of employees would be subject to inspection to the extent they contain compensation or other financially related information.

Note that the Illinois Supreme Court did not address what documents actually constitute “financial books and records” but instead focused on whether the City had the “home rule” authority to enact the Ordinance (even if that Ordinance contradicted provisions of the Condo Act and the Not For Profit Act).

No Costs can be Charged to Unit Owner

There is no provision that the unit owner can be charged for any cost related to producing the records (for example retrieval from archives/warehousing) or for any expense incurred by the Association in monitoring the inspection (for example, having a management person monitor the inspection) as a precaution against alteration or destruction of documents. Of course, one way to avoid that expense is to have the documents available in a digital form, “read only” format that the requesting owner could view on a computer screen.

Conclusion

It is likely that there will be arguments over the Ordinance, such as the “business day” definition as well as the “financial books and records” definition, with those disputes ultimately being resolved by another court decision. Meanwhile, the Association should prepare to comply with the Ordinance when a unit owner seeks to exercise his/her rights thereunder.

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