

UPDATED
2011 PASSED LEGISLATION
AFFECTING CONDOMINIUMS AND HOA'S
Synopsis and Commentary

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When the Legislature adjourned at the end of May, 2011, there were three bills which passed both chambers, out of 19 that were submitted at the start of the session. The Governor has now signed all three bills and we provide an updated summary below.

PUBLIC ACT 97-0105 (HOUSE BILL 991) (HB 991) (effective January 1, 2012) amends the Homeowners' Solar Rights Act by renaming the statute to the Homeowners' Energy Policy Statement Act and by changing the required content of the association's energy policy statement (previously the association would have to provide a statement only as to solar energy but now it would have to state whether a wind energy collection, rain water collection, or composting system is allowed and, if so, the location, design and architectural requirements of those systems). The Act overrides any deed restrictions, covenants, bylaws or similar binding agreements, including such restrictions in condominium, homeowners and common interest community associations, which prohibit the installation of a solar energy system. Note that HB 991 does not prohibit restrictions on wind energy, rain water collection or composting systems, but only requires disclosure.

COMMENT: The original statute became effective on January 1, 2011 and does not apply to any building which is greater than 30 feet in height.

PUBLIC ACT 97-0605 (SENATE BILL 1651) (SB 1651) (effective August 26, 2011) amends the Common Interest Community Association Act ("CICA Act") and Section 18.5 of the Illinois Condominium Property Act (the "Condo Act"). Generally, SB 1651 redefines a "common interest community" to expressly exclude master associations (which will continue to be regulated by Section 18.5 of the Condo Act); introduces the concept of "member" and "membership" (related to but not necessarily the same as "owner" or "unit owner"); allows for a "prescribed delivery method" (which includes mail, delivery or any other means approved by the owner and authorized by the association instruments); deletes the requirements that the term of office of at least 1/3 of the board members expire annually and that all board members are to be elected at large; eliminates required resale disclosure as to improvement or alterations done to a unit or common areas assigned to that unit; specifies a 20% quorum for membership meetings unless the community instruments specify a lesser amount; allow board meetings to be called by any method specified in the community instruments (in addition to being callable by the president or 25% of board members); allow membership meetings to be called by any method specified in the community instruments (in addition

to being callable by the president or the board or 20% of the membership); requires that notice of board meetings be given to all unit owners at least 48 hours in advance by either a prescribed delivery method or by posting notice in the common areas; requires notice to all unit owners for any board meeting concerning the adoption of a budget or assessment not less than 10 nor more than 60 days in advance; allows board discussion of third party contracts in closed (executive) session; allows the board to furnish a summary of the prior year's budget results and requires the board to make available either an itemized annual accounting or an independent audit report of the status of all association fund accounts; clarifies that fidelity insurance and bond coverage amounts are to be commercially available or reasonably required; and requires that all common interest community associations must be in full compliance with the CICA Act by no later than January 1, 2012. Section 18.5 of the Condo Act is amended by deleting subsection (j)'s reference/inclusion of common interest community associations.

COMMENT: Major accomplishment is to confirm that master associations are governed only by Section 18.5 of the Condo Act and not the CICA Act. Overall, non-controversial changes.

PUBLIC ACT 97-0535 (SENATE BILL 1972) (SB 1972) (effective January 1, 2012) amends Section 18.5 of the Condo Act to indicate that a common interest community association is entitled to recover court costs (but does not include attorney's fees) related to collection of delinquent assessments (up to 6 months).

COMMENT: Unfortunately, this change should have been made to Section 18.5 of the Condo Act for master associations and also to the CICA Act for common interest communities, which lacks such a provision. Also, attorney's fees should also be included, not just court costs. Thus, as another "cleanup" step, this change needs further work in both Section 18.5 and the CICA Act to make it right.

In conclusion, for the most part, the bills that passed abide by the Hippocratic Oath to "do no harm".

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