2017 PROPOSED LEGISLATION
AFFECTING CONDOMINIUM, COMMON INTEREST
AND COOPERATIVE ASSOCIATIONS
Synopsis and Commentary

by
Michael C. Kim
MICHAEL C. KIM & ASSOCIATES
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As in the movie Groundhog Day, the Illinois Legislature repetitively considers legislation seeking to affect (for good, bad or otherwise) the operation of condominium associations, master associations, common interest communities and occasionally (and indirectly) residential cooperatives.

During the current legislative session, the following bills have been introduced and begin their journey through committees, floor debate and votes in the House and Senate and possibly land on the Governor’s desk.

HOUSE BILLS

HOUSE BILL 471 (HB 471) (Ford/Olsen) would amend the Landlord and Tenant Act to provide that if a landlord enters into a lease with a tenant after the landlord receives notice of a foreclosure proceeding against the rented premises and the tenant is required to vacate the premises as a result of the foreclosure action, then the tenant may recover all the rent payable from the beginning of the lease until the tenant vacates the premises.

COMMENT: Could be dangerous to an association which leases out a unit during a pending foreclosure.

HOUSE BILL 2400 (HB 2400) (Nekritz) would amend the Common Interest Community Association Act (“CICA Act”) and the Illinois Condominium Property Act (“ICPA”) to mandate non-cumulative voting (thus, for example in elections, preventing the voter from “bulleting” all his/her total votes to a single candidate or conversely distributing his/her total votes among different candidates).

COMMENT: HB 2400 does not expressly distinguish between voting in elections or voting in general. Matters on which unit owners may vote are not limited to elections, but could involve a budget, special assessment or expenditure referendum, a director seeking to do business with the association, and amendments to the declaration or bylaws, none of which would involve cumulative voting in any event. Consequently, HB 2400 is imprecise and if it intended to address elections, it should expressly state so. As for whether cumulative or non-cumulative voting is a “good idea” in elections, the conventional wisdom is that cumulative voting allows a significant minority of members to possibly have some representation on the board of directors, whereas non-cumulative voting would instead would have a “winner take all” result.
**HOUSE BILL 2401** (HB 2401) (Nekritz) would amend the CICA Act to state that there is to be only one class of voting membership unless otherwise provided in the common interest community’s governing documents; and to amend the ICPA to state that there shall be only one class of voting membership (without allowing any exception in the condominium governing documents). HB 2401 also amends the ICPA to provide that the sale of the entire condominium property must be approved by at least 75% of the unit owners if the property has at least 4 but not more than 6 units and by at least 85% of the unit owners if the property has 7 or more units.

**COMMENT:** Linking classes of owners to only voting rights may suggest that “classes” of owners can be created on other bases (such as resident vs. non-resident; delinquent or non-delinquent in assessment payments; persons purchasing before or after a certain date being “grandfathered” against changes in the governing documents, and so on). In common interest communities, it may cut short developer control (since typically the developer reserves a higher weighted vote (such as by a 3 times factor) than homeowner/purchasers), but that practice has been not been available to condominium developers.

**HOUSE BILL 2627** (HB 2627) (Fine) would amend the ICPA to delete the requirement that a unit owner must give a “proper purpose” in order to inspect and copy contracts, leases and other agreements to which the association is a party or under which the association or unit owners have obligations or liabilities; a current listing of the names, addresses and weighted vote of all members entitled to vote; ballots and proxies for all matters voted on by association members during the immediately preceding 12 months, including board elections; and books and records of account for the association’s current and 10 immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts and expenditures.

**COMMENT:** Elimination of any “proper purpose” requirements will allow abusive and frivolous document requests. It would be preferable to better define what constitutes “proper purpose” to support a request to inspect and copy documents.

**HOUSE BILL 2667** (HB 2667) (Cassidy) would amend the Code of Civil Procedure to simplify the authorization of a master association or common interest community association to use the eviction (otherwise technically known as the forcible entry and detainer statute) remedy to collect delinquent assessments, other lawfully agreed upon expenses or fines; and would extend that right to use the eviction remedy to all common interest communities which are subject to the CICA Act. Master associations and common interest community associations would be treated the same as condominium associations under the eviction statute.

**COMMENT:** This bill eliminates outdated clumsy language in the Code and should be supported.

**HOUSE BILL 2673** (HB 2673) (Cassidy) would amend the ICPA to allow the board of directors to dispose of any fiscal year end surplus funds by (i) transfer to the association reserve funds, (ii) return the funds to the unit owners by way of a credit against remaining monthly installments for the current fiscal year, (iii) return the surplus to the unit owners as a direct payment or (iv) maintain the surplus in the operating account in which case the funds are to applied as a credit when determining the following year’s annual budget. However, if 20% of the unit owners file a petition within 14 days after notice to the unit owners of the board’s selection, then the board must call a meeting of the unit owners within 30 days after delivery of the petition and at that
meeting the unit owners may vote to select an option different from that selected by the board but unless unit owners having a majority of the total vote reject the board’s selection and select a different option, the board’s decision is ratified.

COMMENT: Too damn complicated. This “20% petition within 14 days and then referendum meeting with need to get a majority of all votes or else ratified” mantra is being overworked. As Ralph Waldo Emerson said, “a foolish consistency is the hobgoblin of little minds.”

**HOUSE BILL 2696** (HB 2696) (Williams) would amend the CICA Act so that a member of common interest community must receive a copy of the proposed annual budget at least 25 days prior to adoption of that budget by the board, and makes a similar change to the ICPA for master associations. HB 2696 also amends the ICPA to allow a master association board to have an executive/closed session separate from a noticed open meeting and expands the use of executive/closed sessions to include discussions regarding the appointment, employment, engagement or dismissal of an independent contractor, agent or other provider of goods and services, interviewing a potential independent contractor, agent or other provider of goods and services, and consulting with the association’s legal counsel.

COMMENT: Theses changes would treat master associations and common interest communities the same as condominium associations, as such provisions were enacted last year but overlooked this aspect. SB 2696 should be supported.

**HOUSE BILL 2844** (HB 2844) (Cassidy/Welch) would amend the ICPA and CICA Act so that, if approval by or consent of a mortgagee or lienholder of record is required for an amendment to the governing documents, then the mortgagee or lienholder is deemed to have given approval or consent unless it delivers a “negative response” to the requesting party within 35 days after the mailing of the request.

COMMENT: This change would be very valuable to associations who need mortgagee or lienholder consent to an amendment but do not have such a “deemed consent” provision in their documents (especially in older documents), and thus should be supported.

**HOUSE BILL 2931** (HB 2931) (Gabel) would amend the ICPA to give the board of directors the discretion to apply a budget surplus to the association’s capital or operating reserves or to any other common expense and to address any budget deficit by incorporating it into the following year’s annual budget, regardless of any contrary provision in the declaration or by-laws. HB 2931 would also clarify the ICPA as to a combination of units and would allow creation of limited common elements for that purpose without having to obtain the unanimous consent of all the unit owners.

COMMENT: Simpler process for handling budget surpluses and deficits than HB 2673 and would also overcome some unit combination problems created by a recent court opinion. HB 2931 is ACTHA sponsored legislation.

**HOUSE BILL 2932** (HB 2932) (Gabel) would make numerous changes in the ICPA regarding reserve account management, liens, fidelity insurance, master association record keeping and resale disclosure requirements, display of the American or military flags, and community association manager qualifications.
COMMENT: HB 2932 is intended to “clean up” the ICPA by eliminating unnecessary or duplicative text, and inappropriate/outdated references to common interest communities; and by conforming master association record keeping to the same requirements as applicable to condominium associations. HB 2932 is ACTHA sponsored legislation.

HOUSE BILL 3118 (HB 3118) (Jesiel) would amend the Residential Real Property Disclosure Act to expressly state whether the seller is “aware” that the property being sold is “subject to condominium, homeowners’ association, or other restrictive covenants”.

COMMENT: So now being in an association is similar to radon, lead paint, flooding basements and other material defects in the property. It was just a matter of time.

HOUSE BILL 3359 (HB 3359) (Sims) would amend the Code of Civil Procedure and Section 9.2 of the ICPA to replace the term “forcible entry and detainer” with “eviction action” and similarly to replace use of “judgment for possession” with “eviction order”.

COMMENT: Apparently an attempt to use the more commonly understood (at least among non-lawyers) terminology of “eviction”. No substantive change. “A rose by any other name. . .”.

HOUSE BILL 3395 (HB 3395) (Turner) would amend the Community Association Manager Licensing and Disciplinary Act to expressly provide that “No consideration shall be given to [criminal] convictions entered prior to the date of the application, where the applicant has completed any sentence imposed for that conviction, including any period of mandatory supervised release”.

COMMENT: Very interesting. Somebody’s application for a license must have been bounced or someone does not want to disclose past convictions.

HOUSE BILL 3627 (HB 3627) (Anderson) would amend the CICA Act to require that a common interest community having 1,000 or more units and subject to the CICA Act must use generally accepted accounting principles in fulfilling any accounting obligations under the CICA Act. SB 3627 would also amend the ICPA to require condominium associations with 1,000 or more units to use generally accepted accounting principles.

COMMENT: Probably would not charge anything in most of those sized associations.

HOUSE BILL 3755 (HB 3755) (Drury) would amend the ICPA (a) to prohibit including the association’s attorney’s fees as part of any amount demanded for delinquent assessments or other monetary obligations of a unit owner; (b) to allow a unit owner to be awarded his/her attorney’s fees against the association or its board or any individual member of the association or board if that unit owner is found by a court or arbitrator to be the “substantially prevailing party”.

COMMENT: HB 3755 would create a statutory right of a unit owner to recover his/her attorney’s fees from any adverse party (the association, the board, an individual director or even another individual unit owner). Typically a unit owner would not have the right to recover attorney’s fees; HB 3755 would create that right in favor of the “prevailing” owner. Finally, even if the association incurs an attorney’s fee in processing a demand under the eviction statute, the
association would not be able to include that fee in its demand under the eviction statute, and thus would have to collect it in another manner.

**House Bill 3822** (HB 3822) (Evans) would amend the Community Association Manager Licensing and Disciplinary Act to include an extensive, detailed procedure to handle an applicant’s criminal convictions/history (for example, juvenile adjudications of delinquent minors, arrests not followed by conviction, convictions overturned on appeal or convictions that have been sealed or expunged are not to be considered) and that consideration of a prior felony conviction or misdemeanor directly related to licensure must consider any evidence of rehabilitation or mitigation (such as relationship to current duties, functions and responsibilities; time elapsed without a subsequent conviction; lack of prior misconduct in another previously licensed position; age at time of offense; successful completion of sentence or compliance with current parole or probation conditions; evidence of current fitness and professional character; and evidence of rehabilitation or rehabilitative effort). The Department would have to affirmatively demonstrate that the prior conviction would impair the applicant’s ability to engage in the licensed practice, including a detailed disclosure statement in support of its decision to deny the application. The Department would also have to annually publish a report describing the various license applications and the disposition of such applications involving any criminal convictions.

**Comment:** Convicted (but reformed) criminals as community association managers? Ironically, when a major publicized justification for licensing managers was to stop embezzlement of association funds.

**House Bill 3848** (HB 3848) (Yingling) would amend the Property Tax Code to require the county clerk to “abate property taxes levied by a unit of local government on property that is included in a neighborhood association that maintains roads or sidewalks serving the property”. The amount of the abatement is to equal the amount of taxes levied for road or sidewalk maintenance purposes.

**Comment:** Seems fair.

**House Bill 3855** (HB 3855) (Flynn Currie) would amend the CICA Act and the Condominium and Common Interest Community Ombudsperson Act to make a few grammatically and stylistic corrections.

**Comment:** No substantive changes.

**Senate Bills**

**Senate Bill 758** (SB 758) (Barickman) would amend the Code of Civil Procedure so that if a landlord (or his/her agent) is unable to personally serve a demand or summons on a tenant, then the landlord can use an alternate means of service by posting a copy of the demand or notice of summons in 3 public places as well as mailing a copy to the tenant, and thereby obtain constructive service on the tenant.

**Comment:** A useful alternative, especially for evasive tenants.

**Senate Bill 882** (SB 882) (Mulrose) is the same as/companion bill to HB 2401 (see above).
**Senate Bill 884** (SB 884) (Mulrose) is the same as/companion bill to HB 2400 (see above).

**Senate Bill 885** (SB 885) (Koehler/Collins/Martinez) would repeal the Dwelling Structure Act and the Dwelling Unit Installment Contract Act, making a number of significant changes; however, as for condominium and master associations, SB 885 would amend the ICPA so that references to “installment contracts” for the purchase of a unit would now be references to an “installment sales contract” under the new law.

**COMMENT:** An installment contract for the purchase of a unit gives rise to possible rights of the contract buyer to be counted towards quorum, to vote in association elections and to serve on the board of directors; this change would require the association to ascertain whether such an installment contract would meet the requirements of the new installment sales contract law. If a unit owner has sold his/her unit under the current version of the installment sale statute, presumably that contract would be “grandfathered”.

**Senate Bill 927** (SB 927) (Bertino-Tarrant) would amend the CICA Act to provide that when a unit owner accumulates an unpaid assessment balance of $500 or more, the board, after notice and an opportunity to be heard, can place a lien on the unit owner’s residence for that delinquency. In addition, if an owner accumulates an unpaid assessment balance of $1,000 or more, the board, after notice and an opportunity to be heard, can begin foreclosure proceedings on its lien. SB 927 also amends the Code of Civil Procedure to allow the common interest community to institute eviction proceedings if a lien has been placed on the unit owner’s property or if the unit owner has accumulated more than $1,000 in unpaid assessments, as addressed in the CICA Act.

**COMMENT:** Why is this necessary? Nothing prevents a common interest community from using the eviction remedy or placing a consensual lien (that is, pursuant to the governing documents if they so provide) for unpaid assessments. However, the CICA Act does not presently provide for a statutory lien for delinquent assessments, and this proposed legislation would seem to now established that authority.

**Senate Bill 928** (SB 928) (Bertino-Tarrant) would amend the CICA Act to expressly require that in the sale of a unit, the seller must notify the board and the board, upon receipt of such notice, must provide the buyer(s) with written documentation “detailing the assessment structure of the association”, including the penalties for failure to pay assessments. The “written documentation” must provide a space for the seller and buyer(s) to sign/initial that they received and reviewed it and the board must keep a copy of that signed/initialed documentation.

**COMMENT:** So when is this requirement helpful? Most likely when a person buys a unit with no clue about assessments, does not use a real estate agent or attorney or title insurance company and buys with all cash/no financing.

**Senate Bill 948** (SB 948) (Hartings) is the same as/companion bill to HB 2696 (see above).

**Senate Bill 949** (SB 949) is the same as/companion bill to HB 2844 (see above).
SENATE BILL 1818 (SB 1818) (Althoff) would change the repeal date of the Community Association Manager Licensing and Disciplinary Act from January 1, 2020 to immediately “upon becoming law”.

COMMENT: Seriously? Could it be a better dressed “shell” bill?

SENATE BILL 2053 (SB 2053) (Raoul) is the same as/companion bill to HB 3822 (see above).

SHELL BILLS

HOUSE BILLS 2085 and 2298 (both Durkin) and HOUSE BILLS 3616 and 3617 (both Drury).

We will monitor these bills and report the outcome of the legislative sausage making process. The remark attributed to Otto von Bismarck that “Laws are like sausages; it is better not to see them being made” should not deter you.