2019 PROPOSED LEGISLATION AFFECTING CONDOMINIUM, COMMON INTEREST COMMUNITY, MASTER AND COOPERATIVE ASSOCIATIONS

by
Michael C. Kim
MICHAEL C. KIM & ASSOCIATES
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The deadline for bills to be approved in their chamber of origin and move to the other chamber is April 12. Below we summarize and comment on the submitted House (HB) and Senate (SB) proposals as they wend their way through the legislative process. What goes in doesn't always come out or, if it does come out, it may be significantly amended. The bill's sponsor is indicated in the parenthetical. The deadline for the bills to be passed in the other chamber is May 24, with the General Assembly to adjourn on May 31.

HOUSE BILLS

HB 29 (Andre Thapedi) would amend the Illinois Common Interest Community Association Act ("CICA Act") by adding a new Section 1-95 to prevent "home rule municipalities from regulating common interest communities" in a manner inconsistent with the changes to Sections 1-20 [amendments to declaration, bylaws or operating agreement] and 1-45 [Finances] by Public Act 100-292.

HB 29 would also amend the Illinois Condominium Property Act ("Condo Act") by adding a new Section 18.11 which in turn would prohibit a home rule municipality from regulating condominium associations "in a manner inconsistent with the changes made to Sections 9 [Budget and Assessments], 15 [Sale of Entire Condominium], 18 [By-Laws], 18.4 [Powers and Duties of Board], 18.10 [Accounting], 19 [Books and Records], 27 [Amendments] and 31 [Unit Combinations] by Public Act 100-292.

COMMENT: This attempt to pre-empt home rule power is a reaction to the City of Chicago's action to amend its Condominium Ordinance to override the perceived mandatory collection and disclosures of unit owners' personal phone numbers and e-mail addresses under amended Section 19. Essentially, Public Act 100-292 was packaged and promoted by Rep. Thapedi and he is upset that the City had the audacity to interfere with his grand legislation. This change would affect Condominium and Common Interest Community Associations.

HB 50 (Andre Thapedi) would amend Section 18.7 of the Condo Act whereby a maintenance or management contract would not be enforceable unless the contract specified the services, obligations and responsibilities of the contractor; specified the "costs incurred" in performing the services, obligations and responsibilities that are reimbursed by the association; indicates how often each service is to be provided either per service, obligation or responsibility or per each category thereof; specifies the minimum number personnel to be employed by the contractor; discloses any financial or ownership interest that the developer (if the developer is in control of the association) has in the contractor; and discloses any financial or ownership interest that a board member or manager or maintenance contractor has in any contracting party (contractor). If the

contractor fails to provide a service in accordance with the contract, the association can obtain such service from another provider and would be entitled to collect any fees or charges paid to that third party from the contractor. Any service or obligation not expressly stated in the contract are "unenforceable".

This section would not apply to contracts to maintain equipment or property made available to individually serve the unit owners, such as coin-operated laundry, food, soft drink or telephone vendors, cable TV or retail stores, businesses, restaurants and the like.

The maintenance or management contractor or an officer or director thereof, may not purchase a unit at a foreclosure sale resulting from foreclosure of the association's lien for unpaid assessments or accept a deed in lieu of foreclosure.

If 50% or more of the units in the condominium association are owned by the maintenance or management contractor or by an officer or director thereof, then the maintenance or management contract may be cancelled by a majority vote of unit owners other than the contractor (or officer or director thereof).

COMMENT: Someone must have had a really bad experience with a management or maintenance contractor. Should some or all of these provisions be part of the Community Association Manager Licensing and Disciplinary Act ("Manager Licensing Act")? This change would affect all Associations.

HB 281 (Will Guzzardi) would amend the Code of Civil Procedure to require that the summons contain certain disclosures of debtor's rights and resources and would limit the rate of interest on a judgment of $25,000 or less for "consumer debt" to 2% per annum (vs. 9% per annum currently).

HB 281 also would allow revival of a judgment in the fifth [currently seventh] year after entry but the petition may be granted only if citation proceedings were initiated within a year after entry of the judgment. HB 281 would increase the protection of a judgment debtor's income from a deduction/collection order.

COMMENT: Consumer debt would include association assessments and these changes would affect collection of those obligations, generally imposing limits on recovery by associations. This change would affect all Associations; however, these changes would probably not significantly affect the eviction remedy used by most Associations.

HB 1466 (Gregory Harris and Mark L. Walker) would amend Section 10 of the Condo Act so that upon a 2/3 vote of the unit owners, or such greater vote as required by the declaration or bylaws, the board can allocate the percentage of ownership "as a tract for each unit for the limited purpose of calculating the assessment or levy of taxes, special [tax] assessments or charges" constituting property taxes. This allocation is to be based on square footage of each unit and would be separate from the allocation of percentage of ownership interests for common expense assessments and voting. This change would only apply to condo associations with 20 units or less.

COMMENT: This change would allow for a separate, square footage-based, sharing of real estate tax expenses among the condominium units, which is currently based on the percentages of

ownership interest as established by the developer and typically based on "value" (which is related to but not the same as square footage). This change would only affect Condominium Associations.

HB 2192 (Mary E. Flowers) (Kelly Cassidy added as a Chief Co-Sponsor) would create rent control in the State of Illinois, and would apply to dwelling units in condominiums, common interest communities and residential cooperatives. HB 2192 is an extensive bill that affects the Election Code, Tax Code and Code of Civil Procedure as well. HB 2192 would establish 6 regional rent control boards based on geography (Region 1 would cover Cook, DuPage, Grundy, Kane, Kendall, Lake, McHenry and Will Counties), comprised of 6 elected members each, representing different interest groups (tenants, landlords and advocate organizations for low-income tenants). The Rent Control Board would set the rent stabilization rate (that is, the rate by which rents are permitted to change) for each county in its region, with separate rates for tenants over 65 years of age, disabled tenants and "other subclauses of tenants that a board may from time to time define." There is to be a rent control registration fee. There would be "private" enforcement allowable, whereby a prevailing tenant would be entitled to 3 times the total monthly rent charged, together with actual damages, costs and attorney's fees. There are significant limitations on a landlord's right to terminate or not renew a lease, including that the landlord cannot terminate a lease to a disabled tenant. There are also significant new obligations imposed on a developer of a conversion condominium (such as requiring tenant relocation assistance and possible tenant recovery of his/her attorney's fees in enforcement action against the developer).

COMMENT: Associations who rent out units or use the eviction remedy to collect delinquent assessments by possibly renting the owner's unit would be subject to this rent control legislation and related regulations. There should be an exemption for Condominium, Common Interest Community and (especially) Residential Cooperatives.

HB 2260 (Sara Feigenholtz) would authorize the Ombudsperson to hire a staff member, subject to appropriation (that is, funding being available)

COMMENT: It always starts with "just one" and next thing you know, it's 10, 100, etc.

HB 2598 (Jim Durkin) would amend Section 12 of the Condo Act to require a property manager who has an insurance policy in the name of the management company (for the property manager) must provide a 90 day notice to the unit owners before termination of that coverage. If the property manager fails to provide such notice, then the property manager will be liable for all claims on the building and guilty of a Class B misdemeanor.

COMMENT: Very poorly drafted even if well intended (and even that is not clear).

HB 2721 (Jennifer Gong-Gershowitz) would amend Sections 18.5 and 22.1 of the Condo Act and Section 1-35 of the CICA Act to require resale disclosures to include a copy of the most recent independent professional reserve study, if any, obtained by the association or a statement that the association has not obtained such a study within the last 7 years. Amended to apply only to associations with 30 or more units.

COMMENT: This bill was drafted by the Chicago Bar Association Condominium Law Subcommittee and should be supported since the current law does not even mention reserve studies, which are important to a buyer. This change would not apply to Cooperatives or to Common Interest Communities exempt from the CICA Act.

HB 2844 (Keith R. Wheeler) would amend Section 22.1 of the Condo Act to require that the association must provide the requested documents and materials within 5 business (currently 30 calendar days) after the request is made. Also, HB 2844 would limit the fee to provide the Section 22.1 documents and disclosures to a maximum of $100.

COMMENT: I am sure that the State of Illinois responds to citizen requests for documents within 5 business days. Actually, digitally stored documents can be produced rather quickly unless the "computers are down". This change would only affect Condo Associations.

HB 3249 (Gregory Harris) would amend the Condo Act by making some stylistic changes as part of an overall effort to better organize and "cleanup" the various existing statutes.

COMMENT: No substantive changes being made, so no worries.

HB 3416 (Jaime M. Andrade, Jr.) would amend the Condo Act to require that for transactions involving a current director (or his/her immediate family), there must be "a statement of commissions and its amount" provided to the board of directors who shall make that information available to the unit owners.

COMMENT: More clumsy drafting; presumably this bill is intended to disclose any payment, commission or other remuneration that will be paid to the director (or immediate family) in or because of the proposed transaction. This change would only apply to Condo Associations.

HB 3601 (Sam Yingling) would amend the CICA Act to add a definition of "retirement community", basically along the lines of the Federal definition of "over age 55" communities. HB 3601 would also provide that real estate taxes in a retirement community are to be assessed on the unit and paid by the unit owner and not included in the assessments (the only real estate taxes that may be included in the assessment are taxes on a common area). Finally, a common interest community must provide "a detailed breakdown of all costs in an association assessment, including a breakdown of real estate tax information."

COMMENT: I defer to the real estate tax specialists as to whether this bill makes sense or serves an unmet need. Typically, most unit owners are responsible for their own unit's taxes, which are not included in the assessments. This change would only apply to Common Interest Communities not exempt from the CICA Act.

HB 1585 (Sara Feigenholtz) is a "shell" bill.

HB 2090 (Kelly M. Burke) is a "shell" bill.

HB 2091 (Kelly M. Burke) is a "shell" bill.

Note: "Shell" bills do not have any substantive content but are available and sometimes are amended later to include substantive legislation. Like a cannelloni or lettuce wrap or taco shell.

SENATE BILLS

SB 77 (Patricia Van Pell, Jacqueline Y. Collins, Robert Peters) would amend the Code of Civil Procedure to require sealing of eviction case records, which shall be unsealed if the Court enters a

final order of eviction in favor of the plaintiff(s) against the defendant(s). Once unsealed, the records would remain part of the public record for 7 years, at which time the records would be sealed again. Sealed records would be available to the parties and their attorneys, a resident of the premises, a person who provides certain information about the case and anyone permitted by Court order. For eviction cases involving a condominium unit, a tenant named in that case will have his/her name permanently suppressed by order of Court.

COMMENT: Probably intended to protect "innocent" tenants made a party to an eviction case, where the condo association is suing the unit owner for delinquent assessments and names the tenant(s) to terminate his/her/their right of possession to the unit. This change would mostly affect Condo Associations, Master Associations, and Common Interest Communities.

SB 220 (Laura M. Murphy) would amend the Condo Act by changing the association lien rights so that its lien would only arise for assessments that are unpaid when due and for fines imposed in accordance with new requirements for notice and hearing. Also, the association cannot collect a fine or report any adverse information to a credit reporting agency against a unit owner for an unpaid fine unless the fine was levied in accordance with those new requirements. The new requirements would be that the board must first provide the unit owner with a minimum of 20 days' written notice and an opportunity to be heard; the written notice must be made in accordance with the Condo Act [which is not specified]. This notice and opportunity to be heard requirements apply only to the board's ability to levy fines and does not limit or restrict the board's ability to exercise other remedies.

COMMENT: The proposed change in text regarding lien rights raises the issue of whether the board can record a lien for both current and future installments of assessments (which is often done), but instead, the association would have to record its lien on a month by month basis for individual unpaid installments. The minimum 20 days notice seems to be unnecessary and arbitrary micromanaging of associations. This change would only affect Condo Associations. Bill passed out of the Senate and is now being considered in the House.

SB 47 (Michael E. Hastings) is a "shell" bill.

SB 49 (Michael E. Hastings) is a "shell" bill.

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Presumably by May 31, bills that have been passed by both chambers go to the Governor who can sign, veto or amendatorily veto (that is, make changes to the bill which must be accepted by the General Assembly).