



## **Bill introduced addressing smoking in condominium units**

**Q. Our condominium association is dealing with complaints from owners about neighbors who smoke in their units. Does the Condominium Property Act address this issue?**

**A. The Condominium Property Act does not currently address smoking in condominium units. However, legislation was recently introduced to address restrictions on smoking in condominium units. Illinois HB 4134, introduced on January 30, 2012, by Representative Sara Feigenholtz, would amend Section 18(k) of the Condominium Property Act. Section 18(k) provides that the bylaws of a condominium can include restrictions on the use of the units, designed to prevent unreasonable interference with the use of units by the unit owners. HB 4134 would add “Restrictions regarding the use of the units may include other prohibitions on, or the allowance of, smoking tobacco products.” Notably, there is no similar language proposed for the Common Interest Community Associations Act.**

Q. Following our recent annual meeting, the new members of the board met in private, and determined who would serve in each officer position. Was this appropriate?

A. “No.” The election of the president, secretary, treasurer, and vice president if applicable, must be conducted by the board at a duly called and held board meeting or portion thereof open to all of the owners.

Q. A unit in our association was sold at foreclosure sale. A debate has stirred as to whether future payments of the special assessment for the unit were extinguished or are payable by the buyer of the foreclosed unit.

A. A foreclosure sale extinguishes the association’s lien for assessments that are due and payable as of the foreclosure sale. This would include both regular and special assessments. If a special assessment is going to be collected in installments, it is absolutely critical that the resolution adopting the special assessment and describing payment by owners be extremely clear and well-drafted. A poorly-drafted resolution could result in extinguishment of installments of a special assessment to be collected after the foreclosure sale. A well-drafted resolution will preserve the association’s ability to collect future installments of a special assessment after the foreclosure sale. The drafting of the resolution is not a “do it yourself” project.

Q. An increasing number of units in our association are delinquent in the payment of their assessments. Can the board really evict the unit owner for nonpayment of assessments?

A. “Yes.” Illinois allows associations to evict an owner who does not pay assessments, similar to how a landlord can evict a tenant for nonpayment of rent. The legal proceeding, known as forcible entry and detainer, permits the association to take possession (not ownership) of a delinquent owner’s unit. The process is initiated by sending a statutorily required notice and demand to the owner. If the owner does not pay, an eviction suit is filed. When the association obtains a judgment, the unit is then leased to a third party, and the rent received is applied to the payment of outstanding assessments and other charges and the association’s attorney’s fees.

When the owner's account is brought current, the owner can request the court to return possession of the unit to the owner. Most owners bring their account current before the time for eviction. It's an effective remedy, but implementation should not be delayed. Collection should be implemented whenever an owner is delinquent for 60 days, in order to avoid the potential impact of a mortgage foreclosure.

Addendum: The Homeowners' Energy Policy Statement Act, which requires condominium, homeowners and common interest community association to formulate policies to address owner requests to install solar panels, wind energy collection systems (wind turbine), rain water collection systems or composting systems, does not apply to any building taller than 30 feet.

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