

OCTOBER 1, 2020



**Report of the Condominium and
Common Interest Community
Ombudsperson
to the
Illinois General Assembly**

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The Condominium and Common Interest Community Ombudsperson Act (765 ILCS 615/1, et. seq. (“Act”)), which took effect January 1, 2017, created, in the Division of Real Estate within the Department of Financial and Professional Regulation (“Department”), the Office of the Condominium and Common Interest Community Ombudsperson (“Office”). Among its charges, the Act required the Department to name an Ombudsperson and other persons as necessary to discharge the Act’s requirements. On January 1, 2017, the Director of the Department’s Division of Real Estate, appointed Adrienne M. Levatino as Ombudsperson, whose mission is to provide information to unit owners, condominium and common interest community associations and their respective boards in order that they all may better understand their rights and obligations under the Condominium Property Act and the Common Interest Community Association Act.

Section 50 of the Act (765 ILCS 615/50) requires that the Department submit an annual written report on the activities of the Office to the General Assembly; the first report, pursuant to the terms of the Act, was filed on July 1, 2018. Beginning in 2019, the Act requires the Department to submit the report no later than October 1 of each year. In accordance with this requirement, the Office is hereby submitting this Report, which provides the information required by the Act..

Workload and Performance Data:

The Act requires that this Report set forth the following:

- (1) Annual workload and performance data, including (i) the number of requests for information; (ii) training, education, or other information provided; (iii) the manner in which education and training was conducted; and (iv) the staff time required to provide the training, education, or other information. For each category of data, the report shall provide subtotals based on the type of question or dispute involved in the request.

On January 1, 2017, the Office established its website at <https://www.idfpr.com/CCICO/>. This website is accessible from the Department’s Division of Real Estate website in addition to being independently accessible. Among its other content, the website contains an inquiry form for use by persons seeking information from the Office. The inquiry form is a useful tool for collecting complete contact and geographic information pertaining to those seeking information from the Ombudsperson.

During the period beginning July 1, 2019 and ending August 30, 2020, the Ombudsperson received 231 written inquiries. Of the persons submitting inquiries, 157 provided their address and all identified their “status” (attorney, board member, property manager, unit owner or “other”). The overwhelming majority of the total number (231) of individuals submitting inquiries (89%) were unit owners, while only 19 (approximately 8%) identified themselves as board members. Among those who submitted written inquiries, only 158 (68%) identified the municipality within which they resided. Of these, 56 (24%) of the persons providing geographic information lived or owned a unit in an association within the City of Chicago; 49 (21%) of the persons submitting providing geographic information lived or owned a unit in an association in Cook County outside the City of Chicago. The following is a breakdown by county of the number of inquiries received from individuals providing an address and residing outside of the City of Chicago and Cook County:

<u>County</u>	<u>Number of Inquiries</u>
Adams	1
DuPage	20
Kane	2
Lake	6
LaSalle	1
Macoupin	1
Madison	4
McHenry	3
Rock Island	2
Sangamon	7
St. Clair	2
Will	5
Out of State	4
Total	58

The Ombudsperson was able to categorize inquiries by subject matter. More than one-quarter of the inquiries raised governance issues—whether a board provided adequate notice of meetings, whether the board improperly conducted business in closed session and other claimed instances of lack of adherence to the Condominium Property Act, the Common Interest Community Association Act or an association’s governance documents, for instance. A number of these inquiries sought detailed responses involving an interpretation of an association’s declaration and/or bylaws and the persons seeking responses of this nature were advised to carefully read their associations’ governing documents. Five percent of the inquiries involved unit owners’ rights to access records of an association. The Ombudsperson received four inquiries concerning deconversion, and ten questions relating to the imposition or collection of regular or special assessments. Fifteen questions related to the adoption or enforcement of rules. Of the inquiries received by the Ombudsperson, approximately one-quarter involved matters not readily susceptible to categorization—involving, for instance, questions concerning the display of flags and political signage, the manner in which the Condominium Property Act is enforced, issues involving noise and the temperature in the common areas, leaks in units owned by others and six inquiries related to COVID-19.

In response to the inquiries received by the Ombudsperson’s Office, individuals were provided with citations to the General Not for Profit Corporation Act, the Condominium Property Act or the Common Interest Community Association Act, as appropriate, and provided with generally responsive information. Persons submitting inquiries were informed that the Ombudsperson is prohibited from providing legal advice, has no power to enforce any laws or regulations, including the regulation or registration of professions, association, companies or people, and cannot hear, mediate or resolve issues between unit owners and associations. Persons making inquiries were also informed about the availability of educational documents on the Ombudsperson’s website.

The Ombudsperson has developed and posted a robust library of publications available on its website. These include the following eleven FAQs (“Frequently Asked Questions”):

What Are The Documents That Govern An Association?
How Do You Adopt Rules and Regulations?
What Are The Benefits Of Incorporation For Associations?
What Insurance Is An Association Required To Maintain?
How Does An Association Adopt A Budget?
What Are The Requirements For Meetings?
What Is Closed Session And What Can Be Decided There?
How Are Declarations and Rules Enforced?
How Does A Condo Association Adopt A Special
Assessment?
Which Law Governs My Association?
How Does a Deconversion Work?"

Recognizing that associations and their boards and unit owners would have questions relating to the COVID-19 pandemic, the Ombudsperson issued, on May 13, 2020, a publication entitled "Covid-19 Guidance for Condominium and Common Interest Associations." That publication is available on both the Department's and the Ombudsperson's websites and appears at the end of this Report.

Section 35 of the Act requires that "[E]ach association, except for those outlined in subsection (b) of this Section, shall adopt a written policy for resolving complaints made by unit owners. The association shall make the policy available to all unit owners upon request." Subsection (b) exempts Common interest community associations exempt from the Common Interest Community Association Act. To assist associations in complying with this requirement, the Ombudsperson's Office prepared a sample Association Complaint Procedure and Sample Complaint Form and posted these to the Ombudsperson's website in September 2018.

In addition, the Ombudsperson has prepared (and updated as necessary) two publications: "Condominium Unit Owners Rights and Responsibilities Handbook" and "Rights and Responsibilities of Association Board Members." The Ombudsperson's website also contains links of the full text of the current versions of the following Illinois laws:

Condominium Property Act,
Common Interest Community Association Act,
Condominium and Common Interest Community
Ombudsperson Act
Illinois General Not for Profit Corporation Act
Community Association Manager Licensing and Disciplinary
Act
Community Association Manager Administrative Rules
Illinois Human Rights Act
Illinois Assistance Animal Integrity Act

In addition, links to the following federal and local laws are accessible from the Ombudsperson's website:

Americans with Disabilities Act
Federal Fair Housing Laws
Federal Fair Debt Collection Practices Act
Federal U.S. Flag Code
Federal Over-the-Air Reception Rule ("OTARD")

HUD Final Rule: Project Approval for Single-Family
Condominiums (08/15/2019)
City of Chicago Condominium Ordinance

Due to the onset of the COVID-19 pandemic, several events to which the Ombudsperson had been invited were cancelled and no other speaking events were scheduled.

The Ombudsperson role is not a full-time position and the Ombudsperson also serves as the Associate General Counsel in the Department's Division of Real Estate. The Ombudsperson has no additional staff. Approximately twenty percent of her time is devoted to serving as Ombudsperson.

Unit Owner Concerns

The Act further requires that this Report set forth the following:

- (2) Where relevant information is available, analysis of the most common and serious types of concerns within condominiums and common interest communities, along with any recommendations for statutory reform to reduce the frequency or severity of those disputes.

The Ombudsperson received 231 inquiries during the period covered by this Report and approximately 485 total inquiries¹ since establishment of the Ombudsperson's Office. Many of these consisted of lengthy narratives portraying dissatisfaction with boards allegedly ignoring the requirements (and, particularly, the election requirements) of either the Condominium Property Act or the Common Interest Community Association Act. Numerous other of these narratives evidenced confusion as to how the Condominium Property Act is enforced and by whom. Unit owners also sought advice as to what constituted a "common element" in their association and who, therefore, was responsible for the making of and cost of repairs, whether special assessments had been properly adopted and what documents a condominium association must make available to unit owners for inspection and copying.

The Ombudsperson believes that because the Office of the Ombudsperson is relatively new and the limited amount of anecdotal information available from the inquiries received to date, it is premature to make any recommendations for statutory reform at this time. It is clear, however, even from the limited amount of data and from questions raised at the forums in which the Ombudsperson participated since the inception of the Office, that both unit owners and associations would benefit from more effective, transparent and timely communication among and between unit owners and association boards of managers.

¹ Since the inception of the Ombudsperson's Office, 23 individuals accounted for 12% of the total number of inquiries.

COVID-19 Guidance for Condominiums and Common Interest Community Associations

The Department of Financial and Professional Regulation (“Department”) recognizes that homeowners association members and their associations may have questions that have arisen during the COVID-19 pandemic. As a service, the Department has compiled a number of frequently asked questions to provide currently available information in one document. Please keep in mind that these FAQs are not intended to provide legal advice, but rather to convey information that associations and unit owners may find informative and educational.

Please be aware that disputes arising out of the Condominium Property Act (765 ILCS 605/ (“CPA”)) or the Common Interest Community Association Act (765 ILCS 160/ (CICAA”)) may only be resolved by the Illinois courts; the Department does not have regulatory or enforcement authority related to the CPA or CICAA. The Illinois legislature, through CICAA, created the Office of the Condominium and Common Interest Community Ombudsperson in the Division of Real Estate (“Division”). The mission of the Ombudsperson is to provide information to unit owners, condominium and common interest community associations and their respective boards.

FAQs

Q. The COVID-19 pandemic is causing me financial hardship and I’m having trouble paying my assessments. What can I do?

A. The CPA expressly prohibits condominiums from forbearing the collection of assessments: “The Association shall have no authority to forbear the payment of assessments by any unit owners.” 765 ILCS 605/18(13)(o). However, we suggest that you ask your association to consult with its attorney as to whether the association may enter into a reasonable payment plan with owners experiencing severe financial hardship in light of the COVID-19 pandemic. Any such payment plan would have to take into account the board's responsibility to protect the financial health of the association. Your association may also consider adopting a policy for waiving late fees.

Q. Under current law, are virtual board meetings acceptable?

A. The simple answer is “yes,” understanding that proper notice of a meeting, generally 48 hours in advance by mail or email and posting of the notice, must be given. That notice should include specific, detailed instructions on how unit owners can attend those meetings in a virtual manner. Whatever form of electronic means is used, all persons must be able to hear one another and be heard.

The CPA provides that the bylaws of each association must provide that board members may participate in and act at any meeting of the board of managers in person, by telephonic means, or by use of any acceptable technological means whereby all persons participating in the meeting can communicate with each other; and that participation constitutes attendance and presence in person at the meeting.

The Illinois General Not for Profit Corporation Act applies to condominium and common interest community associations and authorizes both virtual member and director meetings. (805 ILCS 105/107.05(c); 805 ILCS 105/108.15(c)). Therefore, a meeting could occur by conference call, Skype, Zoom, or other acceptable technological means.

Q. Is there a requirement that I allow building personnel, such as maintenance staff, entry into my unit?

A. The CPA specifically empowers the board to have access to each unit as may be necessary for the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or to other units. (765 ILCS 605/18.4(j)). The CICA does not contain a similar provision, but common interest community association boards have fiduciary duties to unit owners which likely would include attending to emergencies affecting the common areas or which could cause damage to other units.

In non-emergency situations, or where there is no reasonable basis for a well-being check, unit owners concerned about the transmission of COVID-19 can request that building personnel not enter their unit.

Q. The Governor’s “Restore Illinois” plan established a five-phase approach for reopening the State of Illinois. The plan indicates that gatherings of no more than ten people in Phase III or fifty people in Phase IV may gather; can associations re-open private fitness centers, swimming pools (indoor and outdoor), or other amenity areas?

A. Just as every association is different, so is the analysis and approach to reopening common amenities. Associations and their boards must make informed and reasonable decisions given the knowledge that the virus is easily transmitted and in accordance with the current phase of Governor Pritzker’s “Restore Illinois” Plan. Depending on the amenity in question, associations and boards should undertake measures that reduce transmission risk. For example, opening a fitness center in a condominium could be problematic, as there may be asymptomatic carriers of COVID-19 utilizing the facility and there may be no guarantee that individuals are properly cleaning equipment between uses. For a complete copy of Governor Pritzker’s “Restore Illinois” Plan, please visit: www.coronavirus.illinois.gov.

Q. Are individuals required to wear face coverings in common areas of our community outside of our individual units, such as hallway, elevators, lobbies, etc.?

A. In order to limit the spread of COVID-19, and consistent with social distancing requirements, associations would be well served to follow the guidelines put forth by both the United States Centers for Disease Control and Prevention (“CDC”) and the Illinois Department of Public Health (“IDPH”). For more information, please visit their respective websites: CDC (www.cdc.gov) and IDPH (www.dph.illinois.gov).

Q. Is construction or repair work permitted in my unit under the Governor’s Executive Orders?

A. Governor Pritzker’s Executive Order 2020-32 categorized construction as an essential service; therefore, construction and repair work are permitted for the duration of the Governor’s Executive Orders. Unit owners should communicate with their board of managers or community association manager before scheduling any such work; unit owners, vendors, and contractors must comply with the association’s construction, social distancing, and related rules.