



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB0764

Introduced 2/18/2005, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

765 ILCS 605/9.2	from Ch. 30, par. 309.2
765 ILCS 605/18.5	from Ch. 30, par. 318.5

Amends the Condominium Property Act. Provides that, other than attorney's fees, no fees pertaining to the collection of a unit owner's financial obligation to the Association, including fees charged by a manager or managing agent, shall be added to and deemed a part of an owner's respective share of the common expenses.

LRB094 09375 LCB 39620 b

1 AN ACT concerning property.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Condominium Property Act is amended by
5 changing Sections 9.2 and 18.5 as follows:

6 (765 ILCS 605/9.2) (from Ch. 30, par. 309.2)

7 Sec. 9.2. Other remedies.

8 (a) In the event of any default by any unit owner, his
9 tenant, invitee or guest in the performance of his obligations
10 under this Act or under the declaration, bylaws, or the rules
11 and regulations of the board of managers, the board of managers
12 or its agents shall have such rights and remedies as provided
13 in the Act or condominium instruments including the right to
14 maintain an action for possession against such defaulting unit
15 owner or his tenant for the benefit of all the other unit
16 owners in the manner prescribed by Article IX of the Code of
17 Civil Procedure.

18 (b) Any attorneys' fees incurred by the Association arising
19 out of a default by any unit owner, his tenant, invitee or
20 guest in the performance of any of the provisions of the
21 condominium instruments, rules and regulations or any
22 applicable statute or ordinance shall be added to, and deemed a
23 part of, his respective share of the common expense.

24 (c) Other than attorney's fees, no fees pertaining to the
25 collection of a unit owner's financial obligation to the
26 Association, including fees charged by a manager or managing
27 agent, shall be added to and deemed a part of an owner's
28 respective share of the common expenses.

29 (Source: P.A. 88-417.)

30 (765 ILCS 605/18.5) (from Ch. 30, par. 318.5)

31 Sec. 18.5. Master Associations.

1 (a) If the declaration, other condominium instrument, or
2 other duly recorded covenants provide that any of the powers of
3 the unit owners associations are to be exercised by or may be
4 delegated to a nonprofit corporation or unincorporated
5 association that exercises those or other powers on behalf of
6 one or more condominiums, or for the benefit of the unit owners
7 of one or more condominiums, such corporation or association
8 shall be a master association.

9 (b) There shall be included in the declaration, other
10 condominium instruments, or other duly recorded covenants
11 establishing the powers and duties of the master association
12 the provisions set forth in subsections (c) through (h).

13 In interpreting subsections (c) through (h), the courts
14 should interpret these provisions so that they are interpreted
15 consistently with the similar parallel provisions found in
16 other parts of this Act.

17 (c) Meetings and finances.

18 (1) Each unit owner of a condominium subject to the
19 authority of the board of the master association shall
20 receive, at least 30 days prior to the adoption thereof by
21 the board of the master association, a copy of the proposed
22 annual budget.

23 (2) The board of the master association shall annually
24 supply to all unit owners of condominiums subject to the
25 authority of the board of the master association an
26 itemized accounting of the common expenses for the
27 preceding year actually incurred or paid, together with a
28 tabulation of the amounts collected pursuant to the budget
29 or assessment, and showing the net excess or deficit of
30 income over expenditures plus reserves.

31 (3) Each unit owner of a condominium subject to the
32 authority of the board of the master association shall
33 receive written notice mailed or delivered no less than 10
34 and no more than 30 days prior to any meeting of the board
35 of the master association concerning the adoption of the
36 proposed annual budget or any increase in the budget, or

1 establishment of an assessment.

2 (4) Meetings of the board of the master association
3 shall be open to any unit owner in a condominium subject to
4 the authority of the board of the master association,
5 except for the portion of any meeting held:

6 (A) to discuss litigation when an action against or
7 on behalf of the particular master association has been
8 filed and is pending in a court or administrative
9 tribunal, or when the board of the master association
10 finds that such an action is probable or imminent,

11 (B) to consider information regarding appointment,
12 employment or dismissal of an employee, or

13 (C) to discuss violations of rules and regulations
14 of the master association or unpaid common expenses
15 owed to the master association.

16 Any vote on these matters shall be taken at a meeting or
17 portion thereof open to any unit owner of a condominium
18 subject to the authority of the master association.

19 Any unit owner may record the proceedings at meetings
20 required to be open by this Act by tape, film or other
21 means; the board may prescribe reasonable rules and
22 regulations to govern the right to make such recordings.
23 Notice of meetings shall be mailed or delivered at least 48
24 hours prior thereto, unless a written waiver of such notice
25 is signed by the persons entitled to notice before the
26 meeting is convened. Copies of notices of meetings of the
27 board of the master association shall be posted in
28 entranceways, elevators, or other conspicuous places in
29 the condominium at least 48 hours prior to the meeting of
30 the board of the master association. Where there is no
31 common entranceway for 7 or more units, the board of the
32 master association may designate one or more locations in
33 the proximity of these units where the notices of meetings
34 shall be posted.

35 (5) If the declaration provides for election by unit
36 owners of members of the board of directors in the event of

1 a resale of a unit in the master association, the purchaser
2 of a unit from a seller other than the developer pursuant
3 to an installment contract for purchase shall, during such
4 times as he or she resides in the unit, be counted toward a
5 quorum for purposes of election of members of the board of
6 directors at any meeting of the unit owners called for
7 purposes of electing members of the board, and shall have
8 the right to vote for the election of members of the board
9 of directors and to be elected to and serve on the board of
10 directors unless the seller expressly retains in writing
11 any or all of those rights. In no event may the seller and
12 purchaser both be counted toward a quorum, be permitted to
13 vote for a particular office, or be elected and serve on
14 the board. Satisfactory evidence of the installment
15 contract shall be made available to the association or its
16 agents. For purposes of this subsection, "installment
17 contract" shall have the same meaning as set forth in
18 subsection (e) of Section 1 of the Dwelling Unit
19 Installment Contract Act.

20 (6) The board of the master association shall have the
21 authority to establish and maintain a system of master
22 metering of public utility services and to collect payments
23 in connection therewith, subject to the requirements of the
24 Tenant Utility Payment Disclosure Act.

25 (7) The board of the master association or a common
26 interest community association shall have the power, after
27 notice and an opportunity to be heard, to levy and collect
28 reasonable fines from members for violations of the
29 declaration, bylaws, and rules and regulations of the
30 master association or the common interest community
31 association. Nothing contained in this subdivision (7)
32 shall give rise to a statutory lien for unpaid fines.

33 (8) Other than attorney's fees, no fees pertaining to
34 the collection of a unit owner's financial obligation to
35 the Association, including fees charged by a manager or
36 managing agent, shall be added to and deemed a part of an

1 owner's respective share of the common expenses.

2 (d) Records.

3 (1) The board of the master association shall maintain
4 the following records of the association and make them
5 available for examination and copying at convenient hours
6 of weekdays by any unit owners in a condominium subject to
7 the authority of the board or their mortgagees and their
8 duly authorized agents or attorneys:

9 (i) Copies of the recorded declaration, other
10 condominium instruments, other duly recorded covenants
11 and bylaws and any amendments, articles of
12 incorporation of the master association, annual
13 reports and any rules and regulations adopted by the
14 master association or its board shall be available.
15 Prior to the organization of the master association,
16 the developer shall maintain and make available the
17 records set forth in this subdivision (d)(1) for
18 examination and copying.

19 (ii) Detailed and accurate records in
20 chronological order of the receipts and expenditures
21 affecting the common areas, specifying and itemizing
22 the maintenance and repair expenses of the common areas
23 and any other expenses incurred, and copies of all
24 contracts, leases, or other agreements entered into by
25 the master association, shall be maintained.

26 (iii) The minutes of all meetings of the master
27 association and the board of the master association
28 shall be maintained for not less than 7 years.

29 (iv) Ballots and proxies related thereto, if any,
30 for any election held for the board of the master
31 association and for any other matters voted on by the
32 unit owners shall be maintained for not less than one
33 year.

34 (v) Such other records of the master association as
35 are available for inspection by members of a
36 not-for-profit corporation pursuant to Section 107.75

1 of the General Not For Profit Corporation Act of 1986
2 shall be maintained.

3 (vi) With respect to units owned by a land trust,
4 if a trustee designates in writing a person to cast
5 votes on behalf of the unit owner, the designation
6 shall remain in effect until a subsequent document is
7 filed with the association.

8 (2) Where a request for records under this subsection
9 is made in writing to the board of managers or its agent,
10 failure to provide the requested record or to respond
11 within 30 days shall be deemed a denial by the board of
12 directors.

13 (3) A reasonable fee may be charged by the master
14 association or its board for the cost of copying.

15 (4) If the board of directors fails to provide records
16 properly requested under subdivision (d)(1) within the
17 time period provided in subdivision (d)(2), the unit owner
18 may seek appropriate relief, including an award of
19 attorney's fees and costs.

20 (e) The board of directors shall have standing and capacity
21 to act in a representative capacity in relation to matters
22 involving the common areas of the master association or more
23 than one unit, on behalf of the unit owners as their interests
24 may appear.

25 (f) Administration of property prior to election of the
26 initial board of directors.

27 (1) Until the election, by the unit owners or the
28 boards of managers of the underlying condominium
29 associations, of the initial board of directors of a master
30 association whose declaration is recorded on or after
31 August 10, 1990, the same rights, titles, powers,
32 privileges, trusts, duties and obligations that are vested
33 in or imposed upon the board of directors by this Act or in
34 the declaration or other duly recorded covenant shall be
35 held and performed by the developer.

36 (2) The election of the initial board of directors of a

1 master association whose declaration is recorded on or
2 after August 10, 1990, by the unit owners or the boards of
3 managers of the underlying condominium associations, shall
4 be held not later than 60 days after the conveyance by the
5 developer of 75% of the units, or 3 years after the
6 recording of the declaration, whichever is earlier. The
7 developer shall give at least 21 days notice of the meeting
8 to elect the initial board of directors and shall upon
9 request provide to any unit owner, within 3 working days of
10 the request, the names, addresses, and weighted vote of
11 each unit owner entitled to vote at the meeting. Any unit
12 owner shall upon receipt of the request be provided with
13 the same information, within 10 days of the request, with
14 respect to each subsequent meeting to elect members of the
15 board of directors.

16 (3) If the initial board of directors of a master
17 association whose declaration is recorded on or after
18 August 10, 1990 is not elected by the unit owners or the
19 members of the underlying condominium association board of
20 managers at the time established in subdivision (f) (2), the
21 developer shall continue in office for a period of 30 days,
22 whereupon written notice of his resignation shall be sent
23 to all of the unit owners or members of the underlying
24 condominium board of managers entitled to vote at an
25 election for members of the board of directors.

26 (4) Within 60 days following the election of a majority
27 of the board of directors, other than the developer, by
28 unit owners, the developer shall deliver to the board of
29 directors:

30 (i) All original documents as recorded or filed
31 pertaining to the property, its administration, and
32 the association, such as the declaration, articles of
33 incorporation, other instruments, annual reports,
34 minutes, rules and regulations, and contracts, leases,
35 or other agreements entered into by the association. If
36 any original documents are unavailable, a copy may be

1 provided if certified by affidavit of the developer, or
2 an officer or agent of the developer, as being a
3 complete copy of the actual document recorded or filed.

4 (ii) A detailed accounting by the developer,
5 setting forth the source and nature of receipts and
6 expenditures in connection with the management,
7 maintenance and operation of the property, copies of
8 all insurance policies, and a list of any loans or
9 advances to the association which are outstanding.

10 (iii) Association funds, which shall have been at
11 all times segregated from any other moneys of the
12 developer.

13 (iv) A schedule of all real or personal property,
14 equipment and fixtures belonging to the association,
15 including documents transferring the property,
16 warranties, if any, for all real and personal property
17 and equipment, deeds, title insurance policies, and
18 all tax bills.

19 (v) A list of all litigation, administrative
20 action and arbitrations involving the association, any
21 notices of governmental bodies involving actions taken
22 or which may be taken concerning the association,
23 engineering and architectural drawings and
24 specifications as approved by any governmental
25 authority, all other documents filed with any other
26 governmental authority, all governmental certificates,
27 correspondence involving enforcement of any
28 association requirements, copies of any documents
29 relating to disputes involving unit owners, and
30 originals of all documents relating to everything
31 listed in this subparagraph.

32 (vi) If the developer fails to fully comply with
33 this paragraph (4) within the 60 days provided and
34 fails to fully comply within 10 days of written demand
35 mailed by registered or certified mail to his or her
36 last known address, the board may bring an action to

1 compel compliance with this paragraph (4). If the court
2 finds that any of the required deliveries were not made
3 within the required period, the board shall be entitled
4 to recover its reasonable attorneys' fees and costs
5 incurred from and after the date of expiration of the
6 10 day demand.

7 (5) With respect to any master association whose
8 declaration is recorded on or after August 10, 1990, any
9 contract, lease, or other agreement made prior to the
10 election of a majority of the board of directors other than
11 the developer by or on behalf of unit owners or underlying
12 condominium associations, the association or the board of
13 directors, which extends for a period of more than 2 years
14 from the recording of the declaration, shall be subject to
15 cancellation by more than 1/2 of the votes of the unit
16 owners, other than the developer, cast at a special meeting
17 of members called for that purpose during a period of 90
18 days prior to the expiration of the 2 year period if the
19 board of managers is elected by the unit owners, otherwise
20 by more than 1/2 of the underlying condominium board of
21 managers. At least 60 days prior to the expiration of the 2
22 year period, the board of directors, or, if the board is
23 still under developer control, then the board of managers
24 or the developer shall send notice to every unit owner or
25 underlying condominium board of managers, notifying them
26 of this provision, of what contracts, leases and other
27 agreements are affected, and of the procedure for calling a
28 meeting of the unit owners or for action by the underlying
29 condominium board of managers for the purpose of acting to
30 terminate such contracts, leases or other agreements.
31 During the 90 day period the other party to the contract,
32 lease, or other agreement shall also have the right of
33 cancellation.

34 (6) The statute of limitations for any actions in law
35 or equity which the master association may bring shall not
36 begin to run until the unit owners or underlying

1 condominium board of managers have elected a majority of
2 the members of the board of directors.

3 (g) In the event of any resale of a unit in a master
4 association by a unit owner other than the developer, the owner
5 shall obtain from the board of directors and shall make
6 available for inspection to the prospective purchaser, upon
7 demand, the following:

8 (1) A copy of the declaration, other instruments and
9 any rules and regulations.

10 (2) A statement of any liens, including a statement of
11 the account of the unit setting forth the amounts of unpaid
12 assessments and other charges due and owing.

13 (3) A statement of any capital expenditures
14 anticipated by the association within the current or
15 succeeding 2 fiscal years.

16 (4) A statement of the status and amount of any reserve
17 for replacement fund and any portion of such fund earmarked
18 for any specified project by the board of directors.

19 (5) A copy of the statement of financial condition of
20 the association for the last fiscal year for which such a
21 statement is available.

22 (6) A statement of the status of any pending suits or
23 judgments in which the association is a party.

24 (7) A statement setting forth what insurance coverage
25 is provided for all unit owners by the association.

26 (8) A statement that any improvements or alterations
27 made to the unit, or any part of the common areas assigned
28 thereto, by the prior unit owner are in good faith believed
29 to be in compliance with the declaration of the master
30 association.

31 The principal officer of the unit owner's association or
32 such other officer as is specifically designated shall furnish
33 the above information when requested to do so in writing,
34 within 30 days of receiving the request.

35 A reasonable fee covering the direct out-of-pocket cost of
36 copying and providing such information may be charged by the

1 association or its board of directors to the unit seller for
2 providing the information.

3 (h) Errors and omissions.

4 (1) If there is an omission or error in the declaration
5 or other instrument of the master association, the master
6 association may correct the error or omission by an
7 amendment to the declaration or other instrument, as may be
8 required to conform it to this Act, to any other applicable
9 statute, or to the declaration. The amendment shall be
10 adopted by vote of two-thirds of the members of the board
11 of directors or by a majority vote of the unit owners at a
12 meeting called for that purpose, unless the Act or the
13 declaration of the master association specifically
14 provides for greater percentages or different procedures.

15 (2) If, through a scrivener's error, a unit has not
16 been designated as owning an appropriate undivided share of
17 the common areas or does not bear an appropriate share of
18 the common expenses, or if all of the common expenses or
19 all of the common elements in the condominium have not been
20 distributed in the declaration, so that the sum total of
21 the shares of common areas which have been distributed or
22 the sum total of the shares of the common expenses fail to
23 equal 100%, or if it appears that more than 100% of the
24 common elements or common expenses have been distributed,
25 the error may be corrected by operation of law by filing an
26 amendment to the declaration, approved by vote of
27 two-thirds of the members of the board of directors or a
28 majority vote of the unit owners at a meeting called for
29 that purpose, which proportionately adjusts all percentage
30 interests so that the total is equal to 100%, unless the
31 declaration specifically provides for a different
32 procedure or different percentage vote by the owners of the
33 units and the owners of mortgages thereon affected by
34 modification being made in the undivided interest in the
35 common areas, the number of votes in the unit owners
36 association or the liability for common expenses

1 appertaining to the unit.

2 (3) If an omission or error or a scrivener's error in
3 the declaration or other instrument is corrected by vote of
4 two-thirds of the members of the board of directors
5 pursuant to the authority established in subdivisions
6 (h)(1) or (h)(2) of this Section, the board, upon written
7 petition by unit owners with 20% of the votes of the
8 association or resolutions adopted by the board of managers
9 or board of directors of the condominium and common
10 interest community associations which select 20% of the
11 members of the board of directors of the master
12 association, whichever is applicable, received within 30
13 days of the board action, shall call a meeting of the unit
14 owners or the boards of the condominium and common interest
15 community associations which select members of the board of
16 directors of the master association within 30 days of the
17 filing of the petition or receipt of the condominium and
18 common interest community association resolution to
19 consider the board action. Unless a majority of the votes
20 of the unit owners of the association are cast at the
21 meeting to reject the action, or board of managers or board
22 of directors of condominium and common interest community
23 associations which select over 50% of the members of the
24 board of the master association adopt resolutions prior to
25 the meeting rejecting the action of the board of directors
26 of the master association, it is ratified whether or not a
27 quorum is present.

28 (4) The procedures for amendments set forth in this
29 subsection (h) cannot be used if such an amendment would
30 materially or adversely affect property rights of the unit
31 owners unless the affected unit owners consent in writing.
32 This Section does not restrict the powers of the
33 association to otherwise amend the declaration, bylaws, or
34 other condominium instruments, but authorizes a simple
35 process of amendment requiring a lesser vote for the
36 purpose of correcting defects, errors, or omissions when

1 the property rights of the unit owners are not materially
2 or adversely affected.

3 (5) If there is an omission or error in the declaration
4 or other instruments that may not be corrected by an
5 amendment procedure set forth in subdivision (h)(1) or
6 (h)(2) of this Section, then the circuit court in the
7 county in which the master association is located shall
8 have jurisdiction to hear a petition of one or more of the
9 unit owners thereon or of the association, to correct the
10 error or omission, and the action may be a class action.
11 The court may require that one or more methods of
12 correcting the error or omission be submitted to the unit
13 owners to determine the most acceptable correction. All
14 unit owners in the association must be joined as parties to
15 the action. Service of process on owners may be by
16 publication, but the plaintiff shall furnish all unit
17 owners not personally served with process with copies of
18 the petition and final judgment of the court by certified
19 mail, return receipt requested, at their last known
20 address.

21 (6) Nothing contained in this Section shall be
22 construed to invalidate any provision of a declaration
23 authorizing the developer to amend an instrument prior to
24 the latest date on which the initial membership meeting of
25 the unit owners must be held, whether or not it has
26 actually been held, to bring the instrument into compliance
27 with the legal requirements of the Federal National
28 Mortgage Association, the Federal Home Loan Mortgage
29 Corporation, the Federal Housing Administration, the
30 United States Veterans Administration or their respective
31 successors and assigns.

32 (i) The provisions of subsections (c) through (h) are
33 applicable to all declarations, other condominium instruments,
34 and other duly recorded covenants establishing the powers and
35 duties of the master association recorded under this Act. Any
36 portion of a declaration, other condominium instrument, or

1 other duly recorded covenant establishing the powers and duties
2 of a master association which contains provisions contrary to
3 the provisions of subsection (c) through (h) shall be void as
4 against public policy and ineffective. Any declaration, other
5 condominium instrument, or other duly recorded covenant
6 establishing the powers and duties of the master association
7 which fails to contain the provisions required by subsections
8 (c) through (h) shall be deemed to incorporate such provisions
9 by operation of law.

10 (j) The provisions of subsections (c) through (h) are
11 applicable to all common interest community associations and
12 their unit owners for common interest community associations
13 which are subject to the provisions of Section 9-102(a)(8) of
14 the Code of Civil Procedure. For purposes of this subsection,
15 the terms "common interest community" and "unit owners" shall
16 have the same meaning as set forth in Section 9-102(c) of the
17 Code of Civil Procedure.

18 (Source: P.A. 90-229, eff. 7-25-97; 91-616, eff. 8-19-99.)