

SB2570



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2570

Introduced 1/20/2006, by Sen. Susan Garrett

SYNOPSIS AS INTRODUCED:

765 ILCS 605/9

from Ch. 30, par. 309

Amends the Condominium Property Act. Provides that a purchaser of a condominium unit at a judicial foreclosure sale, or a mortgagee who receives a deed in lieu of foreclosure or a judgment of foreclosure or who otherwise takes possession of a condominium unit pursuant to a court order, must pay the proportionate share of the common expenses for the unit which would have become due in the absence of any assessment acceleration during the 6 months immediately prior to the filing of an action to enforce the collection of assessments.

LRB094 18528 AJO 54463 b

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning condominium 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 Section 9 as follows:

6 (765 ILCS 605/9) (from Ch. 30, par. 309)

7 Sec. 9. Sharing of expenses - Lien for nonpayment.

8 (a) All common expenses incurred or accrued prior to the
9 first conveyance of a unit shall be paid by the developer, and
10 during this period no common expense assessment shall be
11 payable to the association. It shall be the duty of each unit
12 owner including the developer to pay his proportionate share of
13 the common expenses commencing with the first conveyance. The
14 proportionate share shall be in the same ratio as his
15 percentage of ownership in the common elements set forth in the
16 declaration.

17 (b) The condominium instruments may provide that common
18 expenses for insurance premiums be assessed on a basis
19 reflecting increased charges for coverage on certain units.

20 (c) Budget and reserves.

21 (1) The board of managers shall prepare and distribute
22 to all unit owners a detailed proposed annual budget,
23 setting forth with particularity all anticipated common
24 expenses by category as well as all anticipated assessments
25 and other income. The initial budget and common expense
26 assessment based thereon shall be adopted prior to the
27 conveyance of any unit. The budget shall also set forth
28 each unit owner's proposed common expense assessment.

29 (2) All budgets adopted by a board of managers on or
30 after July 1, 1990 shall provide for reasonable reserves
31 for capital expenditures and deferred maintenance for
32 repair or replacement of the common elements. To determine

1 the amount of reserves appropriate for an association, the
2 board of managers shall take into consideration the
3 following: (i) the repair and replacement cost, and the
4 estimated useful life, of the property which the
5 association is obligated to maintain, including but not
6 limited to structural and mechanical components, surfaces
7 of the buildings and common elements, and energy systems
8 and equipment; (ii) the current and anticipated return on
9 investment of association funds; (iii) any independent
10 professional reserve study which the association may
11 obtain; (iv) the financial impact on unit owners, and the
12 market value of the condominium units, of any assessment
13 increase needed to fund reserves; and (v) the ability of
14 the association to obtain financing or refinancing.

15 (3) Notwithstanding the provisions of this subsection
16 (c), an association without a reserve requirement in its
17 condominium instruments may elect to waive in whole or in
18 part the reserve requirements of this Section by a vote of
19 2/3 of the total votes of the association. Any association
20 having elected under this paragraph (3) to waive the
21 provisions of subsection (c) may by a vote of 2/3 of the
22 total votes of the association elect to again be governed
23 by the requirements of subsection (c).

24 (4) In the event that an association elects to waive
25 all or part of the reserve requirements of this Section,
26 that fact must be disclosed after the meeting at which the
27 waiver occurs by the association in the financial
28 statements of the association and, highlighted in bold
29 print, in the response to any request of a prospective
30 purchaser for the information prescribed under Section
31 22.1; and no member of the board of managers or the
32 managing agent of the association shall be liable, and no
33 cause of action may be brought for damages against these
34 parties, for the lack or inadequacy of reserve funds in the
35 association budget.

36 (d) (Blank).

1 (e) The condominium instruments may provide for the
2 assessment, in connection with expenditures for the limited
3 common elements, of only those units to which the limited
4 common elements are assigned.

5 (f) Payment of any assessment shall be in amounts and at
6 times determined by the board of managers.

7 (g) Lien.

8 (1) If any unit owner shall fail or refuse to make any
9 payment of the common expenses or the amount of any unpaid
10 fine when due, the amount thereof together with any
11 interest, late charges, reasonable attorney fees incurred
12 enforcing the covenants of the condominium instruments,
13 rules and regulations of the board of managers, or any
14 applicable statute or ordinance, and costs of collections
15 shall constitute a lien on the interest of the unit owner
16 in the property prior to all other liens and encumbrances,
17 recorded or unrecorded, except only (a) taxes, special
18 assessments and special taxes theretofore or thereafter
19 levied by any political subdivision or municipal
20 corporation of this State and other State or federal taxes
21 which by law are a lien on the interest of the unit owner
22 prior to preexisting recorded encumbrances thereon and (b)
23 encumbrances on the interest of the unit owner recorded
24 prior to the date of such failure or refusal which by law
25 would be a lien thereon prior to subsequently recorded
26 encumbrances. Any action brought to extinguish the lien of
27 the association shall include the association as a party.

28 (2) With respect to encumbrances executed prior to
29 August 30, 1984 or encumbrances executed subsequent to
30 August 30, 1984 which are neither bonafide first mortgages
31 nor trust deeds and which encumbrances contain a statement
32 of a mailing address in the State of Illinois where notice
33 may be mailed to the encumbrancer thereunder, if and
34 whenever and as often as the manager or board of managers
35 shall send, by United States certified or registered mail,
36 return receipt requested, to any such encumbrancer at the

1 mailing address set forth in the recorded encumbrance a
2 statement of the amounts and due dates of the unpaid common
3 expenses with respect to the encumbered unit, then, unless
4 otherwise provided in the declaration or bylaws, the prior
5 recorded encumbrance shall be subject to the lien of all
6 unpaid common expenses with respect to the unit which
7 become due and payable within a period of 90 days after the
8 date of mailing of each such notice.

9 (3) The purchaser of a condominium unit at a judicial
10 foreclosure sale, or a mortgagee who receives title to a
11 unit by deed in lieu of foreclosure or judgment by common
12 law strict foreclosure or otherwise takes possession
13 pursuant to court order under the Illinois Mortgage
14 Foreclosure Law, shall have the duty to pay the
15 proportionate share of the common expenses for the unit
16 which would have become due in the absence of any
17 assessment acceleration during the 6 months immediately
18 preceding institution of an action to enforce the
19 collection of assessments; and thereafter, shall have the
20 duty to pay the unit's proportionate share of the common
21 expenses for the unit assessed from and after the first day
22 of the month after the date of the judicial foreclosure
23 sale, delivery of the deed in lieu of foreclosure, entry of
24 a judgment in common law strict foreclosure, or taking of
25 possession pursuant to such court order. Such payment
26 confirms the extinguishment of any lien created pursuant to
27 paragraph (1) or (2) of this subsection (g) by virtue of
28 the failure or refusal of a prior unit owner to make
29 payment of common expenses, where the judicial foreclosure
30 sale has been confirmed by order of the court, a deed in
31 lieu thereof has been accepted by the lender, or a consent
32 judgment has been entered by the court.

33 (h) A lien for common expenses shall be in favor of the
34 members of the board of managers and their successors in office
35 and shall be for the benefit of all other unit owners. Notice
36 of the lien may be recorded by the board of managers, or if the

1 developer is the manager or has a majority of seats on the
2 board of managers and the manager or board of managers fails to
3 do so, any unit owner may record notice of the lien. Upon the
4 recording of such notice the lien may be foreclosed by an
5 action brought in the name of the board of managers in the same
6 manner as a mortgage of real property.

7 (i) Unless otherwise provided in the declaration, the
8 members of the board of managers and their successors in
9 office, acting on behalf of the other unit owners, shall have
10 the power to bid on the interest so foreclosed at the
11 foreclosure sale, and to acquire and hold, lease, mortgage and
12 convey it.

13 (j) Any encumbrancer may from time to time request in
14 writing a written statement from the manager or board of
15 managers setting forth the unpaid common expenses with respect
16 to the unit covered by his encumbrance. Unless the request is
17 complied with within 20 days, all unpaid common expenses which
18 become due prior to the date of the making of such request
19 shall be subordinate to the lien of the encumbrance. Any
20 encumbrancer holding a lien on a unit may pay any unpaid common
21 expenses payable with respect to the unit, and upon payment the
22 encumbrancer shall have a lien on the unit for the amounts paid
23 at the same rank as the lien of his encumbrance.

24 (k) Nothing in Public Act 83-1271 is intended to change the
25 lien priorities of any encumbrance created prior to August 30,
26 1984.

27 (Source: P.A. 91-357, eff. 7-29-99.)