

SB0949



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0949

Introduced 2/7/2017, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

765 ILCS 160/1-20
765 ILCS 605/27

from Ch. 30, par. 327

Amends the Common Interest Community Association Act and the Condominium Property Act. Provides that if the condominium or community instruments require approval of any mortgagee or lienholder of record and the mortgagee or lienholder of record receives a request to approve or consent to the amendment to the condominium or community instruments, the mortgagee or lienholder of record is deemed to have approved or consented to the request unless the mortgagee or lienholder of record delivers a negative response to the requesting party within 35 days after the mailing of the request.

LRB100 06989 HEP 17042 b

A BILL FOR

1 AN ACT concerning civil law.

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

4 Section 5. The Common Interest Community Association Act is
5 amended by changing Section 1-20 as follows:

6 (765 ILCS 160/1-20)

7 Sec. 1-20. Amendments to the declaration, bylaws, or
8 operating agreement.

9 (a) The administration of every property shall be governed
10 by the declaration and bylaws or operating agreement, which may
11 either be embodied in the declaration or in a separate
12 instrument, a true copy of which shall be appended to and
13 recorded with the declaration. No modification or amendment of
14 the declaration, bylaws, or operating agreement shall be valid
15 unless the same is set forth in an amendment thereof and such
16 amendment is duly recorded. An amendment of the declaration,
17 bylaws, or operating agreement shall be deemed effective upon
18 recordation, unless the amendment sets forth a different
19 effective date.

20 (b) Unless otherwise provided by this Act, amendments to
21 community instruments authorized to be recorded shall be
22 executed and recorded by the president of the board or such
23 other officer authorized by the common interest community

1 association or the community instruments.

2 (c) If an association that currently permits leasing amends
3 its declaration, bylaws, or rules and regulations to prohibit
4 leasing, nothing in this Act or the declarations, bylaws, rules
5 and regulations of an association shall prohibit a unit owner
6 incorporated under 26 USC 501(c)(3) which is leasing a unit at
7 the time of the prohibition from continuing to do so until such
8 time that the unit owner voluntarily sells the unit; and no
9 special fine, fee, dues, or penalty shall be assessed against
10 the unit owner for leasing its unit.

11 (d) No action to incorporate a common interest community as
12 a municipality shall commence until an instrument agreeing to
13 incorporation has been signed by two-thirds of the members.

14 (e) If the community instruments require approval of any
15 mortgagee or lienholder of record and the mortgagee or
16 lienholder of record receives a request to approve or consent
17 to the amendment to the community instruments, the mortgagee or
18 lienholder of record is deemed to have approved or consented to
19 the request unless the mortgagee or lienholder of record
20 delivers a negative response to the requesting party within 35
21 days after the mailing of the request.

22 (Source: P.A. 99-41, eff. 7-14-15.)

23 Section 10. The Condominium Property Act is amended by
24 changing Section 27 as follows:

1 (765 ILCS 605/27) (from Ch. 30, par. 327)

2 Sec. 27. Amendments.

3 (a) If there is any unit owner other than the developer,
4 and unless otherwise provided in this Act, the condominium
5 instruments shall be amended only as follows:

6 (i) upon the affirmative vote of 2/3 of those voting or
7 upon the majority specified by the condominium
8 instruments, provided that in no event shall the
9 condominium instruments require more than a three-quarters
10 vote of all unit owners; and

11 (ii) with the approval of, or notice to, any mortgagees
12 or other lienholders of record, if required under the
13 provisions of the condominium instruments. If the
14 condominium instruments require approval of any mortgagee
15 or lienholder of record and the mortgagee or lienholder of
16 record receives a request to approve or consent to the
17 amendment to the condominium instruments, the mortgagee or
18 lienholder of record is deemed to have approved or
19 consented to the request unless the mortgagee or lienholder
20 of record delivers a negative response to the requesting
21 party within 35 days after the mailing of the request.

22 (b) (1) If there is an omission, error, or inconsistency in
23 a condominium instrument, such that a provision of a
24 condominium instrument does not conform to this Act or to
25 another applicable statute, the association may correct the
26 omission, error, or inconsistency to conform the condominium

1 instrument to this Act or to another applicable statute by an
2 amendment adopted by vote of two-thirds of the Board of
3 Managers, without a unit owner vote. A provision in a
4 condominium instrument requiring or allowing unit owners,
5 mortgagees, or other lienholders of record to vote to approve
6 an amendment to a condominium instrument, or for the mortgagees
7 or other lienholders of record to be given notice of an
8 amendment to a condominium instrument, is not applicable to an
9 amendment to the extent that the amendment corrects an
10 omission, error, or inconsistency to conform the condominium
11 instrument to this Act or to another applicable statute.

12 (2) If through a scrivener's error, a unit has not been
13 designated as owning an appropriate undivided share of the
14 common elements or does not bear an appropriate share of the
15 common expenses or that all the common expenses or all of the
16 common elements in the condominium have not been distributed in
17 the declaration, so that the sum total of the shares of common
18 elements which have been distributed or the sum total of the
19 shares of the common expenses fail to equal 100%, or if it
20 appears that more than 100% of the common elements or common
21 expenses have been distributed, the error may be corrected by
22 operation of law by filing an amendment to the declaration
23 approved by vote of two-thirds of the members of the Board of
24 Managers or a majority vote of the unit owners at a meeting
25 called for this purpose which proportionately adjusts all
26 percentage interests so that the total is equal to 100% unless

1 the condominium instruments specifically provide for a
2 different procedure or different percentage vote by the owners
3 of the units and the owners of mortgages thereon affected by
4 modification being made in the undivided interest in the common
5 elements, the number of votes in the unit owners association or
6 the liability for common expenses appertaining to the unit.

7 (3) If an omission or error or a scrivener's error in the
8 declaration, bylaws or other condominium instrument is
9 corrected by vote of two-thirds of the members of the Board of
10 Managers pursuant to the authority established in subsections
11 (b) (1) or (b) (2) of this Section ~~27 of this Act~~, the Board upon
12 written petition by unit owners with 20 percent of the votes of
13 the association filed within 30 days of the Board action shall
14 call a meeting of the unit owners within 30 days of the filing
15 of the petition to consider the Board action. Unless a majority
16 of the votes of the unit owners of the association are cast at
17 the meeting to reject the action, it is ratified whether or not
18 a quorum is present.

19 (4) The procedures for amendments set forth in this
20 subsection (b) cannot be used if such an amendment would
21 materially or adversely affect property rights of the unit
22 owners unless the affected unit owners consent in writing. This
23 Section does not restrict the powers of the association to
24 otherwise amend the declaration, bylaws, or other condominium
25 instruments, but authorizes a simple process of amendment
26 requiring a lesser vote for the purpose of correcting defects,

1 errors, or omissions when the property rights of the unit
2 owners are not materially or adversely affected.

3 (5) If there is an omission or error in the declaration,
4 bylaws, or other condominium instruments, which may not be
5 corrected by an amendment procedure set forth in paragraphs (1)
6 and (2) of this subsection (b) ~~of Section 27~~ in the declaration
7 then the Circuit Court in the County in which the condominium
8 is located shall have jurisdiction to hear a petition of one or
9 more of the unit owners thereon or of the association, to
10 correct the error or omission, and the action may be a class
11 action. 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 unit
14 owners in the association must be joined as parties to the
15 action. Service of process on owners may be by publication, but
16 the plaintiff shall furnish all unit owners not personally
17 served with process with copies of the petition and final
18 judgment of the court by certified mail return receipt
19 requested, at their last known address.

20 (6) Nothing contained in this Section shall be construed to
21 invalidate any provision of a condominium instrument
22 authorizing the developer to amend a condominium instrument
23 prior to the latest date on which the initial membership
24 meeting of the unit owners must be held, whether or not ~~not~~ it
25 has actually been held, to bring the instrument into compliance
26 with the legal requirements of the Federal National Mortgage

1 Association, the Federal Home Loan Mortgage Corporation, the
2 Federal Housing Administration, the United States Veterans
3 Administration or their respective successors and assigns.

4 (Source: P.A. 98-282, eff. 1-1-14; 99-472, eff. 6-1-16; revised
5 9-1-16.)