



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5388

Introduced 2/9/2024, by Rep. Dagmara Avelar

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.1015 new
815 ILCS 505/2EEEE new

Creates the Homeowners' Association Bill of Rights Act. Requires the Office of the Attorney General to establish a separate HOA Department within the Consumer Protection Division. Provides that the HOA Department shall enforce and provide guidance for the provisions in this Act. Requires that each member of the association shall be assessed \$3 per year to support the HOA Department that shall be remitted to the HOA Fund to be used exclusively by the Attorney General's Office for handling HOA enforcement and compliance. Provides that associations that do not have any special amenities such as a pool, gym, or community space may not increase their annual assessments for these amenities by more than 2% per year. Limits special assessments above \$100,000 unless approved by a vote of the majority of the members. Provides that an association may be dissolved with a vote of at least 65% of its members. Creates a process for a homeowner to file a complaint against a board member. Stays any fines, late fees, and interest once a dispute is filed by a homeowner, and limits attorney's fees to less than 10% of the original amount owed. Provides that a person who violates the Homeowners' Association Bill of Rights Act commits an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act. Amends the State Finance Act to list the HOA Fund as a special fund.

LRB103 36945 JRC 67059 b

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 1. Short title. This Act may be cited as the
5 Homeowners' Association Bill of Rights Act.

6 Section 5. Definitions. All definitions in the Common
7 Interest Community Association Act have the same meanings when
8 used in this Act.

9 Section 15. HOA Department. There is created in the Office
10 of the Attorney General a separate HOA Department within the
11 Consumer Protection Division to enforce and provide guidance
12 regarding this Act. The HOA Department shall enforce and
13 provide guidance for the provisions in this Act. The HOA
14 Department shall be funded by contributions through an
15 assessment by the board and remitted to the Secretary of State
16 annually when the association renews its annual license. Each
17 member of the association shall be assessed \$3 per year to
18 support the HOA Department that shall be remitted to the HOA
19 Fund to be used exclusively by the Attorney General's Office
20 for handling HOA enforcement and compliance. The HOA
21 Department shall recommend that this assessment be evaluated
22 annually to determine whether this \$3 amount should be changed

1 to adequately fund the HOA Department to ensure that all
2 complaints under this Act are investigated within 60 days of
3 receipt by the HOA Department. The HOA Department shall
4 support the efforts of the Condominium and Common Interest
5 Community Ombudsperson in resolving complaints from members.

6 Section 20. Governance requirements. Associations that do
7 not have any special amenities such as a pool, gym, or
8 community space may not increase their annual assessments for
9 these amenities by more than 2% per year. Special assessments
10 above \$100,000 shall be approved by a vote of the majority of
11 the members. The board shall supply an agenda to all members of
12 the association at least a week before a scheduled meeting.
13 Board members have a fiduciary duty to the members of the
14 association. Associations must register annually with the
15 Department of Financial and Professional Regulation. Boards
16 must purchase and maintain directors' and officers' liability
17 insurance for their board members. Upon a vote of at least 65%
18 of the members, the association may be dissolved. Property
19 managers shall report to the board any illegal or unethical
20 actions by the board members. Before making such a report, the
21 property manager shall attempt to recommend to the board
22 corrective actions that can be taken to resolve the illegal or
23 unethical conduct. If the board does not take corrective
24 action within 5 days, the property manager shall report its
25 actions to the HOA Department for further action.

1 Section 25. Penalties for violations of state or federal
2 laws and governing documents. Board members and property
3 managers must not knowingly violate state or federal laws or
4 the association's governing documents. If the violation caused
5 damage to a member, he or she may file a civil action against
6 that board member or property manager under Consumer Fraud and
7 Deceptive Business Practices Act. If a board member breaches
8 his or her fiduciary duties under this Act or fails to comply
9 with this Act, the Attorney General's Office may bring an
10 action for equitable relief, including awarding attorney's
11 fees and reimbursements to members.

12 Section 30. Process to file a complaint against a board
13 member or property manager. The process to file a complaint
14 against a board member or property manager is as follows:

15 (1) The member shall write a complaint to the board
16 that includes the citation to the law or section of the
17 governing document that the board member is violating.

18 (2) The board shall arrange to hear the member's
19 complaint at its next meeting, and the board shall take
20 action on it. The vote of each board member shall be
21 recorded taking action on the appeal.

22 (3) If the board does not respond within 10 days from
23 its receipt of the complaint, the member may submit to the
24 HOA Department the following: a complaint with a summary

1 of the issue, the correspondence sent to and from the
2 board about the issue and the law or governing documents
3 or both that the member alleges has been violated.

4 (4) The HOA Department shall investigate the matter.
5 If the HOA Department finds that the complaint does not
6 have merit, the HOA Department shall take no further
7 action on it. If the HOA Department finds the complaint to
8 have merit, the HOA Department shall submit a cease and
9 desist letter to the board.

10 (5) If the board does not take corrective action to
11 resolve the problem within 5 days of its receipt of the
12 cease and desist letter, the HOA Department shall order
13 the board member who has violated the law or governing
14 documents be removed from the board.

15 (6) If the board does not take corrective action to
16 resolve the problem within 10 days of its receipt of the
17 cease and desist letter, the HOA Department shall file a
18 lawsuit against the offending board member or members. The
19 HOA Department may impose the following remedies against
20 board members:

21 (A) removal from their existing board position;

22 (B) enjoining the board members from serving on
23 any board for a certain period of time, or in
24 perpetuity;

25 (C) personal fines or other financial penalties;

26 and

1 (D) reimbursement of member losses due to the
2 board's actions.

3 (7) Either party may appeal the decision under the
4 Illinois Administrative Procedure Act. The Attorney
5 General shall defend the decision of the HOA Department.

6 Section 35. Foreclosures and debts. All laws relating to
7 fair housing, fair collections, fair lending and consumer
8 protection laws regarding foreclosures shall apply to all
9 members, boards, and board members.

10 Section 40. Fines, late fees, and attorney's fees. All
11 fines, late fees, and interest are stayed once a dispute is
12 filed in writing with the HOA and will resume only when the
13 dispute is resolved in civil court or by the HOA Department.
14 Attorney's fees in excess of 10% of the original amount owed,
15 not including any fees or interest, may not be charged to the
16 homeowner. Attorney's fees may not be requested until the
17 dispute is resolved through court action or by the HOA
18 Department and all appeals have concluded. Neither the board
19 nor a board member or board members may use association funds
20 to pay for attorney's fees if they are not the prevailing party
21 in disputes with a member or members.

22 Section 45. Conflict of laws. If there is a conflict
23 between the provisions of the Common Interest Community

1 Association Act and this Act, this Act controls.

2 Section 900. The State Finance Act is amended by adding
3 Section 5.1015 as follows:

4 (30 ILCS 105/5.1015 new)

5 Sec. 5.1015. The HOA Fund.

6 Section 905. The Consumer Fraud and Deceptive Business
7 Practices Act is amended by adding Section 2EEEE as follows:

8 (815 ILCS 505/2EEEE new)

9 Sec. 2EEEE. Violation. Any person who violates the
10 Homeowners' Association Bill of Rights Act commits an unlawful
11 practice within the meaning of this Act.