



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5760

Introduced 2/16/2012, by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

765 ILCS 605/9

from Ch. 30, par. 309

Amends the Condominium Property Act. In provisions concerning liens for amounts due, for unpaid common expenses, provides, with respect to a condominium unit in foreclosure, that a mortgagee who receives title to a unit by purchase at a judicial foreclosure sale, by a deed in lieu of foreclosure, or by a court order pursuant to a foreclosure shall pay the unpaid proportionate share of the common expenses for the unit, related late charges, and attorney's fees that accrued before the mortgagee acquired title and those that later become due, up to the date of the conveyance of the unit pursuant to a sale by the mortgagee. Provides that a purchaser at a judicial foreclosure sale or a person who purchases a foreclosed unit from the mortgagee has no obligation to pay for the unpaid proportionate share of the common expenses for the unit, related late charges, or attorney's fees which accrued before the purchaser acquired title. Deletes language providing that: (i) the purchaser at a judicial foreclosure sale or a mortgagee who receives title by deed in lieu of foreclosure or by a court order shall pay the unit's common expenses from and after the first day of the month after the delivery of the deed in lieu of foreclosure, the sale, or the court order; and (ii) a person who buys a unit, other than a mortgagee, at a judicial foreclosure sale or from a mortgagee shall have the duty to pay the proportionate share of unpaid unit common expenses which would have become due (without any assessment acceleration) during the 6 months before the filing of an action to collect assessments. Makes other changes.

LRB097 14988 AJ0 65892 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 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

1 expenses by category as well as all anticipated assessments
2 and other income. The initial budget and common expense
3 assessment based thereon shall be adopted prior to the
4 conveyance of any unit. The budget shall also set forth
5 each unit owner's proposed common expense assessment.

6 (2) All budgets adopted by a board of managers on or
7 after July 1, 1990 shall provide for reasonable reserves
8 for capital expenditures and deferred maintenance for
9 repair or replacement of the common elements. To determine
10 the amount of reserves appropriate for an association, the
11 board of managers shall take into consideration the
12 following: (i) the repair and replacement cost, and the
13 estimated useful life, of the property which the
14 association is obligated to maintain, including but not
15 limited to structural and mechanical components, surfaces
16 of the buildings and common elements, and energy systems
17 and equipment; (ii) the current and anticipated return on
18 investment of association funds; (iii) any independent
19 professional reserve study which the association may
20 obtain; (iv) the financial impact on unit owners, and the
21 market value of the condominium units, of any assessment
22 increase needed to fund reserves; and (v) the ability of
23 the association to obtain financing or refinancing.

24 (3) Notwithstanding the provisions of this subsection
25 (c), an association without a reserve requirement in its
26 condominium instruments may elect to waive in whole or in

1 part the reserve requirements of this Section by a vote of
2 2/3 of the total votes of the association. Any association
3 having elected under this paragraph (3) to waive the
4 provisions of subsection (c) may by a vote of 2/3 of the
5 total votes of the association elect to again be governed
6 by the requirements of subsection (c).

7 (4) In the event that an association elects to waive
8 all or part of the reserve requirements of this Section,
9 that fact must be disclosed after the meeting at which the
10 waiver occurs by the association in the financial
11 statements of the association and, highlighted in bold
12 print, in the response to any request of a prospective
13 purchaser for the information prescribed under Section
14 22.1; and no member of the board of managers or the
15 managing agent of the association shall be liable, and no
16 cause of action may be brought for damages against these
17 parties, for the lack or inadequacy of reserve funds in the
18 association budget.

19 (d) (Blank).

20 (e) The condominium instruments may provide for the
21 assessment, in connection with expenditures for the limited
22 common elements, of only those units to which the limited
23 common elements are assigned.

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

26 (g) Lien.

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

21 (2) With respect to encumbrances executed prior to
22 August 30, 1984 or encumbrances executed subsequent to
23 August 30, 1984 which are neither bonafide first mortgages
24 nor trust deeds and which encumbrances contain a statement
25 of a mailing address in the State of Illinois where notice
26 may be mailed to the encumbrancer thereunder, if and

1 whenever and as often as the manager or board of managers
2 shall send, by United States certified or registered mail,
3 return receipt requested, to any such encumbrancer at the
4 mailing address set forth in the recorded encumbrance a
5 statement of the amounts and due dates of the unpaid common
6 expenses with respect to the encumbered unit, then, unless
7 otherwise provided in the declaration or bylaws, the prior
8 recorded encumbrance shall be subject to the lien of all
9 unpaid common expenses with respect to the unit which
10 become due and payable within a period of 90 days after the
11 date of mailing of each such notice.

12 (3) A ~~The purchaser of a condominium unit at a judicial~~
13 ~~foreclosure sale, or a mortgagee who receives title to a~~
14 ~~unit by purchase at a judicial foreclosure sale,~~ deed in
15 lieu of foreclosure, or judgment by common law strict
16 foreclosure or otherwise takes possession pursuant to
17 court order under the Illinois Mortgage Foreclosure Law
18 must: (i) , shall have the duty to pay the unpaid unit's
19 proportionate share, if any, of the common expenses for the
20 unit, related late charges, or attorney's fees which
21 accrued before the mortgagee acquired title; and (ii)
22 continue to pay the proportionate share of the common
23 expenses for the unit and any related charges or fees until
24 the mortgagee conveys title pursuant to a sale by the
25 mortgagee assessed from and after the first day of the
26 month after the date of the judicial foreclosure sale,

1 ~~delivery of the deed in lieu of foreclosure, entry of a~~
2 ~~judgment in common law strict foreclosure, or taking of~~
3 ~~possession pursuant to such court order.~~ Such payment
4 confirms the extinguishment of any lien created pursuant to
5 paragraph (1) or (2) of this subsection (g) by virtue of
6 the failure or refusal of a prior unit owner to make
7 payment of common expenses, where the judicial foreclosure
8 sale has been confirmed by order of the court, a deed in
9 lieu thereof has been accepted by the lender, or a consent
10 judgment has been entered by the court.

11 (4) The purchaser of a condominium unit at a judicial
12 foreclosure sale, other than a mortgagee, who takes
13 possession of a condominium unit pursuant to a court order
14 or a purchaser who acquires title from a mortgagee shall
15 have no ~~the~~ duty to pay the unpaid proportionate share, if
16 any, of the common expenses for the unit, related late
17 charges, or attorney's fees ~~which would have become due in~~
18 ~~the absence of any assessment acceleration during the 6~~
19 ~~months immediately preceding institution of an action to~~
20 ~~enforce the collection of assessments, and which remain~~
21 ~~unpaid by the owner during whose possession the assessments~~
22 ~~accrued. If the outstanding assessments are paid at any~~
23 ~~time during any action to enforce the collection of~~
24 ~~assessments, the purchaser shall have no obligation to pay~~
25 ~~any assessments~~ which accrued before he or she acquired
26 title.

1 (5) The notice of sale of a condominium unit under
2 subsection (c) of Section 15-1507 of the Code of Civil
3 Procedure shall state that the ~~purchaser of the unit other~~
4 ~~than a~~ mortgagee shall pay the assessments, late charges,
5 and ~~the~~ legal fees required by subdivisions (g)(1) and
6 (g)(4) of Section 9 of this Act. The statement of
7 assessment account issued by the association to a unit
8 owner under subsection (i) of Section 18 of this Act, and
9 the disclosure statement issued to a prospective purchaser
10 under Section 22.1 of this Act, shall state the amount of
11 the assessments, late charges, and ~~the~~ legal fees, if any,
12 to be paid by the mortgagee as required by subdivisions
13 (g)(1) and (g)(4) of Section 9 of this Act.

14 (h) A lien for common expenses shall be in favor of the
15 members of the board of managers and their successors in office
16 and shall be for the benefit of all other unit owners. Notice
17 of the lien may be recorded by the board of managers, or if the
18 developer is the manager or has a majority of seats on the
19 board of managers and the manager or board of managers fails to
20 do so, any unit owner may record notice of the lien. Upon the
21 recording of such notice the lien may be foreclosed by an
22 action brought in the name of the board of managers in the same
23 manner as a mortgage of real property.

24 (i) Unless otherwise provided in the declaration, the
25 members of the board of managers and their successors in
26 office, acting on behalf of the other unit owners, shall have

1 the power to bid on the interest so foreclosed at the
2 foreclosure sale, and to acquire and hold, lease, mortgage and
3 convey it.

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

15 (k) Nothing in Public Act 83-1271 is intended to change the
16 lien priorities of any encumbrance created prior to August 30,
17 1984.

18 (Source: P.A. 94-1049, eff. 1-1-07.)