



## 97TH GENERAL ASSEMBLY

### State of Illinois

### 2011 and 2012

### SB1651

Introduced 2/9/2011, by Sen. A. J. Wilhelmi

#### SYNOPSIS AS INTRODUCED:

765 ILCS 160/1-15  
765 ILCS 160/1-25  
765 ILCS 160/1-35  
765 ILCS 160/1-40  
765 ILCS 160/1-45  
765 ILCS 160/1-55  
765 ILCS 160/1-75

Amends the Common Interest Community Association Act. Provides that the Act applies to all common interest communities in this State, except as specifically stated. Provides that portions of a declaration or the by-laws of a common interest community association that are inconsistent with the Act are void as against public policy. Deletes provision that states community instruments should be interpreted consistently with the Act's definitions, unless the context otherwise requires. Deletes provision that states that all provisions of a declaration, bylaws, and other community instruments are severable. Deletes provision stating that the terms of at least one-third of the board members expire annually and that board members are elected at large. Exempts master associations from the provision that states that two-thirds of the unit owners may remove a board member at a special meeting. Deletes exception that allows community instruments to require a quorum other than 20% of the unit owners. Exempts master associations from the finance provisions of the Act that concern separate assessments. Deletes provisions that exempted certain common interest community associations (those which: are not permitted, under their governing documents, to use litigation or arbitration to collect assessments or fines; have 10 units or less; or have annual budgeted assessments of \$50,000 or less) from provisions in the Act pertaining to board meeting frequency, meeting notices, meeting procedures, and fidelity insurance. Makes other changes.

LRB097 08355 AJO 48482 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 Common Interest Community Association Act is  
5 amended by changing Sections 1-15, 1-25, 1-35, 1-40, 1-45,  
6 1-55, and 1-75 as follows:

7 (765 ILCS 160/1-15)

8 Sec. 1-15. Construction, interpretation, and validity of  
9 community instruments.

10 (a) Except to the extent otherwise provided in another  
11 Section of this Act, the provisions of this Act are applicable  
12 to all common interest communities in this State. Any  
13 provisions of the declaration or of the by-laws of a common  
14 interest community that contain provisions inconsistent with  
15 this Act are void as against public policy and ineffective by  
16 ~~the declaration or other community instruments, the terms~~  
17 ~~defined in Section 1-5 of this Act shall be deemed to have the~~  
18 ~~meaning specified therein unless the context otherwise~~  
19 ~~requires.~~

20 (b) (Blank). ~~All provisions of the declaration, bylaws, and~~  
21 ~~other community instruments are severable.~~

22 (c) A provision in the declaration limiting ownership,  
23 rental, or occupancy of a unit to a person 55 years of age or

1 older shall be valid and deemed not to be in violation of  
2 Article 3 of the Illinois Human Rights Act provided that the  
3 person or the immediate family of a person owning, renting, or  
4 lawfully occupying such unit prior to the recording of the  
5 initial declaration shall not be deemed to be in violation of  
6 such age restriction so long as they continue to own or reside  
7 in such unit.

8 (Source: P.A. 96-1400, eff. 7-29-10.)

9 (765 ILCS 160/1-25)

10 Sec. 1-25. Board of managers, board of directors, duties,  
11 elections, and voting.

12 (a) There shall be an election of the board of managers or  
13 board of directors from among the unit owners of a common  
14 interest community association.

15 (b) (Blank). ~~The terms of at least one third of the members~~  
16 ~~of the board shall expire annually and all members of the board~~  
17 ~~shall be elected at large.~~

18 (c) The members of the board shall serve without  
19 compensation, unless the community instruments indicate  
20 otherwise.

21 (d) No member of the board or officer shall be elected for  
22 a term of more than 3 years, but officers and board members may  
23 succeed themselves.

24 (e) If there is a vacancy on the board, the remaining  
25 members of the board may fill the vacancy by a two-thirds vote

1 of the remaining board members until the next annual meeting of  
2 unit owners or until unit owners holding 20% of the votes of  
3 the association request a meeting of the unit owners to fill  
4 the vacancy for the balance of the term. A meeting of the unit  
5 owners shall be called for purposes of filling a vacancy on the  
6 board no later than 30 days following the filing of a petition  
7 signed by unit owners holding 20% of the votes of the  
8 association requesting such a meeting.

9 (f) There shall be an election of a:

10 (1) president from among the members of the board, who  
11 shall preside over the meetings of the board and of the  
12 unit owners;

13 (2) secretary from among the members of the board, who  
14 shall keep the minutes of all meetings of the board and of  
15 the unit owners and who shall, in general, perform all the  
16 duties incident to the office of secretary; and

17 (3) treasurer from among the members of the board, who  
18 shall keep the financial records and books of account.

19 (g) If no election is held to elect board members within  
20 the time period specified in the bylaws, or within a reasonable  
21 amount of time thereafter not to exceed 90 days, then 20% of  
22 the unit owners may bring an action to compel compliance with  
23 the election requirements specified in the bylaws. If the court  
24 finds that an election was not held to elect members of the  
25 board within the required period due to the bad faith acts or  
26 omissions of the board of managers or the board of directors,

1 the unit owners shall be entitled to recover their reasonable  
2 attorney's fees and costs from the association. If the relevant  
3 notice requirements have been met and an election is not held  
4 solely due to a lack of a quorum, then this subsection (g) does  
5 not apply.

6 (h) Where there is more than one owner of a unit, if only  
7 one of the multiple owners is present at a meeting of the  
8 association, he or she is entitled to cast all the votes  
9 allocated to that unit. A unit owner may vote:

10 (1) by proxy executed in writing by the unit owner or  
11 by his or her duly authorized attorney in fact, provided,  
12 however, that the proxy bears the date of execution. Unless  
13 the community instruments or the written proxy itself  
14 provide otherwise, proxies will not be valid for more than  
15 11 months after the date of its execution; or

16 (2) by submitting an association-issued ballot in  
17 person at the election meeting; or

18 (3) by submitting an association-issued ballot to the  
19 association or its designated agent by mail or other means  
20 of delivery specified in the declaration or bylaws.

21 (i) The association may, upon adoption of the appropriate  
22 rules by the board, conduct elections by secret ballot whereby  
23 the voting ballot is marked only with the voting interest for  
24 the unit and the vote itself, provided that the association  
25 shall further adopt rules to verify the status of the unit  
26 owner issuing a proxy or casting a ballot. A candidate for

1 election to the board or such candidate's representative shall  
2 have the right to be present at the counting of ballots at such  
3 election.

4 (j) The purchaser of a unit from a seller other than the  
5 developer pursuant to an installment contract for purchase  
6 shall, during such times as he or she resides in the unit, be  
7 counted toward a quorum for purposes of election of members of  
8 the board at any meeting of the unit owners called for purposes  
9 of electing members of the board, shall have the right to vote  
10 for the election of members of the common interest community  
11 association and to be elected to and serve on the board unless  
12 the seller expressly retains in writing any or all of such  
13 rights.

14 (Source: P.A. 96-1400, eff. 7-29-10.)

15 (765 ILCS 160/1-35)

16 Sec. 1-35. Unit owner powers, duties, and obligations.

17 (a) The provisions of this Act, the declaration, bylaws,  
18 other community instruments, and rules and regulations that  
19 relate to the use of an individual unit or the common areas  
20 shall be applicable to any person leasing a unit and shall be  
21 deemed to be incorporated in any lease executed or renewed on  
22 or after the effective date of this Act. With regard to any  
23 lease entered into subsequent to the effective date of this  
24 Act, the unit owner leasing the unit shall deliver a copy of  
25 the signed lease to the association or if the lease is oral, a

1 memorandum of the lease, not later than the date of occupancy  
2 or 10 days after the lease is signed, whichever occurs first.

3 (b) If there are multiple owners of a single unit, only one  
4 of the multiple owners shall be eligible to serve as a member  
5 of the board at any one time.

6 (c) Except for master associations, two-thirds ~~Two-thirds~~  
7 of the unit owners may remove a board member as a director at a  
8 duty called special meeting of the unit owners.

9 (d) In the event of any resale of a unit in a common  
10 interest community association by a unit owner other than the  
11 developer, the board shall make available for inspection to the  
12 prospective purchaser, upon demand, the following:

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

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

18 (3) A statement of any capital expenditures  
19 anticipated by the association within the current or  
20 succeeding 2 fiscal years.

21 (4) A statement of the status and amount of any reserve  
22 for replacement fund and any portion of such fund earmarked  
23 for any specified project by the board.

24 (5) A copy of the statement of financial condition of  
25 the association for the last fiscal year for which such a  
26 statement is available.

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

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

5           (8) A statement that any improvements or alterations  
6 made to the unit, or any part of the common areas assigned  
7 thereto, by the prior unit owner are in good faith believed  
8 to be in compliance with the declaration of the  
9 association.

10          The principal officer of the board or such other officer as  
11 is specifically designated shall furnish the above information  
12 within 30 days after receiving a written request for such  
13 information.

14          A reasonable fee covering the direct out-of-pocket cost of  
15 copying and providing such information may be charged by the  
16 association or the board to the unit seller for providing the  
17 information.

18          (Source: P.A. 96-1400, eff. 7-29-10.)

19           (765 ILCS 160/1-40)

20           Sec. 1-40. Meetings.

21           (a) Written notice of any membership meeting shall be  
22 mailed or delivered giving members no less than 10 and no more  
23 than 30 days notice of the time, place, and purpose of such  
24 meeting.

25           (b) Meetings.



1           (1) Twenty percent of the unit owners shall constitute  
2 a quorum, ~~unless the community instruments indicate~~  
3 ~~otherwise.~~

4           (2) The unit owners shall hold an annual meeting, one  
5 of the purposes of which shall be to elect members of the  
6 board of managers or board of directors of the common  
7 interest community association.

8           (3) Special meetings of the board may be called by the  
9 president or 25% of the members of the board. Special  
10 meetings of the unit owners may be called by the president,  
11 the board, or by 20% of unit owners.

12           (4) Except to the extent otherwise provided by this  
13 Act, the board shall give the unit owners notice of all  
14 board meetings at least 48 hours prior to the meeting by  
15 sending notice by mail, personal delivery, or by posting  
16 copies of notices of meetings in entranceways, elevators,  
17 or other conspicuous places in the common interest  
18 community at least 48 hours prior to the meeting except  
19 where there is no common entranceway for 7 or more units,  
20 the board may designate one or more locations in the  
21 proximity of these units where the notices of meetings  
22 shall be posted. The board shall give unit owners, by mail  
23 or personal delivery, notice of any board meeting  
24 concerning the adoption of (i) the proposed annual budget,  
25 (ii) regular assessments, or (iii) a separate or special  
26 assessment within 10 to 30 days prior to the meeting,

1 unless otherwise provided in Section 1-45 (a) or any other  
2 provision of this Act.

3 (5) Meetings of the board shall be open to any unit  
4 owner, except for the portion of any meeting held (i) to  
5 discuss litigation when an action against or on behalf of  
6 the particular association has been filed and is pending in  
7 a court or administrative tribunal, or when the common  
8 interest community association finds that such an action is  
9 probable or imminent, (ii) to consider information  
10 regarding appointment, employment, or dismissal of an  
11 employee, or (iii) to discuss violations of rules and  
12 regulations of the association or a unit owner's unpaid  
13 share of common expenses. Any vote on these matters shall  
14 be taken at a meeting or portion thereof open to any unit  
15 owner.

16 (6) The board must reserve a portion of the meeting of  
17 the board for comments by unit owners; provided, however,  
18 the duration and meeting order for the unit owner comment  
19 period is within the sole discretion of the board.

20 (Source: P.A. 96-1400, eff. 7-29-10.)

21 (765 ILCS 160/1-45)

22 Sec. 1-45. Finances.

23 (a) Each unit owner shall receive, at least 30 days prior  
24 to the adoption thereof by the board, a copy of the proposed  
25 annual budget together with an indication of which portions are

1 intended for reserves, capital expenditures or repairs or  
2 payment of real estate taxes.

3 (b) The board shall annually supply to all unit owners an  
4 itemized accounting of the common expenses for the preceding  
5 year actually incurred or paid, together with an indication of  
6 which portions were for reserves, capital expenditures or  
7 repairs or payment of real estate taxes and with a tabulation  
8 of the amounts collected pursuant to the budget or assessment,  
9 and showing the net excess or deficit of income over  
10 expenditures plus reserves.

11 (c) If an adopted budget or any separate assessment adopted  
12 by the board would result in the sum of all regular and  
13 separate assessments payable in the current fiscal year  
14 exceeding 115% of the sum of all regular and separate  
15 assessments payable during the preceding fiscal year, the  
16 common interest community association, upon written petition  
17 by unit owners with 20% of the votes of the association  
18 delivered to the board within 14 days of the board action,  
19 shall call a meeting of the unit owners within 30 days of the  
20 date of delivery of the petition to consider the budget or  
21 separate assessment; unless a majority of the total votes of  
22 the unit owners are cast at the meeting to reject the budget or  
23 separate assessment, it shall be deemed ratified.

24 (d) Any common expense not set forth in the budget or any  
25 increase in assessments over the amount adopted in the budget  
26 shall be separately assessed against all unit owners.

1 (e) Separate assessments for expenditures relating to  
2 emergencies or mandated by law may be adopted by the board  
3 without being subject to unit owner approval or the provisions  
4 of subsection (c) or (f) of this Section. As used herein,  
5 "emergency" means an immediate danger to the structural  
6 integrity of the common areas or to the life, health, safety,  
7 or property of the unit owners.

8 (f) Assessments for additions and alterations to the common  
9 areas or to association-owned property not included in the  
10 adopted annual budget, shall be separately assessed and are  
11 subject to approval of two-thirds of the total votes of all  
12 unit owners.

13 (g) The board may adopt separate assessments payable over  
14 more than one fiscal year. With respect to multi-year  
15 assessments not governed by subsections (e) and (f) of this  
16 Section, the entire amount of the multi-year assessment shall  
17 be deemed considered and authorized in the first fiscal year in  
18 which the assessment is approved.

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

24 (i) The provisions of subsections (c), (f), and (g) of this  
25 Section shall not apply to master associations.

26 (Source: P.A. 96-1400, eff. 7-29-10.)

1 (765 ILCS 160/1-55)

2 Sec. 1-55. Fidelity insurance. An association with 30 or  
3 more units shall obtain and maintain fidelity insurance  
4 covering persons who control or disburse operating and reserve  
5 funds of the association for the maximum amount of coverage  
6 available to protect funds in the custody or control of the  
7 association ~~plus the association reserve fund~~. All management  
8 companies which are responsible for the funds held or  
9 administered by the association shall maintain and furnish to  
10 the association a fidelity bond for the maximum amount of  
11 coverage available to protect funds in the custody of the  
12 management company at any time. The association shall bear the  
13 cost of the fidelity insurance and fidelity bond, unless  
14 otherwise provided by contract between the association and a  
15 management company.

16 (Source: P.A. 96-1400, eff. 7-29-10.)

17 (765 ILCS 160/1-75)

18 Sec. 1-75. Exemptions for small community interest  
19 communities.

20 (a) A common interest community association organized  
21 under the General Not for Profit Corporation Act of 1986 and  
22 having either (i) 10 units or less or (ii) annual budgeted  
23 assessments of \$100,000 or less shall be exempt from this Act  
24 unless the association affirmatively elects to be covered by

1 this Act by a majority of its directors and unit owners.

2 (b) (Blank). ~~Common interest community associations which~~  
3 ~~in their declaration, bylaws, or other governing documents~~  
4 ~~provide that the association may not use the courts or an~~  
5 ~~arbitration process to collect or enforce assessments, fines,~~  
6 ~~or similar levies and common interest community associations~~  
7 ~~(i) of 10 units or less or (ii) having annual budgeted~~  
8 ~~assessments of \$50,000 or less shall be exempt from subsection~~  
9 ~~(a) of Section 1 30, subsections (a) and (b) of Section 1 40,~~  
10 ~~and Section 1 55 but shall be required to provide notice of~~  
11 ~~meetings to unit owners in a manner and at a time that will~~  
12 ~~allow unit owners to participate in those meetings.~~

13 (Source: P.A. 96-1400, eff. 7-29-10.)