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The Fight Isn't Over Yet – Bill Introduced to Change Post-Foreclosure Recovery

As it currently stands, a condominium association is entitled to collect up to six months of assessments, attorneys' fees and costs if it has instituted an action to collect assessments after a foreclosure case has completed. Sometimes called a super lien, this rule came under attack last year as opponents introduced a number of bills aimed at reducing the amounts that a condo association could recover. One bill, which was approved by the General Assembly but vetoed by Governor Quinn through an amendatory veto, would have capped a condo association's recovery at the equivalent of 9 months of regular assessments whether that amount included assessments, costs and attorneys' fees. Governor Quinn's veto would have made the purchaser from the bank responsible for six months of assessments and the bank responsible for everything else owed. Considering the vetoed bill would have done the opposite of what its backers wanted, they let the bill die.

While that battle was narrowly won by the association industry, the fight rages on. This year, a bill has already been proposed that would implement the same 9 month cap on assessments. Associations would be entitled to recover delinquent amounts coming due in the 9 month period prior to the sheriff sale, the delivery of a deed-in-lieu of foreclosure or the taking of possession by the bank. The caveat – associations cannot collect more than the total of 9 months of regular assessments.

Importantly, HB486 does away with the requirement that a condominium association file a lawsuit to collect assessments. This is, perhaps, the only redeeming quality of the bill as it would allow associations to collect delinquent amounts without having to turn an account over to an attorney if a foreclosure sale is imminent. Unfortunately, this comes at a high cost.

Beyond capping a condominium association's recovery, the bill also requires professionally managed associations to respond to a 22.1 disclosure request within 14 days. Self-managed associations must provide a 22.1 disclosure within 21 days.

The bill is HB 486. It is currently in the House Judiciary Civil Committee. Its proponents will likely try to fast-track the bill before significant opposition can be lodged against it.

Bills Trying To Modify *Palm* Are On Their Way

On January 19,2015, a number of bills were introduced in the General Assembly that seek to modify the recent *Palm v. 2800 Lake Shore Drive* case which dominated association discussions over most of the last year. Collectively, the bills seek to redefine meetings and provide avenues for the board to approve of items outside of meetings. Below is a short summary of the notable *Palm* bills that have already been introduced:

HB2645 – This bill redefines what is meant by a meeting for the purposes of the Condominium Property Act. Currently, a meeting is defined any gathering of a quorum of the Board for the purposes of conducting board business. In *Palm,* the court took an expansive view of what is a meeting and extended it to all

discussions about association business. This bill adds provides exceptions to the meetings rule stating that it does not include "any mere discussion, conference or working session at which no formal vote is taken." This would allow boards to work more effectively and efficiently, permitting workshops of the Board to get organized. It also would allow board members to discuss issues without having to worry about whether they are improperly engaging in meetings.

HB2640 – This bill specifically allows meetings to take place over conference call and other technological means whereby all participants can communicate with each other. Notice of every board member meeting must be given to the members of the Board at least 48 hours in advance of the meeting. In addition, notice of the meeting must be posted at least 48 hours in advance of meeting and must be given to 1) any owner requesting that he or she receive notices by electronic means and 2) any owners required under the declaration, by-laws or plat. Since a most condominium declaration and by-laws require notices be given to owners for meetings, this change will not help. However, it opens the door for some associations to provide notices only by posting and sending out email notices.

HB2641 – This bill provides the first real guidance on the process and procedures for ratification of actions taken outside of a meeting. It allows a condominium board to ratify actions taken in response to an emergency, which is defined as an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners. The board must give notice to all unit owners within 2 days of the emergency event and must describe the actions taken to address the emergency within 7 days. Any vote to ratify the action must take place within 30 days after the emergency event. Finally, the notice must specifically state that the board will vote to ratify and confirm emergency actions taken.

If passed, the bill makes it clear that the ability to ratify actions is very limited. Ratification does not apply to all actions and cannot be used to fix illegal actions. Instead, it can only be done if a true emergency exists. The notice provisions are strict and must be adhered to.

HB2646 – While HB2641 deals with emergency situations, HB2646 allows the Board to ratify other actions taken outside of a meeting. This bill incorporates provisions permitting informal action by board members if the action could otherwise be taken at a meeting, which is permitted under the General Not-for-Profit Corporation Act. In order to take action outside of a meeting, the following must occur:

1) all members of the board sign a resolution or other document that states the action to be taken,
2) the signed document states the date of the consented to action,
3) the consent is ratified at a meeting within 30 days of the approval of the action,
4) that a copy of the unanimous action is attached to the meeting minutes,
5) that at least one board member states his or her reasons for consenting to the action and
6) a summary of the board members' reasons for consenting to the action is included in the minutes.

However, there is an important exception included in the bill – if the number of board members is less than what would constitute a quorum if there were a full board under the declaration and by-laws, than

the action is not deemed the action of the board. Additionally, if the board fails to timely ratify and confirm the action, it will be deemed invalid.

HB2646 provides a more expansive way of resolving issues outside of meetings. The important thing to note is that it require unanimous approval. Board members can give approval electronically or through other technological means. We expect that this bill will be quite popular.

Associations Organized As Limited Liability Companies May Have Relief On The Horizon

In Illinois, a business can take many forms, with the owners choosing to form their businesses as partnerships, corporations, limited liability partnerships and limited liability companies (LLCs) among other options. Associations are generally incorporated as not-for-profit corporations. Recently, some developers have created associations as LLCs rather than not-for-profit corporations. This are some benefits to doing so. However, there is a major consequence – if an association is not a not-for-profit corporation, it cannot pursue collections against owners under the Illinois Forcible Entry and Detainer Act. The Forcible Entry and Detainer Act allows an association to take possession of a home through eviction proceedings. The threat of eviction often gets the association paid. It is a special remedy.

A current bill (SB1374) would amend both the Forcible Entry and Detainer Act and the Common Interest Community Association Act to specifically allow non-condominium associations to be organized as LLCs. This would give those associations organized as LLCs the right to pursue collections under the Forcible Entry and Detainer Act provided that they allow members to attend board meetings, which is already required of any association whose declaration was recorded after 1985.

If passed by the General Assembly and signed by the Governor, the bill would take effective immediately, allowing Boards that fall into this unique issue to better pursue collections.

Management Agreements Will Be Open To Inspection By Condo Owners – Aren't They Already?

An interesting bill has just been introduced in the General Assembly. HB2606 would amend the Condominium Property Act to state that the by-laws of each association must have a provision that requires a condominium association to provide a copy of any legally binding copy of any management agreements between the association and its management companies. Section 19(a)(6) of the Condo Act requires a condominium board to keep records of any contracts in which the association is a party or the owners have legal obligations. Under the current law, owners can inspect any contracts in effect by submitting a request in writing, which states a proper purpose for why the owner wants to inspect the record. Making sure that the management company is performing under the contract would likely be a proper purpose. Thus, any owner would likely be allowed to inspect the contract under the current system making this bill peculiar.

There appears to be two interesting differences between the current law and this bill. First, if the bill is adopted, the association has to provide a copy of the management agreements to the members. Under the current records request situation, a condominium association is only obligated to make records available and then can make copies, at the owner's expense. Second, it will be interesting to see how a court interprets the phrase "makes payments for common expenses." Does it require a delinquent owner

to be current before he or she can request current management agreements? Currently, the Condo Act does not have such a requirement for records requests.

Other Notable Bills

HB2642 – This bill would amend the Common Interest Community Association Act to delete a provision that allows the board of directors of a common interest community association to fix any provisions that have been invalidated by the Act. The current provision allows the board to do this independently from the membership.

HB2643 – This bill amends the amendment provisions of the Condominium Property Act. The bill clarifies that if the declaration or by-laws requires the association to obtain the approval of or give notice to mortgagees or other lienholders, it has to do so for the amendment to be effective. However, it also makes it clear that unit owner approval and mortgagee/lien holder approval is not necessary for amendments that are conforming the declaration or by-laws to correct errors, omissions or inconsistencies with applicable law – often called an amended and restated declaration.

HB2644 – This bill modifies some changes made last year concerning an association's ability to pursue litigation. It makes it clear that any provision in the declaration or by-laws of a condominium association is void if it restricts a board's ability to pursue legal remedies in a representative capacity. This would include any requirement that the association obtain unit owner approval or which requires the association to arbitrate any dispute with any developer, declarant or other non-unit owner. This bill would remove potential hurdles to litigation.

For more information on the items contained in this