

**COMMON INTEREST COMMUNITY ASSOCIATION ACT
AMENDMENTS**

(Public Act #97-0605/Senate Bill 1651)

by

Michael C. Kim

Michael C. Kim & Associates

August 29, 2011

Originally enacted in 2010, the Common Interest Community Association Act ("CICA Act") has been amended by Public Act #97-0605 (Senate Bill 1651) which was signed into law by Governor Quinn on August 26, 2011, and is effective as of that date.

This Article will address the changes made to the CICA Act by virtue of that new Public Act.

To begin with, Section 1-5 (Definitions) is amended to expressly exclude master associations from the definition of a "common interest community". Consequently, the CICA Act does not apply to master associations, which remain governed by Section 18.5 of the Illinois Condominium Property Act (the "ICPA").

Section 1-5 is also amended to include the concept of "member" and "membership", which is related to, but not the same as, "unit owner". A "member" is defined "as the person or entity designated as an owner and entitled to one vote as defined by the community instruments"; in other words, a member is an owner (or a person "designated as an owner") who is entitled to vote cast at least one vote on behalf of a particular unit. Similarly, "membership" is the collective group of members entitled to vote as defined by the community instruments.

Section 1-5 is also amended to include a new definition of "prescribed delivery method" which is "mailing, delivering, posting in an association publication that is routinely mailed to all unit owners, or any other delivery method that is approved in writing by the unit owner and authorized by the community instruments." This definition encompasses a wide range of methods by which notices or other types of communication are to be given to the unit owners. Presumably, the prescribed delivery method could include electronic mail (e-mail) as long as it is approved in writing by the owner and authorized by the community instruments (which by definition include rules and regulations). Thus, if the board of directors adopts a rule to authorize e-mail communication and the unit owner agrees in writing to that use of e-mail, then e-mail can be used as to that owner. Posting in an association publication could include an association's newsletter or other circular that is routinely mailed to all the unit owners.

Section 1-15 (Construction, interpretation and validity of community instruments) is amended to require that the Association must define "a member and its relationship to

the units or unit owners in its community instruments,” Subsection (d); in that regard, apart from the statutory definition set forth in Section 1-5, there is potentially additional characteristics of a member and membership as they appear in the community instruments.

Section 1-20 (Amendments) is amended to indicate that amendments to the community instruments may be executed and recorded by the president or such other officer as authorized by the community instruments, and not just the declaration.

Section 1-25 (Board of managers, board of directors, duties, elections, and voting) is amended to require an annual election of the board of managers/board of directors from among the “membership” (as opposed to the “unit owners”). Subsection (a).

Section 1-25(b) (which required that the terms of at least 1/3 of the members of the board needs to expire annually and that all board members were to be elected at large) has been deleted and no longer applies.

Section 1-25(e) is amended to substitute the members’ (as opposed to unit owners) right to fill a board member vacancy.

Section 1-25(f) is amended to change the reference to meetings of the unit owners to meetings of the membership.

Section 1-25(g) is amended to substitute “members” in place of “unit owners” who may take action if no election is held to elect board members within a specified time.

Section 1-25(h) is amended to state that if there are multiple owners of a unit and there is only 1 member vote associated with that unit, then if only one of the owners is present at a meeting of the membership, that owner is entitled to cast the vote associated with that unit. That provision raises the question as to whether and how to handle the situation if there are multiple owners of the unit and there is more than 1 member vote associated with that unit.

Section 1-25(h-5)(1) is amended to substitute “member” in place of “unit owner” with regard to the giving of proxies.

Section 1-25(i) is amended to specify that if secret balloting is used in elections, the ballot must be disturbed by the association. Also, the terminology of “member” is inserted in lieu of “unit owner” and “unit”.

Section 1-25(j) is amended to include references to “membership” meetings and to clarify the election of board members in situations involving installment contracts for purchase of a unit.

Section 1-30 (Board duties and obligations; records) is amended to substitute “membership” in place of “unit owners” with regard to petition and referendum procedures in situations involving a board member’s potential conflict of interest. Subsection (b).

Section 1-30(h) is amended to include “court costs” as being chargeable in assessment collection situations, and not subject to the various requirements regarding fees charged by a manager or managing agent.

Section 1-35 (Unit owner powers, duties and obligations) is amended to substitute “membership” in place of “unit owners” with regard to meetings to remove a director. Subsection (c).

Section 1-35(d)(4) is amended to clarify that, in re-sale disclosures, the statement with respect to reserves includes replacement funds and any other “fund specifically designated for association projects”.

Section 1-35(d)(8) which had previously addressed improvements and alterations to units or exclusive common areas, has been deleted and is no longer applicable.

Section 1-40 (Meetings) requires that membership meeting notices must give the time, place, and purpose of the meeting and that the notice must be given through a prescribed delivery method. Subsection (a).

Section 1-40(b) is amended to provide that 20% of the membership shall constitute a quorum, unless the community instruments indicate a lesser amount. In addition, the election of the board of directors may be conducted at the annual meeting, but it is no longer required that the election be held at the annual meeting (as previously provided in that Subsection).

Section 1-40(b)(3) is amended to allow special board meetings to be called by the president, by 25% of the board members, or by any other method that is prescribed in the community instruments. Similarly, special membership meetings may be called by the president, the board or 20% of the membership, or any other method that is prescribed by the community instruments.

Section 1-40(b)(4) is amended to provide that unit owners (not just members) must be given notice of all board meetings at least 48 hours prior to the meeting by use of a prescribed delivery method or by posting copies of the notice in various locations on the property. With regards to notice of a board meeting concerning the adoption of

budgets or assessments, the board must give unit owners (not just members) notice of that meeting to a prescribed delivery method at least 10 and not more than 60 (formerly 30) days prior to the meeting.

Section 1-40(b)(5) is amended to include third party contracts as being permissible for executive/closed session discussions; that is, board discussions about third party contracts need not be had in an open portion of the board meeting.

Section 1-45 (Finances) is amended to require that a copy of the proposed annual budget must be given to unit owners at least 30 but not more than 60 days prior to the adoption of that budget. Subsection (a).

Section 1-45(b) is amended to state that the board is to provide all unit owners with a reasonably detailed summary of receipts, common expenses and reserves for the preceding budget year. In that regard, the Board must either (i) make available for review to all unit owners an itemized accounting of the common expenses and income for the prior year or (ii) provide a consolidated annual independent audit report of the financial status of all fund accounts within the association. Note that the audit alternative does not mean that an audit is required for the association but instead, if such an audit has been obtained, it may be used to provide the annual accounting to the unit owners.

Section 1-45(f) is amended to provide that approval of a special assessment for additions or alterations to the common areas or association owned property is subject to approval of $2/3^{\text{rds}}$ of the "total members" at a meeting called for that purpose.

Section 1-55 (Fidelity insurance) is amended to provide that the maximum amount of fidelity insurance coverage is to be an amount that is commercially available or reasonably required to protect the association funds. Similarly, the maximum amount of the fidelity bond for management companies is also the amount that is commercially available or reasonably required.

Section 1-60 (Errors and omissions) is amended to substitute a vote of the members in place of unit owners in situations involving amendments to correct errors and omissions in the community instruments.

Section 1-75 (Exemptions for small community interest communities) is amended to substitute members (in place of unit owners) as to whether an exempt small common interest community association wishes to "opt-in" and be covered by the CICA Act. Subsection (a).

Section 1-80 (Compliance) has been added to require that all common interest community associations must be in full compliance with the provisions of the CICA Act by no later than January 1, 2012.

Section 18.5(j) of the ICPA has been deleted, thereby excluding common interest communities from the mandatory application of that Section of the ICPA.

In conclusion, the above described changes implemented by Public Act #97-0605/Senate Bill 1651 are significant and must be taken into account by common interest community associations, particularly in light of the impending January 1, 2012 mandatory compliance date.

©Copyright 2011. Michael C. Kim. All Rights Reserved. This article contains a general discussion and opinion on the subject matter and is not legal advice. For any specific legal problem or question, you should consult an attorney.