

Association of Condominium,  
Townhouse, and  
Homeowners Associations



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## October 2010

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## "COMMON INTEREST COMMUNITY ASSOCIATION ACT: WHAT IS IT ALL ABOUT?"

By Gabriella Comstock of Keough & Moody, PC

For years, non-condominium associations have heard so much about the Illinois Condominium Property Act (765 ILCS 605/1, et seq.). On July 29, 2010, the day arrived when common interest community associations have their own act to follow. The purpose of this article is to provide a general overview of the Common Interest Community Association Act (765 ILCS 160/1-1et seq.).

### Who is bound by the Common Interest Community Association Act?

The Common Interest Community Association Act (hereinafter "the Act") applies to all common interest community associations in the State of Illinois. The Act does allow a common interest community association with ten (10) units or less or an annual budgeted assessment of \$100,000 or less to be exempt from this Act, unless the association affirmatively elects to be covered by the Act, by the approval of the majority of its directors and unit owners. The Act states that such a community may consist of townhomes, villas, single family homes, or a master association.

### What are some of the key provisions of the Act?

1. **General Terms:** A common interest community association's declaration may contain a provision that limits ownership, rental or occupancy to a person 55 years of age or older, without violating the Illinois Human Rights Act.

Continued on page 5



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# TIP OF THE MONTH

## Best Practices: Insurance & Risk Management

- ⇒ Understand the type of association being insured and what the requirements are
- ⇒ Buy only from agents with experience with community associations—preferably of your type
- ⇒ Meet with your agent to make proactive recommendations for change—not just when the policy is expiring
- ⇒ Use insurance companies that are admitted carriers and have lengthy experience in this field
- ⇒ Do not annually bid the insurance—establishing a multiple year relationship. Once every three years is plenty although reviewing the plan annually is wise to keep property values and fidelity bond limits current
- ⇒ Never buy on the basis of price alone
- ⇒ Reduce claims by informing residents on how to handle claims and on reporting to their own agents as well as consciously avoiding small property claims
- ⇒ Be careful of master programs which can be good or bad
- ⇒ Always buy workers compensation in the name of the association, even if you have no employees. The need may change but exists today.
- ⇒ Inform residents of their insurance responsibilities, how they should handle claims and how to get certificates of insurance. This reduces an association's exposure when an uninsured resident comes for compensation
- ⇒ Remember that associations can not be discriminatory
- ⇒ There is an obligation to inform mortgagees of changes in insurance at least 30 days in advance.

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ACTHA regrets the announcement of **Sharon Haymond's** resignation due to personal issues from ACTHA's Board. Sharon was elected in 2008, is a Learn and Lead graduate and was instrumental in setting up several seminars at Kennedy-King College as well as assisting on the Education Committee with its year-round programming. She will be missed!

### Board of Directors

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# LEGISLATIVE CORNER

**THE ELECTION: November 2** It is noteworthy, but not surprising, that the candidates for State Offices are not talking about the two issues that will absorb most of their time and energy: the seriousness of the State's fiscal condition and the "in-house" issue of redistricting. There are two transitory events that will have some consequence—the election of the next Chicago Mayor and the trial, beginning in January of former Governor Blagojevich. Perhaps most interesting and more lasting will be the arrival in Springfield of nearly 30 new legislators, which will be the largest "freshman class" in years and the new districts created in 2012 will produce the potential for additional "arrivals."

**THE FALL LEGISLATIVE SESSION: Nov. 16—Dec. 2** Many call this the "veto session," however any issue can, and will, be dealt with as well. It is almost a certainty that the Illinois Senate will vote on a large borrowing authorization bill due to the fact the required 36 "yes" votes were not there in May. Now due to some "lame duck" Senators, the 36 votes will be "found."

**FISCAL ACTIVITIES:** The Illinois Constitution requires a balanced budget annually but hasn't been attained in recent years. Under law, the Commission on Government Forecasting & Accountability presents a report to the Legislature anticipating revenues for the fiscal year beginning July 1, 2011. Between January 13 and May 31st, a giant battle will be fought entailing increased taxes, reducing expenditures, borrowing additional money and the manipulation of the figures so as to give the appearance that the budget has been balanced, when it is not.

*Richard Lockhart, ACTHA Lobbyists ^ Social Engineering Associates*



## Don't let FHA mortgages elude your grasp.

New federal regulations have made FHA spot financing obsolete. Your condominium, townhouse or homeowners association must become FHA-certified for any new purchasers to qualify for FHA financing.

### **New rules trigger lengthy delays.**

As of February 1, 2010, new HUD regulations went into effect, requiring associations to certify with the FHA. There may be months-long delays in HUD processing of applications for certification for those associations which don't act quickly. Buyers of properties in those associations will be unable to acquire mortgages.

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### **What can you do?**

The attorneys at Kovitz Shifrin Nesbit can find out if your association is FHA-certified, and, if not, we can assist your board in expediting the complex certification process.

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An amendment to a common interest community association's declaration or bylaws is effective once it is recorded with the county recorder's office, where the property is located. The Act does not have a minimum percentage of owners required to approve an amendment. However, the amendment must be executed by the association's board president. In addition, an owner incorporated under 26 USC §501( c)(3)(a tax-exempt charitable organization), which is leasing at the time an amendment prohibiting leasing goes into effect, must be allowed to lease, until that owner sells its unit.

An association with thirty (30) or more units shall obtain and maintain fidelity insurance covering those persons who control or disburse funds of the association for the maximum amount available to protect the funds, including the reserves, in the custody or control of the association.

If the association is professionally managed, the management company shall also maintain and furnish to the association a fidelity bond for the maximum amount of coverage available to protect the funds in the custody of the management company. The association is responsible for bearing the cost of the fidelity insurance bond, unless the contract between the association and management provides otherwise.

**2. Terms related to the management of the association:** Like a condominium association, a common interest community association is managed by its board of managers or board of directors. The board is to be elected among the unit owners, and no board member shall be elected for a term of more than three (3) years. Yet, a board member may succeed himself. Every board must consist of a president, secretary and treasurer.

The board must meet at least four (4) times a year. A board member may not enter into a contract with the association, if the board member or his immediate family member has twenty-five percent (25%) or more of an ownership interest in the contract, unless a notice of intent is given to the owners, so that the unit owners have the opportunity to overturn the board's action to enter into the contract with the board member.

The association may engage the services of a manager or management company. If the association wants to charge a unit owner for the fees incurred by the association for the management company's efforts to assist in the collection of unpaid assessments, this can only be done if the contract between management and the association set forth these fees and the association's declaration or bylaws specifically authorize the assessment of these fees to the unit owner's account.

The board may levy and collect fines from unit owners, after notice has been given to the owner and the owner has been given the opportunity to be heard by the Board.

An association may not prohibit the installation of a flagpole or the display of the American or a military flag on or within the limited common areas of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located. Yet, the board can adopt reasonable rules and regulations regarding the location and size of the flagpoles.

**3. Terms related to the rights, powers and duties of the owners.** The association may have more than one class of membership.

A unit owner has the right to inspect and examine the association's books and records, if specific requirements are met. The request for records must be in writing. If the association fails to respond or provide the records to the owner within thirty (30) days of the request being made, the association shall be deemed to have denied the request. The association may charge a reasonable fee for the cost of retrieving and copying the records properly requested by the unit owners. Like the Condominium Act, if the association fails to provide records that were properly requested, within the appropriate time frame, the unit owner may seek the court's assistance and shall be entitled to an award of attorney's fees and costs, if the owner prevails.

Likewise, a prospective purchaser has the right to ask the Board to allow him to inspect certain documents, i.e. association's governing documents, statement of any capital expenditures, statement of pending suits or judgment, etc.

Any person leasing a unit within a common interest association is bound by the terms of the Act, declaration, bylaws and rules and regulations for the association. An owner who is leasing his unit, must provide a copy of the signed lease to the association, within ten (10) days after the tenant occupies the unit or ten (10) days after the lease is signed, whichever comes first.

Multiple owners of a unit shall not be eligible to serve as members of the board at one time.

**4. Meetings.** Written notice of membership meetings shall be given no less than ten (10) days and no more than thirty (30) days notice, before the scheduled meeting. The Board shall give unit owners notice of all board meetings at least forty-eight (48) hours prior to the meeting.

Continued from page 5

Unless otherwise provided, twenty percent (20%) of the unit owners shall constitute a quorum.

The board must reserve a portion of the meeting of the board for comments by the unit owners. The board has the sole discretion as to how long this portion of the meeting will last and when it will occur.

**Finances.:** At least thirty (30) days before the adoption by the board, the owners shall receive a copy of the proposed annual budget.

A board may adopt a budget or any separate (special) assessment that results in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments payable during the preceding fiscal year. However, the unit owners with twenty percent (20%) of the votes, may deliver a petition to the Board within fourteen (14) days of the board taking action, requesting that a meeting of the membership be called for the purpose of considering the budget or increase. Unless a majority of the total votes of the unit owners are cast at the meeting to

reject the budget or separate assessment, the board's action is ratified.

If a separate assessment is adopted to cover an expense related to an emergency or mandate by law, this assessment may be adopted, without being subject to the unit owner approval or being subject to a challenge by the unit owners.

**Are common interest community associations still bound by Section 18.5( c)-(h) of the Illinois Condominium Property Act?** The adoption of this Act does not negate the applicability of Section 18.5 ( c)-(h) of the Illinois Condominium Property Act to common interest community association. It also does not negate the applicability of the terms of the Illinois Not for Profit Corporation Act. As always, before acting, a board should review the terms of their association's governing documents, in addition to those stated within any state statute.

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## Question of the Month *continued from page 8*

Whether the property is administered by a condominium association or a common interest community association, an association's governing documents may require the consent of lien holders and/or satisfaction of other technical requirements in order to sell the entire property and/or terminate the association.

In any event, except in certain unique cases, termination of a community association as a practical matter would be detrimental to the homeowners. Termination of an association in most instances would have a serious adverse effect upon the ability of the homeowners to effectively maintain and operate the property and/or otherwise negatively impact the marketability of their homes. In most cases, if an association were to be terminated, even the most disenchanted homeowners would quickly come to realize that their former association provided them with valuable financial and practical benefits.

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## APPOINTMENTS ANNOUNCED

The Dept. of Professional Regulation has announced five of the seven members to the Advisory Board to the recently enacted Property Management Licensing Act. Among them is ACTHA's **President Beth Lloyd** who will be one of two public members. The others are: **Ken Bunte**, a realtor/manager from Rock Island and former ACTHA Board member, **Angela Falzone**, a management consultant with Association Advocates, Inc., **Robert Graf**, a manager with Chicago-based Sudler, Inc. and **Shari Vass** with Goldman-Vass Realty in Chicago.



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## Question of the Month



**Q.** Given these difficult times, some disgruntled homeowners in our association have suggested that the association should be dissolved. Is this possible?

**A.** As a legal matter, termination of an established, fully functioning, owner-occupied community association with physically intact buildings and more than only a few homes is extremely difficult to accomplish and is rarely carried out. Relative to condominiums, Section 16 of the Illinois Condominium Property Act (“ICPA”)

provides that a condominium property in its entirety may be removed from the provisions of the ICPA upon the unanimous consent of all unit owners and all holders of liens affecting any of the units (e.g., unit mortgagees). For condominiums having four or more units, Section 15 of the ICPA provides that a condominium association may elect to sell the entire condominium property upon a 75 percent vote of the unit owners (unless a greater percentage is provided for in the condominium declaration or bylaws).

With respect to non-condominium common interest community associations, the specific procedure for taking actions such as terminating an association will largely depend upon the terms of the associations’ governing documents. Typically, the governing documents require the consent of at least a supermajority of homeowners and otherwise make such actions difficult to accomplish.