

**SB2427**



**95TH GENERAL ASSEMBLY**

**State of Illinois**

**2007 and 2008**

**SB2427**

Introduced 2/15/2008, by Sen. John J. Cullerton

**SYNOPSIS AS INTRODUCED:**

765 ILCS 605/18

from Ch. 30, par. 318

Amends the Condominium Property Act. Provides that an association's bylaws restricting the use of the units may include other prohibitions on, or allowance of, smoking products. Effective January 1, 2009.

LRB095 15991 AJO 42004 b

**A BILL FOR**

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 18 as follows:

6 (765 ILCS 605/18) (from Ch. 30, par. 318)

7 (Text of Section after amendment by P.A. 95-624)

8 Sec. 18. Contents of bylaws. The bylaws shall provide for  
9 at least the following:

10 (a) (1) The election from among the unit owners of a board  
11 of managers, the number of persons constituting such board,  
12 and that the terms of at least one-third of the members of  
13 the board shall expire annually and that all members of the  
14 board shall be elected at large. If there are multiple  
15 owners of a single unit, only one of the multiple owners  
16 shall be eligible to serve as a member of the board at any  
17 one time.

18 (2) the powers and duties of the board;

19 (3) the compensation, if any, of the members of the  
20 board;

21 (4) the method of removal from office of members of the  
22 board;

23 (5) that the board may engage the services of a manager

1 or managing agent;

2 (6) that each unit owner shall receive, at least 30  
3 days prior to the adoption thereof by the board of  
4 managers, a copy of the proposed annual budget together  
5 with an indication of which portions are intended for  
6 reserves, capital expenditures or repairs or payment of  
7 real estate taxes;

8 (7) that the board of managers shall annually supply to  
9 all unit owners an itemized accounting of the common  
10 expenses for the preceding year actually incurred or paid,  
11 together with an indication of which portions were for  
12 reserves, capital expenditures or repairs or payment of  
13 real estate taxes and with a tabulation of the amounts  
14 collected pursuant to the budget or assessment, and showing  
15 the net excess or deficit of income over expenditures plus  
16 reserves;

17 (8) (i) that each unit owner shall receive notice, in  
18 the same manner as is provided in this Act for membership  
19 meetings, of any meeting of the board of managers  
20 concerning the adoption of the proposed annual budget and  
21 regular assessments pursuant thereto or to adopt a separate  
22 (special) assessment, (ii) that except as provided in  
23 subsection (iv) below, if an adopted budget or any separate  
24 assessment adopted by the board would result in the sum of  
25 all regular and separate assessments payable in the current  
26 fiscal year exceeding 115% of the sum of all regular and

1 separate assessments payable during the preceding fiscal  
2 year, the board of managers, upon written petition by unit  
3 owners with 20 percent of the votes of the association  
4 delivered to the board within 14 days of the board action,  
5 shall call a meeting of the unit owners within 30 days of  
6 the date of delivery of the petition to consider the budget  
7 or separate assessment; unless a majority of the total  
8 votes of the unit owners are cast at the meeting to reject  
9 the budget or separate assessment, it is ratified, (iii)  
10 that any common expense not set forth in the budget or any  
11 increase in assessments over the amount adopted in the  
12 budget shall be separately assessed against all unit  
13 owners, (iv) that separate assessments for expenditures  
14 relating to emergencies or mandated by law may be adopted  
15 by the board of managers without being subject to unit  
16 owner approval or the provisions of item (ii) above or item  
17 (v) below. As used herein, "emergency" means an immediate  
18 danger to the structural integrity of the common elements  
19 or to the life, health, safety or property of the unit  
20 owners, (v) that assessments for additions and alterations  
21 to the common elements or to association-owned property not  
22 included in the adopted annual budget, shall be separately  
23 assessed and are subject to approval of two-thirds of the  
24 total votes of all unit owners, (vi) that the board of  
25 managers may adopt separate assessments payable over more  
26 than one fiscal year. With respect to multi-year

1 assessments not governed by items (iv) and (v), the entire  
2 amount of the multi-year assessment shall be deemed  
3 considered and authorized in the first fiscal year in which  
4 the assessment is approved;

5 (9) that meetings of the board of managers shall be  
6 open to any unit owner, except for the portion of any  
7 meeting held (i) to discuss litigation when an action  
8 against or on behalf of the particular association has been  
9 filed and is pending in a court or administrative tribunal,  
10 or when the board of managers finds that such an action is  
11 probable or imminent, (ii) to consider information  
12 regarding appointment, employment or dismissal of an  
13 employee, or (iii) to discuss violations of rules and  
14 regulations of the association or a unit owner's unpaid  
15 share of common expenses; that any vote on these matters  
16 shall be taken at a meeting or portion thereof open to any  
17 unit owner; that any unit owner may record the proceedings  
18 at meetings or portions thereof required to be open by this  
19 Act by tape, film or other means; that the board may  
20 prescribe reasonable rules and regulations to govern the  
21 right to make such recordings, that notice of such meetings  
22 shall be mailed or delivered at least 48 hours prior  
23 thereto, unless a written waiver of such notice is signed  
24 by the person or persons entitled to such notice pursuant  
25 to the declaration, bylaws, other condominium instrument,  
26 or provision of law other than this subsection before the

1 meeting is convened, and that copies of notices of meetings  
2 of the board of managers shall be posted in entranceways,  
3 elevators, or other conspicuous places in the condominium  
4 at least 48 hours prior to the meeting of the board of  
5 managers except where there is no common entranceway for 7  
6 or more units, the board of managers may designate one or  
7 more locations in the proximity of these units where the  
8 notices of meetings shall be posted;

9 (10) that the board shall meet at least 4 times  
10 annually;

11 (11) that no member of the board or officer shall be  
12 elected for a term of more than 2 years, but that officers  
13 and board members may succeed themselves;

14 (12) the designation of an officer to mail and receive  
15 all notices and execute amendments to condominium  
16 instruments as provided for in this Act and in the  
17 condominium instruments;

18 (13) the method of filling vacancies on the board which  
19 shall include authority for the remaining members of the  
20 board to fill the vacancy by two-thirds vote until the next  
21 annual meeting of unit owners or for a period terminating  
22 no later than 30 days following the filing of a petition  
23 signed by unit owners holding 20% of the votes of the  
24 association requesting a meeting of the unit owners to fill  
25 the vacancy for the balance of the term, and that a meeting  
26 of the unit owners shall be called for purposes of filling

1 a vacancy on the board no later than 30 days following the  
2 filing of a petition signed by unit owners holding 20% of  
3 the votes of the association requesting such a meeting, and  
4 the method of filling vacancies among the officers that  
5 shall include the authority for the members of the board to  
6 fill the vacancy for the unexpired portion of the term;

7 (14) what percentage of the board of managers, if other  
8 than a majority, shall constitute a quorum;

9 (15) provisions concerning notice of board meetings to  
10 members of the board;

11 (16) the board of managers may not enter into a  
12 contract with a current board member or with a corporation  
13 or partnership in which a board member or a member of the  
14 board member's immediate family has 25% or more interest,  
15 unless notice of intent to enter the contract is given to  
16 unit owners within 20 days after a decision is made to  
17 enter into the contract and the unit owners are afforded an  
18 opportunity by filing a petition, signed by 20% of the unit  
19 owners, for an election to approve or disapprove the  
20 contract; such petition shall be filed within 20 days after  
21 such notice and such election shall be held within 30 days  
22 after filing the petition; for purposes of this subsection,  
23 a board member's immediate family means the board member's  
24 spouse, parents, and children;

25 (17) that the board of managers may disseminate to unit  
26 owners biographical and background information about

1 candidates for election to the board if (i) reasonable  
2 efforts to identify all candidates are made and all  
3 candidates are given an opportunity to include  
4 biographical and background information in the information  
5 to be disseminated; and (ii) the board does not express a  
6 preference in favor of any candidate;

7 (18) any proxy distributed for board elections by the  
8 board of managers gives unit owners the opportunity to  
9 designate any person as the proxy holder, and gives the  
10 unit owner the opportunity to express a preference for any  
11 of the known candidates for the board or to write in a  
12 name;

13 (19) that special meetings of the board of managers can  
14 be called by the president or 25% of the members of the  
15 board; and

16 (20) that the board of managers may establish and  
17 maintain a system of master metering of public utility  
18 services and collect payments in connection therewith,  
19 subject to the requirements of the Tenant Utility Payment  
20 Disclosure Act.

21 (b) (1) What percentage of the unit owners, if other than  
22 20%, shall constitute a quorum provided that, for  
23 condominiums with 20 or more units, the percentage of unit  
24 owners constituting a quorum shall be 20% unless the unit  
25 owners holding a majority of the percentage interest in the  
26 association provide for a higher percentage;



1           (2) that the association shall have one class of  
2 membership;

3           (3) that the members shall hold an annual meeting, one  
4 of the purposes of which shall be to elect members of the  
5 board of managers;

6           (4) the method of calling meetings of the unit owners;

7           (5) that special meetings of the members can be called  
8 by the president, board of managers, or by 20% of unit  
9 owners;

10          (6) that written notice of any membership meeting shall  
11 be mailed or delivered giving members no less than 10 and  
12 no more than 30 days notice of the time, place and purpose  
13 of such meeting;

14          (7) that voting shall be on a percentage basis, and  
15 that the percentage vote to which each unit is entitled is  
16 the percentage interest of the undivided ownership of the  
17 common elements appurtenant thereto, provided that the  
18 bylaws may provide for approval by unit owners in  
19 connection with matters where the requisite approval on a  
20 percentage basis is not specified in this Act, on the basis  
21 of one vote per unit;

22          (8) that, where there is more than one owner of a unit,  
23 if only one of the multiple owners is present at a meeting  
24 of the association, he is entitled to cast all the votes  
25 allocated to that unit, if more than one of the multiple  
26 owners are present, the votes allocated to that unit may be

1 cast only in accordance with the agreement of a majority in  
2 interest of the multiple owners, unless the declaration  
3 expressly provides otherwise, that there is majority  
4 agreement if any one of the multiple owners cast the votes  
5 allocated to that unit without protest being made promptly  
6 to the person presiding over the meeting by any of the  
7 other owners of the unit;

8 (9) (A) that unless the Articles of Incorporation or the  
9 bylaws otherwise provide, and except as provided in  
10 subparagraph (B) of this paragraph (9) in connection with  
11 board elections, a unit owner may vote by proxy executed in  
12 writing by the unit owner or by his duly authorized  
13 attorney in fact; that the proxy must bear the date of  
14 execution and, unless the condominium instruments or the  
15 written proxy itself provide otherwise, is invalid after 11  
16 months from the date of its execution;

17 (B) that if a rule adopted at least 120 days before a  
18 board election or the declaration or bylaws provide for  
19 balloting as set forth in this subsection, unit owners may  
20 not vote by proxy in board elections, but may vote only (i)  
21 by submitting an association-issued ballot in person at the  
22 election meeting or (ii) by submitting an  
23 association-issued ballot to the association or its  
24 designated agent by mail or other means of delivery  
25 specified in the declaration, bylaws, or rule; that the  
26 ballots shall be mailed or otherwise distributed to unit

1 owners not less than 10 and not more than 30 days before  
2 the election meeting, and the board shall give unit owners  
3 not less than 21 days' prior written notice of the deadline  
4 for inclusion of a candidate's name on the ballots; that  
5 the deadline shall be no more than 7 days before the  
6 ballots are mailed or otherwise distributed to unit owners;  
7 that every such ballot must include the names of all  
8 candidates who have given the board or its authorized agent  
9 timely written notice of their candidacy and must give the  
10 person casting the ballot the opportunity to cast votes for  
11 candidates whose names do not appear on the ballot; that a  
12 ballot received by the association or its designated agent  
13 after the close of voting shall not be counted; that a unit  
14 owner who submits a ballot by mail or other means of  
15 delivery specified in the declaration, bylaws, or rule may  
16 request and cast a ballot in person at the election  
17 meeting, and thereby void any ballot previously submitted  
18 by that unit owner;

19 (C) that if a written petition by unit owners with at  
20 least 20% of the votes of the association is delivered to  
21 the board within 14 days after the board's approval of a  
22 rule adopted pursuant to subparagraph (B) of this paragraph  
23 (9), the board shall call a meeting of the unit owners  
24 within 30 days after the date of delivery of the petition;  
25 that unless a majority of the total votes of the unit  
26 owners are cast at the meeting to reject the rule, the rule

1 is ratified;

2 (10) that the association may, upon adoption of the  
3 appropriate rules by the board of managers, conduct  
4 elections by secret ballot whereby the voting ballot is  
5 marked only with the percentage interest for the unit and  
6 the vote itself, provided that the board further adopt  
7 rules to verify the status of the unit owner issuing a  
8 proxy or casting a ballot; and further, that a candidate  
9 for election to the board of managers or such candidate's  
10 representative shall have the right to be present at the  
11 counting of ballots at such election;

12 (11) that in the event of a resale of a condominium  
13 unit the purchaser of a unit from a seller other than the  
14 developer pursuant to an installment contract for purchase  
15 shall during such times as he or she resides in the unit be  
16 counted toward a quorum for purposes of election of members  
17 of the board of managers at any meeting of the unit owners  
18 called for purposes of electing members of the board, shall  
19 have the right to vote for the election of members of the  
20 board of managers and to be elected to and serve on the  
21 board of managers unless the seller expressly retains in  
22 writing any or all of such rights. In no event may the  
23 seller and purchaser both be counted toward a quorum, be  
24 permitted to vote for a particular office or be elected and  
25 serve on the board. Satisfactory evidence of the  
26 installment contract shall be made available to the

1 association or its agents. For purposes of this subsection,  
2 "installment contact" shall have the same meaning as set  
3 forth in Section 1 (e) of "An Act relating to installment  
4 contracts to sell dwelling structures", approved August  
5 11, 1967, as amended;

6 (12) the method by which matters subject to the  
7 approval of unit owners set forth in this Act, or in the  
8 condominium instruments, will be submitted to the unit  
9 owners at special membership meetings called for such  
10 purposes; and

11 (13) that matters subject to the affirmative vote of  
12 not less than 2/3 of the votes of unit owners at a meeting  
13 duly called for that purpose, shall include, but not be  
14 limited to:

15 (i) merger or consolidation of the association;

16 (ii) sale, lease, exchange, or other disposition  
17 (excluding the mortgage or pledge) of all, or  
18 substantially all of the property and assets of the  
19 association; and

20 (iii) the purchase or sale of land or of units on  
21 behalf of all unit owners.

22 (c) Election of a president from among the board of  
23 managers, who shall preside over the meetings of the board of  
24 managers and of the unit owners.

25 (d) Election of a secretary from among the board of  
26 managers, who shall keep the minutes of all meetings of the

1 board of managers and of the unit owners and who shall, in  
2 general, perform all the duties incident to the office of  
3 secretary.

4 (e) Election of a treasurer from among the board of  
5 managers, who shall keep the financial records and books of  
6 account.

7 (f) Maintenance, repair and replacement of the common  
8 elements and payments therefor, including the method of  
9 approving payment vouchers.

10 (g) An association with 30 or more units shall obtain and  
11 maintain fidelity insurance covering persons who control or  
12 disburse funds of the association for the maximum amount of  
13 coverage available to protect funds in the custody or control  
14 of the association plus the association reserve fund. All  
15 management companies which are responsible for the funds held  
16 or administered by the association shall maintain and furnish  
17 to the association a fidelity bond for the maximum amount of  
18 coverage available to protect funds in the custody of the  
19 management company at any time. The association shall bear the  
20 cost of the fidelity insurance and fidelity bond, unless  
21 otherwise provided by contract between the association and a  
22 management company. The association shall be the direct obligee  
23 of any such fidelity bond. A management company holding reserve  
24 funds of an association shall at all times maintain a separate  
25 account for each association, provided, however, that for  
26 investment purposes, the Board of Managers of an association

1 may authorize a management company to maintain the  
2 association's reserve funds in a single interest bearing  
3 account with similar funds of other associations. The  
4 management company shall at all times maintain records  
5 identifying all moneys of each association in such investment  
6 account. The management company may hold all operating funds of  
7 associations which it manages in a single operating account but  
8 shall at all times maintain records identifying all moneys of  
9 each association in such operating account. Such operating and  
10 reserve funds held by the management company for the  
11 association shall not be subject to attachment by any creditor  
12 of the management company.

13 For the purpose of this subsection a management company  
14 shall be defined as a person, partnership, corporation, or  
15 other legal entity entitled to transact business on behalf of  
16 others, acting on behalf of or as an agent for a unit owner,  
17 unit owners or association of unit owners for the purpose of  
18 carrying out the duties, responsibilities, and other  
19 obligations necessary for the day to day operation and  
20 management of any property subject to this Act. For purposes of  
21 this subsection, the term "fiduciary insurance coverage" shall  
22 be defined as both a fidelity bond and directors and officers  
23 liability coverage, the fidelity bond in the full amount of  
24 association funds and association reserves that will be in the  
25 custody of the association, and the directors and officers  
26 liability coverage at a level as shall be determined to be

1 reasonable by the board of managers, if not otherwise  
2 established by the declaration or by laws.

3 Until one year after the effective date of this amendatory  
4 Act of 1985, if a condominium association has reserves plus  
5 assessments in excess of \$250,000 and cannot reasonably obtain  
6 100% fidelity bond coverage for such amount, then it must  
7 obtain a fidelity bond coverage of \$250,000.

8 (h) Method of estimating the amount of the annual budget,  
9 and the manner of assessing and collecting from the unit owners  
10 their respective shares of such estimated expenses, and of any  
11 other expenses lawfully agreed upon.

12 (i) That upon 10 days notice to the manager or board of  
13 managers and payment of a reasonable fee, any unit owner shall  
14 be furnished a statement of his account setting forth the  
15 amount of any unpaid assessments or other charges due and owing  
16 from such owner.

17 (j) Designation and removal of personnel necessary for the  
18 maintenance, repair and replacement of the common elements.

19 (k) Such restrictions on and requirements respecting the  
20 use and maintenance of the units and the use of the common  
21 elements, not set forth in the declaration, as are designed to  
22 prevent unreasonable interference with the use of their  
23 respective units and of the common elements by the several unit  
24 owners. Restrictions regarding the use of the units may include  
25 other prohibitions on, or the allowance of, smoking tobacco  
26 products.



1           (1) Method of adopting and of amending administrative rules  
2 and regulations governing the operation and use of the common  
3 elements.

4           (m) The percentage of votes required to modify or amend the  
5 bylaws, but each one of the particulars set forth in this  
6 section shall always be embodied in the bylaws.

7           (n) (i) The provisions of this Act, the declaration,  
8 bylaws, other condominium instruments, and rules and  
9 regulations that relate to the use of the individual unit or  
10 the common elements shall be applicable to any person leasing a  
11 unit and shall be deemed to be incorporated in any lease  
12 executed or renewed on or after the effective date of this  
13 amendatory Act of 1984. (ii) With regard to any lease entered  
14 into subsequent to the effective date of this amendatory Act of  
15 1989, the unit owner leasing the unit shall deliver a copy of  
16 the signed lease to the board or if the lease is oral, a  
17 memorandum of the lease, not later than the date of occupancy  
18 or 10 days after the lease is signed, whichever occurs first.  
19 In addition to any other remedies, by filing an action jointly  
20 against the tenant and the unit owner, an association may seek  
21 to enjoin a tenant from occupying a unit or seek to evict a  
22 tenant under the provisions of Article IX of the Code of Civil  
23 Procedure for failure of the lessor-owner to comply with the  
24 leasing requirements prescribed by this Section or by the  
25 declaration, bylaws, and rules and regulations. The board of  
26 managers may proceed directly against a tenant, at law or in

1 equity, or under the provisions of Article IX of the Code of  
2 Civil Procedure, for any other breach by tenant of any  
3 covenants, rules, regulations or bylaws.

4 (o) The association shall have no authority to forbear the  
5 payment of assessments by any unit owner.

6 (p) That when 30% or fewer of the units, by number, possess  
7 over 50% in the aggregate of the votes in the association, any  
8 percentage vote of members specified herein or in the  
9 condominium instruments shall require the specified percentage  
10 by number of units rather than by percentage of interest in the  
11 common elements allocated to units that would otherwise be  
12 applicable. For purposes of this subsection (p), when making a  
13 determination of whether 30% or fewer of the units, by number,  
14 possess over 50% in the aggregate of the votes in the  
15 association, a unit shall not include a garage unit or a  
16 storage unit.

17 (q) That a unit owner may not assign, delegate, transfer,  
18 surrender, or avoid the duties, responsibilities, and  
19 liabilities of a unit owner under this Act, the condominium  
20 instruments, or the rules and regulations of the Association;  
21 and that such an attempted assignment, delegation, transfer,  
22 surrender, or avoidance shall be deemed void.

23 The provisions of this Section are applicable to all  
24 condominium instruments recorded under this Act. Any portion of  
25 a condominium instrument which contains provisions contrary to  
26 these provisions shall be void as against public policy and

1       ineffective. Any such instrument which fails to contain the  
2       provisions required by this Section shall be deemed to  
3       incorporate such provisions by operation of law.

4       (Source: P.A. 95-624, eff. 6-1-08.)

5               Section 99. Effective date. This Act takes effect January  
6       1, 2009.