

HB2606



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2606

by Rep. Kenneth Dunkin

SYNOPSIS AS INTRODUCED:

765 ILCS 605/18

from Ch. 30, par. 318

Amends the Condominium Property Act. Provides that upon request, any person who makes payments for common expenses shall be furnished a copy of any legally binding agreements between the unit owners' association and each management company retained by the association. Effective immediately.

LRB099 06276 HEP 26345 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 Sec. 18. Contents of bylaws. The bylaws shall provide for
8 at least the following:

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

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

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

18 (4) the method of removal from office of members of the
19 board;

20 (5) that the board may engage the services of a manager or
21 managing agent;

22 (6) that each unit owner shall receive, at least 30 days
23 prior to the adoption thereof by the board of managers, a copy

1 of the proposed annual budget together with an indication of
2 which portions are intended for reserves, capital expenditures
3 or repairs or payment of real estate taxes;

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

12 (8) (i) that each unit owner shall receive notice, in the
13 same manner as is provided in this Act for membership meetings,
14 of any meeting of the board of managers concerning the adoption
15 of the proposed annual budget and regular assessments pursuant
16 thereto or to adopt a separate (special) assessment, (ii) that
17 except as provided in subsection (iv) below, if an adopted
18 budget or any separate assessment adopted by the board would
19 result in the sum of all regular and separate assessments
20 payable in the current fiscal year exceeding 115% of the sum of
21 all regular and separate assessments payable during the
22 preceding fiscal year, the board of managers, upon written
23 petition by unit owners with 20 percent of the votes of the
24 association delivered to the board within 14 days of the board
25 action, shall call a meeting of the unit owners within 30 days
26 of the date of delivery of the petition to consider the budget

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

23 (9) that meetings of the board of managers shall be open to
24 any unit owner, except for the portion of any meeting held (i)
25 to discuss litigation when an action against or on behalf of
26 the particular association has been filed and is pending in a

1 court or administrative tribunal, or when the board of managers
2 finds that such an action is probable or imminent, (ii) to
3 consider information regarding appointment, employment or
4 dismissal of an employee, or (iii) to discuss violations of
5 rules and regulations of the association or a unit owner's
6 unpaid share of common expenses; that any vote on these matters
7 shall be taken at a meeting or portion thereof open to any unit
8 owner; that any unit owner may record the proceedings at
9 meetings or portions thereof required to be open by this Act by
10 tape, film or other means; that the board may prescribe
11 reasonable rules and regulations to govern the right to make
12 such recordings, that notice of such meetings shall be mailed
13 or delivered at least 48 hours prior thereto, unless a written
14 waiver of such notice is signed by the person or persons
15 entitled to such notice pursuant to the declaration, bylaws,
16 other condominium instrument, or provision of law other than
17 this subsection before the meeting is convened, and that copies
18 of notices of meetings of the board of managers shall be posted
19 in entranceways, elevators, or other conspicuous places in the
20 condominium at least 48 hours prior to the meeting of the board
21 of managers except where there is no common entranceway for 7
22 or more units, the board of managers may designate one or more
23 locations in the proximity of these units where the notices of
24 meetings shall be posted;

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

26 (11) that no member of the board or officer shall be

1 elected for a term of more than 2 years, but that officers and
2 board members may succeed themselves;

3 (12) the designation of an officer to mail and receive all
4 notices and execute amendments to condominium instruments as
5 provided for in this Act and in the condominium instruments;

6 (13) the method of filling vacancies on the board which
7 shall include authority for the remaining members of the board
8 to fill the vacancy by two-thirds vote until the next annual
9 meeting of unit owners or for a period terminating no later
10 than 30 days following the filing of a petition signed by unit
11 owners holding 20% of the votes of the association requesting a
12 meeting of the unit owners to fill the vacancy for the balance
13 of the term, and that a meeting of the unit owners shall be
14 called for purposes of filling a vacancy on the board no later
15 than 30 days following the filing of a petition signed by unit
16 owners holding 20% of the votes of the association requesting
17 such a meeting, and the method of filling vacancies among the
18 officers that shall include the authority for the members of
19 the board to fill the vacancy for the unexpired portion of the
20 term;

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

23 (15) provisions concerning notice of board meetings to
24 members of the board;

25 (16) the board of managers may not enter into a contract
26 with a current board member or with a corporation or

1 partnership in which a board member or a member of the board
2 member's immediate family has 25% or more interest, unless
3 notice of intent to enter the contract is given to unit owners
4 within 20 days after a decision is made to enter into the
5 contract and the unit owners are afforded an opportunity by
6 filing a petition, signed by 20% of the unit owners, for an
7 election to approve or disapprove the contract; such petition
8 shall be filed within 20 days after such notice and such
9 election shall be held within 30 days after filing the
10 petition; for purposes of this subsection, a board member's
11 immediate family means the board member's spouse, parents, and
12 children;

13 (17) that the board of managers may disseminate to unit
14 owners biographical and background information about
15 candidates for election to the board if (i) reasonable efforts
16 to identify all candidates are made and all candidates are
17 given an opportunity to include biographical and background
18 information in the information to be disseminated; and (ii) the
19 board does not express a preference in favor of any candidate;

20 (18) any proxy distributed for board elections by the board
21 of managers gives unit owners the opportunity to designate any
22 person as the proxy holder, and gives the unit owner the
23 opportunity to express a preference for any of the known
24 candidates for the board or to write in a name;

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

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

5 (b)(1) What percentage of the unit owners, if other than
6 20%, shall constitute a quorum provided that, for condominiums
7 with 20 or more units, the percentage of unit owners
8 constituting a quorum shall be 20% unless the unit owners
9 holding a majority of the percentage interest in the
10 association provide for a higher percentage, provided that in
11 voting on amendments to the association's bylaws, a unit owner
12 who is in arrears on the unit owner's regular or separate
13 assessments for 60 days or more, shall not be counted for
14 purposes of determining if a quorum is present, but that unit
15 owner retains the right to vote on amendments to the
16 association's bylaws;

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

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

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

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

25 (6) that written notice of any membership meeting shall be
26 mailed or delivered giving members no less than 10 and no more

1 than 30 days notice of the time, place and purpose of such
2 meeting except that notice may be sent, to the extent the
3 condominium instruments or rules adopted thereunder expressly
4 so provide, by electronic transmission consented to by the unit
5 owner to whom the notice is given, provided the director and
6 officer or his agent certifies in writing to the delivery by
7 electronic transmission;

8 (7) that voting shall be on a percentage basis, and that
9 the percentage vote to which each unit is entitled is the
10 percentage interest of the undivided ownership of the common
11 elements appurtenant thereto, provided that the bylaws may
12 provide for approval by unit owners in connection with matters
13 where the requisite approval on a percentage basis is not
14 specified in this Act, on the basis of one vote per unit;

15 (8) that, where there is more than one owner of a unit, if
16 only one of the multiple owners is present at a meeting of the
17 association, he is entitled to cast all the votes allocated to
18 that unit, if more than one of the multiple owners are present,
19 the votes allocated to that unit may be cast only in accordance
20 with the agreement of a majority in interest of the multiple
21 owners, unless the declaration expressly provides otherwise,
22 that there is majority agreement if any one of the multiple
23 owners cast the votes allocated to that unit without protest
24 being made promptly to the person presiding over the meeting by
25 any of the other owners of the unit;

26 (9) (A) except as provided in subparagraph (B) of this

1 paragraph (9) in connection with board elections, that a unit
2 owner may vote by proxy executed in writing by the unit owner
3 or by his duly authorized attorney in fact; that the proxy must
4 bear the date of execution and, unless the condominium
5 instruments or the written proxy itself provide otherwise, is
6 invalid after 11 months from the date of its execution; to the
7 extent the condominium instruments or rules adopted thereunder
8 expressly so provide, a vote or proxy may be submitted by
9 electronic transmission, provided that any such electronic
10 transmission shall either set forth or be submitted with
11 information from which it can be determined that the electronic
12 transmission was authorized by the unit owner or the unit
13 owner's proxy;

14 (B) that if a rule adopted at least 120 days before a board
15 election or the declaration or bylaws provide for balloting as
16 set forth in this subsection, unit owners may not vote by proxy
17 in board elections, but may vote only (i) by submitting an
18 association-issued ballot in person at the election meeting or
19 (ii) by submitting an association-issued ballot to the
20 association or its designated agent by mail or other means of
21 delivery specified in the declaration, bylaws, or rule; that
22 the ballots shall be mailed or otherwise distributed to unit
23 owners not less than 10 and not more than 30 days before the
24 election meeting, and the board shall give unit owners not less
25 than 21 days' prior written notice of the deadline for
26 inclusion of a candidate's name on the ballots; that the

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

14 (B-5) that if a rule adopted at least 120 days before a
15 board election or the declaration or bylaws provide for
16 balloting as set forth in this subparagraph, unit owners may
17 not vote by proxy in board elections, but may vote only (i) by
18 submitting an association-issued ballot in person at the
19 election meeting; or (ii) by any acceptable technological means
20 as defined in Section 2 of this Act; instructions regarding the
21 use of electronic means for voting shall be distributed to all
22 unit owners not less than 10 and not more than 30 days before
23 the election meeting, and the board shall give unit owners not
24 less than 21 days' prior written notice of the deadline for
25 inclusion of a candidate's name on the ballots; the deadline
26 shall be no more than 7 days before the instructions for voting

1 using electronic or acceptable technological means is
2 distributed to unit owners; every instruction notice must
3 include the names of all candidates who have given the board or
4 its authorized agent timely written notice of their candidacy
5 and must give the person voting through electronic or
6 acceptable technological means the opportunity to cast votes
7 for candidates whose names do not appear on the ballot; a unit
8 owner who submits a vote using electronic or acceptable
9 technological means may request and cast a ballot in person at
10 the election meeting, thereby voiding any vote previously
11 submitted by that unit owner;

12 (C) that if a written petition by unit owners with at least
13 20% of the votes of the association is delivered to the board
14 within 14 days after the board's approval of a rule adopted
15 pursuant to subparagraph (B) or subparagraph (B-5) of this
16 paragraph (9), the board shall call a meeting of the unit
17 owners within 30 days after the date of delivery of the
18 petition; that unless a majority of the total votes of the unit
19 owners are cast at the meeting to reject the rule, the rule is
20 ratified;

21 (D) that votes cast by ballot under subparagraph (B) or
22 electronic or acceptable technological means under
23 subparagraph (B-5) of this paragraph (9) are valid for the
24 purpose of establishing a quorum;

25 (10) that the association may, upon adoption of the
26 appropriate rules by the board of managers, conduct elections

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

9 (11) that in the event of a resale of a condominium unit
10 the purchaser of a unit from a seller other than the developer
11 pursuant to an installment contract for purchase shall during
12 such times as he or she resides in the unit be counted toward a
13 quorum for purposes of election of members of the board of
14 managers at any meeting of the unit owners called for purposes
15 of electing members of the board, shall have the right to vote
16 for the election of members of the board of managers and to be
17 elected to and serve on the board of managers unless the seller
18 expressly retains in writing any or all of such rights. In no
19 event may the seller and purchaser both be counted toward a
20 quorum, be permitted to vote for a particular office or be
21 elected and serve on the board. Satisfactory evidence of the
22 installment contact shall be made available to the association
23 or its agents. For purposes of this subsection, "installment
24 contact" shall have the same meaning as set forth in Section 1
25 (e) of "An Act relating to installment contracts to sell
26 dwelling structures", approved August 11, 1967, as amended;

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

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

8 (i) merger or consolidation of the association;

9 (ii) sale, lease, exchange, or other disposition
10 (excluding the mortgage or pledge) of all, or substantially
11 all of the property and assets of the association; and

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

14 (c) Election of a president from among the board of
15 managers, who shall preside over the meetings of the board of
16 managers and of the unit owners.

17 (d) Election of a secretary from among the board of
18 managers, who shall keep the minutes of all meetings of the
19 board of managers and of the unit owners and who shall, in
20 general, perform all the duties incident to the office of
21 secretary.

22 (e) Election of a treasurer from among the board of
23 managers, who shall keep the financial records and books of
24 account.

25 (f) Maintenance, repair and replacement of the common
26 elements and payments therefor, including the method of

1 approving payment vouchers.

2 (g) An association with 30 or more units shall obtain and
3 maintain fidelity insurance covering persons who control or
4 disburse funds of the association for the maximum amount of
5 coverage available to protect funds in the custody or control
6 of the association plus the association reserve fund. All
7 management companies which are responsible for the funds held
8 or administered by the association shall maintain and furnish
9 to the association a fidelity bond for the maximum amount of
10 coverage available to protect funds in the custody of the
11 management company at any time. The association shall bear the
12 cost of the fidelity insurance and fidelity bond, unless
13 otherwise provided by contract between the association and a
14 management company. The association shall be the direct obligee
15 of any such fidelity bond. A management company holding reserve
16 funds of an association shall at all times maintain a separate
17 account for each association, provided, however, that for
18 investment purposes, the Board of Managers of an association
19 may authorize a management company to maintain the
20 association's reserve funds in a single interest bearing
21 account with similar funds of other associations. The
22 management company shall at all times maintain records
23 identifying all moneys of each association in such investment
24 account. The management company may hold all operating funds of
25 associations which it manages in a single operating account but
26 shall at all times maintain records identifying all moneys of

1 each association in such operating account. Such operating and
2 reserve funds held by the management company for the
3 association shall not be subject to attachment by any creditor
4 of the management company.

5 For the purpose of this subsection a management company
6 shall be defined as a person, partnership, corporation, or
7 other legal entity entitled to transact business on behalf of
8 others, acting on behalf of or as an agent for a unit owner,
9 unit owners or association of unit owners for the purpose of
10 carrying out the duties, responsibilities, and other
11 obligations necessary for the day to day operation and
12 management of any property subject to this Act. For purposes of
13 this subsection, the term "fiduciary insurance coverage" shall
14 be defined as both a fidelity bond and directors and officers
15 liability coverage, the fidelity bond in the full amount of
16 association funds and association reserves that will be in the
17 custody of the association, and the directors and officers
18 liability coverage at a level as shall be determined to be
19 reasonable by the board of managers, if not otherwise
20 established by the declaration or by laws.

21 Until one year after the effective date of this amendatory
22 Act of 1985, if a condominium association has reserves plus
23 assessments in excess of \$250,000 and cannot reasonably obtain
24 100% fidelity bond coverage for such amount, then it must
25 obtain a fidelity bond coverage of \$250,000.

26 (h) Method of estimating the amount of the annual budget,

1 and the manner of assessing and collecting from the unit owners
2 their respective shares of such estimated expenses, and of any
3 other expenses lawfully agreed upon.

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

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

11 (k) Such restrictions on and requirements respecting the
12 use and maintenance of the units and the use of the common
13 elements, not set forth in the declaration, as are designed to
14 prevent unreasonable interference with the use of their
15 respective units and of the common elements by the several unit
16 owners.

17 (l) Method of adopting and of amending administrative rules
18 and regulations governing the operation and use of the common
19 elements.

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

23 (n) (i) The provisions of this Act, the declaration, bylaws,
24 other condominium instruments, and rules and regulations that
25 relate to the use of the individual unit or the common elements
26 shall be applicable to any person leasing a unit and shall be

1 deemed to be incorporated in any lease executed or renewed on
2 or after the effective date of this amendatory Act of 1984.

3 (ii) With regard to any lease entered into subsequent to the
4 effective date of this amendatory Act of 1989, the unit owner
5 leasing the unit shall deliver a copy of the signed lease to
6 the board or if the lease is oral, a memorandum of the lease,
7 not later than the date of occupancy or 10 days after the lease
8 is signed, whichever occurs first. In addition to any other
9 remedies, by filing an action jointly against the tenant and
10 the unit owner, an association may seek to enjoin a tenant from
11 occupying a unit or seek to evict a tenant under the provisions
12 of Article IX of the Code of Civil Procedure for failure of the
13 lessor-owner to comply with the leasing requirements
14 prescribed by this Section or by the declaration, bylaws, and
15 rules and regulations. The board of managers may proceed
16 directly against a tenant, at law or in equity, or under the
17 provisions of Article IX of the Code of Civil Procedure, for
18 any other breach by tenant of any covenants, rules, regulations
19 or bylaws.

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

22 (p) That when 30% or fewer of the units, by number, possess
23 over 50% in the aggregate of the votes in the association, any
24 percentage vote of members specified herein or in the
25 condominium instruments shall require the specified percentage
26 by number of units rather than by percentage of interest in the

1 common elements allocated to units that would otherwise be
2 applicable and garage units or storage units, or both, shall
3 have, in total, no more votes than their aggregate percentage
4 of ownership in the common elements; this shall mean that if
5 garage units or storage units, or both, are to be given a vote,
6 or portion of a vote, that the association must add the total
7 number of votes cast of garage units, storage units, or both,
8 and divide the total by the number of garage units, storage
9 units, or both, and multiply by the aggregate percentage of
10 ownership of garage units and storage units to determine the
11 vote, or portion of a vote, that garage units or storage units,
12 or both, have. For purposes of this subsection (p), when making
13 a determination of whether 30% or fewer of the units, by
14 number, 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 (r) That upon request, any person who makes payments for
24 common expenses shall be furnished a copy of any legally
25 binding agreements between the association and each management
26 company retained by the association.

1 The provisions of this Section are applicable to all
2 condominium instruments recorded under this Act. Any portion of
3 a condominium instrument which contains provisions contrary to
4 these provisions shall be void as against public policy and
5 ineffective. Any such instrument which fails to contain the
6 provisions required by this Section shall be deemed to
7 incorporate such provisions by operation of law.

8 (Source: P.A. 98-1042, eff. 1-1-15.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.