



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5985

Introduced 2/10/2010, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

765 ILCS 605/18.5

from Ch. 30, par. 318.5

Amends the Condominium Property Act. Provides that to the extent that the governing documents of a common interest community or a master association provide for lien rights and the applicability of forcible entry provisions of the Code of Civil Procedure, the purchaser of a unit in a common interest community or master association at a judicial foreclosure sale, other than a mortgagee, who takes possession of a unit pursuant to a court order or a purchaser who acquires title from a mortgagee has the duty to pay the proportionate share, if any, of the common expenses for the unit which would have become due in the absence of any assessment acceleration during the 6 months immediately preceding the commencement of an action to collect the unpaid assessments. Provides that if the outstanding assessments are paid at any time during a collection action, the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title. Provides that this does not create a statutory lien in favor of the common interest community or master association.

LRB096 18713 AJ0 34097 b

1 AN ACT concerning property.

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 18.5 as follows:

6 (765 ILCS 605/18.5) (from Ch. 30, par. 318.5)

7 Sec. 18.5. Master Associations.

8 (a) If the declaration, other condominium instrument, or
9 other duly recorded covenants provide that any of the powers of
10 the unit owners associations are to be exercised by or may be
11 delegated to a nonprofit corporation or unincorporated
12 association that exercises those or other powers on behalf of
13 one or more condominiums, or for the benefit of the unit owners
14 of one or more condominiums, such corporation or association
15 shall be a master association.

16 (b) There shall be included in the declaration, other
17 condominium instruments, or other duly recorded covenants
18 establishing the powers and duties of the master association
19 the provisions set forth in subsections (c) through (h).

20 In interpreting subsections (c) through (h), the courts
21 should interpret these provisions so that they are interpreted
22 consistently with the similar parallel provisions found in
23 other parts of this Act.

1 (c) Meetings and finances.

2 (1) Each unit owner of a condominium subject to the
3 authority of the board of the master association shall
4 receive, at least 30 days prior to the adoption thereof by
5 the board of the master association, a copy of the proposed
6 annual budget.

7 (2) The board of the master association shall annually
8 supply to all unit owners of condominiums subject to the
9 authority of the board of the master association an
10 itemized accounting of the common expenses for the
11 preceding year actually incurred or paid, together with a
12 tabulation of the amounts collected pursuant to the budget
13 or assessment, and showing the net excess or deficit of
14 income over expenditures plus reserves.

15 (3) Each unit owner of a condominium subject to the
16 authority of the board of the master association shall
17 receive written notice mailed or delivered no less than 10
18 and no more than 30 days prior to any meeting of the board
19 of the master association concerning the adoption of the
20 proposed annual budget or any increase in the budget, or
21 establishment of an assessment.

22 (4) Meetings of the board of the master association
23 shall be open to any unit owner in a condominium subject to
24 the authority of the board of the master association,
25 except for the portion of any meeting held:

26 (A) to discuss litigation when an action against or

1 on behalf of the particular master association has been
2 filed and is pending in a court or administrative
3 tribunal, or when the board of the master association
4 finds that such an action is probable or imminent,

5 (B) to consider information regarding appointment,
6 employment or dismissal of an employee, or

7 (C) to discuss violations of rules and regulations
8 of the master association or unpaid common expenses
9 owed to the master association.

10 Any vote on these matters shall be taken at a meeting or
11 portion thereof open to any unit owner of a condominium
12 subject to the authority of the master association.

13 Any unit owner may record the proceedings at meetings
14 required to be open by this Act by tape, film or other
15 means; the board may prescribe reasonable rules and
16 regulations to govern the right to make such recordings.
17 Notice of meetings shall be mailed or delivered at least 48
18 hours prior thereto, unless a written waiver of such notice
19 is signed by the persons entitled to notice before the
20 meeting is convened. Copies of notices of meetings of the
21 board of the master association shall be posted in
22 entranceways, elevators, or other conspicuous places in
23 the condominium at least 48 hours prior to the meeting of
24 the board of the master association. Where there is no
25 common entranceway for 7 or more units, the board of the
26 master association may designate one or more locations in

1 the proximity of these units where the notices of meetings
2 shall be posted.

3 (5) If the declaration provides for election by unit
4 owners of members of the board of directors in the event of
5 a resale of a unit in the master association, the purchaser
6 of a unit from a seller other than the developer pursuant
7 to an installment contract for purchase shall, during such
8 times as he or she resides in the unit, be counted toward a
9 quorum for purposes of election of members of the board of
10 directors at any meeting of the unit owners called for
11 purposes of electing members of the board, and shall have
12 the right to vote for the election of members of the board
13 of directors and to be elected to and serve on the board of
14 directors unless the seller expressly retains in writing
15 any or all of those rights. In no event may the seller and
16 purchaser both be counted toward a quorum, be permitted to
17 vote for a particular office, or be elected and serve on
18 the board. Satisfactory evidence of the installment
19 contract shall be made available to the association or its
20 agents. For purposes of this subsection, "installment
21 contract" shall have the same meaning as set forth in
22 subsection (e) of Section 1 of the Dwelling Unit
23 Installment Contract Act.

24 (6) The board of the master association shall have the
25 authority to establish and maintain a system of master
26 metering of public utility services and to collect payments

1 in connection therewith, subject to the requirements of the
2 Tenant Utility Payment Disclosure Act.

3 (7) The board of the master association or a common
4 interest community association shall have the power, after
5 notice and an opportunity to be heard, to levy and collect
6 reasonable fines from members for violations of the
7 declaration, bylaws, and rules and regulations of the
8 master association or the common interest community
9 association. Nothing contained in this subdivision (7)
10 shall give rise to a statutory lien for unpaid fines.

11 (8) Other than attorney's fees, no fees pertaining to
12 the collection of a unit owner's financial obligation to
13 the Association, including fees charged by a manager or
14 managing agent, shall be added to and deemed a part of an
15 owner's respective share of the common expenses unless: (i)
16 the managing agent fees relate to the costs to collect
17 common expenses for the Association; (ii) the fees are set
18 forth in a contract between the managing agent and the
19 Association; and (iii) the authority to add the management
20 fees to an owner's respective share of the common expenses
21 is specifically stated in the declaration or bylaws of the
22 Association.

23 (9) To the extent that the governing documents of a
24 common interest community or a master association provide
25 for lien rights and the applicability of Article IX of the
26 Code of Civil Procedure, the purchaser of a unit in a

1 common interest community or master association at a
2 judicial foreclosure sale, other than a mortgagee, who
3 takes possession of a unit pursuant to a court order, or a
4 purchaser who acquires title from a mortgagee shall have
5 the duty to pay the proportionate share, if any, of the
6 common expenses for the unit which would have become due in
7 the absence of any assessment acceleration during the 6
8 months immediately preceding the institution of an action
9 to enforce the collection of assessments, and which remain
10 unpaid by the owner during whose possession the assessments
11 accrued. If the outstanding assessments are paid at any
12 time during any action to enforce the collection of
13 assessments, the purchaser shall have no obligation to pay
14 any assessments which accrued before he or she acquired
15 title. Nothing contained in this subdivision (9) shall give
16 rise to a statutory lien in favor of the common interest
17 community or master association.

18 (d) Records.

19 (1) The board of the master association shall maintain
20 the following records of the association and make them
21 available for examination and copying at convenient hours
22 of weekdays by any unit owners in a condominium subject to
23 the authority of the board or their mortgagees and their
24 duly authorized agents or attorneys:

25 (i) Copies of the recorded declaration, other
26 condominium instruments, other duly recorded covenants

1 and bylaws and any amendments, articles of
2 incorporation of the master association, annual
3 reports and any rules and regulations adopted by the
4 master association or its board shall be available.
5 Prior to the organization of the master association,
6 the developer shall maintain and make available the
7 records set forth in this subdivision (d)(1) for
8 examination and copying.

9 (ii) Detailed and accurate records in
10 chronological order of the receipts and expenditures
11 affecting the common areas, specifying and itemizing
12 the maintenance and repair expenses of the common areas
13 and any other expenses incurred, and copies of all
14 contracts, leases, or other agreements entered into by
15 the master association, shall be maintained.

16 (iii) The minutes of all meetings of the master
17 association and the board of the master association
18 shall be maintained for not less than 7 years.

19 (iv) Ballots and proxies related thereto, if any,
20 for any election held for the board of the master
21 association and for any other matters voted on by the
22 unit owners shall be maintained for not less than one
23 year.

24 (v) Such other records of the master association as
25 are available for inspection by members of a
26 not-for-profit corporation pursuant to Section 107.75

1 of the General Not For Profit Corporation Act of 1986
2 shall be maintained.

3 (vi) With respect to units owned by a land trust,
4 if a trustee designates in writing a person to cast
5 votes on behalf of the unit owner, the designation
6 shall remain in effect until a subsequent document is
7 filed with the association.

8 (2) Where a request for records under this subsection
9 is made in writing to the board of managers or its agent,
10 failure to provide the requested record or to respond
11 within 30 days shall be deemed a denial by the board of
12 directors.

13 (3) A reasonable fee may be charged by the master
14 association or its board for the cost of copying.

15 (4) If the board of directors fails to provide records
16 properly requested under subdivision (d)(1) within the
17 time period provided in subdivision (d)(2), the unit owner
18 may seek appropriate relief, including an award of
19 attorney's fees and costs.

20 (e) The board of directors shall have standing and capacity
21 to act in a representative capacity in relation to matters
22 involving the common areas of the master association or more
23 than one unit, on behalf of the unit owners as their interests
24 may appear.

25 (f) Administration of property prior to election of the
26 initial board of directors.

1 (1) Until the election, by the unit owners or the
2 boards of managers of the underlying condominium
3 associations, of the initial board of directors of a master
4 association whose declaration is recorded on or after
5 August 10, 1990, the same rights, titles, powers,
6 privileges, trusts, duties and obligations that are vested
7 in or imposed upon the board of directors by this Act or in
8 the declaration or other duly recorded covenant shall be
9 held and performed by the developer.

10 (2) The election of the initial board of directors of a
11 master association whose declaration is recorded on or
12 after August 10, 1990, by the unit owners or the boards of
13 managers of the underlying condominium associations, shall
14 be held not later than 60 days after the conveyance by the
15 developer of 75% of the units, or 3 years after the
16 recording of the declaration, whichever is earlier. The
17 developer shall give at least 21 days notice of the meeting
18 to elect the initial board of directors and shall upon
19 request provide to any unit owner, within 3 working days of
20 the request, the names, addresses, and weighted vote of
21 each unit owner entitled to vote at the meeting. Any unit
22 owner shall upon receipt of the request be provided with
23 the same information, within 10 days of the request, with
24 respect to each subsequent meeting to elect members of the
25 board of directors.

26 (3) If the initial board of directors of a master

1 association whose declaration is recorded on or after
2 August 10, 1990 is not elected by the unit owners or the
3 members of the underlying condominium association board of
4 managers at the time established in subdivision (f)(2), the
5 developer shall continue in office for a period of 30 days,
6 whereupon written notice of his resignation shall be sent
7 to all of the unit owners or members of the underlying
8 condominium board of managers entitled to vote at an
9 election for members of the board of directors.

10 (4) Within 60 days following the election of a majority
11 of the board of directors, other than the developer, by
12 unit owners, the developer shall deliver to the board of
13 directors:

14 (i) All original documents as recorded or filed
15 pertaining to the property, its administration, and
16 the association, such as the declaration, articles of
17 incorporation, other instruments, annual reports,
18 minutes, rules and regulations, and contracts, leases,
19 or other agreements entered into by the association. If
20 any original documents are unavailable, a copy may be
21 provided if certified by affidavit of the developer, or
22 an officer or agent of the developer, as being a
23 complete copy of the actual document recorded or filed.

24 (ii) A detailed accounting by the developer,
25 setting forth the source and nature of receipts and
26 expenditures in connection with the management,

1 maintenance and operation of the property, copies of
2 all insurance policies, and a list of any loans or
3 advances to the association which are outstanding.

4 (iii) Association funds, which shall have been at
5 all times segregated from any other moneys of the
6 developer.

7 (iv) A schedule of all real or personal property,
8 equipment and fixtures belonging to the association,
9 including documents transferring the property,
10 warranties, if any, for all real and personal property
11 and equipment, deeds, title insurance policies, and
12 all tax bills.

13 (v) A list of all litigation, administrative
14 action and arbitrations involving the association, any
15 notices of governmental bodies involving actions taken
16 or which may be taken concerning the association,
17 engineering and architectural drawings and
18 specifications as approved by any governmental
19 authority, all other documents filed with any other
20 governmental authority, all governmental certificates,
21 correspondence involving enforcement of any
22 association requirements, copies of any documents
23 relating to disputes involving unit owners, and
24 originals of all documents relating to everything
25 listed in this subparagraph.

26 (vi) If the developer fails to fully comply with

1 this paragraph (4) within the 60 days provided and
2 fails to fully comply within 10 days of written demand
3 mailed by registered or certified mail to his or her
4 last known address, the board may bring an action to
5 compel compliance with this paragraph (4). If the court
6 finds that any of the required deliveries were not made
7 within the required period, the board shall be entitled
8 to recover its reasonable attorneys' fees and costs
9 incurred from and after the date of expiration of the
10 10 day demand.

11 (5) With respect to any master association whose
12 declaration is recorded on or after August 10, 1990, any
13 contract, lease, or other agreement made prior to the
14 election of a majority of the board of directors other than
15 the developer by or on behalf of unit owners or underlying
16 condominium associations, the association or the board of
17 directors, which extends for a period of more than 2 years
18 from the recording of the declaration, shall be subject to
19 cancellation by more than 1/2 of the votes of the unit
20 owners, other than the developer, cast at a special meeting
21 of members called for that purpose during a period of 90
22 days prior to the expiration of the 2 year period if the
23 board of managers is elected by the unit owners, otherwise
24 by more than 1/2 of the underlying condominium board of
25 managers. At least 60 days prior to the expiration of the 2
26 year period, the board of directors, or, if the board is

1 still under developer control, then the board of managers
2 or the developer shall send notice to every unit owner or
3 underlying condominium board of managers, notifying them
4 of this provision, of what contracts, leases and other
5 agreements are affected, and of the procedure for calling a
6 meeting of the unit owners or for action by the underlying
7 condominium board of managers for the purpose of acting to
8 terminate such contracts, leases or other agreements.
9 During the 90 day period the other party to the contract,
10 lease, or other agreement shall also have the right of
11 cancellation.

12 (6) The statute of limitations for any actions in law
13 or equity which the master association may bring shall not
14 begin to run until the unit owners or underlying
15 condominium board of managers have elected a majority of
16 the members of the board of directors.

17 (g) In the event of any resale of a unit in a master
18 association by a unit owner other than the developer, the owner
19 shall obtain from the board of directors and shall make
20 available for inspection to the prospective purchaser, upon
21 demand, the following:

22 (1) A copy of the declaration, other instruments and
23 any rules and regulations.

24 (2) A statement of any liens, including a statement of
25 the account of the unit setting forth the amounts of unpaid
26 assessments and other charges due and owing.

1 (3) A statement of any capital expenditures
2 anticipated by the association within the current or
3 succeeding 2 fiscal years.

4 (4) A statement of the status and amount of any reserve
5 for replacement fund and any portion of such fund earmarked
6 for any specified project by the board of directors.

7 (5) A copy of the statement of financial condition of
8 the association for the last fiscal year for which such a
9 statement is available.

10 (6) A statement of the status of any pending suits or
11 judgments in which the association is a party.

12 (7) A statement setting forth what insurance coverage
13 is provided for all unit owners by the association.

14 (8) A statement that any improvements or alterations
15 made to the unit, or any part of the common areas assigned
16 thereto, by the prior unit owner are in good faith believed
17 to be in compliance with the declaration of the master
18 association.

19 The principal officer of the unit owner's association or
20 such other officer as is specifically designated shall furnish
21 the above information when requested to do so in writing,
22 within 30 days of receiving the request.

23 A reasonable fee covering the direct out-of-pocket cost of
24 copying and providing such information may be charged by the
25 association or its board of directors to the unit seller for
26 providing the information.

1 (h) Errors and omissions.

2 (1) If there is an omission or error in the declaration
3 or other instrument of the master association, the master
4 association may correct the error or omission by an
5 amendment to the declaration or other instrument, as may be
6 required to conform it to this Act, to any other applicable
7 statute, or to the declaration. The amendment shall be
8 adopted by vote of two-thirds of the members of the board
9 of directors or by a majority vote of the unit owners at a
10 meeting called for that purpose, unless the Act or the
11 declaration of the master association specifically
12 provides for greater percentages or different procedures.

13 (2) If, through a scrivener's error, a unit has not
14 been designated as owning an appropriate undivided share of
15 the common areas or does not bear an appropriate share of
16 the common expenses, or if all of the common expenses or
17 all of the common elements in the condominium have not been
18 distributed in the declaration, so that the sum total of
19 the shares of common areas which have been distributed or
20 the sum total of the shares of the common expenses fail to
21 equal 100%, or if it appears that more than 100% of the
22 common elements or common expenses have been distributed,
23 the error may be corrected by operation of law by filing an
24 amendment to the declaration, approved by vote of
25 two-thirds of the members of the board of directors or a
26 majority vote of the unit owners at a meeting called for

1 that purpose, which proportionately adjusts all percentage
2 interests so that the total is equal to 100%, unless the
3 declaration specifically provides for a different
4 procedure or different percentage vote by the owners of the
5 units and the owners of mortgages thereon affected by
6 modification being made in the undivided interest in the
7 common areas, the number of votes in the unit owners
8 association or the liability for common expenses
9 appertaining to the unit.

10 (3) If an omission or error or a scrivener's error in
11 the declaration or other instrument is corrected by vote of
12 two-thirds of the members of the board of directors
13 pursuant to the authority established in subdivisions
14 (h) (1) or (h) (2) of this Section, the board, upon written
15 petition by unit owners with 20% of the votes of the
16 association or resolutions adopted by the board of managers
17 or board of directors of the condominium and common
18 interest community associations which select 20% of the
19 members of the board of directors of the master
20 association, whichever is applicable, received within 30
21 days of the board action, shall call a meeting of the unit
22 owners or the boards of the condominium and common interest
23 community associations which select members of the board of
24 directors of the master association within 30 days of the
25 filing of the petition or receipt of the condominium and
26 common interest community association resolution to

1 consider the board action. Unless a majority of the votes
2 of the unit owners of the association are cast at the
3 meeting to reject the action, or board of managers or board
4 of directors of condominium and common interest community
5 associations which select over 50% of the members of the
6 board of the master association adopt resolutions prior to
7 the meeting rejecting the action of the board of directors
8 of the master association, it is ratified whether or not a
9 quorum is present.

10 (4) The procedures for amendments set forth in this
11 subsection (h) cannot be used if such an amendment would
12 materially or adversely affect property rights of the unit
13 owners unless the affected unit owners consent in writing.
14 This Section does not restrict the powers of the
15 association to otherwise amend the declaration, bylaws, or
16 other condominium instruments, but authorizes a simple
17 process of amendment requiring a lesser vote for the
18 purpose of correcting defects, errors, or omissions when
19 the property rights of the unit owners are not materially
20 or adversely affected.

21 (5) If there is an omission or error in the declaration
22 or other instruments that may not be corrected by an
23 amendment procedure set forth in subdivision (h)(1) or
24 (h)(2) of this Section, then the circuit court in the
25 county in which the master association is located shall
26 have jurisdiction to hear a petition of one or more of the

1 unit owners thereon or of the association, to correct the
2 error or omission, and the action may be a class action.
3 The court may require that one or more methods of
4 correcting the error or omission be submitted to the unit
5 owners to determine the most acceptable correction. All
6 unit owners in the association must be joined as parties to
7 the action. Service of process on owners may be by
8 publication, but the plaintiff shall furnish all unit
9 owners not personally served with process with copies of
10 the petition and final judgment of the court by certified
11 mail, return receipt requested, at their last known
12 address.

13 (6) Nothing contained in this Section shall be
14 construed to invalidate any provision of a declaration
15 authorizing the developer to amend an instrument prior to
16 the latest date on which the initial membership meeting of
17 the unit owners must be held, whether or not it has
18 actually been held, to bring the instrument into compliance
19 with the legal requirements of the Federal National
20 Mortgage Association, the Federal Home Loan Mortgage
21 Corporation, the Federal Housing Administration, the
22 United States Veterans Administration or their respective
23 successors and assigns.

24 (i) The provisions of subsections (c) through (h) are
25 applicable to all declarations, other condominium instruments,
26 and other duly recorded covenants establishing the powers and

1 duties of the master association recorded under this Act. Any
2 portion of a declaration, other condominium instrument, or
3 other duly recorded covenant establishing the powers and duties
4 of a master association which contains provisions contrary to
5 the provisions of subsection (c) through (h) shall be void as
6 against public policy and ineffective. Any declaration, other
7 condominium instrument, or other duly recorded covenant
8 establishing the powers and duties of the master association
9 which fails to contain the provisions required by subsections
10 (c) through (h) shall be deemed to incorporate such provisions
11 by operation of law.

12 (j) The provisions of subsections (c) through (h) are
13 applicable to all common interest community associations and
14 their unit owners for common interest community associations
15 which are subject to the provisions of Section 9-102(a)(8) of
16 the Code of Civil Procedure. For purposes of this subsection,
17 the terms "common interest community" and "unit owners" shall
18 have the same meaning as set forth in Section 9-102(c) of the
19 Code of Civil Procedure.

20 (Source: P.A. 94-384, eff. 1-1-06.)