

HB3979



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3979

Introduced 1/18/2012, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

765 ILCS 605/18

from Ch. 30, par. 318

Amends the Condominium Property Act. Provides that the bylaws of an association shall provide that a unit owner may not vote by proxy in a board officer election, but may vote by mail. Makes related changes.

LRB097 16497 AJO 61665 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,
11 and that the terms of at least one-third of the members of
12 the board shall expire annually and that all members of the
13 board shall be elected at large. If there are multiple
14 owners of a single unit, only one of the multiple owners
15 shall be eligible to serve as a member of the board at any
16 one time.

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

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

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

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

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

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

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

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

1 amount of the multi-year assessment shall be deemed
2 considered and authorized in the first fiscal year in which
3 the assessment is approved;

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

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

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

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

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

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

1 filing of a petition signed by unit owners holding 20% of
2 the votes of the association requesting such a meeting, and
3 the method of filling vacancies among the officers that
4 shall include the authority for the members of the board to
5 fill the vacancy for the unexpired portion of the term;

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

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

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

24 (17) that the board of managers may disseminate to unit
25 owners biographical and background information about
26 candidates for election to the board if (i) reasonable

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

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

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

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

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

1 owner who is in arrears on the unit owner's regular or
2 separate assessments for 60 days or more, shall not be
3 counted for purposes of determining if a quorum is present,
4 but that unit owner retains the right to vote on amendments
5 to the association's bylaws;

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

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

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

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

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

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

1 (8) that, where there is more than one owner of a unit,
2 if only one of the multiple owners is present at a meeting
3 of the association, he is entitled to cast all the votes
4 allocated to that unit, if more than one of the multiple
5 owners are present, the votes allocated to that unit may be
6 cast only in accordance with the agreement of a majority in
7 interest of the multiple owners, unless the declaration
8 expressly provides otherwise, that there is majority
9 agreement if any one of the multiple owners cast the votes
10 allocated to that unit without protest being made promptly
11 to the person presiding over the meeting by any of the
12 other owners of the unit;

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

22 (B) that ~~if a rule adopted at least 120 days before a~~
23 ~~board election or the declaration or bylaws provide for~~
24 ~~balloting as set forth in this subsection,~~ unit owners may
25 not vote by proxy in board elections, but may vote only (i)
26 by submitting an association-issued ballot in person at the

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

24 (C) that if a written petition by unit owners with at
25 least 20% of the votes of the association is delivered to
26 the board within 14 days after the board's approval of a

1 rule adopted pursuant to subparagraph (B) of this paragraph
2 (9), the board shall call a meeting of the unit owners
3 within 30 days after the date of delivery of the petition;
4 that unless a majority of the total votes of the unit
5 owners are cast at the meeting to reject the rule, the rule
6 is ratified;

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

17 (11) that in the event of a resale of a condominium
18 unit the purchaser of a unit from a seller other than the
19 developer pursuant to an installment contract for purchase
20 shall during such times as he or she resides in the unit be
21 counted toward a quorum for purposes of election of members
22 of the board of managers at any meeting of the unit owners
23 called for purposes of electing members of the board, shall
24 have the right to vote for the election of members of the
25 board of managers and to be elected to and serve on the
26 board of managers unless the seller expressly retains in

1 writing any or all of such rights. In no event may the
2 seller and purchaser both be counted toward a quorum, be
3 permitted to vote for a particular office or be elected and
4 serve on the board. Satisfactory evidence of the
5 installment contact shall be made available to the
6 association or its agents. For purposes of this subsection,
7 "installment contact" shall have the same meaning as set
8 forth in Section 1 (e) of "An Act relating to installment
9 contracts to sell dwelling structures", approved August
10 11, 1967, as amended;

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

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

20 (i) merger or consolidation of the association;

21 (ii) sale, lease, exchange, or other disposition
22 (excluding the mortgage or pledge) of all, or
23 substantially all of the property and assets of the
24 association; and

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

1 (c) Election of a president from among the board of
2 managers, who shall preside over the meetings of the board of
3 managers and of the unit owners.

4 (d) Election of a secretary from among the board of
5 managers, who shall keep the minutes of all meetings of the
6 board of managers and of the unit owners and who shall, in
7 general, perform all the duties incident to the office of
8 secretary.

9 (e) Election of a treasurer from among the board of
10 managers, who shall keep the financial records and books of
11 account.

12 (f) Maintenance, repair and replacement of the common
13 elements and payments therefor, including the method of
14 approving payment vouchers.

15 (g) An association with 30 or more units shall obtain and
16 maintain fidelity insurance covering persons who control or
17 disburse funds of the association for the maximum amount of
18 coverage available to protect funds in the custody or control
19 of the association plus the association reserve fund. All
20 management companies which are responsible for the funds held
21 or administered by the association shall maintain and furnish
22 to the association a fidelity bond for the maximum amount of
23 coverage available to protect funds in the custody of the
24 management company at any time. The association shall bear the
25 cost of the fidelity insurance and fidelity bond, unless
26 otherwise provided by contract between the association and a

1 management company. The association shall be the direct obligee
2 of any such fidelity bond. A management company holding reserve
3 funds of an association shall at all times maintain a separate
4 account for each association, provided, however, that for
5 investment purposes, the Board of Managers of an association
6 may authorize a management company to maintain the
7 association's reserve funds in a single interest bearing
8 account with similar funds of other associations. The
9 management company shall at all times maintain records
10 identifying all moneys of each association in such investment
11 account. The management company may hold all operating funds of
12 associations which it manages in a single operating account but
13 shall at all times maintain records identifying all moneys of
14 each association in such operating account. Such operating and
15 reserve funds held by the management company for the
16 association shall not be subject to attachment by any creditor
17 of the management company.

18 For the purpose of this subsection a management company
19 shall be defined as a person, partnership, corporation, or
20 other legal entity entitled to transact business on behalf of
21 others, acting on behalf of or as an agent for a unit owner,
22 unit owners or association of unit owners for the purpose of
23 carrying out the duties, responsibilities, and other
24 obligations necessary for the day to day operation and
25 management of any property subject to this Act. For purposes of
26 this subsection, the term "fiduciary insurance coverage" shall

1 be defined as both a fidelity bond and directors and officers
2 liability coverage, the fidelity bond in the full amount of
3 association funds and association reserves that will be in the
4 custody of the association, and the directors and officers
5 liability coverage at a level as shall be determined to be
6 reasonable by the board of managers, if not otherwise
7 established by the declaration or by laws.

8 Until one year after the effective date of this amendatory
9 Act of 1985, if a condominium association has reserves plus
10 assessments in excess of \$250,000 and cannot reasonably obtain
11 100% fidelity bond coverage for such amount, then it must
12 obtain a fidelity bond coverage of \$250,000.

13 (h) Method of estimating the amount of the annual budget,
14 and the manner of assessing and collecting from the unit owners
15 their respective shares of such estimated expenses, and of any
16 other expenses lawfully agreed upon.

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

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

24 (k) Such restrictions on and requirements respecting the
25 use and maintenance of the units and the use of the common
26 elements, not set forth in the declaration, as are designed to

1 prevent unreasonable interference with the use of their
2 respective units and of the common elements by the several unit
3 owners.

4 (l) Method of adopting and of amending administrative rules
5 and regulations governing the operation and use of the common
6 elements.

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

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

1 leasing requirements prescribed by this Section or by the
2 declaration, bylaws, and rules and regulations. The board of
3 managers may proceed directly against a tenant, at law or in
4 equity, or under the provisions of Article IX of the Code of
5 Civil Procedure, for any other breach by tenant of any
6 covenants, rules, regulations or bylaws.

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

9 (p) That when 30% or fewer of the units, by number, possess
10 over 50% in the aggregate of the votes in the association, any
11 percentage vote of members specified herein or in the
12 condominium instruments shall require the specified percentage
13 by number of units rather than by percentage of interest in the
14 common elements allocated to units that would otherwise be
15 applicable and garage units or storage units, or both, shall
16 have, in total, no more votes than their aggregate percentage
17 of ownership in the common elements; this shall mean that if
18 garage units or storage units, or both, are to be given a vote,
19 or portion of a vote, that the association must add the total
20 number of votes cast of garage units, storage units, or both,
21 and divide the total by the number of garage units, storage
22 units, or both, and multiply by the aggregate percentage of
23 ownership of garage units and storage units to determine the
24 vote, or portion of a vote, that garage units or storage units,
25 or both, have. For purposes of this subsection (p), when making
26 a determination of whether 30% or fewer of the units, by

1 number, possess over 50% in the aggregate of the votes in the
2 association, a unit shall not include a garage unit or a
3 storage unit.

4 (q) That a unit owner may not assign, delegate, transfer,
5 surrender, or avoid the duties, responsibilities, and
6 liabilities of a unit owner under this Act, the condominium
7 instruments, or the rules and regulations of the Association;
8 and that such an attempted assignment, delegation, transfer,
9 surrender, or avoidance shall be deemed void.

10 The provisions of this Section are applicable to all
11 condominium instruments recorded under this Act. Any portion of
12 a condominium instrument which contains provisions contrary to
13 these provisions shall be void as against public policy and
14 ineffective. Any such instrument which fails to contain the
15 provisions required by this Section shall be deemed to
16 incorporate such provisions by operation of law.

17 (Source: P.A. 95-624, eff. 6-1-08; 96-55, eff. 1-1-10; 96-977,
18 eff. 7-2-10.)