

HB2640



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2640

by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

765 ILCS 605/18

from Ch. 30, par. 318

Amends the Condominium Property Act. Makes changes in provisions governing: portions of board of managers' meetings which may be closed to the unit owners; participation by board members in meetings via acceptable technological means; and notice requirements for board of managers meetings.

LRB099 07615 HEP 27746 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) (A) that every meeting ~~meetings~~ of the board of managers
24 shall be open to any unit owner, except for the portion of any
25 meeting held ~~(i)~~ to discuss or consider information relating
26 to: (i) litigation when an action against or on behalf of the

1 particular association has been filed and is pending in a court
2 or administrative tribunal, or when the board of managers finds
3 that such an action is probable or imminent, (ii) ~~to consider~~
4 ~~information regarding~~ appointment, employment or dismissal of
5 an employee, ~~or~~ (iii) ~~to discuss~~ violations of rules and
6 regulations of the association, or (iv) a unit owner's unpaid
7 share of common expenses; that any vote on these matters
8 discussed or considered in closed session shall take place ~~be~~
9 ~~taken~~ at a meeting of the board of managers or portion thereof
10 open to any unit owner;

11 (B) that board members may participate in and act at any
12 meeting of the board of managers in person, by telephonic
13 means, or by use of any acceptable technological means whereby
14 all persons participating in the meeting can communicate with
15 each other; that participation constitutes attendance and
16 presence in person at the meeting;

17 (C) that any unit owner may record the proceedings at
18 meetings of the board of managers or portions thereof required
19 to be open by this Act by tape, film or other means, and, that
20 the board may prescribe reasonable rules and regulations to
21 govern the right to make such recordings;7

22 (D) that notice of every meeting of the board of managers
23 ~~such meetings~~ shall be given to every board member ~~mailed or~~
24 ~~delivered~~ at least 48 hours prior thereto, unless the board
25 member waives notice of the meeting pursuant to subsection (a)
26 of Section 18.8; a written waiver of such notice is signed by

1 ~~the person or persons entitled to such notice pursuant to the~~
2 ~~declaration, bylaws, other condominium instrument, or~~
3 ~~provision of law other than this subsection before the meeting~~
4 ~~is convened, and~~

5 (E) that notice ~~copies of notices~~ of every meeting ~~meetings~~
6 of the board of managers shall be posted in entranceways,
7 elevators, or other conspicuous places in the condominium at
8 least 48 hours prior to the meeting of the board of managers
9 except where there is no common entranceway for 7 or more
10 units, the board of managers may designate one or more
11 locations in the proximity of these units where the notices of
12 meetings shall be posted; that notice of every meeting of the
13 board of managers shall also be given at least 48 hours prior
14 to the meeting, or such longer notice as this Act may
15 separately require, to: (i) each unit owner who has provided
16 the association with written authorization to conduct business
17 by acceptable technological means, and (ii) to the extent that
18 the condominium instruments of an association require, to each
19 other unit owner, as required by subsection (f) of Section
20 18.8, by mail or delivery, and that no other notice of a
21 meeting of the board of managers need be given to any unit
22 owner;

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

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

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

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

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

21 (15) provisions concerning notice of board meetings to
22 members of the board;

23 (16) the board of managers may not enter into a contract
24 with a current board member or with a corporation or
25 partnership in which a board member or a member of the board
26 member's immediate family has 25% or more interest, unless

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

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

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

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

25 (20) that the board of managers may establish and maintain
26 a system of master metering of public utility services and

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

3 (b)(1) What percentage of the unit owners, if other than
4 20%, shall constitute a quorum provided that, for condominiums
5 with 20 or more units, the percentage of unit owners
6 constituting a quorum shall be 20% unless the unit owners
7 holding a majority of the percentage interest in the
8 association provide for a higher percentage, provided that in
9 voting on amendments to the association's bylaws, a unit owner
10 who is in arrears on the unit owner's regular or separate
11 assessments for 60 days or more, shall not be counted for
12 purposes of determining if a quorum is present, but that unit
13 owner retains the right to vote on amendments to the
14 association's bylaws;

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

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

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

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

23 (6) that written notice of any membership meeting shall be
24 mailed or delivered giving members no less than 10 and no more
25 than 30 days notice of the time, place and purpose of such
26 meeting except that notice may be sent, to the extent the

1 condominium instruments or rules adopted thereunder expressly
2 so provide, by electronic transmission consented to by the unit
3 owner to whom the notice is given, provided the director and
4 officer or his agent certifies in writing to the delivery by
5 electronic transmission;

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

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

24 (9) (A) except as provided in subparagraph (B) of this
25 paragraph (9) in connection with board elections, that a unit
26 owner may vote by proxy executed in writing by the unit owner

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

12 (B) that if a rule adopted at least 120 days before a board
13 election or the declaration or bylaws provide for balloting as
14 set forth in this subsection, unit owners may not vote by proxy
15 in board elections, but may vote only (i) by submitting an
16 association-issued ballot in person at the election meeting or
17 (ii) by submitting an association-issued ballot to the
18 association or its designated agent by mail or other means of
19 delivery specified in the declaration, bylaws, or rule; that
20 the ballots shall be mailed or otherwise distributed to unit
21 owners not less than 10 and not more than 30 days before the
22 election meeting, and the board shall give unit owners not less
23 than 21 days' prior written notice of the deadline for
24 inclusion of a candidate's name on the ballots; that the
25 deadline shall be no more than 7 days before the ballots are
26 mailed or otherwise distributed to unit owners; that every such

1 ballot must include the names of all candidates who have given
2 the board or its authorized agent timely written notice of
3 their candidacy and must give the person casting the ballot the
4 opportunity to cast votes for candidates whose names do not
5 appear on the ballot; that a ballot received by the association
6 or its designated agent after the close of voting shall not be
7 counted; that a unit owner who submits a ballot by mail or
8 other means of delivery specified in the declaration, bylaws,
9 or rule may request and cast a ballot in person at the election
10 meeting, and thereby void any ballot previously submitted by
11 that unit owner;

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

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

10 (C) that if a written petition by unit owners with at least
11 20% of the votes of the association is delivered to the board
12 within 14 days after the board's approval of a rule adopted
13 pursuant to subparagraph (B) or subparagraph (B-5) of this
14 paragraph (9), the board shall call a meeting of the unit
15 owners within 30 days after the date of delivery of the
16 petition; that unless a majority of the total votes of the unit
17 owners are cast at the meeting to reject the rule, the rule is
18 ratified;

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

23 (10) that the association may, upon adoption of the
24 appropriate rules by the board of managers, conduct elections
25 by secret ballot whereby the voting ballot is marked only with
26 the percentage interest for the unit and the vote itself,

1 provided that the board further adopt rules to verify the
2 status of the unit owner issuing a proxy or casting a ballot;
3 and further, that a candidate for election to the board of
4 managers or such candidate's representative shall have the
5 right to be present at the counting of ballots at such
6 election;

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

25 (12) the method by which matters subject to the approval of
26 unit owners set forth in this Act, or in the condominium

1 instruments, will be submitted to the unit owners at special
2 membership meetings called for such purposes; and

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

6 (i) merger or consolidation of the association;

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

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

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

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

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

23 (f) Maintenance, repair and replacement of the common
24 elements and payments therefor, including the method of
25 approving payment vouchers.

26 (g) An association with 30 or more units shall obtain and

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

1 association shall not be subject to attachment by any creditor
2 of the management company.

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

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

24 (h) Method of estimating the amount of the annual budget,
25 and the manner of assessing and collecting from the unit owners
26 their respective shares of such estimated expenses, and of any

1 other expenses lawfully agreed upon.

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

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

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

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

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

21 (n) (i) The provisions of this Act, the declaration, bylaws,
22 other condominium instruments, and rules and regulations that
23 relate to the use of the individual unit or the common elements
24 shall be applicable to any person leasing a unit and shall be
25 deemed to be incorporated in any lease executed or renewed on
26 or after the effective date of this amendatory Act of 1984.

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

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

20 (p) That when 30% or fewer of the units, by number, possess
21 over 50% in the aggregate of the votes in the association, any
22 percentage vote of members specified herein or in the
23 condominium instruments shall require the specified percentage
24 by number of units rather than by percentage of interest in the
25 common elements allocated to units that would otherwise be
26 applicable and garage units or storage units, or both, shall

1 have, in total, no more votes than their aggregate percentage
2 of ownership in the common elements; this shall mean that if
3 garage units or storage units, or both, are to be given a vote,
4 or portion of a vote, that the association must add the total
5 number of votes cast of garage units, storage units, or both,
6 and divide the total by the number of garage units, storage
7 units, or both, and multiply by the aggregate percentage of
8 ownership of garage units and storage units to determine the
9 vote, or portion of a vote, that garage units or storage units,
10 or both, have. For purposes of this subsection (p), when making
11 a determination of whether 30% or fewer of the units, by
12 number, possess over 50% in the aggregate of the votes in the
13 association, a unit shall not include a garage unit or a
14 storage unit.

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

21 The provisions of this Section are applicable to all
22 condominium instruments recorded under this Act. Any portion of
23 a condominium instrument which contains provisions contrary to
24 these provisions shall be void as against public policy and
25 ineffective. Any such instrument which fails to contain the
26 provisions required by this Section shall be deemed to

1 incorporate such provisions by operation of law.

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