



## 99TH GENERAL ASSEMBLY

### State of Illinois

### 2015 and 2016

### SB1368

Introduced 2/18/2015, by Sen. Heather A. Steans

#### SYNOPSIS AS INTRODUCED:

|                   |                         |
|-------------------|-------------------------|
| 765 ILCS 605/2    | from Ch. 30, par. 302   |
| 765 ILCS 605/9    | from Ch. 30, par. 309   |
| 765 ILCS 605/22.1 | from Ch. 30, par. 322.1 |

Amends the Condominium Property Act. Defines "regular monthly assessments". Provides that following a foreclosure sale, consent foreclosure, common law strict foreclosure, or the delivery of a deed in lieu of foreclosure, the mortgagee shall have the duty to pay to the association all moneys due to satisfy the lien held by the association, except for the 9 months of unpaid regular monthly assessments and associated attorney's fees which may be collected from the purchaser. Provides that the amount due may include any attorney's fees and court costs, but may not exceed 9 months of regular assessments due over the same 9-month period. Deletes language providing that the purchaser shall have 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 for the 6 months immediately preceding the institution of an action to enforce the collection of assessments, and which remain unpaid. Deletes language providing that if the outstanding assessments are paid at any time during an action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title. Provides that the notice of a foreclosure sale of a condominium unit shall state that a purchaser, other than a mortgagee, shall pay to the association any unpaid monthly assessments for the 9-month period preceding the sale, including attorney's fees and court costs. Provides that each notice of a judicial sale a condominium unit and each disclosure statement issued to a prospective purchaser shall list the required fees. Provides that in certain situations, the Board of Managers (instead of the owner) of a condominium unit must make specified information available within 21 days of the request if the association is self-managed, and within 14 days if managed by a community association management firm or a community association manager as those terms are defined in the Community Association Manager Licensing and Disciplinary Act (instead of "upon demand") and may do so either electronically or in writing. Makes other changes. Effective immediately.

LRB099 03526 HEP 23534 b

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 Sections 2, 9 and 22.1 as follows:

6 (765 ILCS 605/2) (from Ch. 30, par. 302)

7 Sec. 2. Definitions. As used in this Act, unless the  
8 context otherwise requires:

9 (a) "Declaration" means the instrument by which the  
10 property is submitted to the provisions of this Act, as  
11 hereinafter provided, and such declaration as from time to time  
12 amended.

13 (b) "Parcel" means the lot or lots, tract or tracts of  
14 land, described in the declaration, submitted to the provisions  
15 of this Act.

16 (c) "Property" means all the land, property and space  
17 comprising the parcel, all improvements and structures  
18 erected, constructed or contained therein or thereon,  
19 including the building and all easements, rights and  
20 appurtenances belonging thereto, and all fixtures and  
21 equipment intended for the mutual use, benefit or enjoyment of  
22 the unit owners, submitted to the provisions of this Act.

23 (d) "Unit" means a part of the property designed and

1 intended for any type of independent use.

2 (e) "Common Elements" means all portions of the property  
3 except the units, including limited common elements unless  
4 otherwise specified.

5 (f) "Person" means a natural individual, corporation,  
6 partnership, trustee or other legal entity capable of holding  
7 title to real property.

8 (g) "Unit Owner" means the person or persons whose estates  
9 or interests, individually or collectively, aggregate fee  
10 simple absolute ownership of a unit, or, in the case of a  
11 leasehold condominium, the lessee or lessees of a unit whose  
12 leasehold ownership of the unit expires simultaneously with the  
13 lease described in item (x) of this Section.

14 (h) "Majority" or "majority of the unit owners" means the  
15 owners of more than 50% in the aggregate in interest of the  
16 undivided ownership of the common elements. Any specified  
17 percentage of the unit owners means such percentage in the  
18 aggregate in interest of such undivided ownership. "Majority"  
19 or "majority of the members of the board of managers" means  
20 more than 50% of the total number of persons constituting such  
21 board pursuant to the bylaws. Any specified percentage of the  
22 members of the board of managers means that percentage of the  
23 total number of persons constituting such board pursuant to the  
24 bylaws.

25 (i) "Plat" means a plat or plats of survey of the parcel  
26 and of all units in the property submitted to the provisions of

1 this Act, which may consist of a three-dimensional horizontal  
2 and vertical delineation of all such units.

3 (j) "Record" means to record in the office of the recorder  
4 or, whenever required, to file in the office of the Registrar  
5 of Titles of the county wherein the property is located.

6 (k) "Conversion Condominium" means a property which  
7 contains structures, excepting those newly constructed and  
8 intended for condominium ownership, which are, or have  
9 previously been, wholly or partially occupied before recording  
10 of condominium instruments by persons other than those who have  
11 contracted for the purchase of condominiums.

12 (l) "Condominium Instruments" means all documents and  
13 authorized amendments thereto recorded pursuant to the  
14 provisions of the Act, including the declaration, bylaws and  
15 plat.

16 (m) "Common Expenses" means the proposed or actual expenses  
17 affecting the property, including reserves, if any, lawfully  
18 assessed by the Board of Managers of the Unit Owner's  
19 Association.

20 (n) "Reserves" means those sums paid by unit owners which  
21 are separately maintained by the board of managers for purposes  
22 specified by the board of managers or the condominium  
23 instruments.

24 (o) "Unit Owners' Association" or "Association" means the  
25 association of all the unit owners, acting pursuant to bylaws  
26 through its duly elected board of managers.

1           (p) "Purchaser" means any person or persons other than the  
2 Developer who purchase a unit in a bona fide transaction for  
3 value.

4           (q) "Developer" means any person who submits property  
5 legally or equitably owned in fee simple by the developer, or  
6 leased to the developer under a lease described in item (x) of  
7 this Section, to the provisions of this Act, or any person who  
8 offers units legally or equitably owned in fee simple by the  
9 developer, or leased to the developer under a lease described  
10 in item (x) of this Section, for sale in the ordinary course of  
11 such person's business, including any successor or successors  
12 to such developers' entire interest in the property other than  
13 the purchaser of an individual unit.

14           (r) "Add-on Condominium" means a property to which  
15 additional property may be added in accordance with condominium  
16 instruments and this Act.

17           (s) "Limited Common Elements" means a portion of the common  
18 elements so designated in the declaration as being reserved for  
19 the use of a certain unit or units to the exclusion of other  
20 units, including but not limited to balconies, terraces, patios  
21 and parking spaces or facilities.

22           (t) "Building" means all structures, attached or  
23 unattached, containing one or more units.

24           (u) "Master Association" means an organization described  
25 in Section 18.5 whether or not it is also an association  
26 described in Section 18.3.

1 (v) "Developer Control" means such control at a time prior  
2 to the election of the Board of Managers provided for in  
3 Section 18.2(b) of this Act.

4 (w) "Meeting of Board of Managers or Board of Master  
5 Association" means any gathering of a quorum of the members of  
6 the Board of Managers or Board of the Master Association held  
7 for the purpose of conducting board business.

8 (x) "Leasehold Condominium" means a property submitted to  
9 the provisions of this Act which is subject to a lease, the  
10 expiration or termination of which would terminate the  
11 condominium and the lessor of which is (i) exempt from taxation  
12 under Section 501(c)(3) of the Internal Revenue Code of 1986,  
13 as amended, (ii) a limited liability company whose sole member  
14 is exempt from taxation under Section 501 (c)(3) of the  
15 Internal Revenue Code of 1986, as amended, or (iii) a Public  
16 Housing Authority created pursuant to the Housing Authorities  
17 Act that is located in a municipality having a population in  
18 excess of 1,000,000 inhabitants.

19 (y) "Electronic transmission" means any form of  
20 communication, not directly involving the physical  
21 transmission of paper, that creates a record that may be  
22 retained, retrieved, and reviewed by a recipient and that may  
23 be directly reproduced in paper form by the recipient through  
24 an automated process.

25 (z) "Acceptable technological means" includes, without  
26 limitation, electronic transmission over the Internet or other

1 network, whether by direct connection, intranet, telecopier,  
2 or electronic mail.

3 (aa) "Regular Monthly Assessments" means the amount  
4 charged by the association as provided for in the current  
5 annual budget adopted under subsection (c) of Section 9 of this  
6 Act.

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

8 (765 ILCS 605/9) (from Ch. 30, par. 309)

9 Sec. 9. Sharing of expenses - Lien for nonpayment.

10 (a) All common expenses incurred or accrued prior to the  
11 first conveyance of a unit shall be paid by the developer, and  
12 during this period no common expense assessment shall be  
13 payable to the association. It shall be the duty of each unit  
14 owner including the developer to pay his proportionate share of  
15 the common expenses commencing with the first conveyance. The  
16 proportionate share shall be in the same ratio as his  
17 percentage of ownership in the common elements set forth in the  
18 declaration.

19 (b) The condominium instruments may provide that common  
20 expenses for insurance premiums be assessed on a basis  
21 reflecting increased charges for coverage on certain units.

22 (c) Budget and reserves.

23 (1) The board of managers shall prepare and distribute  
24 to all unit owners a detailed proposed annual budget,  
25 setting forth with particularity all anticipated common

1 expenses by category as well as all anticipated assessments  
2 and other income. The initial budget and common expense  
3 assessment based thereon shall be adopted prior to the  
4 conveyance of any unit. The budget shall also set forth  
5 each unit owner's proposed common expense assessment.

6 (2) All budgets adopted by a board of managers on or  
7 after July 1, 1990 shall provide for reasonable reserves  
8 for capital expenditures and deferred maintenance for  
9 repair or replacement of the common elements. To determine  
10 the amount of reserves appropriate for an association, the  
11 board of managers shall take into consideration the  
12 following: (i) the repair and replacement cost, and the  
13 estimated useful life, of the property which the  
14 association is obligated to maintain, including but not  
15 limited to structural and mechanical components, surfaces  
16 of the buildings and common elements, and energy systems  
17 and equipment; (ii) the current and anticipated return on  
18 investment of association funds; (iii) any independent  
19 professional reserve study which the association may  
20 obtain; (iv) the financial impact on unit owners, and the  
21 market value of the condominium units, of any assessment  
22 increase needed to fund reserves; and (v) the ability of  
23 the association to obtain financing or refinancing.

24 (3) Notwithstanding the provisions of this subsection  
25 (c), an association without a reserve requirement in its  
26 condominium instruments may elect to waive in whole or in



1 part the reserve requirements of this Section by a vote of  
2 2/3 of the total votes of the association. Any association  
3 having elected under this paragraph (3) to waive the  
4 provisions of subsection (c) may by a vote of 2/3 of the  
5 total votes of the association elect to again be governed  
6 by the requirements of subsection (c).

7 (4) In the event that an association elects to waive  
8 all or part of the reserve requirements of this Section,  
9 that fact must be disclosed after the meeting at which the  
10 waiver occurs by the association in the financial  
11 statements of the association and, highlighted in bold  
12 print, in the response to any request of a prospective  
13 purchaser for the information prescribed under Section  
14 22.1; and no member of the board of managers or the  
15 managing agent of the association shall be liable, and no  
16 cause of action may be brought for damages against these  
17 parties, for the lack or inadequacy of reserve funds in the  
18 association budget.

19 (d) (Blank).

20 (e) The condominium instruments may provide for the  
21 assessment, in connection with expenditures for the limited  
22 common elements, of only those units to which the limited  
23 common elements are assigned.

24 (f) Payment of any assessment shall be in amounts and at  
25 times determined by the board of managers.

26 (g) Lien.

1           (1) If any unit owner shall fail or refuse to make any  
2           payment of the common expenses or the amount of any unpaid  
3           fine when due, the amount thereof together with any  
4           interest, late charges, reasonable attorney fees incurred  
5           enforcing the covenants of the condominium instruments,  
6           rules and regulations of the board of managers, or any  
7           applicable statute or ordinance, and costs of collections  
8           shall constitute a lien on the interest of the unit owner  
9           in the property prior to all other liens and encumbrances,  
10          recorded or unrecorded, except only (a) taxes, special  
11          assessments and special taxes theretofore or thereafter  
12          levied by any political subdivision or municipal  
13          corporation of this State and other State or federal taxes  
14          which by law are a lien on the interest of the unit owner  
15          prior to preexisting recorded encumbrances thereon and (b)  
16          encumbrances on the interest of the unit owner recorded  
17          prior to the date of such failure or refusal which by law  
18          would be a lien thereon prior to subsequently recorded  
19          encumbrances. Any action brought to extinguish the lien of  
20          the association shall include the association as a party.

21          (2) With respect to encumbrances executed prior to  
22          August 30, 1984 or encumbrances executed subsequent to  
23          August 30, 1984 which are neither bonafide first mortgages  
24          nor trust deeds and which encumbrances contain a statement  
25          of a mailing address in the State of Illinois where notice  
26          may be mailed to the encumbrancer thereunder, if and

1 whenever and as often as the manager or board of managers  
2 shall send, by United States certified or registered mail,  
3 return receipt requested, to any such encumbrancer at the  
4 mailing address set forth in the recorded encumbrance a  
5 statement of the amounts and due dates of the unpaid common  
6 expenses with respect to the encumbered unit, then, unless  
7 otherwise provided in the declaration or bylaws, the prior  
8 recorded encumbrance shall be subject to the lien of all  
9 unpaid common expenses with respect to the unit which  
10 become due and payable within a period of 90 days after the  
11 date of mailing of each such notice.

12 (3) The purchaser of a condominium unit at a judicial  
13 foreclosure sale, or a mortgagee who receives title to a  
14 unit by deed in lieu of foreclosure or judgment by common  
15 law strict foreclosure or otherwise takes possession  
16 pursuant to court order under the Illinois Mortgage  
17 Foreclosure Law, shall have the duty to pay the unit's  
18 proportionate share of the common expenses for the unit  
19 assessed from and after the first day of the month after  
20 the date of the judicial foreclosure sale, delivery of the  
21 deed in lieu of foreclosure, entry of a judgment in common  
22 law strict foreclosure, or taking of possession pursuant to  
23 such court order. Such payment confirms the extinguishment  
24 of any lien created pursuant to paragraph (1) or (2) of  
25 this subsection (g) by virtue of the failure or refusal of  
26 a prior unit owner to make payment of common expenses,

1 where the judicial foreclosure sale has been confirmed by  
2 order of the court, a deed in lieu thereof has been  
3 accepted by the lender, or a consent judgment has been  
4 entered by the court.

5 (4) Following a foreclosure sale, consent foreclosure,  
6 common law strict foreclosure, or the delivery of a deed in  
7 lieu of foreclosure, the mortgagee shall have the duty to  
8 pay to the association those amounts required by  
9 subdivision (g)(1) of Section 9 of this Act, except that  
10 the ~~The~~ purchaser of a condominium unit at a judicial  
11 foreclosure sale, other than a mortgagee, or a purchaser of  
12 a condominium unit from a mortgagee who acquired title  
13 through a judicial foreclosure, a consent foreclosure, a  
14 common law strict foreclosure, or the delivery of a deed in  
15 lieu of foreclosure ~~who takes possession of a condominium~~  
16 ~~unit pursuant to a court order or a purchaser who acquires~~  
17 ~~title from a mortgagee~~ shall have the duty to pay to the  
18 association an amount not to exceed the total of the unpaid  
19 regular monthly assessments for the condominium unit for  
20 the 9-month period immediately preceding the date of the  
21 judicial foreclosure sale, delivery of the deed in lieu of  
22 foreclosure, entry of a judgment in a common law strict  
23 foreclosure, or the taking of possession pursuant to a  
24 court order under the Illinois Mortgage Foreclosure Law.  
25 The amount due may include any attorney's fees incurred by  
26 the association due to the non-payment of the assessments

1        during the same 9-month period, and in no event shall the  
2        total amount due exceed the sum of 9 months of regular  
3        monthly assessments ~~the proportionate share, if any, of the~~  
4        ~~common expenses for the unit which would have become due in~~  
5        ~~the absence of any assessment acceleration during the 6~~  
6        ~~months immediately preceding institution of an action to~~  
7        ~~enforce the collection of assessments, and which remain~~  
8        ~~unpaid by the owner during whose possession the assessments~~  
9        ~~accrued. If the outstanding assessments are paid at any~~  
10       ~~time during any action to enforce the collection of~~  
11       ~~assessments, the purchaser shall have no obligation to pay~~  
12       ~~any assessments which accrued before he or she acquired~~  
13       ~~title.~~

14       (5) The notice of sale of a condominium unit under  
15       subsection (c) of Section 15-1507 of the Code of Civil  
16       Procedure shall state that the purchaser of the unit other  
17       than a mortgagee shall pay to the association amounts ~~the~~  
18       ~~assessments and the legal fees~~ required by subdivision  
19       ~~subdivisions (g) (1) and (g) (4)~~ of Section 9 of this Act.  
20       The statement of assessment account issued by the  
21       association to a unit owner under subsection (i) of Section  
22       18 of this Act, and the disclosure statement issued to a  
23       prospective purchaser under Section 22.1 of this Act, shall  
24       state the amount ~~of the assessments and the legal fees, if~~  
25       ~~any,~~ required by subdivisions (g) (1) and (g) (4) of Section  
26       9 of this Act.

1           (h) A lien for common expenses shall be in favor of the  
2 members of the board of managers and their successors in office  
3 and shall be for the benefit of all other unit owners. Notice  
4 of the lien may be recorded by the board of managers, or if the  
5 developer is the manager or has a majority of seats on the  
6 board of managers and the manager or board of managers fails to  
7 do so, any unit owner may record notice of the lien. Upon the  
8 recording of such notice the lien may be foreclosed by an  
9 action brought in the name of the board of managers in the same  
10 manner as a mortgage of real property.

11           (i) Unless otherwise provided in the declaration, the  
12 members of the board of managers and their successors in  
13 office, acting on behalf of the other unit owners, shall have  
14 the power to bid on the interest so foreclosed at the  
15 foreclosure sale, and to acquire and hold, lease, mortgage and  
16 convey it.

17           (j) Any encumbrancer may from time to time request in  
18 writing a written statement from the manager or board of  
19 managers setting forth the unpaid common expenses with respect  
20 to the unit covered by his encumbrance. Unless the request is  
21 complied with within 20 days, all unpaid common expenses which  
22 become due prior to the date of the making of such request  
23 shall be subordinate to the lien of the encumbrance. Any  
24 encumbrancer holding a lien on a unit may pay any unpaid common  
25 expenses payable with respect to the unit, and upon payment the  
26 encumbrancer shall have a lien on the unit for the amounts paid

1 at the same rank as the lien of his encumbrance.

2 (k) Nothing in Public Act 83-1271 is intended to change the  
3 lien priorities of any encumbrance created prior to August 30,  
4 1984.

5 (Source: P.A. 94-1049, eff. 1-1-07.)

6 (765 ILCS 605/22.1) (from Ch. 30, par. 322.1)

7 Sec. 22.1. (a) In the event of any resale of a condominium  
8 unit by a unit owner other than the developer, the Board of  
9 Managers shall produce for the seller and the prospective  
10 purchaser, either electronically or in writing, within 14 days  
11 of a request from the owner or the owner's agent if the  
12 association is managed by a community association management  
13 firm or a community association manager, as those terms are  
14 defined in Section 10 of the Community Association Manager  
15 Licensing and Disciplinary Act, and within 21 days if the  
16 association is self-managed: ~~such owner shall obtain from the~~  
17 ~~Board of Managers and shall make available for inspection to~~  
18 ~~the prospective purchaser, upon demand, the following:~~

19 (1) A copy of the Declaration, by-laws, other  
20 condominium instruments and any rules and regulations.

21 (2) A statement of any liens, including a statement of  
22 the account of the unit setting forth the amounts ~~of unpaid~~  
23 ~~assessments and other charges~~ due and owing as authorized  
24 and limited by the provisions of Section 9 of this Act or  
25 the condominium instruments.

1           (3) A statement of any capital expenditures  
2 anticipated by the unit owner's association within the  
3 current or succeeding two 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 Managers.

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

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

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

15          (8) A statement that any improvements or alterations  
16 made to the unit, or the limited common elements assigned  
17 thereto, by the prior unit owner are in good faith believed  
18 to be in compliance with the condominium instruments.

19          (9) The identity and mailing address of the principal  
20 officer of the unit owner's association or of the other  
21 officer or agent as is specifically designated to receive  
22 notices.

23          (10) If ownership of the condominium unit was  
24 transferred by either a judicial foreclosure sale, a  
25 consent foreclosure, a common law strict foreclosure, or a  
26 deed in lieu of foreclosure, a statement setting forth the



1        total due and owing under subsection (g) of Section 9 of  
2        this Act.

3        (b) The principal officer of the unit owner's association  
4        or such other officer as is specifically designated shall  
5        furnish the above information when requested to do so either  
6        electronically or in writing and within 14 ~~30~~ days of the  
7        request.

8        (c) Within 15 days of the recording of a mortgage or trust  
9        deed against a unit ownership given by the owner of that unit  
10       to secure a debt, the owner shall inform the Board of Managers  
11       of the unit owner's association of the identity of the lender  
12       together with a mailing address at which the lender can receive  
13       notices from the association. If a unit owner fails or refuses  
14       to inform the Board as required under subsection (c) then that  
15       unit owner shall be liable to the association for all costs,  
16       expenses and reasonable attorneys fees and such other damages,  
17       if any, incurred by the association as a result of such failure  
18       or refusal.

19       A reasonable fee covering the direct out-of-pocket cost of  
20       providing such information and copying may be charged by the  
21       association or its Board of Managers to the unit seller for  
22       providing such information.

23       (Source: P.A. 87-692.)

24       Section 99. Effective date. This Act takes effect upon  
25       becoming law.