



Welcome New Association

Foxwood Estates Condo Association

MESSAGE FROM YOUR ACTHA BOARD OF DIRECTORS

Restore Illinois- Back to the Future

As we now begin to learn how the state will gradually allow for restoring our day-to-day lives with quite different realities impacting most areas, we also need to determine how to interpret an even greater myriad of laws, executive orders, and local guidelines. Of course, for associations, the health and safety of our communities must also be a priority. Restrictions of stay-at-home orders and constant media statistical reports contributed to the influx of information that may have somehow helped us to accept our fate. Community association Boards were charged with navigating this uncharted territory and implementing directives sometimes without the benefit of professional management and attorney counsel. We at ACTHA hope we have been able to assist in clarifying many questions related to meetings, elections, rules, responsibilities, and the inevitable increasing financial implications due to assessment delinquencies and unanticipated expenses. We now know that we must define and prepare for the phases as outlined in "Restore Illinois". We also know that implications of COVID 19 will be long-term. It seems that the time has come to adjust on a permanent or at least semi-permanent basis.

With our weather finally warming up the pressure to open common areas and amenities such as pools, tennis courts, playgrounds, picnic/grill areas, and community rooms is becoming more

pools, tennis courts, playgrounds, prom/ghm areas, and community rooms is becoming more intense. Associations must balance safety with fiduciary duties and insurance implications now more than ever. Interpretations of the best course of action may vary. As we also know, decisions at the federal, state, and local levels are being modified all the time. Homeowners, Board members, and commercial service providers for associations have an enormous responsibility. ACTHA is committed to providing resources to assist and support. Please let us know how we can continue to assist. If you have questions and/or topics you would like us to address in the next couple of weeks, either email actha@actha.org or call **312-987-1906**.

ACTHA Membership Policies - Back to the By-Laws

As you may have been aware, the ACTHA Board made a decision a few months ago to include all association, commercial, and individual members, (current and lapsed), as well as contacts in our data base who may have attended an event sponsored by ACTHA in our emails, webinars and newsletters without additional charges. We felt it was paramount to follow our mission in educating all who live in or work with community associations during this difficult time. While our commitment to support and educate has not changed, we will be moving back to including only current members in all activities and emails. Our website is currently under construction and will soon require membership and an individual password to access most links. We anticipate moving back to enforcing this policy in the next couple of months. If you wish to renew your membership at this time please contact us. For association members, please be reminded that **all homeowners** in the association are **full members of ACTHA with all membership benefits**. Registration with name, email and an individual password is required to be added to our database. **Commercial members are entitled to two contacts per membership**. Contact ACTHA if your contact list currently exceeds that number or you are unsure of who is currently listed. Solutions will be agreed upon individually. Most importantly, the actual primary contact information may not be up to date. Associations must designate a homeowner as the primary contact. Any additional association contacts must be homeowners in the member association. All commercial providers affiliated with an association must be listed as commercial membership contacts and may be listed with the association only if they are a homeowner member of that association. We appreciate your assistance!

Take care,

The ACTHA Board of Directors

STAY THE COURSE

Board members and managers are looking for clear direction for their Associations as they face these unprecedented times. As an Association attorney who has practiced collections for almost 20 years, I have dealt with the ups and downs that come along with recouping dues for communities prior to a recession, during a recession and following a recession. Based on this experience, I know that now is the time – more than ever – for Boards to stay the course.

In order to “stay the course”, it is important to keep the following basics in mind:

1. There is no question that associations’ financial obligations must continue despite the current pandemic. Accordingly, all community associations must put their financial stability on the front burner. Indeed, the Illinois Condominium Property Act and nearly all associations’ governing documents mandate that boards shall have no authority to forego the collection of assessments. That restriction exists because, without collected assessments, the business of the association simply cannot continue. Associations’ vendors still need to be paid (insurance, janitorial, management, utilities, etc.) and at least certain expenses

(insurance, janitorial, management, utilities, etc.) and at least certain expenses related to this pandemic are likely to arise or increase. Board still should contribute to reserves. Board members have a duty to keep their association viable and should educate and encourage their association's members to share in that sense of pride and communal responsibility to maintain necessary services and property values.

2. While many boards wish to help unit owners who have fallen on hard times, waiver of assessments is not an option; in fact, the Illinois Condominium Property Act makes it unlawful. Instead of waiving assessments, boards may wish to offer waiver of late fees and/or hardship payment plans in order to assist struggling owners who come to the board for help. The cautionary tale of 2008 is worth sharing: Boards stopped pursuing the collection of assessments, because of sympathy for struggling owners. This forced the remaining owners to take on larger obligations to cover for the losses caused by non-paying members; this resulted in people walking away from their homes. This led to a waterfall effect resulting in more people failing to meet their obligations and more owners walked away from their homes. Foreclosures then began to plague the communities. The lesson learned from that 2008 crisis is that boards should now know that it is better to help owners get back on track as soon as possible, rather than to sit by on the sidelines, immobilized.

3. Despite the Governor's "stay at home" order, with its associated restrictions on evictions, associations can still issue demands related to the non-payment of assessments, and thereafter – if and when appropriate – may file an action to collect those unpaid assessments in order to protect the association.

While some have misunderstood the Governor's Executive Order 2020-30, issued on April 23, 2020, to forbid the mere filing of eviction actions, I would like to point out that the language of

Executive Order 2020-30 specifically references "landlords" and evictions for unpaid "rent", along with other landlord-type evictions. See: ksnlaw.com/blog/illinois-stay-at-home-extension-impact-landlord-tenant-evictions<<http://ksnlaw.com/blog/illinois-stay-at-home-extension-impact-landlord-tenant-evictions>>. In other words, it is my law firm's opinion that the Governor's use of rental-market language means that the latest Executive Order does not apply to associations that are impacted by the non-payment of assessments.

4. While the Governor's latest order does not prevent the filing of proceedings against

association owners who are failing to pay their assessments, the sheriff will hold off on actual physical evictions until the stay at home order is lifted. This does not prevent associations from queuing up their lawsuits now – sending demands, filing lawsuits and otherwise proceeding to judgment and possession orders. In fact, with the anticipated backlog of cases once the restrictions are lifted, moving forward with proceedings now will put your association toward the front, rather than at the end, of the line.

In conclusion, now is the time for your association to take all necessary steps to protect the critical flow of assessments. We will continue to offer guidance to you during this uncertain time and, together, will assist in helping your association to reach the other side of this pandemic in as sound financial condition as the circumstances allow.

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IDFPR COVID-19 Guidance

COVID-19 Guidance Condominiums and Common Interest Community Associations



JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

MARIO TRETO, JR.
Director of Real Estate

COVID-19 Guidance for Condominiums and Common Interest Community Associations

The Department of Financial and Professional Regulation (“Department”) recognizes that homeowners association members and their associations may have questions that have arisen during the COVID-19 pandemic. As a service, the Department has compiled a number of frequently asked questions to provide currently available information in one document. Please keep in mind that these FAQs are not intended to provide legal advice, but rather to convey information that associations and unit owners may find informative and educational.

Please be aware that disputes arising out of the Condominium Property Act (765 ILCS 605/ (“CPA”)) or the Common Interest Community Association Act (765 ILCS 160/ (CICAA”)) may only be resolved by the Illinois courts; the Department does not have regulatory or enforcement authority related to the CPA or CICAA. The Illinois legislature, through CICAA, created the Office of the Condominium and Common Interest Community Ombudsperson in the Division of Real Estate (“Division”). The mission of the Ombudsperson is to provide information to unit owners, condominium and common interest community associations and their respective boards.

FAQs

Q. The COVID-19 pandemic is causing me financial hardship and I’m having trouble paying my assessments. What can I do?

A. The CPA expressly prohibits condominiums from forbearing the collection of assessments: “The Association shall have no authority to forbear the payment of assessments by any unit owners.” 765 ILCS 605/18(13)(o). However, we suggest that you ask your association to consult with its attorney as to whether the association may enter into a reasonable payment plan with owners experiencing severe financial hardship in light of the COVID-19 pandemic. Any such payment plan would have to take into account the board’s responsibility to protect the financial health of the association. Your association may also consider adopting a policy for waiving late fees.

May 13, 2020

FAQs

Q. Under current law, are virtual board meetings acceptable?

A. The simple answer is “yes,” understanding that proper notice of a meeting, generally 48

hours in advance by mail or email and posting of the notice, must be given. That notice should include specific, detailed instructions on how unit owners can attend those meetings in a virtual manner. Whatever form of electronic means is used, all persons must be able to hear one another and be heard.

The CPA provides that the bylaws of each association must provide that board members may participate in and act at any meeting of the board of managers in person, by telephonic means, or by use of any acceptable technological means whereby all persons participating in the meeting can communicate with each other; and that participation constitutes attendance and presence in person at the meeting.

The Illinois General Not for Profit Corporation Act applies to condominium and common interest community associations and authorizes both virtual member and director meetings. (805 ILCS 105/107.05(c); 805 ILCS 105/108.15(c)). Therefore, a meeting could occur by conference call, Skype, Zoom, or other acceptable technological means.

Q. Is there a requirement that I allow building personnel, such as maintenance staff, entry into my unit?

A. The CPA specifically empowers the board to have access to each unit as may be necessary for the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or to other units. (765 ILCS 605/18.4(j)). The CICA does not contain a similar provision, but common interest community association boards have fiduciary duties to unit owners which likely would include attending to emergencies affecting the common areas or which could cause damage to other units.

In non-emergency situations, or where there is no reasonable basis for a well-being check, unit owners concerned about the transmission of COVID-19 can request that building personnel not enter their unit.

FAQs

Q. The Governor’s “Restore Illinois” plan established a five-phase approach for reopening the State of Illinois. The plan indicates that gatherings of no more than ten people in Phase III or fifty people in Phase IV may gather; can associations re-open private fitness centers, swimming pools (indoor and outdoor), or other amenity areas?

A. Just as every association is different, so is the analysis and approach to reopening common amenities. Associations and their boards must make informed and reasonable decisions given the knowledge that the virus is easily transmitted and in accordance with the current phase of Governor Pritzker’s “Restore Illinois” Plan. Depending on the amenity in question, associations and boards should undertake measures that reduce transmission risk. For example, opening a fitness center in a condominium could be problematic, as there may be asymptomatic carriers of COVID-19 utilizing the facility and there may be no guarantee that individuals are properly cleaning equipment between uses. For a complete copy of Governor Pritzker’s “Restore Illinois” Plan, please visit: www.coronavirus.illinois.gov.

Q. Are individuals required to wear face coverings in common areas of our community outside of our individual units, such as hallway, elevators,

lobbies, etc.?

A. In order to limit the spread of COVID-19, and consistent with social distancing requirements, associations would be well served to follow the guidelines put forth by both the United States Centers for Disease Control and Prevention (“CDC”) and the Illinois Department of Public Health (“IDPH”). For more information, please visit their respective websites: CDC (www.cdc.gov) and IDPH (www.dph.illinois.gov).

Q. Is construction or repair work permitted in my unit under the Governor’s Executive Orders?

A. Governor Pritzker’s Executive Order 2020-32 categorized construction as an essential service; therefore, construction and repair work are permitted for the duration of the Governor’s Executive Orders. Unit owners should communicate with their board of managers or community association manager before scheduling any such work; unit owners, vendors, and contractors must comply with the association’s construction, social distancing, and related rules.

Legislative Links

We are proud to announce that the ACTHA Legislative Committee is back up and running! Coincidentally, so is the **Illinois General Assembly**. You may have heard that a **Special Session** is planned for the week of May 18th utilizing creative methods to get back to the business of Illinois. Of course, we know that, for now, the main issues to be addressed revolve around the budget and COVID19 related topics. That is what is anticipated at this time.

We decided that this would be an opportune time to also begin providing information through our newsletter on bills that have been introduced this year that will impact community associations. As time goes on, we plan to provide regular updates on the status of current bills with directions on how our members may let their voice be heard and work together with our elected representatives to improve community association living in Illinois.

There were quite a few bills introduced that you may have heard about. However, at this time we do not anticipate action being taken during this special session, however, community associations should be aware and informed. Also, please keep in mind that some of the bills that were introduced have already been withdrawn or have not moved out of committee. For our initial legislative report, we wanted to give our members an overview of issues that are being presented that may impact your association. It is always a good time to get to know your elected representatives and let them know how you feel about pending laws and issues you may want them to assist with by introducing legislation. At this time, ACTHA has not taken any positions either to support or oppose the bills listed below. Our goal for now, is to inform and ultimately educate our members on the legislative process and options for greater legislative involvement. While we are focused this month on the ILGA, future articles will incorporate city and local, as well as, case law that will impact our members.

Below we have listed bills introduced in 2019-2020 with links to find the actual language for your information.

Current Pending Association Legislation

HB4025: Condo Act & CICCAs: Amends Eviction Act – service by posting on website [LINK](#)

HB4068: Condo Act & CICCAs: Amends Homeowners' Energy Policy Statement Act – Solar Energy -location/reduction [LINK](#)

HB4148: CICAAs – Electrical Vehicle Charging Stations [LINK](#)

HB4284: Condo Act & CICCAs: Creates Electric Vehicle Charging Act [LINK](#)

HB4654: Amends Property Tax Code – condo tax reduction [LINK](#)

HB4744: Amends CICAAs – repeated violation remedy [LINK](#)

HB4745: Amends Condo Act – mold remediation [LINK](#)

HB4766: Amends Community Association Manager Licensing and Disciplinary Act – various changes [LINK](#)

HB5105: Amends Homeowners' Energy Policy Statement Act – limits home rule [LINK](#)

HB5199: CICAAs, Condo Act – firearm possession [LINK](#)

HB5210: Condo Act – Sec. 22.1 [LINK](#)

HB5368: Smoke Detector Act – eliminates certain exemptions [LINK](#)

SB2479: Amends Eviction Act – service by posting on website [LINK](#)

SB2480: Amends Condo Act – lease filing fee prohibition [LINK](#)

SB3064: Amends HEPSAs – rain water collection & compost systems [LINK](#)

SB3145: Amends Condo Act – Shell [LINK](#)

SB3146: Amends CICAAs – Shell [LINK](#)

SB3163: Amends HEPSAs – greater than 40 ft [LINK](#)

SB3264: Amends Sunset Act & Community Association Manager Licensing and Disciplinary Act – various changes [LINK](#)

SB3284: Amends Condo Act – accessible parking space [LINK](#)

SB3435: Condo Act – residency requirement [LINK](#)

SB3471: Condo Act - common element use fee [LINK](#)

SB3731: Condo Act – Sec. 15 increase to 85% [LINK](#)

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