



THE NEW CONDOMINIUM AND COMMON INTEREST COMMUNITY OMBUDSPERSON ACT – WHAT YOU NEED TO KNOW

by

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(January 14, 2015)

BACKGROUND

The word “ombudsman” was first used in Sweden in the 1950s. Literally translated, it means “representative,” in Swedish and was derived from the Old Norse word “umbothsmathr” (Umboth = commission + Mathr = man). The definition has evolved over time and an ombudsman is now defined by the Merriam-Webster dictionary as, “A person (such as a government official or an employee) who investigates complaints and tries to deal with problems fairly.”

For the past decade, there was a concerted, albeit unsuccessful, effort on the part of Illinois legislators to enact some form of ombudsperson legislation, whereby there would be one person, the ombudsperson, who would be a resource for all condominium unit owners and associations by providing education, training and direction. This approach followed Nevada, Florida, Virginia and Colorado, all of whom have enacted a form of ombudsperson legislation.

Prior ombudsperson bills provided that the ombudsperson would be under the control of the Illinois Attorney General’s Office and provided that every condominium association had to pay an annual fee to cover the costs of administration. These prior bills were consistently and successfully opposed by associations.

NEW LAW

Despite that history, the Illinois General Assembly passed House bill 4204 which was signed into law by Governor Pat Quinn as Public Act 098-1135, to become effective on July 1, 2016. House Bill 4204 is also known as the Condominium and Common Interest Community Ombudsperson Act (the “Act”).

House Bill 4204 creates the Office of the Condominium and Common Interest Community Ombudsperson (the “Ombudsperson”) in the Division of Professional Regulation within the Illinois Department of Financial and Professional Regulation, under the supervision and control of the Department’s Secretary. As its title suggest, the new Act applies to all condominiums and common interest communities, which is much broader than its predecessor efforts, which only applied to condominiums.¹

The Act acknowledges that the management of condominium property and common interest community property is a complex and difficult endeavor which is often performed by people who lack prior experience in managing associations, operating a not-for-profit association or corporation,

¹ Note that the Act provides an extraordinarily broad, unconventional and confusing definition of “condominium association” which includes owners or shareholders of units in a condominium, cooperative, townhouse, villa, or other residential units which are part of a residential development plan. This definition may imply that the Act applies to other residential entities in addition to condominiums and common interest communities.

complying with the laws governing condominium or common interest community law and interpreting and enforcing restrictions, rules and covenants imposed by the association's governing instruments. The Act seeks to avoid situations where unit owners do not fully understand their rights and obligations and help unit owners avoid mistakes, misunderstandings and serious, costly and divisive problems.

EDUCATION

In order to prevent or reduce the severity of such problems, the Act focuses on the education of unit owners, condominium associations, common interest community associations, boards of managers and boards of directors about the Illinois Condominium Property Act and the Illinois Common Interest Community Association Act.

The Ombudsperson is to offer training, educational materials and courses. Such training is to be offered by no later than July 1, 2018. While prior versions of the bill provided that a fee could be charged to associations for these items, the current version deletes such fees and charges, deletes language establishing fees for purchase of printed materials and deletes the creation of an "ombudsperson fund." Exactly how these programs will be funded remains a serious question that will need to be answered in light of Illinois' current financial woes.

The Ombudsperson is to maintain a website which will have copies of the Condominium Property Act, the Common Interest Community Association Act and any other statute or rule that the Ombudsperson deems relevant to the operation and management of condominiums and common interest communities. The website must also have information concerning non-judicial resolution of disputes, a description of the Ombudsperson's services and information on how to contact the Ombudsperson for assistance.

UNIT OWNER COMPLAINT RESOLUTION POLICY

The Act further mandates that within 180 days of the effective date of the Act (that is, December 27, 2016), each association (other than those common interest community associations that are exempt from the Common Interest Community Association Act) is required to adopt a written policy for resolving complaints made by unit owners, which policy shall be made available to all unit owners upon request. Such policy must include: a sample complaint form, a description of the process by which complaints shall be delivered to the association, the association's timeline and manner of making final determinations in response to unit owner complaints and a requirement that the final determination made by the association in response to a unit owner complaint be in writing, made within a "reasonable time" after the complaint was made and marked clearly and conspicuously as "final." New associations that are created after the effective date of the Act, must establish and adopt the above described written policy by the time that they are required to be registered under the Act.

UNIT OWNER REQUESTS FOR ASSISTANCE

Beginning on July 1, 2019, a unit owner meeting the requirements of the Act will be able to make a written request to the Ombudsperson for assistance in resolving a dispute between that unit owner and his/her association that involves a violation of the Illinois Condominium Property Act or the Common Interest Community Association Act. The Ombudsperson will only assist opposing parties who mutually agree to participate in dispute resolution, and a unit owner is limited

to one request for assistance per dispute. All information collected in the course of addressing a request for assistance is to be kept confidential and not disclosed, except to law enforcement officials or regulatory agencies that have appropriate regulatory interest. The Ombudsperson will not accept requests to resolve disputes with managers or management firms or disputes where there is a pending claim filed in a court or administrative tribunal or any dispute for which arbitration or alternative dispute resolution is scheduled. Essentially, the function of the Ombudsperson in resolving disputes is similar to a mediator, who does not have the power to impose a binding resolution on the parties.

REPORTS

Beginning on October 1, 2019 and each year thereafter, the Department of Financial and Professional Regulation will submit an annual report detailing the number of requests for assistance received, the manner requests were or were not resolved and the staff time required to resolve the requests. In addition, the annual report will contain an analysis of the most common and serious types of disputes within condominiums and common interest communities along with recommendations for statutory reform to reduce the frequency or severity of those disputes.

REGISTRATION

Every association (except for time share properties or common interest community associations that are exempt from the Common Interest Community Association Act) is required to register with the Department of Financial and Professional Regulation, and the registration is valid for two years. The initial registration for an association existing on the effective date of the Act (that is, July 1, 2016) is due one year after the effective date of the Act, or such time as the Department of Financial and Professional Regulation has adopted rules and forms for registration, whichever is later. Newly created associations will need to register within 90 days after the association has assumed control of the property. If an association fails to initially register, or fails to timely renew its registration, the Department may impose a late charge or late fee on the association.

*Note that if an association fails to properly register within 2 years after the effective date of the Act (that is, July 1, 2018), or fails to renew its registration on 3 or more occasions, **the association is ineligible to impose or enforce a lien for common expenses or to pursue any action or employ any enforcement mechanism otherwise available to it in enforcement of a lien for common expenses until it is validly registered.** A lien for common expenses previously filed during a period in which the association was registered will not be extinguished by a lapse in the association's registration, nor shall the common expense debt reflected by the lien or court action be deemed invalid, but **any pending enforcement proceedings related to the lien shall be suspended and any applicable time limits tolled until the association is again validly registered.***

Obviously, there are potentially crippling consequences to associations for failure to register!

CONCLUSION

In sum, associations will need to register within one year after the effective date of the Act (that is, July 1, 2017) and by July 1, 2019, a unit owner will be able to bring a dispute to the Ombudsperson for review and possible resolution. Conspicuous by its absence in the Act are

details of how the Act and Ombudsperson position will be funded. Accordingly, until that issue is resolved, funding remains a question and a concern that the General Assembly must address.

The Act has a “sunset” provision of July 1, 2021, meaning that it will be rescinded/expire unless renewed on or before the “sunset” date.

Whether unit owners and associations will actively engage the Ombudsperson for information, training, education or dispute resolution remains to be seen. Likewise, whether the Ombudsperson will be able to actually provide the requested services and resolve and/or reduce the number of disputes is unknown. If it lives up to its stated purposes, then the Act could be another way to improve association living.