

Public Act 98-1042 and Implications for Associations

This is a summary of the recently adopted Illinois Public Act 98-1042, which makes significant updates to the Illinois Condominium Property Act (765 ILCS 605/1 et. seq., the "Condo Act") and the Illinois Common Interest Community Association Act (765 ILCS 160/1-5, "CICAA") to reflect the use of technology in the operation of associations. While some associations have taken steps to update their individual governing documents to reflect the use of technology for voting, notices, etc., Public Act 98-1042 changes the Condo Act and CICAA regarding the use of technology and affects all associations subject to either of these acts. The full text of Public Act 98-1042 can be reviewed at the following location: <http://www.ilga.gov>. The original draft of House Bill 5322, which became Public Act 98-1042 was drafted by Patrick Costello of Keay & Costello, P.C. Public Act 98-1042 took effect on January 1, 2015.

The summary of the changes contained in Public Act 98-1042 are as follows:

Changes made to both the CICAA and Condo Act:

- Definitions for the terms "acceptable technological means" and "electronic transmission" are added.
- "Acceptable technological means" is defined to include, without limitation, "electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, or electronic mail."
- "Electronic transmission" is defined to mean "any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in paper form by the recipient through an automated process."
- A new section 1-85 is added to the CICAA which contains a number of changes regarding the use of technology. A new section 18.8 is added to the Condo Act which is, effectively, identical to the new section 1-85 of the CICAA. The new provisions in these sections are:
 - Any notice, signature, vote, consent or approval that is required under the CICAA/Condo Act or an association's governing documents may be given by using the technology that is generally available at the time such action is taken.
 - Any right or obligation of an association, owner or unit occupant that is granted or required under the CICAA/Condo Act or an association's governing documents may be performed by the use of any technological means, so long as such technology provides sufficient security, reliability, identification and verifiability.
 - Any requirement for a signature under an association's governing documents or the CICAA/Condo Act may be accomplished by a verifiable electronic signature.
 - Any matter under an association's governing documents or the CICAA/Condo Act may be voted on, consented to or approved via electronic transmission or other equivalent technological means as long as a record is created to document the vote, consent or approval. Such records must be maintained for as long as the record would be required to be maintained if it was in paper form.
 - Except as provided in other provisions of law, if a provision in an association's governing documents or the CICAA/Condo Act require that a signature be notarized, that requirement is waived if the identity and signature of the person can be authenticated to the satisfaction of the board in some other manner.
 - In order for an association to conduct business with an owner via electronic transmission or other technological means, the owner must give his/her written authorization. If an owner does not give his/her written authorization to this, the association must, at the association's expense, conduct its business with the owner without using electronic transmission or other equivalent technological means.
 - The ability to use technology which is granted to an association by this section of the CICAA/Condo Act specifically does not apply to any notices the association may send to an owner under Article IX of the Code of Civil Procedure, which covers assessment collection actions.
 - Adds language clarifying that votes cast by mail-in ballot or via electronic or acceptable technological means shall be counted towards quorum.

Additional Changes Made to the CICAA:

- The definition of "prescribed delivery method", which outlines the various methods of delivery permitted by the CICAA, is amended to include "electronic transmission".
- Section 1-25(h-5) is amended to provide an additional method that owners may vote. In addition to voting in person at a meeting, by submitting an association-issued ballot by mail or other means specified in the association's declaration or bylaws, or by proxy, this change provides that an owner may vote by any electronic or acceptable technological means.
- Section 1-25(i) is amended to eliminate the use of secret ballots for elections. Instead, this Section is amended to provide that if a board adopts appropriate rules, elections may be conducted by electronic or acceptable technological means and proxy voting may be prohibited. If the board adopts rules to conduct an election in this manner, then instructions for using the electronic or acceptable technological means for voting must be provided to all owners not less than ten (10) and not more than thirty (30) days before the election meeting, owners must be provided with a list of all candidates who have submitted their names to the board and also must be allowed to cast a vote for a "write-in" candidate. Owners must also be given the option of attending the election meeting in person and casting a vote in person, which would void any vote previously cast by such owner for the election.

Additional Changes Made to the Condo Act:

- Section 18(b)(6) is amended to provide that notices of membership meetings may be given by electronic transmission. But, in order for this to happen, the association's governing documents or the rules must authorize such electronic notices, and an owner must

consent to receive notice via electronic transmission, and a board member must certify, in writing, that the notice has been sent by electronic transmission.

- Section 18(b)(9)(A) is amended to provide that if an association's governing documents or rules permit, votes or proxies may be submitted by electronic transmission.
- A new Section 18(b)(9)(B-5) is added which is similar to current Section 18(b)(9)(B), which permits a board to adopt a rule at least 120 days before an election to prohibit the use of proxies and permit voting only in person at meetings or by mail-in ballot or other means specified in the association's governing documents. What the new Section 18(b)(9)(B-5) provides is that a board can adopt a rule at least 120 days before an election and prohibit the use of proxies and permit voting only either in person at the election meeting or by any acceptable technological means. There are specific requirements for providing owners with instructions on how to vote using technology, and providing owners with candidate names that must be followed if a board chooses to adopt such a rule.

The adoption of Public Act 98-1042 has the potential to help associations operate more efficiently and cost-effectively through the use of electronic voting and notices. Additionally, its adoption has the potential to alleviate many of the concerns associations have had regarding how they conduct business since the Illinois Appellate Court for the First District, Fifth Division decision in *Palm v. 2800 Lake Shore Drive Condominium Association, et. al.* earlier this year. **However, associations will be required to take certain steps in many cases to utilize the procedures permitted by Public Act 98-1042.**

Before an association provides electronic notices to owners, under the changes to both the CICA and the Condo Act an association will be required to obtain a written consent from an owner that he/she is willing to accept electronic notices. Additionally, **the use of electronic voting by an association in many cases under the changes to the CICA and Condo Act will require that the association has rules in place with respect to electronic voting.**

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