

# CONDO 101

**A GUIDE FOR CONDOMINIUM DIRECTORS AND OWNERS**

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## **ABOUT THE FIRM**

The law firm of Penland & Hartwell, LLC was formed specifically to meet the unique legal needs of condominium associations, homeowner associations, and cooperatives. Kathleen Penland, David Hartwell and the firm's other attorneys advise more than 300 associations on corporate, litigation, and other matters. Penland & Hartwell, LLC works closely with property management as well as other professionals in order to provide solutions and guidance on various issues. The attorneys at Penland & Hartwell, LLC regularly speak at public seminars and for professional organizations as an ongoing effort to educate property managers as well as directors of associations.

## **DISCLAIMER**

This handbook is written to provide a general overview and guide to the Illinois Condominium Property Act, the operation of a condominium association and the rights and responsibilities of its directors and members. The materials and comments contained in this guide do not constitute, and should not be treated as, legal advice. Although every effort has been made to assure its accuracy, Ms. Penland, Mr. Hartwell and Penland & Hartwell, LLC do not assume responsibility for any individual's reliance on the information contained in this handbook. Each reader should independently verify all statements made in the handbook before applying them to a particular fact situation.

PENLAND & HARTWELL, LLC  
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## **PREFACE**

In 1963, the Condominium Property Act (“ICPA”) became part of the law of the State of Illinois. Neither the legislators nor the attorneys who drafted the first declarations could anticipate the numerous issues that would arise for developers, boards of directors and individual unit owners. The problems of community living and the special rights of homeowners created yet another set of issues which were not addressed in the early documents. Over the years, the ICPA has been amended numerous times to address these issues. As a result, it is often difficult for a unit owner to identify the provisions of a declaration which are inconsistent with the ICPA and, as a matter of law, are void.

This handbook is written as a practical guide to the law that governs condominium associations. It provides owners, particularly those who serve as directors, with a general knowledge of association operations, information on the rights and responsibilities of association members and a guide to the relationship between provisions in the law and those contained in the association documents.

The directors of a condominium association are authorized by law to operate, maintain, replace and improve the common areas of the association and manage its funds. In carrying out these duties, they must act in the best interest of all the owners. If you are a director, it is imperative that you become familiar with the law and documents that govern association operations and use this knowledge as a basis for your decisions. For many owners, a condominium unit is both their home and their largest single investment. Owners look to the board for information, direction and solutions to their problems and become very emotional when a decision affects them financially or limits their use of the property. By operating in an orderly business-like manner, a board can generally avoid serious problems and expensive legal actions.

If you are about to serve your first term on the board of a condominium association, you will discover that, in addition to knowledge of association operations, directors need patience, time, energy and a sense of humor. The cooperation, support and understanding of each board member is essential in order to implement its plans and communicate information about board actions to the unit owners. Directors and owners must keep the lines of communication open and make continuous efforts to balance competing needs and priorities. Your term on the board can be a very positive community-building experience that enhances the value of the property for all owners.

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## I.

### CONDOMINIUM DOCUMENTS

The operation of a condominium association is governed by specific laws and documents. It is essential that directors' decisions are consistent with the provisions of these laws and documents or their decisions may be unenforceable and could subject the board to litigation.

#### **THE FORMATION OF A CONDOMINIUM ASSOCIATION**

When the owner of a parcel of real estate records a declaration of condominium ownership and a plat of survey with the recorder of deeds in the county where the property is located, the property becomes subject to the provisions of the Illinois Condominium Property Act ("ICPA").

#### **RULES, DOCUMENTS AND LAWS**

##### *THE RULES, DOCUMENTS AND LAWS THAT GOVERN A CONDOMINIUM ASSOCIATION*

The operation of the association is governed by the provisions of its declaration, bylaws, rules and regulations; the ICPA; and the Illinois General Not-For-Profit Corporation Act of 1986 ("Not-For-Profit Act").

##### *WHICH DOCUMENT TAKES PRECEDENCE?*

The terms of the declaration govern association operations unless they are inconsistent with the ICPA. Inconsistent provisions are void and unenforceable unless the ICPA specifically provides otherwise. Rules which are adopted by the board of directors of an association must also be consistent with the declaration and the ICPA. When an issue arises that is not addressed in the condominium documents or ICPA, the Not-for-Profit Act governs association operations.

## II.

### MEMBERSHIP

#### QUALIFICATIONS FOR MEMBERSHIP IN A CONDOMINIUM ASSOCIATION

Each owner of a condominium unit automatically becomes a member of the association upon acceptance of a deed to a unit. A person who is not an owner of a unit cannot become a member.

#### VOTING RIGHTS

All voting is on a percentage basis, unless the bylaws of the association carve out exceptions to this general rule and those exceptions do not contradict the provisions of the ICPA. The other situation which suspends the percentage voting requirement and permits each owner to have one vote exists if 30% of the units represent 50% of the ownership.

#### *MULTIPLE UNIT OWNERS*

If there are multiple owners of a unit, the owners must designate one person as the voting member. This person will then vote on behalf of all the owners of the unit.

#### MEETINGS OF THE MEMBERS

##### *THE ANNUAL MEETING*

An annual meeting is held for the purpose of electing the directors who will administer the association. The president of the association, a majority of the members of the board or 20% of the owners may call a special meeting of the members at any time during the year.

##### *NOTICE OF MEETINGS OF THE MEMBERS*

The board must deliver notice of a membership meeting to each owner at least ten but not more than thirty days prior to the date of the meeting. The notice must state the date, time and location of the meeting as well as the purpose of the meeting.

## **ELECTION OF DIRECTORS**

### ***QUALIFICATIONS TO SERVE AS A DIRECTOR***

All unit owners are eligible to serve as directors. A spouse or friend of a unit owner cannot serve as a director unless that person's name is also on the title to the unit. A purchaser of a unit under an installment contract who resides in the unit may serve as a director unless the owner reserves that right in writing.

### ***LENGTH OF THE TERM OF A DIRECTOR***

The term of a director is stated in the declaration, but the ICPA prohibits a term which exceeds two years. In addition, the ICPA provides that the terms of at least one-third of the directors must expire each year. Unless the declaration or bylaws specifically prohibits a unit owner from doing so, he may serve multiple terms.

### ***VOTING BY PROXY***

A unit owner may vote by proxy unless the articles of incorporation or bylaws specifically prohibit this form of voting or the association has properly adopted a rule that provides for electing directors by permitting both the absentee owners and the owners who are present at an election to vote on an absentee ballot.

If voting is by proxy, proxy form for an election must provide the owner with an opportunity to designate a specific person as proxy and instruct him to vote for specific candidates whose names are either printed on the proxy or written-in by the owner.

<p>✓ Though courts liberally construe the right of an owner to express his or her preference in an election, a proxy which is not signed and/or dated is void.</p>
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### ***VOTING BY ASSOCIATION-ISSUED BALLOT - ABSENTEE VOTING***

If the association adopts a rule at least 120 days prior to a board election, owners may not vote by proxy and may vote only by (i) submitting an association-issued ballot in person at the meeting or (ii) submitting an association-issued ballot to the association or its agent by mail or other means specified in the declaration, bylaws or rules. The association must mail or distribute the ballot to unit owners not less than 10 nor more than 30 days prior to the election.

The board must also give owners at least 21 days prior written notice of the deadline for including a candidate's name on the ballot. That deadline must not be more than 7 days before the ballots are

mailed or distributed to owners. The ballot must include the names of the owners who gave timely notice of their candidacy and must give each owner an opportunity to vote for candidates whose names are not on the ballot. Ballots that are received by the association after the close of voting are not counted. An owner who submits a ballot by mail or other means of delivery specified in the declaration, bylaws or rules may request and cast a ballot in person at the election and thereby void the previously submitted ballot.

#### ***CUMULATIVE VOTING***

Cumulative voting is permitted only if the declaration specifically provides for this form of voting.

#### ***ELECTION RULES***

The board may adopt specific rules which govern the election. The board may also distribute biographical information on each candidate as long as the board makes a reasonable effort to identify all the candidates and no preference is shown for any specific candidate or slate of candidates. (See: Adopting and Amending Rules)

#### ***VOTING BY SECRET BALLOT***

An owner can vote by secret ballot only if the association has properly adopted a rule that provides for this form of voting. A rule which permits voting by secret ballot must provide a procedure for verifying the status of the owner who issues the proxy or casts the ballot. In all elections, a candidate may be present at the counting of the ballots.

### III.

#### BOARD OF DIRECTORS

##### DEVELOPER-CONTROLLED ASSOCIATIONS

###### *ELECTION OF THE FIRST BOARD OF DIRECTORS*

Initially, the developer elects a board of directors. In his role as a member of the board of directors, the developer and the directors that are elected by the unit owners have a fiduciary duty to the unit owners. This means the directors must act in the best interest of all unit owners.

✓ Beginning with the closing of the sale of the first unit, the developer must collect monthly assessments from the unit owners and must pay monthly assessments from his own funds for each unsold unit. The developer may use the assessments to maintain the property, but must not use these funds for development-related expenses and must not intermingle association funds with his own funds.

###### *ELECTION OF THE FIRST UNIT OWNER BOARD OF DIRECTORS*

The developer must turn control of the association over to the unit owners following the closing of the sale of 75% of the units or three years from the date the declaration was recorded, whichever comes first. The developer must provide owners with at least twenty-one days notice of the meeting at which the first unit owner board will be elected. Within three working days of a request from an owner, the developer must provide a unit owner with a list of names, addresses and the weighted vote of the persons who are entitled to vote in the election.

###### *DELIVERY OF ASSOCIATION RECORDS*

Within sixty days from the date the first unit owner board is elected, the developer must deliver the following association documents to the newly elected board: (i) all original association documents including the declaration, bylaws, articles of incorporation, other condominium documents, annual reports, minutes, rules, contracts, leases and agreements; (ii) a detailed accounting which includes the source and nature of receipts and expenditures connected with management of the association and maintenance and operation of the property, copies of all insurance policies and a list of outstanding loans; (iii) association funds; (iv) an inventory of the association's property, warranties, deeds, title insurance policies and tax bills; and (v) a list of litigation, administrative actions and arbitrations; notices of governmental bodies; architectural drawings and specifications; instruments, certificates and correspondence filed with any other governmental authority or documents enforcing any association requirements or relating to disputes involving unit owners.

**CONTRACTS, LEASES OR OTHER AGREEMENTS  
ENTERED INTO BY THE DEVELOPER ON BEHALF OF THE ASSOCIATION**

Unless the agreements extend for a period of more than two years from the date of the election of the first unit owner board and the owners follow the specific procedure to cancel those agreements, the association is bound by the agreements.

**CANCELING DEVELOPER CONTRACTS**

Within one hundred twenty days after the election of the first unit owner board, the board must notify the owners by delivering a list to them of all contracts, leases and other agreements which are subject to cancellation. The notice must explain the procedure which the unit owners must follow in order to call a meeting to cancel these agreements.

If the owners choose to cancel an agreement, a special meeting of the unit owners must be called during the one hundred eighty days following election of the first unit owner board. If a majority of the total unit ownership, other than the developer, votes to terminate the agreement, the termination becomes effective thirty days following the mailing of notice by certified mail, return receipt requested, to the last known address of the other parties to the agreement. The other parties to these agreements also have the right of cancellation during this period.

✓ If a contract is not canceled within the one hundred eighty-day period, the association is bound by the contract.

**REMEDIES IF THE DEVELOPER DOES NOT DELIVER DOCUMENTS OR FUNDS TO  
THE UNIT OWNER BOARD OR DOES NOT COMPLETE CONSTRUCTION**

The newly elected board should contact an attorney. The association may have several causes of action against a developer if the documents or funds are not turned over by the developer and/or if construction is incomplete or defective.

☎ Though an association may have several causes of action against a developer, **Illinois law strictly limits the time period during which an association may recover from a developer.** If a law suit is not filed within a specific period of time, recovery may be impossible. It is essential that the board consult a lawyer who is experienced in condominium law.

## **MEETINGS OF THE BOARD OF DIRECTORS**

### ***FREQUENCY OF MEETINGS***

The board must hold at least four meetings each year, though many boards meet monthly. Notice of each meeting must be mailed or delivered to unit owners at least forty-eight hours in advance of the meeting. In addition, where there is a common entrance for seven or more units, the board must post notice of the meeting in a conspicuous location at least forty-eight hours prior to the meeting.

### ***ATTENDING MEETINGS OF THE BOARD OF DIRECTORS***

The meetings are open to all unit owners for the purpose of observing the meeting. Unit owners do not participate in meetings of the board of directors. They may record the proceedings of meetings by tape, film or other means, but the board may prescribe reasonable rules and regulations to govern the right to make such recordings. Though boards are not required to do so, some boards reserve a short period of time prior to or after the meeting for unit owners to voice their concerns or suggestions.

### ***CLOSED PORTIONS OF MEETINGS OF THE BOARD OF DIRECTORS***

Specific portions of a meeting may be closed to unit owners. These include the portion of a meeting held to discuss pending or probable litigation; consider information regarding appointment, employment or dismissal of an employee; or discuss a unit owner's unpaid assessments or violations of rules and regulations of the association. A vote on these matters must be taken at the portion of a meeting that is open to the unit owners.

### ***ELECTION OF THE OFFICERS OF THE BOARD OF DIRECTORS***

The members of the board elect officers from among themselves.

### ***VACANCIES ON THE BOARD OF DIRECTORS***

The board may fill the vacancy for the unexpired portion of the term by a two-thirds vote of the directors. The newly elected director serves until either the next annual meeting of unit owners or for a period terminating no later than thirty days following the filing of a petition signed by 20% of the total unit ownership requesting a meeting of the unit owners to fill the vacancy for the balance of the term. The board must call the special meeting within thirty days following receipt of a petition.

### **DUTIES OF THE BOARD OF DIRECTORS**

The board of directors administers the operation of the association. Like directors in other corporations, it must do so in a businesslike manner. If the directors exceed their authority, a unit owner may successfully challenge their decisions and they may face personal liability. The following list includes some of the board's numerous duties:

#### **• MAINTAINING, REPLACING AND REPAIRING THE COMMON ELEMENTS •**

The declaration and the ICPA state that it is the duty of the board of directors to provide for the maintenance, repair and replacement of the common elements.

#### ***DO OWNERS APPROVE THE BOARD'S DECISIONS?***

No. The owners approve the board's decisions only when certain conditions exist. In general, the board is authorized to operate, care, maintain, replace and improve the common elements of the property without owner approval. The Board must follow the provisions of the ICPA which provide definitions that guide it in determining whether an expense is a repair, replacement or restoration which the board may approve or a capital addition which must be approved by owners. As defined by the ICPA, *repair, replacement or restoration* refers to expenses attributable to deteriorated or damaged portions of the property related to the existing decorations, facilities, structural or mechanical components, interior or exterior surfaces, emergency systems, and equipment with the functional equivalent of the original portions of those areas.

If the replacement of a portion of the common elements results in an improvement over its original quality (e.g. a roof or boiler is replaced with a more energy efficient system) and the expenditure exceeds 5% of the annual budget, 20% of the owners may deliver a written petition to the board within fourteen days of its approval requesting a special meeting of the unit owners to consider the expenditure. The board must call the meeting within thirty days following delivery of the petition. Unless a majority of the total unit ownership votes to reject the improvement, the expenditure is approved. An expenditure which is not a repair, replacement or restoration is an addition or alteration to the common elements and is not included in the adopted annual budget must be approved by two-thirds of the total unit ownership.

#### **• MANAGING THE ASSOCIATION - PROFESSIONAL MANAGEMENT VS. SELF-MANAGEMENT •**

The board is authorized to delegate the day-to-day administration of the property to a managing agent.

### ***THE ADVANTAGES OF PROFESSIONAL MANAGEMENT***

Though some self-managed associations operate smoothly, most directors neither have the time, skills nor desire to perform all the management functions. When the snow is not shoveled, the maintenance man is ill, a pipe freezes or bids must be obtained from contractors for various services, most directors are unable to take time to handle the complaints or wait for contractors to arrive. After receiving calls on weekends and in the middle of the night, a board member often begins to think that the board should consider professional management!

### ***MANAGEMENT COMPANY FEES***

The cost of professional management depends on the range of services the management company provides to the association. In the past, it was difficult to obtain professional management services for small associations, but in recent years, management companies have responded to the increased conversion and development of smaller properties by developing services which are tailored to the needs of these associations. From management contracts which provide only the basic accounting and consulting services to those which provide on-site management, daily supervision of employees and monitoring of large construction projects, a board of directors can choose from several companies that fit its needs.

### ***GUIDELINES FOR CHOOSING A MANAGEMENT COMPANY***

Price is only one of the factors that should be considered in choosing a management company. The fee determines the amount of time that a company will devote to a specific property. The board of directors should obtain proposals from at least three companies that manage similarly sized properties in its geographical area. After reviewing the proposals, the board should interview the person from each management company who would be responsible for supervising the property. Do not assume that the managing agent will perform certain tasks. During the interview, ask specific questions about the scope of the management company's services.



The terms of a management agreement affect the entire operation of the association and should be reviewed by an attorney before it is signed by the board of directors.

**•PREPARING, DISTRIBUTING AND ADOPTING THE BUDGET •**

***PREPARATION OF THE BUDGET***

An annual budget must be delivered to the unit owners at least thirty days prior to its adoption by the board of directors. The budget must include all anticipated expenses by category, all anticipated income from assessments and other sources, and reasonable reserves.

***RESERVES***

The ICPA instructs the board of directors to use the following factors in determining the amount of reserves which are reasonable for a particular association: (i) the repair and replacement cost and estimated useful life of the common elements, including, but not limited to, the structural and mechanical components, energy systems and equipment; (ii) the current and anticipated return on investment of association funds; (iii) the results of an independent professional reserve study, if the association has contracted for that service; (iv) the financial impact on the owners and the market value of the units of any assessment increase needed to fund the reserves; and (v) the ability of the association to obtain financing or refinancing.

***WAIVING THE RESERVE REQUIREMENT***

If the declaration does not require reserves, an association may waive all or part of the reserve requirement by a vote of two-thirds of the total unit ownership. This fact must be disclosed in the association's financial statement and highlighted in bold print in the response to any request from prospective purchasers. If the declaration requires reserves, the unit owners may not waive the reserve requirement.

***WHAT HAPPENS IF THE ASSOCIATION WAIVES THE RESERVE REQUIREMENT AND AN EMERGENCY OCCURS THAT REQUIRES AN EXPENDITURE WHICH EXCEEDS THE AVAILABLE FUNDS?***

The board of directors must amend the budget and obtain a bank loan and/or levy a special assessment.

**•AMENDING THE BUDGET •**

In the event the annual budget is not sufficient to cover the actual operating expenses of the property or an emergency occurs, the board must amend the budget to cover these expenses.

***NOTICE REQUIREMENTS - AMENDING THE BUDGET  
OR ADOPTING A SPECIAL ASSESSMENT***

The board must deliver a copy of the annual budget to all owners at least thirty days before its adoption. All owners must also receive at least ten but not more than thirty days notice of a meeting at which the board will adopt the budget, an amended budget or a special assessment. If the budget exceeds 115% of the sum of all regular and separate assessments payable during the preceding fiscal year, 20% of the total unit ownership may deliver a petition to the board of directors requesting a special meeting to consider the budget. The board must call a meeting of the owners within thirty days following delivery of the petition. Unless a majority of the total unit ownership votes to reject the budget or special assessment, it is ratified.

✓ The board of directors may adopt a separate assessment payable over more than one fiscal year, but the entire amount of the multi-year assessment must be considered as authorized in the first fiscal year in which the assessment is approved. Unless the expense is mandated by law or for an emergency, the entire amount is considered in determining whether the expense causes the budget to exceed the 115% threshold.

***ASSESSMENTS THAT ARE CHARACTERIZED AS SPECIAL ASSESSMENTS***

A common expense that arises after the budget has been approved or any increase in assessments over the amount adopted in the budget constitutes a *special assessment* and must be separately assessed against all unit owners.

Assessments for additions and alterations to the common elements or to association-owned property which are not included in the adopted annual budget must be separately assessed and are subject to the approval of two-thirds of the total unit ownership.

***ASSESSMENTS THAT ARE NOT SUBJECT TO THE OWNERS' RIGHT TO PETITION***

A special assessment for an expenditure relating to an emergency or mandated by law is not subject to owner approval.

***DEFINING AN "EMERGENCY"***

The ICPA defines *emergency* as an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the owners.

• **EMPLOYING AND DISMISSING PERSONNEL** •

***HIRING AND DISCHARGING EMPLOYEES***

The board of directors is authorized to hire and discharge employees, but it may delegate that responsibility to the managing agent.

✓ To avoid serious problems with either a union or the various local, state and federal agencies, the board should consult with its attorney prior to discharging an employee.

• **OBTAINING INSURANCE** •

***INSURANCE COVERAGE***

The ICPA provides that the board must obtain property insurance for the full replacement cost of the units and the common elements including costs of construction due to building code requirements. The Board must also obtain general liability insurance in a minimum amount of \$1,000,000. In addition, it must obtain directors and officers liability coverage. If the association contains more than six units, the board must obtain a fidelity bond for persons who handle or control association funds. Regardless of the number of units, the association must maintain fidelity coverage for its managing agent at the association's expense unless the agent and association contract otherwise.

The Board should request proposals for insurance from agents who are experienced in insuring condominium associations.

***INSURANCE DEDUCTIBLES***

In the case of a claim for damage to a unit or the common elements, the board may (i) pay the deductible as a common expense; (ii) after notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose unit the damage or cause of loss originated; or (iii) require the unit owners of the affected units to pay the deductible amount.

✓ Each unit owner is responsible for insuring the contents of his or her unit (e.g. personal property, decorating). The description of the unit boundaries are not identical in all declarations. To avoid an uncovered loss, owners should verify that their personal coverage will pick up exactly where the association's policy leaves off.

• **ADOPTING AND AMENDING RULES** •

There are few subjects which cause as much controversy as rule enforcement, particularly when pets and parking are involved. Reasonable properly adopted rules are essential for all associations. The following paragraphs provide some guidance in adopting, amending and enforcing rules.

**THE BASICS OF RULE ADOPTION**

***WHO MAKES THE RULES?***

The board of directors, not the owners, amends and adopts rules by using the following procedure: (i) a notice of a meeting which is called by the board for the purpose of discussing the proposed rules and which contains a copy of the proposed rules must be delivered to all unit owners at least ten but not more than thirty days prior to the date of the meeting; (ii) at the meeting, owners must be given an opportunity to voice their opinions about the proposed rules; (iii) following the meeting of the unit owners, at an open meeting of the board of directors, the directors, not the unit owners, vote to either adopt the rules as proposed or it may modify the rules to reflect the comments of the unit owners; and (iv) notice of the rules that were adopted must be sent to all unit owners, and the notice must contain the date on which the rules become effective. Rules may not be retroactive.

<p>✓ Before calling a meeting of the unit owners for the purpose of amending or adopting rules, the proposed rules should be reviewed by the association's attorney to determine whether the rules are enforceable.</p>
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***CHARACTERISTICS OF ENFORCEABLE RULES***

A rule is enforceable if it is reasonably related to a legitimate concern of the association, is consistent with the declaration, the bylaws, the ICPA, and other relevant laws and is properly adopted.

***ENFORCING THE RULES***

The board enforces the rules. The rules may include an enforcement procedure. The procedure should provide the following steps: (i) the owner or employee who observes a rule violation signs a report which details the incident and submits the report to management or the board; (ii) the board sends a written notice of the violation to the unit owner which identifies the rule which the owner violated; (iii) depending on the nature of the violation and number of occurrences, the board must send a notice of a hearing to the unit owner; and (iv) following the hearing, the board decides whether it will assess a fine.

✓ Before a board assesses a fine against an owner, it must comply with the owner's right to due process. The owner must be given an opportunity to attend a hearing and respond to the allegations contained in the notice of violation. If the violation continues or if it threaten public safety, the board should seek the advice of its attorney.

✓ A rule which is not properly adopted or is inconsistent with the declaration or ICPA is unenforceable. For example, the board may adopt rules reasonably related to leasing, but if it chooses to prohibit leasing, the association must amend the declaration with the assistance of the association's attorney.

#### ***SPECIAL CONSIDERATIONS IN ADOPTING RULES REGARDING LEASING***

Unless specifically prohibited by the declaration or an amendment to the declaration, a unit owner may lease his unit.

#### ***CONTROLLING LEASING OF UNITS***

The ICPA requires owners to deliver a copy of each signed lease to the board within ten days after its execution or prior to occupancy of the unit, whichever comes first. The provisions of the declaration, bylaws, rules and regulations and the ICPA are incorporated into the lease as a matter of law.

If the owner fails to deliver a copy of the lease or the tenant fails to abide by the association documents, the board may issue a ten day notice to vacate the unit. This notice must conform to specific statutory requirements and should be prepared by an attorney. If the tenant does not vacate the unit within ten days, the attorney may file suit on behalf of the board.

#### ***ASSIGNING DUTIES, RESPONSIBILITIES OR OBLIGATIONS TO A TENANT***

Unit owners are responsible for the actions of their tenants. Any attempt by an owner to assign his obligations to his tenant is void.

#### **• OWNING, CONVEYING, LEASING AND OBTAINING LOANS ON UNITS •**

The purchase or sale of land or of a unit by the association is subject to the approval of at least two-thirds of the total unit ownership. The board may lease units owned by the association without owner approval. Some declarations provide that the association has a right of first refusal when units are leased or sold. Each declaration has specific requirements which must be reviewed prior to waiving or exercising this right.

**•MAINTAINING ASSOCIATION RECORDS •**

The board must keep and maintain the make the following records or complete copies of these records at the association's principal office:

1. Declaration, bylaws, plats of survey and all amendments;
2. Rules and regulations;
3. Articles of incorporation, if any, and all amendments;
4. Minutes of all meetings of the association and its board for the preceding seven years;
5. Insurance policies;
6. Contracts, leases and other agreements;
7. List of names, addresses and the weighted vote of all voting members;
8. Ballots and proxies for all matters voted on by the owners during the preceding 12 months, including the election of directors; and
9. Books and records of account for the preceding ten years, including but not limited to itemized and detailed records of all receipts and expenditures.

***INSPECTING ASSOCIATION RECORDS***

Following delivery of a written request to the board of directors, stating with particularity the records he wishes to examine, a member of the association or his agent has the right to inspect, examine and make copies of the records listed in items 1 through 5. If a member wishes to inspect, examine and copy the records listed in items 6 through 9, he must submit a written request that stating with particularity the records to be examined and a proper purpose for the request. The burden of proof is upon the member to establish that his request is based on a proper purpose.

The actual cost to the association of retrieving and making requested records available for inspection and examination and the cost of copying any records shall be charged to the requesting member.

***RECORDS THAT ARE NOT AVAILABLE FOR INSPECTION***

The following records are not available for inspection, examination or copying unless otherwise directed by a court order:

1. Documents relating to appointment, employment, discipline or dismissal of association employees;
2. Documents relating to actions pending against or on behalf of the association or its board in a court or administrative tribunal;
3. Documents relating to actions threatened against, or likely to be asserted on behalf of the association or its board in a court or administrative tribunal;

4. Documents relating to common expenses or charges owed by a member other than the requesting member; and
5. Documents provided to the association in connection with the lease, sale or other transfer of a unit by a member other than the requesting member.

In addition, if the association has properly adopted a secret voting rule, the ballots without unit numbers, not proxies, are available for inspection. The proxies are not may be inspected or and proxies are not open for inspection

***PENALTIES IF AN ASSOCIATION DOES NOT MAKE THE RECORDS  
AVAILABLE TO A UNIT OWNER***

If the association does not make the requested records available within 30 days of receipt of the member's written request, it is considered a denial. If the member prevails in an enforcement action with respect to the records listed in items 1 through 5, the member is entitled to recover reasonable attorney's fees and costs from the association. If the member prevails in an enforcement action with respect to the records listed in items 6 through 9, the member is entitled to receive reasonable attorney's fees and costs only if the court finds that the board acted in bad faith in denying the member's request.

✓ Courts liberally enforce the right of owners to inspect these documents.
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**• OBTAINING ACCESS TO UNITS •**

The board or its representative (e.g. management or contractors) may enter units when necessary for the maintenance, repair or replacement of the common elements or for making emergency repairs which will prevent damage to the common elements or units.

**• PAYING REAL ESTATE TAXES •**

Real estate taxes, if any, assessed against the common elements, units or property owned by the association are paid as part of the common expenses. Real estate taxes assessed against the units are paid individually by the unit owners.

**•ASSESSING LATE CHARGES AND FINES •**

***ASSESSING A LATE CHARGE TO OWNERS WHO ARE DELINQUENT  
IN THE PAYMENT OF THEIR ASSESSMENTS***

Yes. The board of directors may adopt a rule which states that a late fee will be assessed to owners who do not pay their assessments by a specific day of each month.

***FINES FOR VIOLATING THE RULES OR PROVISIONS OF THE DECLARATION***

The board may impose a reasonable fine for violation of the declaration, bylaws and rules after providing the owner with notice and an opportunity to be heard. The amount of the fine should be related to the severity and number of violations. (See: Adopting and Amending Rules)

**• PLEDGING ASSESSMENTS •**

Unless the declaration or bylaws provide otherwise, a majority of the members of the board may assign the right of the association to future income or may mortgage or pledge substantially all of the remaining assets of the association.

**• DEDICATING STREETS AND GRANTING EASEMENTS •**

The board may dedicate a portion of the property for a street or utility following approval of two-thirds of the total unit ownership.

**• ACCOMMODATING HANDICAPPED OWNERS •**

The board must reasonably accommodate the needs of a handicapped unit owner. This means the board must permit a handicapped unit owner to make modifications to his or her unit, at the unit owner's expense.

<p>✓ If a disabled owner or resident requests modifications, the board of directors should consult an attorney prior to denying the request.</p>
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• **COLLECTING ASSESSMENTS** •

The Act provides that the board shall not forebear assessments. As a not for profit corporation, a condominium association cannot operate without prompt payment of assessments by its members. The association rules should contain specific policies concerning payment of assessments, including the amount of the late charge, the day of the month on which it will be assessed and notice that the board will send accounts which remain unpaid for a specific number of days to an attorney for collection.

When a foreclosure is filed by the lender who holds a mortgage on a unit, the unpaid association assessments are extinguished upon the court's confirmation of the foreclosure sale unless certain steps have been taken by the association. Associations are named in foreclosure proceedings and are served with a copy of the complaint. Without exception, the association should seek the advice of its attorney when it is served with a foreclosure complaint.

Bankruptcy petitions that are filed by unit owners also may leave the association with unpaid assessments that it cannot recover from the owner. When an association receives notice of a bankruptcy petition, the association should immediately seek the advice of its attorney upon receipt of the petition in order to protect its rights.

**IV.****REMEDIES****EVICTION*****COLLECTING DELINQUENT ASSESSMENTS***

The declaration and Illinois law provide a remedy when an owner does not pay assessments. Following mailing of a thirty-day demand letter, a condominium association may file suit against a delinquent unit owner. The ICPA also permits the association to record a lien against his unit.

In addition to obtaining a judgment for the unpaid assessments, the association's attorney may petition the court to award attorneys fees and costs. If the unit is rented to a tenant, the association may obtain an assignment of rent and apply the rent to the delinquent assessments. If the unit is occupied by the owner, the association may have him evicted. It may then rent out the unit and apply rent payment to unpaid assessments.

✓ Illinois law contains very specific requirements which must be followed in order to obtain an enforceable judgment. The association attorney should issue the demand letter on behalf of the board.

**INJUNCTIVE RELIEF - INVOLUNTARY SALE**

When the rule enforcement procedures do not resolve a problem and the resident continues to act in a manner that violates the provisions of the declaration, the association's attorney may file a suit on behalf of the association which asks the court to enter an order that either prohibits the resident from continuing the violation, orders him to act in a specific manner or directs him to sell the unit. For example, it may order an owner to cease activities which disturb neighbors or threaten public safety. Courts are reluctant to grant this form of relief and will do so only under extraordinary circumstances.

**ALTERNATE DISPUTE RESOLUTION*****RESOLVING DISPUTES BETWEEN THE ASSOCIATION AND A  
UNIT OWNER OR BETWEEN UNIT OWNERS***

Other methods are available including mediation and arbitration. If the declaration does not mandate either procedure, the parties may voluntarily agree to submit the dispute to either process.

***WHAT IS MEDIATION?***

It is a process that allows the disputants to reach a mutually acceptable agreement with the assistance of an impartial person, the mediator. Unlike a judge or arbitrator, the mediator does not decide the outcome of the dispute. Instead, the disputants participate in creating their agreement with his help.

Mediation is particularly beneficial when the disputants have a continuing relationship. Both parties leave the mediation as “winners” with the agreement they created rather than one that was forced upon them by a third party. It is essential to use professional mediators who are experienced in condominium matters. These persons have worked with associations to resolve seemingly unresolvable disputes!

***WHAT IS ARBITRATION?***

Arbitration is a method of settling disputes whereby an impartial third party or a panel of several impartial persons hears testimony from the disputants and then, much like a judge, the arbitrator or panel issues a decision. This process is less formal, less time consuming and usually less costly than litigation. It is essential that the arbitrator is experienced in condominium matters.

V.

**MISCELLANEOUS**

*UPDATING THE DECLARATION*

As the result of numerous amendments to the ICPA, declarations contain provisions that are no longer consistent with the ICPA. In older declarations with numerous outdated provisions, it is particularly difficult to determine which provisions are valid. To avoid the need to cross reference several documents, the association's attorney can prepare an amended and restated declaration. This document eliminates obsolete references to the developer, revises provisions which are contrary to the ICPA, and incorporates any amendments to the declaration, thereby creating one document which reflects the current state of the law.

If the sole purpose of the amended and restated declaration is to conform to the provisions of the ICPA, the board may adopt the document without owner approval. After board approval, it is recorded with the recorder of deeds.