



ALTUS LEGAL LLC

CONDO AND HOA LAW

LEGAL TIPS
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2021 Illinois Legislative Update

After a quiet 2020, legislators returned to business in 2021. The new year brought several changes to the General Assembly. One significant change involved longtime Speaker of the House Representative Michael Madigan stepping down and Representative Emanuel Chris Welch being elected to take Representative Madigan's place. Most significantly, and well worth celebrating, Speaker Welch is the first African American Speaker of the House in the Illinois General Assembly. Other changes involved the General Assembly shifting to conduct some business virtually, such as holding committee hearings via Zoom.

During the 2021 legislative session, several bills were introduced affecting community associations. Those bills covered a variety of situations, including but not limited to Section 15 of the Condominium Property Act (often referred to as "deconversions"), imposing a residency requirement for owners to be eligible to serve on condominium boards, rainwater collection and composting systems, mandating reserve studies, mold disclosure and remediation, electric vehicle charging stations, and the Community Association Manager Licensing and Disciplinary Act. Most of those bills "died" (i.e., they did not pass out of their chamber of origin), but a handful of those bills moved forward and were enacted into law. Below is a synopsis of those bills.

Public Act 102-0020 (House Bill 806) – Effective 6.25.2021

P.A. 102-20 makes changes to various statutes. With respect to community associations, P.A. 102-20 amends the Community Association Manager Licensing and Disciplinary Act (the "CAM Act"). The changes to the CAM Act in P.A. 102-20 are too numerous to discuss in detail in this summary. However, a few of the more significant changes include:

- The category of "supervising community association manager" was removed, which proved to be a problematic category in real-world situations.
- The category of "designated community association manager" was added, which will be a better and more workable category.
- Specific qualifications for a community association management firm to obtain a firm license were added. The CAM Act has included references to a firm license but lacked any express qualifications for obtaining such a license. The new language provides clarity.
- The qualifications for obtaining a community association manager license now expressly include a high school diploma or equivalency certificate.
- New language providing for the exclusion of certain juvenile criminal records from applications for licensure or registration as a community association manager.

- The grounds upon which disciplinary action can be taken due to discriminatory treatment of a person expanded the protected classes to include ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, and pregnancy. Previously, the protected classes included race, color, sex, religion, and national origin.
- New subsection providing that the failure of a licensee to disclose to a community association any compensation received from a third party related to a transaction involving that community association is grounds for disciplinary action.
- New provision expressly provides that a designated community association manager is responsible for supervising employees and independent contractors licensed under the CAM Act.
- A new section providing for a 5-year statute of limitations for bringing an action under the CAM Act by the IDFPR.
- A new section providing that the CAM Act does not grant a private right of action to enforce the provisions of the CAM Act or related regulatory rules. The IDFPR wants to be clear that it has the authority to enforce the CAM Act. Community associations and individuals would have to avail themselves of other causes of action against a community association manager, such as breach of contract.
- The sunseting of the CAM Act was extended to January 1, 2027.

Public Act 102-0110 (House Bill 58) – Effective 1.1.2022

P.A. 102-110 creates a new section of the Counties Code that allows for unlawful restrictive covenant modifications. Under this new law, the board of a condo, common interest community, master association, or residential housing cooperative may cause to be recorded a restrictive covenant modification to effectively remove an unlawfully restrictive covenant. In other words, the board may amend the association’s governing documents without unit owner approval when that amendment is for the limited purpose of removing an unlawfully restrictive covenant. “Unlaw restrictive covenant” is defined to mean “any recorded covenant or restriction that is void under Section 3-105 of the Illinois Human Rights Act which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof on the basis of race, color, religion, or national origin.”

The new law also provides for a procedure by which owners in a community association may force a board to file a restrictive covenant modification when that board, for whatever reason, has failed or refused to address the unlawful restrictive covenant on its own initiative. That procedure includes the right of owners to file a lawsuit to compel the board to record the necessary restrictive covenant modification and be awarded attorneys’ fees in connection to that lawsuit.

Public Act 102-0161 (House Bill 644) – Effective 7.26.2021

P.A. 102-161 makes changes to the Homeowner’s Energy Policy Statement Act (“HEPSA”), which include: (a) update the criteria for determining whether a specific location on a roof is suitable for installation of solar panels; (b) reduce timeframes in which the association must act, which timeframes remain reasonable; and (c) clarify that buildings in a community association that has shared roofs are exempt from HEPSA.

Public Act 102-0162 (Senate Bill 636) – 1.1.2022

P.A. 102-162 makes changes to the Illinois Condominium Property Act by adding new language to Section 18(a)(1). That new language permits an association to impose a residency requirement for serving on an association’s board of managers. For existing condominiums, such a residency requirement must be implemented by a duly adopted amendment to the association’s condominium instruments (i.e., the declaration or bylaws). However, the residency requirement is limited. It cannot apply to all members of the board. Instead, no more than a majority of the board can be required to occupy their unit as their principal residence.

For any further questions, feel free to contact Altus Legal at 312.450.6655 or at admin@altuslegal.com.