

## UNIT OWNERS COMING UP SHORT? LEGAL CONSIDERATIONS AND REMEDIES FOR ASSOCIATION BOARDS

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## WHAT GOVERNS?

- The Illinois Condominium Property Act (the "Act")
- Governance Documents

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## THE ACT

- Provides the framework for the creation and governance of condominium associations.
- Imposes duties and obligations on Association Board and unit owners.
- Establishes remedies to Association Boards and unit owners

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### GOVERNANCE DOCUMENTS

- Made up of (1) Condo Declaration, (2) the Bylaws, and (3) the Rules and Regulations.
- Together they control the operation and administration of the association.
- Contain various restrictions against owners using the property or the units in certain ways.
- Establish the "Dos and Don'ts" the association and the method/procedure of enforcement by the association.

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### THE ACT VS THE GOVERNANCE DOCUMENTS

- In any situation where the governance documents and the Act conflict, the Act will control and override any inconsistent provision within the governance documents.
- All persons who use or occupy a condominium unit are subject to the Act, as well as the governance documents.

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### UNIT OWNER OBLIGATIONS PURSUANT TO ACT AND GOVERNANCE DOCUMENTS

- Payment of Assessments: Unit owners must pay assessments in the amounts and at times determined by the board. 765 ILCS 605/9(a), (f).
- Adhere to Governance Documents: Unit owners, along with its tenants, invitees, and guests, must abide by all requirements under the Act, or under the declaration, bylaws or the rules and regulations of the board 765 ILCS 605/9.2(a)

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### UNIT OWNER'S FAILURE TO MEET FINANCIAL OBLIGATIONS

- If a unit owner fails to adhere to the Act and/or governance documents the association has the following remedies available to it:
  - Lien the delinquent unit owner's interest in the property
  - File for relief under the Forcible Entry and Detainer Act. (735 ILCS 5/9-101).

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### LIEN RIGHTS OF ASSOCIATION

If any unit owner shall fail or refuse to make any payment of the common expenses or the amount of any unpaid fine when due, the amount thereof together with interest, late charges, reasonable attorney fees, and costs of collections constitute a prior lien to all other liens and encumbrances, recorded or unrecorded, except:

- a) Taxes, special assessments and special taxes levied government; and
- b) Incumbrances recorded prior to such failure which by law would be a lien prior to subsequently recorded encumbrances (e.g. Mechanics Liens)

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### LIEN RIGHTS OF ASSOCIATION (CONT.)

Association shall issue notice to any encumbrancer to the mailing address set forth in the recorded encumbrance (e.g. Mortgage, Mechanics Lien, etc.) a statement of the amounts and due dates of the unpaid common expenses to ensure that prior recorded encumbrances are subject to the lien of all unpaid common expenses which became due and payable within a period of 90 days after the date of mailing.

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### LIEN RIGHTS OF ASSOCIATION (CONT.)

In order to extinguish the association's lien, the purchaser at a foreclosure sale, or a mortgagee who receives title to the encumbered unit, has the obligation to satisfy the unit's assessments from and after the first day of the month after the date of the:

- a) Foreclosure sale;
- b) Delivery of the deed in lieu of foreclosure;
- c) Entry of judgment; or
- d) Taking of possession pursuant to court order in order

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### LIEN RIGHTS OF ASSOCIATION (CONT.)

The purchaser at judicial sale, other than a mortgagee, who takes possession of the unit pursuant to court order or who acquires title from a mortgagee must pay the delinquent assessments for the unit as well as the association's legal fees, which would have become due during the 6 months immediately preceding institution of the association's action to enforce the collection of assessments.

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### EVICTON RIGHTS OF ASSOCIATION

- In the event of any default by a unit owner, his tenant, invitee or guest in the performance of his obligations under the Act or governance documents the association may file for relief under the Forcible Entry and Detainer Act (735 ILCS 5/9-101).
- If successful, the association is entitled to a money judgment, attorneys' fees, and possession of the unit, however, unit owner still holds title to unit.
- Once in possession, the association may rent out the unit and use the rental income to pay the past due assessment and/or fines.

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