

KDAO

KLEIN, DADAY, ARETOS & O'DONOGHUE
ATTORNEYS AT LAW

2015/2016 Legal Updates

**For Condos & Common Interest
Community Associations**



Klein, Daday, Aretos & O'Donoghue, LLC
2550 West Golf Road, Suite 250
Rolling Meadows, IL 60008
Phone: (847) 590-8700
Fax: (847) 590-9825

2015/2016 Legal Updates

A brief overview of recent and upcoming legal changes affecting condos & other common interest community associations.

Illinois Condominium Property Act (ICPA), 765 ILCS 605/

Effective January 1, 2015:

- **§18: Contents of Bylaws** – this section was changed to:
 - Add language to subsection 18(b)(6) providing for notice of membership meetings to be sent via electronic transmission if allowed by the association’s governing documents or adopted rules and consented to by the owner. The director/officer or his agent must certify in writing to the delivery by electronic transmission.
 - Add language to subsection 18(b)(9) allowing electronic voting; if allowed by the association’s governing documents or adopted rules, a vote or proxy may be submitted by electronic means provided it can be determined that the it was authorized by the unit owner or the owner’s proxy.

- Add subsection 18(b)(9)(B-5) which provides the Board with the right to adopt a rule at least 120 days before an election (or if the declarations or bylaws so provide) prohibiting the use of proxies in board elections. This subsection also provides that if a rule has been adopted by the board, an owner may vote by the use of acceptable technological means; instructions regarding the use of electronic voting must be disbursed to all owners not less than 10 and not more than 30 days before the election. Further, the board must give owners not less than 21 days' prior written notice of the deadline for inclusion of candidate's names on the ballots; the deadline must be no more than 7 days before the instructions for electronic voting are distributed to the owners. The instruction notice must include the names of all candidates who have given timely notice of their candidacy and must also allow write-ins. An owner who has submitted an electronic vote may appear and cast a ballot in person at the election meeting, voiding their prior vote submitted electronically.
- Add subsection 19(b)(9)(D) which provides that an owner that votes by

electronic means shall be counted for the purpose of establishing a quorum.

- **§18.4(s): Electronic Notices** – this new section allows an association to adopt or amend its rules to authorize the delivery of notices and other communications required or contemplated by the Act via electronic delivery (i.e. email) with written authorization of the owner. It also provides that an owner can designate an email address in addition to, or in replacement of, his or her mailing address on the list of members which an association is required to provide upon request under the Act or the association’s governing documents.

- **§18.8: Rights of Board** – this new section voids provisions in an association’s governing documents that seek to restrict certain Board rights. It provides that regardless of what the association’s governing documents say:
 - The Board is not required to obtain prior consent of the owners for the board to take any action, including the filing of a lawsuit or demanding a trial by jury.
 - The Board is not required to arbitrate or mediate a dispute with the declarant or the developer or any person not then a unit

owner prior to the filing of a lawsuit or demanding a trial by jury (notwithstanding Section 32 of the ICPA).

However, the association can overrule this new section and enforce such a restriction if approved by a vote of not less than 75% of the unit owners at any time after the election of the first unit owner board.

NOTE: effective July 20, 2015, this section will be renumbered as §18.9 because there will be a new §18.8.

- **§18.8: Use of Technology** – this new section was created to provide for an association’s use of technology. It provides:
 - (a) Any notice required to be sent or received or signature, vote, consent or approval required to be obtained under the governing documents or the Act may be accomplished by using the technology generally available at that time.
 - (b) The right to use technology includes the association, unit owners and other persons entitled to occupy a unit.
 - (c) Allows the use of an electronic signature – A verifiable electronic signature satisfies any requirement for a

signature under the governing documents or the Act.

- (d) Board must keep a record – Voting on, consent to, and approval of any matter under the governing documents or the Act may be accomplished by electronic transmission, provided that a record is created as evidence and maintained as long as the record would be required to be maintained in non-electronic form.
- (e) Removes the need for a signature to be notarized – Subject to other provisions of law, no action required or permitted by the governing documents or the Act need be acknowledged before a notary public if the identity and signature of the person can be authenticated to the satisfaction of the board.
- (f) Need authorization – if a person does not provide written authorization to conduct business using electronic transmission or other equivalent technological means, the association must, at its expense, conduct business with that person without the use of technological means.
- (g) This section does not apply to notices required under the Forcible Entry and Detainer provisions of the Code of Civil Procedures related to: (i) an action to

collect unpaid common expenses; or (ii) foreclosure proceedings in enforcement of any lien under the Act.

Effective June 1, 2015:

- **§12: Insurance** – this section is changed to:
 - Amend subsection 12(a)(1)(iii) regarding property damage insurance and coverage amounts; for policy issued or renewed on or after June 1, 2015, the policy must provide coverage sufficient to repair or place the insured property in compliance with building code requirements, and it must include coverage for demolition costs and the increased cost of construction that combined must amount to the lesser of 10% of each insured building's value or \$500,000.
 - Add language to subsection 12(a)(3)(D) regarding directors and officers liability coverage; it provides that this coverage must include, but not be limited to, the defense of non-monetary actions, breach of contract, and decisions related to insurance. Further, the coverage must include past, present, and future board members while acting in their capacity as members of the

board; the managing agent; and employees of the board and managing agent.

- Add language to subsection 12(b) that expands the definition of “improvements and betterments” to include “any other additions, alternations, or upgrades installed or purchased by any unit owner.”
- Remove language from subsection 12(h) that had allowed the board to purchase insurance on behalf of an owner that did not purchase or produce evidence of insurance when requested.

Effective June 1, 2016:

- **§18(a)(6): Proposed Annual Budget** – when this change takes effect, the number of days prior to the adoption of the budget that members need to receive a copy of the proposed annual budget will be reduced from 30 to 25.
- **§18(a)(9): Board Meetings** – when this change takes effect, a board member will be able to participate in (and be counted for a quorum) by accepted technological means (i.e., teleconference, Skype, Facetime, etc.). It will also allow notice for board meetings to be given by acceptable technological means (i.e., email

or text) to owners that have consented, in writing, to receive electronic notices.

- **§18(a)(21): Emergency Powers of the Board**
– when this change takes effect, this subsection will empower the board to act in emergency situations (those that involve an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners) so long as the board notifies the owners of the emergency and the actions taken to address it within 7 days.
- **§27: Amendments to Governing Documents**
– when this change takes effect, the board will be able to correct errors, omissions or inconsistencies in the governing documents to conform them to the Act and other applicable laws by board vote, without a vote of the owners, regardless of what the governing documents state. It further provides that a provision in the governing documents requiring approval from, or notice to, mortgagees or other lienholders of record is not applicable to an amendment to correct errors, omissions or inconsistencies in the governing documents to conform them to the Act and other applicable laws.

Common Interest Community Association Act (CICAA), 765 ILCS 160/1-1 et seq.

Effective January 1, 2015:

- **§1-5: Definitions** – this section is amended to include the definitions of:
 - “Acceptable technological means” which includes, without limitation, electronic transmission over the Internet or other network, whether by direct connection, intranet, fax, or e-mail.
 - “Electronic transmission” means 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.
 - It also adds “electronic transmission” to the definition of “prescribed delivery method.”
- **§1-25: Electronic Voting** – this section is changed to:
 - Add language to subsection 1-25(h-5) to allow electronic voting. It also provides that votes cast by electronic means shall be counted for the purpose of establishing a quorum.

- Amends subsection 1-25(i) to allow the board, upon the adoption of the appropriate rules, to conduct elections by electronic voting. It also prohibits members from voting by proxy in board elections. It requires that instructions regarding the use of electronic voting must be disbursed to all owners not less than 10 and not more than 30 days before the election meeting; the instruction notice must include the names of all candidates who have given timely notice of their candidacy and must also allow write-ins. An owner who has submitted an electronic vote may appear and cast a ballot in person at the election meeting, voiding their prior vote submitted electronically.

- **§1-35(A): Leasing** – this section is changed to provide “unless otherwise provided in the governing documents,” with regard to any lease entered into after this change, the owner leasing the unit must deliver a copy of the signed lease to the association or if the lease is oral, a memorandum of the lease, not later than the date of occupancy or 10 days after the lease is signed, whichever is first.

- **§1-85: Use of Technology** – this new section was created to provide for an association’s use of technology. It provides:
 - (a) Any notice required to be sent or received or signature, vote, consent or approval required to be obtained under the governing documents or the Act may be accomplished by using the technology generally available at that time.
 - (b) The right to use technology includes the association, unit owners and other persons entitled to occupy a unit.
 - (c) Allows the use of an electronic signature – A verifiable electronic signature satisfies any requirement for a signature under the governing documents or the Act.
 - (d) Board must keep a record – Voting on, consent to, and approval of any matter under the governing documents or the Act may be accomplished by electronic transmission, provided that a record is created as evidence and maintained as long as the record would be required to be maintained in non-electronic form.
 - (e) Removes the need for a signature to be notarized – Subject to other provisions of law, no action required or permitted by the governing documents or the Act need be

acknowledged before a notary public if the identity and signature of the person can be authenticated to the satisfaction of the board.

- (f) Need authorization – if a person does not provide written authorization to conduct business using electronic transmission or other equivalent technological means, the association must, at its expense, conduct business with that person without the use of technological means.
- (g) This section does not apply to notices required under the Forcible Entry and Detainer provisions of the Code of Civil Procedures related to: (i) an action to collect unpaid common expenses; or (ii) foreclosure proceedings in enforcement of any lien under the Act.

Effective July 14, 2015:

- Various provision of CICCA were amended to provide that community associations organized as limited liability companies, rather than not-for-profit corporations, are still bound to the terms and provisions of the Act.

Illinois Code of Civil Procedure

Effective January 1, 2015:

- **Forcible Entry and Detainer Act**, 735 ILCS 5/9-111.1 – this section was changed to clarify the associations right to lease a unit to a bona fide tenant upon obtaining possession of a unit under the Act. The amendment provides:
 - The board has up to 8 months from the expiration of the stay to lease the unit; the lease term must commence within these 8 months.
 - The lease term may not exceed 13 months from the date of commencement of the lease.
 - The court may, upon motion by the board, permit or extend the lease for one or more additional terms not to exceed 13 months per term.
- **Service of Process in a Common Interest Community**, 735 ILCS 5/2-203 – this section was amended to require an employee of a gated residential community, including a condo association, housing cooperative, or private community, to grant entry into the community, including its common areas, to a process servicer who is attempting to serve process on a

defendant or witness who resides within or is known to be within the community.

Effective July 14, 2015:

- **Forcible Entry and Detainer Act**, 735 ILCS 5/9-102 – this section was changed to provide that a common interest community organized as limited liability companies may use the Act to collect unpaid common expenses. Formerly, the community had to be a not-for-profit corporation to take advantage of the Act.

Please note that properly determining how these legal changes will affect your particular association requires a careful review of the association's governing documents. We strongly suggest that you seek legal assistance before implementing any legal changes in your association. Please contact KDAO for all your association's needs.

In addition, our office handles a variety of other legal matters, including appeals, banking, civil litigation, corporate law, criminal defense, family law, real estate, personal injury and transactional law. Please visit our website (www.kdaolaw.com) for more information about our practice areas and to meet our attorneys.