



Changes to Illinois Condo Act and Community Association Act Shift Burden to Mortgagees for Opposing Objectionable Association Amendments

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MANY CONDOMINIUM and community association declarations require a certain percentage of unit owners and mortgagees consent to amendments of the governing condominium documents before the amendment is deemed valid and enforceable. Because of this requirement, associations routinely send out written notices seeking mortgagees' consent to such amendments. These notices, however, are routinely ignored or disregarded by most mortgagees based on the belief that a response is not required. In some cases, mortgagees receive no notice at all because a functional address is not of record. But as of January 1, 2018, two recent amendments have drastically altered this paradigm.

Section 27 of the Illinois Condominium Property Act and its counterpart, Section 1-20(e) of the Common Interest Community Association Act, now make it easier for associations to pass amendments without the *actual consent* of the required percentage of mortgagees. Both statutes now hold that if an association is required to obtain the approval or consent of a mortgagee before amending a declaration, a mortgagee is deemed to have given consent to the amendment *unless* the mortgagee delivers an objection to the association's request within 60 days of its mailing.

The potential impact of these amendments is far-reaching. Associations will now have a far easier time inserting amendments that may materially prejudice mortgagees. Such amendments could include imposing restrictions in the following areas: leasing; the sale of an entire building; allowing pets; enforcement of rules and fines; insurance obligations; and owner maintenance requirements.

Imposing leasing restrictions, for example, could shrink the pool of potential buyers interested in purchasing property from a lender following a foreclosure. Associations in Illinois routinely impose restrictions that seek to either outright ban leases (often with a hardship exception) or drastically limit the

number of units in a building that may be leased. Because many REO buyers are investors seeking to purchase properties for their rental income value, granting an easier path to such amendments will undoubtedly have an impact on the size of the pool of potential buyers and their appetites for such investments. Foreclosing lenders may then be forced to solely market to owner-occupant buyers.

In light of these statutory amendments, it is recommended that mortgagees for properties in Illinois governed by condominium or community associations take the following steps:

- timely escalate and review an association's request to approve or consent to amendments;
- evaluate the request to consider whether the amendments might negatively impact the mortgagee's current (or future) rights or interests in the property; and
- where it is deemed prudent, prepare and submit a "no vote" or written objection to the association within 60 days of the date the association mailed the request.

Now that the burden has shifted to mortgagees, the importance of exercising vigilance in the face of these amendments is more important than ever. **■**