

Association of Condominium,
Townhouse, and
Homeowners Associations



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ACTHA's EDUCATIONAL CONFERENCE

Sat., April 18 - Oakbrook Terrace
See pages 6-7 for details

How to Implement Electronic Voting and Notices within your Association

By Ben Rooney of Keay and Costello

Public Act 98-1042 took effect on January 1, 2015. This Public Act contains changes to both the Illinois Condominium Property Act (“Condominium Act”) and the Illinois Common Interest Community Association Act (“CICAA”) concerning associations’ ability to utilize electronic communications in sending notices and voting. Prior to adoption of the Public Act, an association wishing to send notices via email or take votes of the membership online were typically forced to amend their declarations and/or bylaws to do so, which often required approval of the members. Thanks to the recent changes in the law, associations can now take advantage of modern technology (and the efficiency and costs savings that come with it) without the need to obtain the approval of the membership. While many board members are aware of these recent changes to the law and the advantages of utilizing technology, many also have questions on how to actually implement these procedures within their association. This article will provide a general outline as to what steps must be taken before an association can begin sending notices and conducting elections electronically.

Step One: Preparation of the Rule

First, the association must prepare a rule which authorizes the board to send out notices to the members electronically. The rule should include such details as how a member may authorize the association to send notices electronically (email, fax, text, etc.) and that a member may revoke the authorization at any time. Further, the rule should provide that the member may also include an electronic address or a physical address to serve as the member’s address on any list of members which the association is required to provide upon request.

Next, the rule should set forth that proxies are not allowed for elections, but that a member is only allowed to vote either i) in person at the election meeting or ii) by the electronic system adopted by the association. The rule should also provide that

Continued on page 4

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LEGISLATIVE UPDATE

Below is a synopsis of bills introduced. Because bills are still being introduced at press time and action is weekly, so we urge you to visit ACTHA's website—www.actha.org—and click on “Illinois Laws and Legislation.” You may view the full text of any bill by going to www.ilga.gov and typing in the bill number. At press time, ACTHA had not formally taken a position on most of these bills.

HOUSE BILLS

H. B. 2646 (Cassidy) Amends the ICPA. Adds language to allow a board to ratify actions. House Rules.

H. B. 2645 (Cassidy) Amends the ICPA. Provides that a board may meet without it being considered a "board meeting" if it does not include any mere discussion, conference or working session where a formal vote is taken. House Rules.

H. B. 2644 (Cassidy) Amends the ICPA. Restricts the applicability of a board to take actions concerning common elements and deletes language providing that a provision in a declaration which could be void may be enforced if it is approved by a vote of not less than 75% of the owners. House Rules.

H. B. 2643 (Cassidy) Amends the ICPA. Allows for governing documents that are inconsistent with law to be amended by a 2/3rds vote of the board instead of by a vote of the membership. House Rules

H. B. 2642 (Cassidy) Amends CICA by deleting the section referring to certain governing documents being revised by the board. House Rules

H. B. 2641 (Cassidy) Amends the ICPA to give the Board powers to act in emergency situations. House Rules.

H. B. 2640 (Cassidy) Amends the ICPA to allow for directors to participate in board meetings via electronic means, changes notice of meeting requirements and makes other minor changes. House Rules

H. B. 486 (Cassidy) Amends the Condominium Property Act. Provides that in a foreclosure action the Mortgagee shall have the duty to pay all monies due the association to satisfy the lien except for nine months of regular assessments and attorney fees which will be the responsibility of the buyer. House Rules **ACTHA Supports**

SENATE BILLS

S.B. 1555 (Raoul) See S.B.1374 **ACTHA Initiated/Supports**

S.B. 1521 (Noland) Makes various changes to CICA including embracing all non-condo associations unless the membership votes to not be under the Act. **ACTHA Initiated/Supports**

S. B. 1374 (Hastings) Amends the CICA. Adds certain community associations owned by limited liability entities to those covered in the Act. Senate Assignment **ACTHA Initiated/Supports**

S.B. 1368 (Steans) See H. B. 486 above **ACTHA Initiated/Supports**

S.B. 1344 (Haine) Amends CICA. No action to incorporate as a municipality shall commence until an instrument agreeing to incorporation has been signed by 51% (instead of 2/3rds) of the members.

Board of Directors

Officers

President: Beth Lloyd **Vice President:** Diane Pagoulatos **Treasurer:** Bob LaMontagne **Secretary:** Jacqueline Fanter

Directors

Aurelio Carmona

Joe Fong

Mike Matthews

Myrna Santiago-Martinez

Ron Sirotzki

Executive Director: Gael Mennecke

Lobbyist: John Carr, Social Engineering Associates, Inc.

Legal Advisors: Rob Kogen, Kovitz, Shifrin Nesbit / Charles VanderVennet, Attorney in private practice

Accountant/Advisor: Garry Chankin, Frost Ruttenberg & Rothblatt, C.P.A.

Insurance Consultant: Karyl Foray, Rosenthal Bros.

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instructions regarding the use of electronic means for voting are to be distributed to all unit owners not less than 10 and not more than 30 days before the election meeting, and that unit owners should have at least 21 days' prior written notice of the deadline for a member to give the association notice of their candidacy.

Step two: Adopting the Rule

For a condominium, the association must first hold a meeting of the unit owners called for the specific purpose of discussing the proposed rule. The meeting should be called and held in the same manner as any other member meeting except that the notice of this meeting must contain the full text of the proposed rule, and no quorum is required at the meeting unless the declaration, bylaws or other condominium instrument expressly provides to the contrary. Once the meeting is held, the Board should vote to approve the rule at a duly called board meeting. For an association subject to CICAA, the meeting of the members is not required, and the rule can simply be voted on at a meeting of the board. But, a common interest community will need to review its own governing documents to determine if any specific procedures have been established concerning rule adoption. Regardless of whether the association is subject to the Condominium Act or CICAA, any rule allowing elections to be conducted via electronic means must have been approved at least 120 days prior to the

board election for it to be effective for that particular election.

Step three: Obtaining owner consent and information

Both the Condominium Act and CICAA provide that, in order for an association to conduct business with an owner via electronic transmission or other technological means, the owner must give his or her written authorization. If an owner does not give his or her written authorization, the association must, at the association's expense, conduct its business with the owner without using electronic transmission. As such, once the rule allowing electronic notices and elections is approved, the association should distribute forms to the owners allowing them to 1) authorize and consent to the use of electronic notices and 2) provide the association with the address/number to which notices should be directed.

With the adoption of a rule providing for electronic notices and voting, associations can operate much more efficiently and cost effectively, as well as potentially alleviating many of the concerns regarding how to conduct business in light of the decision in Palm v. 2800 Lake Shore Drive Condominium Association, et. al.

128 S. County Farm Rd., Wheaton 60187

630-690-6446 / ben@keaycostello.com / www.keaycostello.com

Interested in running for ACTHA's Board or serving on a committee?

If you are interested in running, complete this application* and return to: ACTHA, 11 E. Adams, #1107, Chicago 60603 or email to gael@actha.org. . Forms must be received in ACTHA's office no later than Wed., March 18.

NAME: _____

ASSOCIATION: _____

ADDRESS: _____

CITY: _____ ZIP: _____ PHONE: _____

EMAIL: _____

REASON TO BE INVOLVED: _____

I AM INTERESTED IN: _____ ACTHA's Board _____ Committee _____ Either

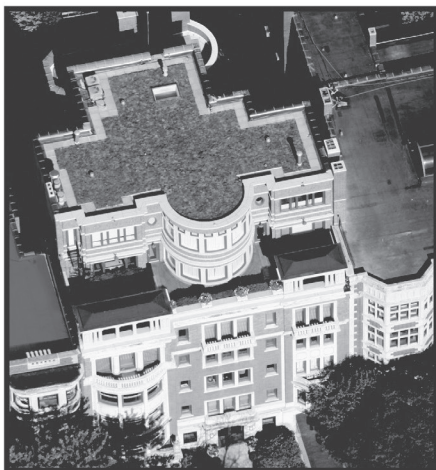
* Once application is initially verified, you will be asked to complete a slightly more detailed application. To view ACTHA's bylaws, go to www.actha.org and click on "Board of Directors" in the right-hand side box.

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ACTHA's Educational Conference Program

For more detailed information, including speakers and exhibitors, visit ACTHA's website: www.actha.org & click on "Educational Conference & Trade Show"

Your choice! Pick one program from each of the time slots offered!

8:00 a.m.—9:30 a.m.

1) Nuisances & Disputes

- Issue, solution, resolution
- Enforceable v. unenforceable
- Violation persistence

Presenters: Kelly Elmore of Kovitz Shifrin Nesbit and Jack Mancione of Werk Management

2) Roles: Officers, Directors, Owners, Professionals

- Roles, functions, rights, responsibilities
- Legal and fiduciary foundations
- Ensuring a smooth working relationship

Presenters: Mark Rosenberg of Fischel Kahn, Michael Rutkowski of First Community Management and Steve Silberman of Frost Ruttenberg Rothblatt

3) Insurance – Risk Management: Covering Your (Ass)ets

- Frequent pitfalls / common errors of omission
- Assessing types of insurance and its coverage
- Bid comparison
- Owner coverage, loss of use, replacement

Presenters: Dawn Moody of Keough & Ron Sirotzki of Hollinger Insurance

11:30 a.m.— 12:30 p.m.

1) Expectations of a Professional Team

- Manager, attorney and CPA expectations
- Communication and operating standards
- Working as a team v. positive critical feedback

Presenters: Gabriella Comstock of Keough and Moody, Hank Demlow of Selden Fox and Lou Lutz of Realty and Mortgage Co.

2) Fiduciary Duty/Until it Happens to You

- Legal, ethical and practical definitions for board members
- Exposure and liability
-

Presenters: Jim Arrigo of Tressler, Karyl Foray of Rosenthal Bros. and Tom Skweres of ACM Community Management

3) Electronic Voting: Can We or Can't We?:

- Steps to implement
- Advantages and disadvantages
- Provider evaluation
- Legal and practical aspects

Presenters: Pat Costello of Keay and Costello and Laura Nicolini of Caruso Management Group

1:30 p.m.— 2:30 p.m.

1) Best Practices for New Owners/Renters

- "Community association" - reality and perception
- Orienting new owners
- Process, timing, do's and don'ts
- When info given was less instead of more

Presenters: Scott Rosenlund of Fullett Rosenlund Anderson and Patricia Bialek of First Service Residential

2) Board Procedures

- Development of policy procedures
- Ensuring fairness and consistency
- Statutory compliance

Presenters: William DeMille of Chicagoland Community Management and Attorney Charles VanderVennet

3) Palm Decision: One Year Later

- Past
- Current
- Future

Presenters: Mark Cantey of Cantey Associates and David Hartwell of Penland and Hartwell

ASK A LEGISLATOR / ASK AN ATTORNEY

Concludes the Day

State Representative Elaine Nekritz and Marshall Dickler of Dickler Kahn Slowikowski & Zavell

ACTHA ANNUAL MEMBERSHIP MEETING

The annual membership meeting will take place on Saturday, April 18 at Drury Lane in Oakbrook. The Call to Order will take place at the conclusion of the Ask a Legislator/Ask an Attorney panel. It is anticipated the meeting will begin at around 3:45. p.m.

Information on voting, including recommendations for changes to the ACTHA bylaws, will be sent towards the end of March.

ACTHA PARTNERS in LEARNING

The **BEST BOARD MEMBERS** and the **BEST MANAGERS** are
Informed Educated Knowledgeable

Become a Partner in Learning and be rewarded!

Associations bringing their manager to the April Conference will receive a one month extension on their ACTHA membership.

Managers bringing their association board member(s) will receive \$ 5.00 off their registration for each association they bring

Registration Form

YES!! I want to register for the Conference and Trade Show on Saturday, April 18 at the Drury Lane in Oakbrook Terrace. **Full Conference Access includes:** seminars, continental breakfast, sit-down lunch, Trade Show, parking and all seminar hand-outs.

Trade Show only

Full Access Attendance

Association registering Board member(s) and Manager

Association registering board member(s) or owners only

Manager registering Board member(s)/Owners

Manager registering only

Name of Association: _____

Name of Management Company: _____

PLEASE PRINT: Role with Board Name Address Email

Role with Board	Name	Address	Email

REGISTRATION FEES: Board Members/owners (ACTHA members): \$45 each \$ _____

Board members/owners (ACTHA members, 3 or more): \$40 each \$ _____

Manager (ACTHA member), not bringing anyone : \$45 \$ _____

Manager (ACTHA members bringing association members: \$40 \$ _____

Note: if bringing association members from more than one Association, complete a separate registration form for each Association, and deduct \$5 for each separate Association

Non-Members: \$120 each \$ _____

TOTAL AMOUNT DUE \$ _____

Amount Enclosed; Make check payable to "ACTHA" and remit to 11 E. Adams, Ste. 1107, Chicago, IL 60603 or register online at ww.actha.org: 2015 Educational Conference & Trade Show

NOTE: Confirmations are not sent except upon request. No refunds are given after April 1 and there will be an additional charge of \$20 per person for anyone registering after April 11 or at the door. All cancellations are subject to a 25% handling fee.



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11 E. Adams, Ste. 1107
Chicago, IL 60603

Question of the Month

By: David Freeman of Tressler LLP

305 W. Briarcliff, Bolingbrook 60440 / 630-759-0800

www.tresslerlp.com / DFreeman@tresslerllp.com



Q. We will be imposing a special assessment on owners to cover bills that were over budget for the past fiscal year. Normally the total is divided by ownership percentage across the board. Two owners bought mid-year. Should they still have to incur the costs for the months that they were not owners or are those costs split among the owners that have owned all year?

A. Based upon the question's wording, I am assuming this is a condominium and therefore it is governed by the Illinois Condominium Property Act. Special assessments are permitted pursuant to the terms of Section 18 (a) (8) of the Act. In general, special assessments are due and payable as of the time they are approved. Thus, if a special assessment is approved, for example, in January, someone who purchases a unit in July or September would typically be responsible for paying the special assessment. However, the prior owner normally pays the special assessment(s) due prior to the closing at the time of the closing; the new purchaser would not normally be responsible for those additional costs.

It is important to note that the new purchaser should have received a Section 22.1 disclosure, prior to the closing, in which he/she would have been advised of the special assessment. If the prior owner has not paid the special assessment and has not advised the new purchaser of the existence of the special assessment, then the new purchaser may have an argument that he/she is not responsible for the special assessment.