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August 24, 2005

## **AMENDMENTS THAT MAY IMPACT YOUR ASSOCIATION OR COMPANY**

### **ALERT...ALERT...ALERT...ALERT...ALERT**

Recently, the legislature and the Governor have been busy. The following is a brief summary of many new laws that may impact associations.

#### **I. EFFECTIVE JULY 29, 2005**

An entirely new section was added to the Illinois Condominium Property Act (the "CPAct"), by Public Act 94-0386. It became effective upon signature by the Governor.

**Sec. 30.5. Conversion of apartments. In the case of the conversion of an apartment building into condominium units, a municipality shall have the right to inspect the apartment building prior to the conversion to condominium units and may require that each new proposed condominium unit comply with the current life safety, building, and zoning codes of the municipality.**

#### **II. EFFECTIVE AUGUST 22, 2005**

Not to be outdone by the federal government in protecting our active duty service people, there is a new Illinois Patriot Act, Public Act 94-0635. It provides, in part, for a modification to the Forcible Entry and Detainer Act (the "FEDAct") through the addition of an entirely new section. This section does not, on its face, directly apply to associations, HOWEVER, the term "tenant" is commonly used in the FEDAct, and one may expect that this provision will be automatically applied to associations by courts considering such situations; if not, were an association to argue against such application, one may expect that the association would be judged harshly for that position!

**Sec. 9-107.10. Military personnel on active duty; action for possession.**

**(a) In this Section:**

“Active duty” means active duty pursuant to an executive order of the President of the United States, an act of the Congress of the United States, or an order of the Governor.

“Service member” means a member of the armed services or reserve forces of the United States or a member of the Illinois National Guard.

**(b) In an action for possession of residential premises of a tenant, including a tenant who is a resident of a mobile home park, who is a service member deployed on active duty, or of any member of the tenant’s family who resides with the tenant, if the tenant entered into the rental agreement on or after the effective date of this amendatory Act of the 94<sup>th</sup> General Assembly, the court may, on its own motion, and shall, upon motion made by or on behalf of the tenant, do either of the following if the tenant’s ability to pay the agreed rent is materially affected by the tenant’s deployment on active duty:**

**(1) Stay the proceedings for a period of 90 days, unless, in the opinion of the court, justice and equity require a longer or shorter period of time.**

**(2) Adjusts the obligation under the rental agreement to preserve the interest of all parties to it.**

**(c) In order to be eligible for the benefits granted to service members under this Section, a service member or a member of the service member’s family who resides with the service member must provide the landlord or mobile home park operator with a copy of the military or gubernatorial orders calling the service member to active duty and of any orders further extending the service member’s period of active duty.**

**(d) If a stay is granted under this Section, the court may grant the landlord or mobile home park operator such relief as equity may require.**

The new Illinois Patriot Act ALSO impacts interest rates charged to active duty service people, by amending the Interest Act (815 ILCS 205/1 *et seq.*; not ordinarily addressed in writings by this author), with the addition of new Section 4.05. Whether this will impact associations that charge interest for late assessments is subject to interpretation (as are most laws), but at least one should be aware of this immediately-effective law.

**4.05. Military personnel on active duty; limitation on interest rate.**

**(a) In this Section:**

**“Active duty” means active duty pursuant to an executive order of the President of the United States, an act of the Congress of the United States, or an order of the Governor.**

**“Obligation” means an retail installment sales contract, other contract for the purchase of goods or services, or bond, bill, note, or other instrument of writing for the payment of money arising out of a contract or other transaction for the purchase of goods or services.**

**“Service member” means a member of the armed services or reserve forces of the United States or a member of the Illinois National Guard.**

**(b) Notwithstanding any contrary provision of State law, but subject to the federal Servicemembers Civil Relief Act, no creditor in connection with an obligation entered into on or after the effective date of this amendatory Act of the 94<sup>th</sup> General Assembly, but prior to a service member’s deployment on active duty, shall charge or collect from a service member who is deployed on active duty, or the spouse of that service member, interest or finance charges exceeding 6% per annum during the period that the service member is deployed on active duty.**

**(c) Notwithstanding any contrary provision of law, interest or finance charges in excess of 6% per annum that otherwise would be incurred but for the prohibition in subsection (b) are forgiven.**

**(d) The amount of any periodic payment due from a service member who is deployed on active duty, or the spouse of that service member, under the terms of the obligation shall be reduced by the amount of the interest and finance charges forgiven under subsection (c) that is allocable to the period for which the periodic payment is made.**

**(e) In order for an obligation to be subject to the interest and finance charges limitation of this Section, the service member deployed on active duty, or the spouse of that service member, shall provide the creditor with written notice of and a copy of the military or gubernatorial orders calling the service member to active duty and of any orders further extending the service member’s period of active duty, not later than 180 days after the date of the service member’s termination of or release from active duty.**

(f) Upon receipt of the written notice and a copy of the orders referred to in subsection (e), the creditor shall treat the obligation in accordance with subsection (b), effective as of the date on which the service member is deployed to active duty.

(g) A court may grant a creditor relief from the interest and finance charges limitation of this Section, if, in the opinion of the court, the ability of the service member deployed on active duty, or the spouse of that service member, to pay interest or finance charges with respect to the obligation at a rate in excess of 6% per annum is not materially affected by reason of the service member's deployment on active duty.

### **III. EFFECTIVE JANUARY 1, 2006**

New subsections were added to the CPAct, restricting charge-backs to unit owners of certain collection costs, by Public Act 94-0384, as follows:

**9.2 (c) Other than attorney's fees, no fees pertaining to the collection of a unit owner's financial obligation to the Association, including fees charged by a manager or managing agent, shall be added to and deemed a part of an owner's respective share of the common expenses unless: (i) the managing agent fees relate to the costs to collect common expenses for the Association; (ii) the fees are set forth in a contract between the managing agent and the Association; and (iii) the authority to add the management fees to an owner's respective share of the common expenses is specifically stated in the declaration or bylaws of the Association.**

It holds true for non-condominium common interest communities, as well, under another new subsection added to the CPAct by Public Act 94-0384:

**18.5(c)(8) Other than attorney's fees, no fees pertaining to the collection of a unit owner's financial obligation to the Association, including fees charged by a manager or managing agent, shall be added to and deemed a part of an owner's respective share of the common expenses unless: (i) the managing agent fees relate to the costs to collect common expenses for the Association; (ii) the fees are set forth in a contract between the managing agent and the Association; and (iii) the authority to add the management fees to an owner's respective share of the common expenses is specifically stated in the declaration or bylaws of the Association.**

Public Act 94-0384 also ventured into mechanic's lien territory with the addition of the following power and duty of condominium boards of managers:

**18.4 (r) To accept service of a notice of claim for purposes of the Mechanics Lien Act on behalf of each respective member of the Unit Owners' Association with respect to improvements performed pursuant to any contract entered into by the Board of Managers or any contract entered into prior to the recording of the condominium declaration pursuant to this Act, for a property containing more than 8 units, and to distribute the notice to the unit owners within 7 days of the acceptance of the service by the Board of Managers. The service shall be effective as if each individual unit owner had been served individually with notice.**

#### **IV. NO CAP ON LATE FEES:**

The Governor vetoed Senate Bill 1915, which would have capped late fees for associations by the addition of a provision at the end of Section 18 of the CPAct. On August 19, 2005, the Governor wrote:

**August 19, 2005**

**To the Honorable Members of the**

**Illinois Senate**

**94th General Assembly**

**Pursuant to Article IV, Section 9(b) of the Illinois Constitution of 1970, I hereby veto**

**Senate Bill 1915, entitled "AN ACT concerning condominiums." Senate Bill 1915 limits the amount a condominium association can charge for late payments on monthly assessments. Condominium Associations are run by the owners themselves and ought to be given the freedom to determine the amount of late fees to be assessed. The Association is uniquely qualified to determine the economic impact of late payments and the incentive value of these penalties; in this case, one size does not fit all.**

***ALERT... ALERT... ALERT... ALERT... ALERT... ALERT... ALERT... ALERT***

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*August 24, 2005*

**For this reason, I hereby veto and return Senate Bill  
1915.**

**Sincerely,**

**ROD R. BLAGOJEVICH**

**Governor**

The new laws specifically or possibly address various aspects of operations of associations and developers. For specific legal advice as to the impact of these laws on your association or your development company, contact your legal advisor. Nothing in this Alert is or is intended to be legal advice, but merely timely information about new laws. **THIS ALERT MAY BE COPIED FOR DISTRIBUTION, BUT IT MUST BE DONE IN ITS ENTIRETY, ONLY, AND WITH ALL ATTRIBUTION INTACT.**

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