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An Overview of the Common Interest Community Association Act

Effective as of January 1, 2014

By: Lara A. Anderson



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On July 29, 2010, the Illinois Common Interest Community Association Act (“CICAA”) was signed into law and became effective. While not as comprehensive as the Illinois Condominium Property Act, CICAA does address important areas of community association governance and operations and, therefore, it is important for property managers, board members and residents of community associations to be familiar with CICAA.

This article will provide an overview of CICAA, point out some of the ways it differs from the Illinois Condominium Property Act and identify matters of concern for common interest community associations.

Associations Covered by CICAA:

CICAA governs common interest communities which it defines as:

“real estate other than a condominium or cooperative with respect to which any person by virtue of his or her ownership of a partial interest or a unit therein is obligated to pay for the maintenance, improvement, insurance premiums or real estate taxes of common areas described in a declaration which is administered by an association” and may include “an attached or detached townhome, villa, or single-family home. A ‘common interest community’ does not include a master association.”

The original version of CICAA included “master associations” in the definition of a “common interest community.” However, this term was removed from the definition in 2011 and the phrase, “*a ‘common interest community’ does not include a master association*” was added. The reason for the amendment was to resolve conflicts between CICAA and Section 18.5 of the Illinois Condominium Property Act (“ICPA”) which specifically applies to master associations.

Section 18.5 of the ICPA generally defines “master association” as a nonprofit or unincorporated association that exercises the powers of member associations on behalf of one or more condominiums or for the benefit of unit owners of one or more condominiums pursuant to a declaration.

The amended definition of “common interest community” generally encompasses all homeowner associations, community associations and townhome associations which are not subject to the ICPA. Generally, an association is subject to the ICPA when it states within the association’s declaration that it has been submitted to the provisions of the ICPA. CICAA specifically excludes condominium associations, cooperatives, and master associations.

Applicability of CICA:

CICA covers all common interest community associations, whether or not incorporated as a not for profit corporation, except those:

- Incorporated under the General Not for Profit Corporation Act with less than 10 units;
or
- Incorporated under the General Not for Profit Corporation Act with annual budgeted assessments of \$100,000 or less.

Associations which fall into either of these exceptions may elect to be covered by CICA by a majority of its board and members.

Controlling Provisions:

One difference between CICA and the ICPA is that, unlike the ICPA, CICA does not contain an affirmative statement that if a particular provision in an association's declaration conflicts with it, that provision in the declaration is void as against public policy and ineffective. Rather, various sections of CICA specifically provide that if a particular provision in an association's declaration or bylaws conflict with CICA, the association's declaration or bylaws control.

Until a court of law rules otherwise, it appears that the absence of specific language in other provisions in CICA means that CICA controls if those other provisions conflict with an association's declaration or bylaws. However, a board should consult with its association's attorney, if a provision in their declaration or bylaws conflict with CICA.

General Provisions:

- Every common interest community association must have a recorded declaration and bylaws and any amendment to the declaration or bylaws must be recorded to be valid. Associations that do not currently have recorded bylaws should act promptly to record them or risk being precluded from enforcing them.
- The association can only have one class of membership unless the declaration or bylaws of the association provide otherwise.
- The board has the power, after providing notice and an opportunity to be heard, to levy and collect reasonable fines from members for violations of the declaration, bylaws and rules and regulations of the association.
- The bylaws of a common interest community association shall provide for the maintenance, repair and replacement of the common areas and payment thereof, including a method of approving payment vouchers.
- The provisions of CICAA, the declaration, bylaws, other community instruments, and rules and regulations are deemed to be incorporated into any lease executed or renewed after July 29, 2010.
- For any lease entered into after July 29, 2010, the member is required to provide the board with a copy of the signed lease or, if the lease is oral, a memorandum of the lease, no later than the date of occupancy or 10 days after the lease is signed, whichever occurs first.

- If an association that currently permits leasing amends its declaration to prohibit leasing, it must allow Section 501(c)(3) non-profit members that are leasing at the time of the amendment to continue to lease until the member sells the unit.
- Errors, omissions and scrivener's errors in declarations and other community instruments may be corrected by an amendment to the document approved by two-thirds of the board or by a majority of the members. If the error is corrected by an amendment approved by two-thirds of the board, then upon petition of members with 20% of the votes of the association received within 30 days of the board action, the board shall call a meeting of the members within 30 days to consider the board action. Unless a majority of the votes of the members are cast to reject the action, it is ratified.
- The board of community association has standing and capacity to act in a representative capacity in relation to matters involving the common areas or more than one unit, on behalf of the members or unit owners.
- A provision in the declaration limiting ownership, rental or occupancy of a unit to a person 55 or older will not violate the Illinois Human Rights Act.
- A board may not prohibit the display of the American flag or a military flag, or both, or the installation of a flagpole for such flags, on or within the limited common areas and facilities of a member or on the immediately adjacent exterior of the building in which the unit of a member is located. A board, however, may adopt reasonable rules regarding the placement and manner of display of the flags and the location and size of flagpoles.

Board and Board Member Provisions:

The original version of CICAA required that at least one-third of the board members' terms expire each year. This requirement was removed from CICAA in 2011. Currently, any number of the board members' terms may expire each year. Other board-related requirements in CICAA include:

- An association must have at least three board members and three officers including a president, secretary and treasurer.
- Board members cannot be elected to a term of more than four (4) years but they can succeed themselves.
- Board members must be members of the association.
- There must be an election of the board at least once every twenty-four (24) months and board members are to be elected from among the membership.
- If there are multiple owners of a unit, only one owner may serve on the board at a time.
- The board must meet at least four times annually.
- Board members serve without compensation unless the community instruments provide otherwise.
- Vacancies can be filled by the vote of two-thirds of the remaining board members until the next annual meeting. CICAA also provides a procedure for members to fill a vacancy for the balance of the term.

- A board member may be removed by a two-thirds vote of the members at a duly called special meeting.
- A board member may not enter into a contract with a current board member or entity in which the board member or his or her immediate family has 25% or more interest without providing notice to the members and giving them an opportunity to vote on the contract as further provided in Section 1-30(b) of CICAA. For purposes of this section, a board member's immediate family is defined as the board member's spouse, parents and children.

Meeting Provisions – Board Member Meetings:

One significant provision in CICAA that is not in the ICPA is that the board of a common interest community association must reserve a portion of the board meeting for comments by the members. While this provision appears to encourage communication between the board and members, it does not force such communication. The amount of time allotted to member comments and the order in which the member comment period occurs during the meeting are within the sole discretion of the board.

Another difference between CICAA and the ICPA, are the notice requirements for regular board meetings. Under the ICPA, notice of all board meetings are to be sent by mail, by personal delivery or by posting in conspicuous places at least forty-eight hours prior to the meeting. Under CICAA, notice for board meetings of common interest community associations must be sent “using a prescribed delivery method” or by posting in conspicuous places at least forty-eight hours prior to the meeting.

A “prescribed delivery method” is defined as “mailing, delivering, posting in an association publication that is routinely mailed to all members, or any other delivery method that is approved in writing by the member and authorized by the community instruments.” This provision allows a common interest community association to provide notice in a newsletter, if one is routinely mailed to all members, or by electronic means such as e-mail if approved by the member and allowed by the community instruments.

Other board meeting provisions:

- Notice of board meetings concerning the adoption of the proposed annual budget, regular assessments or a separate or special assessment must be given through a prescribed delivery method within 10 to 60 days prior to the meeting.
- CICAA requires meetings of the board to be open to the members except for those portions held to discuss (a) litigation; (b) employment issues; (c) violations or assessment delinquencies; or (d) third party contracts.
- Unlike the ICPA, CICAA does not require that the board allow members to record open meetings. Unless the association’s declaration or bylaws provide otherwise, a board may prohibit the recording of any open meetings.
- Special meetings of the board may be called by the president, by 25% of the members of the board, or by any other method that is prescribed in the community instruments.

Meeting Provisions – Membership Meetings:

- Notice of membership meetings must be given through a “prescribed delivery method” no less than 10 days or more than 30 days prior to the meeting and must provide the time, place and purpose of the meeting.
- Special meetings of the members may be called by the president, the board, 20% of the members of the board or by any other method that is prescribed in the community instruments.
- CICA provides that twenty percent of the members constitute a quorum unless the association’s governing instruments provide a lesser amount. Therefore, a quorum cannot be more than twenty percent even if the community instruments call for a larger number.

Election and Voting Provisions:

- The membership is required to hold an annual meeting. CICAA states that the board “may be elected at the annual meeting.” This opens the door to board elections by mail or other means.
- There must be an election of the board at least once every twenty-four (24) months and board members are to be elected from among the membership.
- If an election is not held within 90 days of the date specified in the association’s bylaws, twenty percent of the members may bring an action to compel compliance with the election requirements.
- Members can vote by proxy, in person or by submitting an association-issued ballot by mail or other means authorized in the declaration or bylaws. Proxies may be executed by the member or the member’s duly authorized attorney in fact.
- A member present at an election is entitled to cast the vote for that unit.
- The association can conduct a secret ballot if they have adopted appropriate rules for it, including the verification of the status of a member issuing a proxy or casting a ballot.
- If an association conducts an election by secret ballot, candidates or their representatives have the right to be present at the counting of such ballots.

Financial Provisions:

- Each member is to receive, through a prescribed delivery method, at least 30 days but not more than 60 days prior to its adoption, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes.

- The Board is required to:
 1. Provide all members with a reasonably detailed summary of the receipts, common expenses and reserves for the preceding year;

AND

 2. EITHER
 - (a) make an itemized accounting available for review;

OR
 - (b) provide a consolidated annual independent audit report.

- Except for assessments for expenditures relating to emergencies or mandated by law which may be adopted by the board without membership approval, CICAA provides a procedure, similar to the one in the ICPA, for the members to reject a budget or separate assessment that will result in an increase of more than 115% of the sum of the previous year's assessments. An "emergency" means a danger to or a compromise of the structural integrity of the common areas or any of the common facilities or a danger to the life, health or safety of the membership.
- Assessments for additions and alterations to the common areas not included in the adopted budget are subject to the approval of a majority of the total members at a meeting called for that purpose.
- The board may adopt assessments payable over more than one year.
- A managing agent's fee related to the collection of assessments may only be added to a member's account if: (a) the fees relate to the costs to collect common expenses for the association; (b) the fees are set forth in a contract between the managing agent and the association; and (c) the authority to add the management fee to the unit owner's account is specifically stated in the declaration or bylaws.

- Collecting assessments in foreclosure cases:

Section 18.5(g-1) of the ICPA applies to common interest community associations. Section 18.5(g-1) of the ICPA allows a common interest community association to collect up to six months of common expenses and court costs from the purchaser of unit at a judicial foreclosure sale (other than the mortgagee) or the purchaser from the mortgagee. The common expenses that may be collected are those that accrued the six months immediately preceding the institution of an action to enforce the collection of assessments.

Section 18.5(g-1), states:

“(g-1) The purchaser of a unit of a common interest community at a judicial foreclosure sale, other than a mortgagee, who takes possession of a unit of a common interest community pursuant to a court order or a purchaser who acquires title from a mortgagee shall have the duty to pay the proportionate share, if any, of the common expenses for the unit that would have become due in the absence of any assessment acceleration during the 6 months immediately preceding institution of an action to enforce the collection of assessments, and the court costs incurred by the association in an action to enforce the collection and that remain unpaid by the owner during whose possession the assessments accrued. If the outstanding assessments and the court costs incurred by the association in an action to enforce the collection are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments that accrued before he or she acquired title. The notice of sale of a unit of a common interest community under subsection (c) of Section 15-1507 of the Code of Civil Procedure shall state that the purchaser of the unit other than a mortgagee shall pay the assessments and court costs required by this subsection (g-1).”

Record Keeping and Production Requirements:

CICAA's record production requirements are very similar to those of the ICPA. CICAA requires the Board of an association to maintain certain records of the association and make them available for examination and copying at convenient hours of weekdays by any member. It also allows the Board to charge a reasonable fee for the cost of retrieving and copying properly requested records.

If the Board receives a written request for records and does not respond within thirty days, it is considered a denial. If the association denies a request or does not make available properly requested documents within thirty days, the member may seek relief in court. If the court finds that the documents were not provided due to the acts or omissions of the board, the owner will be entitled to an award for their attorneys' fees.

The following documents are the ones that the Board must maintain and make available for examination and copying:

- Declaration, bylaws and other community instruments;
- Articles of incorporation;
- Annual reports;
- Rules and regulations;
- Detailed and accurate records in chronological order of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred;

- Contracts, leases and other agreements entered into by the board; and
- Minutes of all meetings of the board for the last 7 years.

Under CICA, if the member provides a written statement of a proper purpose, the Board must also make available to members for examination and copying: ballots and proxies and any other corporate accounts and records not listed above.

In the event of any resale of a unit in a common interest community association by a member, the board is obligated to make certain documents available for inspection to the prospective purchaser. This provision is similar to the disclosure requirements of Sections 22.1 of the Illinois Condominium Property Act.

CICA requires the board to furnish the following the information to a prospective purchaser within thirty days after receiving a written request:

- Declaration, other instruments and any rules and regulations;
- A statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing;
- A statement of any capital expenditures anticipated by the association within the current or succeeding two fiscal years;
- statement of the status and amount of any reserve or replacement fund and any other fund specifically designated for association projects;

- A copy of the statement of financial condition of the association for the last fiscal year for which such a statement is available;
- A statement of the status of any pending suits or judgments in which the association is a party; and
- A statement setting forth what insurance coverage is provided for all members by the association.

Previously, common interest community associations were also required to provide “a statement that any improvements or alterations made to the unit, or any part of the common areas assigned thereto, by the prior member are in good faith believed to be in compliance with the declaration of the association.” This requirement was removed by Public Act 97-0605.

The above information is required to be furnished within 30 days after receiving a request for such information. The board may charge the seller a reasonable fee covering the direct out-of-pocket cost of copying and providing such information.

Fidelity Insurance Provisions:

CICAA requires associations with thirty or more units and their management companies to maintain fidelity insurance. Fidelity insurance (or a fidelity bond) protects associations from loss of money resulting from crime such as fraud and embezzlement. The Community Association Manager Licensing and Disciplinary Act requires community association managers to maintain fidelity insurance for any associations they manage with more than ten units. Additionally, Section 18.7 of the Illinois Condominium Property Act requires that community association managers maintain fidelity insurance for any associations with 6 or more units. Association boards should be sure to comply with all three Acts.

Act	Number of Units	Amount of Fidelity Insurance
Common Interest Community Association Act	30 or more	Maximum amount of coverage that is commercially available or reasonably required.
Community Association Manager Licensing and Disciplinary Act	More than 10 units	Not less than all moneys under control of the supervising community association manager
Section 18.7 of the Illinois Condominium Property Act	6 or more	Not less than all monies of the association in the custody or control of the community association manager.

New Community Associations:

- Several provisions of CICAA only apply to associations that recorded their declarations after July 29, 2010, such as the provisions regarding the turnover. The provisions in CICAA regarding the election of the initial board and the developer's obligations only apply to associations whose declarations are recorded on or after July 29, 2010. There are no provisions addressing the developer or turnover for associations who declarations were recorded prior to July 29, 2010.
- For associations whose declarations are recorded on or after July 29, 2010, the election of the initial board is to be held no later than 60 days after the earlier of (a) sale of 75% of the units; or (3) three years after the recording of the declaration.

Boards attempting to comply with CICAA, should consult with an attorney. Additionally, common interest community associations that have declarations and/or bylaws that conflict with any of CICAA's provisions should consider amending their governing documents. If you have any questions about CICAA, your association's community instruments or would like assistance in complying with CICAA, please contact us at Fullett Rosenlund Anderson PC.

Fullett Rosenlund Anderson PC

Fullett Rosenlund Anderson PC (FRA) is dedicated to providing the highest caliber of legal services to condominium associations, master associations and common interest community associations throughout Northern Illinois. The firm offers a full range of transactional, assessment collection, litigation and corporate counseling services as well as educational/training programs for its clients.

FRA's work in both transactional and litigation matters is tailored to the individual needs of each association client. The firm prides itself on its commitment to providing personal services and observing old-fashioned business values in a world increasingly dependent on impersonal, electronic communications. While FRA remains on the cutting edge of technology with state-of-the-art data management systems and portal capabilities, its attorneys strive to develop close personal relationships with their clients and become each association's trusted counselor.

The principals of FRA include Stuart A. Fullett, Scott A. Rosenlund, Lara A. Anderson and Paul Fosco. All four owners are veterans in the field with many years of experience and have extensive knowledge of condominium and community association law. They have authored numerous articles and are frequently asked to speak before various groups and organizations on condominium and community association law. They are all members of CAI-Illinois and ACTHA as well as a number of bar associations and professional organizations.

Fullett Rosenlund Anderson PC's main office is in Lake Zurich; however, it maintains offices in downtown Chicago and Homewood to further serve the needs of its clients. For more information about how Fullett Rosenlund Anderson PC can serve your association, please contact us at:

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