2021 Proposed Legislation
Affecting Condominium and Common Interest Communities

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The 2019-2020 Legislative Session was understandably uneventful for condo and common interest communities. 2021 started with over two dozen relevant bills, of which a handful are keeping pace towards possibly becoming law. The following bills have passed out (or appear likely to do so) of the chamber of origin on to the other chamber for approval (which must be accomplished by the end of May).

HOUSE BILLS (HB)

HB 58, as currently amended, provides that if the declaration of a condominium, common interest association, unit owners, residential housing cooperatives or master associations has an "unlawful restrictive covenant" (defined as a covenant or restriction that would be void under Section 3-105 of the Illinois Human Rights Act because it purports to forbid or restrict transfer, occupancy or leasing of real estate based on race, color, religion or national origin), then that unlawful restrictive covenant can be modified by a majority vote of the board of the association without the need for approval of the unit owners/members regardless of any provision in the declaration or other governing documents. If the board receives a written request by an owner or member to file an (unlawful) restrictive covenant modification, then the board must investigate the matter within 90 days and if determined to be unlawful, the board shall execute and file a modification; however, if the board fails to do so, then the requesting owner/member can bring a legal action to compel the board to do so and, if successful, the owner/member can recover his/her attorney's fees and costs from the association. The board must provide a copy of the original restrictive covenant and the modification to all owners/members within 21 days after receiving a copy of the recorded documents. Upon receipt of the restrictive covenant modification, the recorder of deeds must submit the modification to the States Attorney who shall review the modification and the original instrument to determine whether there is an unlawful restrictive covenant and whether the modification correctly eliminates only that unlawful restriction; the recorder may not record the modification unless the States Attorney determines that the modification is appropriate. The effective date of the modification will be on the same date as the original declaration.

COMMENT: Must the restriction be unlawful as specifically written or can it be deemed unlawful "as applied" even though the text is not necessarily unlawful?

HB 644, as currently amended, would amend the Homeowners' Energy Policy Statement Act to modify the definition of "solar storage mechanism" to include batteries; to require that a condominium, common interest or homeowners' association must adopt an energy policy statement within 90 days after receipt of a member's request for a policy statement; that approval

of an application to install or use a solar energy system must be processed within 75 days of submission of the application; to limit the association's ability to control the orientation of the installation; and to provide that the Act shall not apply to any building having a shared (or common element/area) roof or that is greater than 60 feet (currently 30 feet) in height.

HB 731 would make numerous amendments to the Community Association Manager Licensing and Disciplinary Act, including that licensees provide a postal (not P.O. Box) and e-mail address to the Department of Financial and Professional Regulation to be used as the address of record; expands the definition of management services; provides that there cannot be any private right of action for damages or to enforce the Act or rules (except as otherwise expressly provided in the Act); creates provisions regarding licensure and qualifications for community association management firms; prohibits illegal discrimination; specifies a statute of limitations of 5 years; and extends the repeal (sunset) date to January 1, 2032.

COMMENT: Many changes, most of which are logical and appropriate.

SENATE BILLS (SB)

SB 215 is the same as HB 644.

SB 636 would amend the Illinois Condominium Property Act to allow the imposition of a residency requirement for Board members, by requiring that a majority of members (or such lesser number specified in the declaration/bylaws amendment) occupy their units as their "primary" residence, but in any event the declaration/bylaws may not require more than a majority of Board members occupy their units as their "principal" residence.

COMMENT: What is the difference between "primary" and "principal"? Also, is this a second class of ownership (based on residency) being created in contrast to the mandate of "one class of ownership"? For associations with significant non-resident owners, will this law result in a shortage of eligible candidates for the Board?

Stay tuned for further developments.