

ILLINOIS CONDOMINIUM LAW

2010

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This 2010 edition revises and replaces the 2007 handbook.

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**Cooperative, Condominium,
and Homeowners' Association
Litigation**

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Currently, the trend is toward reducing association litigation by encouraging alternative dispute resolution. Section 32 of the Condominium Property Act (765 ILCS 605/32) provides for mediation or arbitration of disputes not exceeding \$10,000 although it is not a mandatory procedure.

The number of cases filed is minimal in comparison to the relative numbers of people living in associations.

C. [10.6] Operating Documents

In order to create a cooperative, condominium, or homeowners' association, there must be a unanimous subscription to an underlying document by the owners of the property — a charter, bylaws, a trust agreement and/or proprietary lease (co-op), or a recorded set of covenants and bylaws that run with the land. Anything less creates a "voluntary" association in which membership is not mandatory and rules are not enforceable against nonmembers.

In order to create a condominium association, the association must follow statutorily prescribed requirements. By recording a declaration, plat, and building floor plan, a declarant submits the property to the provisions of the Condominium Property Act. 765 ILCS 605/4.1. Consequently, all owners of record are subject to these covenants, as well as all applicable statutes.

The procedure for creating a homeowners' or property owners' association is similar though not identical. The legal documents define (1) which property is owned and by whom; (2) responsibilities of ownership; (3) rights of membership; (4) a system of protective standards; (5) management and maintenance; (6) election procedures; (7) means for financing association operations; (8) transition of control from the developer to the members; and (9) amendment procedures. In addition to the more common types of developments with residential dwelling units situated on lots that are owned in fee simple and that are subject to recorded covenants, there are associations for "zero-lot line" communities, boat slips, recreational lots, etc., and leasehold communities where the dwelling unit or home is situated on a lot owned by a third party and leased for "99 years."

The legal documents are the primary source for judicial enforcement of association rights, whether recorded covenants or association-adopted rules. One type of covenant that was prevalent in the 1970s and early 1980s is the right of first refusal. A key element in cooperative bylaws to limit rights of stock purchasers, the right of first refusal has consistently been upheld by the courts since *Gale v. York Center Community Cooperative, Inc.*, 21 Ill.2d 86, 171 N.E.2d 30 (1960). In practicality, the right of first refusal is difficult to administer on a day-to-day basis, and in the late 1980s it became increasingly less popular. Further, courts have begun to scrutinize the reasons behind a board's denying ownership rights. An additional area of board liability has now been created as a result of *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184 (7th Cir. 1982), in which the court held that an association's exercise of the right of first refusal was racially motivated and constituted a violation of the Civil Rights Act of 1966 and the Fair Housing Act. The association and the board were the subject of a sizeable judgment that was not covered by directors and officers insurance.