

by Pamela Dittmer McKuen

What The New Laws Mean For Association Boards & Managers

The year 2016 has been an active one for legislators with community associations on their minds. Myriad new laws have gone into effect—or will be soon—that impact how boards conduct the business of running their Associations. Some are optional, and others are mandatory. And, frankly, a few could use further tweaking.

Here we take a look at some of the most significant changes and reactions from industry stakeholders:

» **The Palm II restrictions regarding executive session are relaxed.** The 2014 Illinois Appellate Court decision in the case of Palm vs. 2800 Lake Shore Drive Condominium Association, also known as Palm II, stirred quite a ruckus. It prohibits “working sessions” as well as casual discussions of association matters by more than a quorum of board members. The decision also limited the

topics which boards were permitted to discuss during executive session to pending or potential litigation; employment issues; and violations of governing documents.

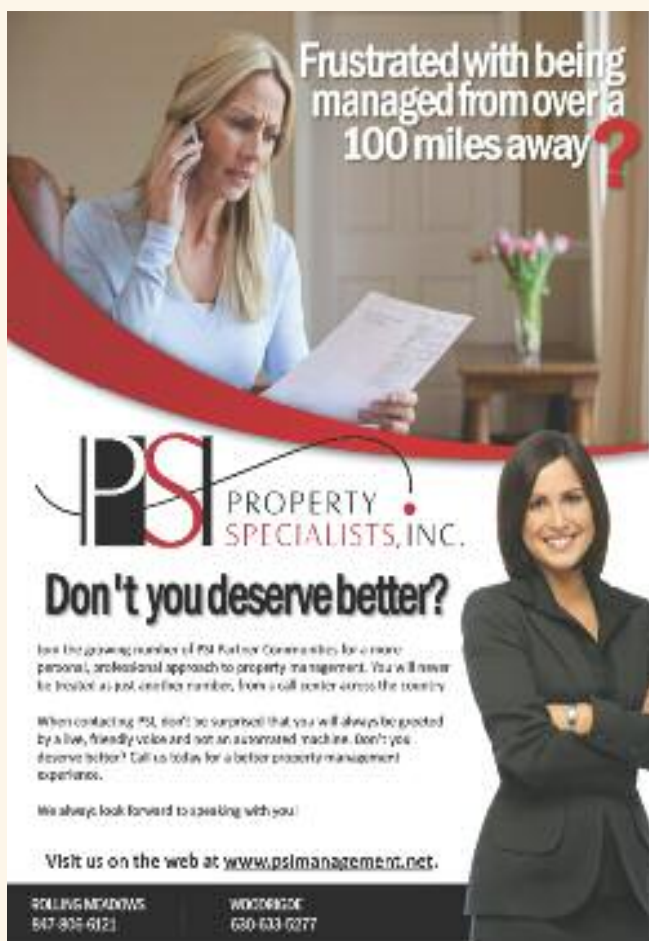
An amendment to both the Illinois Condominium Property Act and the Common Interest Community Association Act relaxes some of the Palm II restrictions. As of Jan. 1, 2017, board members may privately meet to discuss the following topics without providing notice to owners: pending or probable litigation, third-party contracts and vendor per-

(Elsewhere in this issue, we give in-depth explanations of the new laws. A legal update article on page 7 covers several updates to the Illinois Condo Act including board communication, budget notices and emergency decisions. An article on page 15 covers the Ombudsman Act updates and article on page 34 explains the Chicago Short-term Rental Ordinance.)

formance, violations of governing documents, and any owners’ unpaid assessments. Boards also may use executive session to interview prospective employees and service-providers and to meet with their legal counsel.

Community Association property management professionals in general are relieved to see the expanded topics approved without the need for additional noticing. The Palm II decision makes some excellent points, but it also lays some burdens on board members and managers alike.

“I believe that the overall intent of the Palm case was to reinforce and highlight parts of the Condo and CISA Act (open meetings, transparency, proper communication) and that is laudable,” said Michael Baum, President of Baum Property Management AAMC in



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Aurora. “However, strict adherence of the Palm case were overkill and borderline ridiculous that made the practical operation of an association semi-impossible. Many of these new provisions are practical and useful remedies that will make the operations of a volunteer board much less cumbersome.”

“With strict enforcement following the Palm II decision, we have noticed the number and duration of board meetings increase,” said Asa Sherwood, president at FirstService Residential in Chicago. “Board members are volunteers who typically don’t have time for additional meetings, not to mention the additional time commitment these meetings place on property managers.”

The expanded use of workshops will allow boards to discuss specific association issues between meetings and should allow board members to come to meetings better prepared and cut down on the duration of their meetings, he added.

“With the changes now, we hope to be able to have discussions prior to a board meeting that can assist everyone understand what the issue is and what the possible solutions are,” said

Marcia Caruso, president at Caruso Management, a division of Real Manage, in Naperville. “Research and interviews of vendors should be an easy process, not one where board members are afraid to talk to each other for fear of breaking the law. Of course, it is critical that any decision of the board be made in an open meeting.”

“These are practical, much-needed changes, but they do not go far enough insofar as making it easy for board members, who are volunteers, to operate their association on a daily basis,” said Michael Rutkowski, president at First Community Management in Chicago.

» **Chicago associations get help banning short-term rentals.** The city of Chicago adopted an innovative new ordinance that regulates short-term rentals and the websites like Airbnb and VRBO that broker them. Perhaps the most significant provision of the ordinance for condominium associations is the ability to be included on a Prohibited Building List. The city will monitor home-sharing sites and take action against owners who rent their units for short-term stays.

Rutkowski has mixed feelings about the

ordinance. “While I don’t like this ordinance from the standpoint that it is just another way for the city to jump on this new bandwagon of revenue, the fact that you can register as a Prohibited Building is fantastic,” he said. “Ninety-nine percent of the associations we manage prohibit short-term renting. However, monitoring and proving such activity is extremely difficult.”

“We’re happy about it, obviously, for the security of our buildings and residents,” Gary Kass, president of Kass Management in Chicago said. “We need to know who is coming and going.”

Kass Management is advising its client associations to be added to the Prohibited Building List, and Kass believes most will do so. For those whose declarations or bylaws specifically prohibit all leasing or short-term leasing, it is a simple matter. Others will have to amend their governing documents, as is spelled out in the article on short term rentals on page 34.

“For other buildings, if you’re doing a short-term rental and the building has move-in and move-out fees, you can make an argument those fees would be applicable, which

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would make the cost prohibitive,” Kass said.

» **Board members can participate via teleconference.** The definition of “acceptable technological means” for both condominium and common interest communities was expanded to include any acceptable technological means as long as all persons participating in the meeting can communicate with each other. The effective date is January 1, 2017.

“This is a very mobile world, and by allowing board members the flexibility of

calling in to a board meeting will really open the available pool of potential board members,” Sherwood said. “We have board members who add tremendous value to their associations, but due to time constraints can’t always commit to physically attending board meetings. By calling in, a board member can still add value while not giving up as much personal time. Most importantly, there is no transparency lost to the ownership.”

Allowing board members to participate

electronically will greatly assist boards in making the required quorum, Kass said.

» **Condo boards have more time, fewer budget mailings.** The Illinois Condo Act was amended to provide owners must receive copies of proposed annual budgets at least 25 days prior to adoption rather than the previous requirement of 30 days. The new math, which went into effect June 1, 2016, works out best for boards that meet monthly. Giving a 30-day notice means budgets must be finalized the month before that, which is about 60 days before the adoption meeting. Or they must schedule an interim meeting. With a 25-day notice, boards can finalize their budgets the month before the adoption meeting and still have a few days to prepare the mailing.

In addition, multiple mailings are no longer necessary to comply with the notice requirement of at least 10 days and not more than 30 days before the adoption meeting.

“Saving money starts one step at a time, and again common sense prevails,” Caruso said.

“The budget timeframe is a good one as timing has always been an issue for getting budgets approved,” said Tom Skweres, regional vice president at American Community Management in Downers Grove. “It avoids the rush, rush of getting a budget approved at the last minute.”

» **Boards can make emergency decisions.**

The Illinois Condo Act was amended June 1, 2016, to empower and support boards to act in cases of emergency, answering questions raised by the Palm II verdict, which made no such provision. The amendment allows boards to take action but must notify owners within seven business days of the occurrence of the event and the actions taken to address it.

“I think the amendment to empower boards to act in the event of an emergency, then have a meeting to ratify their decisions is basically good,” Skweres said. “But I would have liked the amendment to give the board the opportunity to ratify at their next scheduled board meeting instead of calling a special meeting. There is a cost involved for the board to notify the owners. Instead of having to do this for a special meeting and then again for their regular board meeting, this issue can be taken care of in the same meeting. The emergency is already over and hopefully taken care of, so I don’t know why a ratifying decision can’t wait.” ■



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