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Supporters of stalled condo board bill will try again next year

LOOP NORTH NEWS

78°

Condominium Living

Supporters of stalled condo board bill will try again next year

A bill in the Illinois House of Representatives was going to try to level the playing field between condo boards and unit owners but it quickly stalled – despite testimony from two Chicago-area unit owners with personal experience of how bad boards can get.

By Steven Dahlman

22-Aug-16 – Supporters will keep trying to get a bill passed that they say will help unit owners who are suing their condominium association.

House Bill 4489, along with two related amendments to the Illinois Condominium Property Act, was introduced on January 22 by 58th District Representative **Scott Drury** and assigned to the eleven-member Judiciary-Civil Committee but on March 2 it lost a motion, 3-8, for recommendation to the full House.

Chicago attorney **Norman Lerum**, who wrote preliminary versions of the bill, says Drury is “speaking with a number of members of the...committee in the hope of making compromises on the bill and doing something that would be acceptable to the majority and then perhaps reintroducing it in the next session.”

Among the changes to the Condominium Property Act, the bill would allow a unit owner to recover legal fees if breach of fiduciary duty by a board member is proven.

While the cost to defend a lawsuit is typically paid by the condo association's insurance carrier, it is often difficult for a unit owner to recover their cost of litigation, making lawsuits too expensive for most people. And even if a unit owner can afford to sue, it can be difficult to prove a board member has failed to act in the best interest of the owner because of exculpatory clauses in the condo declaration that protect board members unless they are found to have committed malice, gross negligence, or fraud.

“That standard is not applied to other fiduciaries,” says Lerum (left). “If a trust officer, who’s a fiduciary to beneficiaries of a trust, breaches his or her fiduciary duty, the beneficiaries who’ve suffered as a result of that can plead and prove breach of fiduciary duty as required under the law but that burden of proof does not include fraud, malice, or gross negligence.”



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Supporters of stalled condo board bill will try again next year



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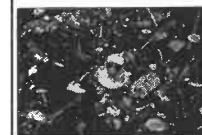


Photo: Where the losing ducks ended up



State tosses \$50,000 life preserver to underwater homeowners

20-year vision for Chicago River includes big events, better security, and swimming



Exculpatory clause protected board in case lawmakers heard about

In March, the Judiciary-Civil Committee heard of the case of a Chicago-area woman who lost her condominium unit and wound up \$400,000 in debt because her 32-unit condo association would not fix a leaky roof.

Lisa Carlson recalled for lawmakers in Springfield her seven-year ordeal with Spanish Court Two Condominium Association in Highland Park, north of Chicago.



Her lawsuit wound up appealed to the Illinois Supreme Court, which decided against Carlson, but after it was re-filed in another division, a 19th Judicial Circuit Court judge issued an opinion partially in her favor.

Circuit Judge **Margaret Mullen** said while board members breached their fiduciary duties, they were protected by the exculpatory clause in their condo declarations. Board president **Maria Cassabaum's** actions and omissions, however, were in such bad faith that Carlson was awarded \$195,000 to cover the loss of her condo unit's value, along with emotional and exemplary damages.

Although he was satisfied with the settlement, Lerum says the only winner was Kovitz Shifrin Nesbit, the law firm that represented Carlson's condo association.

"I spent a lot more time than I could ever be compensated for in that case. The Kovitz firm made so much money in fees, paid for by State Farm Insurance Company and their association and whoever. I was not made whole and I don't think Lisa Carlson was made whole. They could drag it on for another three or four years. And they never faced the risk of paying my fees and my expenses."

Disputes escalate because boards don't want to spend money

Owners can sometimes find themselves with a condo unit that needs expensive repair and a condo board composed of investors unwilling to pay for it.

"They'll just stand off, say it's your carrier's responsibility and the unit owner's carrier won't budge because they say it was caused by the association," says Lerum. "The unit owner typically is in the middle in a conflict between their own carrier and the association carrier."

The reluctance to spend money can sometimes be combined with personal animosity toward an owner. Carlson (left), for example, believes she was "targeted" by her condo board after she was injured in an elevator malfunction and Lerum discovered the elevator had not been properly certified or maintained.



Street sign will honor Redhead Piano Bar owner



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Today

Millennium Park concert. **HOMME** is an experiment in voice and sound by Sima Cunningham and Macie Stewart who joined forces in 2014, inspired by the free improvisational music scene in Chicago, and influenced by folk and avant-garde rock. 6:30 p.m., Jay Pritzker Pavilion, Millennium Park, 201 East Randolph Street. Admission: Free. [Map](#).



Friday

Take in the laughs - and dramatic nighttime views of Chicago - as popular headliner Pat McGann performs on Shoreline Sightseeing's 90-minute **Comedy Cruise** with Zanies' Comedy Club.

Last comedy cruise of the season. Tickets include opening act, headliner, and one drink ticket. A cash bar will also be available.

Departs from Shoreline's dock at Polk Bros Park at the southwest corner of Navy Pier at 8:00 p.m. Boarding will begin 15 minutes before departure. Tickets: \$49 per person. Must be 21. [Map](#). [More info](#).

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Next taxi departs...

| From | To | Time |
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| LaSalle (River North) | Ogilvie/Union (West Loop) | 6:20PM |
| LaSalle (River North) | Michigan Avenue | 6:23PM |
| Michigan Avenue | LaSalle (River North) | 6:15PM |
| Michigan Avenue | Ogilvie/Union (West Loop) | 6:15PM |
| Michigan Avenue | LaSalle (River North) | 6:30PM |
| Michigan Avenue | Ogilvie/Union (West Loop) | 6:30PM |



"It's their way of trying to edge them out," says Lerum. "They know that it's a long and hard road for a unit owner. It's an expensive road."

He says many people in such a situation will simply walk away from the unit and let the lender foreclose.

"A well-educated board that's 'lawyered up' by the association lawyers, they all know that they can rest on their laurels, they can delay it, they don't have to spend a dime, and someone else is going to be defending them, and there's no risk."

Amendments to the Illinois Condominium Property Act, believes Lerum, "have changed this to such a point where there's such imbalance against the unit owners. It almost by nature sets up an adversary system between the board and the unit owners."

Advice to unit owners: Complain to state regulators

Short of hiring a lawyer, Lerum says if a unit owner has a complaint about how their condo association is managed, he or she should contact the Illinois Department of Financial & Professional Regulation, which licenses community association managers.

"They have limited resources...but there is some regulatory enforcement power. They will field complaints about a management company and they will sometimes look into it."

City looking into complaints of Gold Coast cond owner

Also testifying in March was a unit owner from a condo association in Chicago's Gold Coast neighborhood. **Michael Novak**, a former CPA with an MBA in Finance, told lawmakers the bill would have saved him and his condo board \$1 million. He says he has looked at the books of State Parkway Condominium Association and uncovered "a massive amount of fraud." He wants a state court to appoint a custodian to manage the association's financial affairs.

More recently, Novak has the City of Chicago interested in the case. A revenue investigator for the city's Business Affairs and Consumer Protection department is looking into Novak's complaints about financial records kept by State Parkway Condominium Association.



According to a complaint filed by Novak on May 29, his condo board has refused to let him see a monthly financial report from the property manager. Novak says the report "was a standard part of the monthly financial statements...but beginning with the September 2015 financials, State Parkway stopped making this report available for inspection by unit owners."

Novak says he was told by the condo association that the records he was requesting "are not records of the association as this report is not approved by the board."

He also says he has not been allowed to inspect tax returns filed by the condo association.

- Website: [Illinois Department of Financial & Professional Regulation](http://www.ilrfpr.com)

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| Ogilvie/Union (West Loop) | LaSalle (River North) | 6:15PM |
| Ogilvie/Union (West Loop) | Michigan Avenue | 6:15PM |
| Ogilvie/Union (West Loop) | Michigan Avenue | 6:30PM |
| Ogilvie/Union (West Loop) | Riverwalk Clark Street | 6:30PM |
| Riverwalk Clark Street | Michigan Avenue | 6:38PM |
| Riverwalk Clark Street | Ogilvie/Union (West Loop) | 6:50PM |
| Riverwalk Clark Street | Michigan Avenue | 6:53PM |
| Riverwalk Clark Street | Ogilvie/Union (West Loop) | 7:05PM |

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|-----------------------------------|-----------------|
| S&P 500 | 2,172.47 ▼ 2.97 |
| NASDAQ COMPOSITE | 5,212.20 ▼ 5.49 |
| LOOP/NORTH | 37.90 ▲ 0.07 |
| Biggest Gainers & Losers | |
| OIL-DRI CORP. OF AMERICA | 37.81 ▲ 1.11 |
| EQUITY RESIDENTIAL | 65.62 ▲ 0.81 |
| ARCHER DANIELS MIDLAND CO. | 42.56 ▼ 0.76 |
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By **Steven Dahlman** | Loop North News | sdahlman@loopnorth.com

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