

by Gabriella R. Comstock - Keough & Moody PC

# 2018 Case Law and Legislative Update

## Case Law

### In re Application of Skidmore, 2018 IL App (2d) 170369 (February 14, 2018)

Court granted Petitioner a tax deed for condominium for which Petitioner had purchased delinquent property taxes. County clerk's practice of using PIN on line designated for certificate number does not violate Property Tax Code. Petitioner strictly complied with notice requirements of Code, entitling it to a tax deed.

### Board of Managers of the Northbrook Country Condominium Association v. Spiezer, 2018 IL App (1st) 170868 (February 20, 2018)

Condo Board sued Trustee to recover common expenses owed on her condo unit. Court entered default judgment and order of possession, the last such order being in January 2013. Trustee's son filed a timely notice of appeal, which court dismissed for want of prosecution. Three

years later, Trustee's son filed petition to vacate January 2013 order of possession, which court denied, and motion to reconsider, which court denied. Trustee's son then filed another notice of appeal. Motion to vacate does not create right to appeal under Rule 303. Appellate court has no authority to address issues raised in an untimely motion.

### Henderson v. Lofts at Lake Arlington Towne Condominium Association, 2018 IL App (1st) 162744 (March 16, 2018)

Plaintiff filed suit for injuries in slip-and-fall on a stoop and stairs just outside condominium entrance. Court erred in granting summary judgment for Defendants. Defendants' duty was not eliminated by evidence that dangerous "slippery-when-wet" condition was "known" to Plaintiff, because it was still reasonably foreseeable that Plaintiff might momentarily forget that condition and suffer injury. Thus, "forgetfulness or distraction" exception to open and obvious doctrine applies. Genuine

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issues of material fact exist as to whether Defendants breached duty of care and whether any such breach proximately caused Plaintiff's injuries. Court properly granted 3rd-party defendant's motion for summary judgment as to independent contractor's contribution claims against her, as there is no evidence that she had any prior knowledge or control of epoxy work.

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**Quadrangle House Condominium Association v. U.S. Bank, N.A.**, 2018 IL App (1st) 171713 (April 20, 2018)

Purchaser of a condominium unit at a judicial foreclosure sale is obligated to pay the common expenses for the unit assessed from and after the first day of the month after the date of the judicial foreclosure sale. This fixes the date when purchaser's liability for assessments begins. Payment of post-purchase assessments, whenever made, is the step necessary to confirm extinguishment of any lien created under section 9(g)(1) of the Condominium Property Act.

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**Dedic v. Board of North Shore Towers Condominium Association**, 2018 IL App (1st) 171842 (May 17, 2018)

Condominium owner sought permanent injunction to prevent condo association Board from levying a \$1.01 million special assessment to remediate all 90 balconies in her residential condo complex, and from executing a contract to perform the work. Court properly denied request for permanent injunction. Record clearly shows that raisings of 56 of the 90 balconies posed imminent safety risks to the unit owners and constituted an "emergency", and were not compliant with local building code requirement. Record showed that 80-85% of cost of remediation project had to be incurred to address only these 56 most dangerous balconies, with remaining portion of the cost being incurred for preventative maintenance.



**V&T Investment Corporation v. West Columbia Condominium Association**, 2018 IL App (1st) 170436 (May 18, 2018)

Plaintiff, a real estate investment company, was foreclosure sale purchaser of condominium unit. Condo association issued a paid assessment letter, at Plaintiff's request, stating total amount due. Plaintiff paid that amount under protest. First assessments came due the month after the foreclosure sale. Plaintiff's payment of

1st assessment was prompt, as it was made shortly after confirmation of sale, and thus their payment extinguished the prior section 9(g)(1) lien on the condo unit. Plaintiff had no obligation to pay any assessments that had accrued before it acquired title. Reversed and remanded for entry of judgment in favor of Plaintiff for a portion of payment it made under protest.





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**Geraci v. Union Square Condominium Association,**  
891 F.3d 274 (7th Cir. May 26, 2018)

In action by plaintiff-condominium owner alleging that defendant-condominium association violated Fair Housing Act by retaliating against her for submitting accommodation request based on her diagnosis of post-traumatic stress disorder (PTSD), plaintiff failed to establish viable retaliation claim, where plaintiff asserted as coercive, adverse act fact that defendant held open forum with other condominium owners and sent two litigation update letters to said owners regarding status of her FHA handicap claim against defendant. Plaintiff's claimed act of retaliation did not qualify as sufficient adverse act, since at moment that plaintiff had filed her handicap claim, her PTSD condition became public knowledge, and plaintiff's counsel conceded that information about plaintiff's handicap that was mentioned at forum or in letters did not go beyond facts contained in public records. Moreover, no federal law prevents co-owners of condominium association from knowing why their association is bearing legal costs. Also, district court did not err in allowing defendant to present expert testimony at trial on issue as to whether plaintiff's PTSD qualified as covered handicap condition under FHA, since defendant was merely responding to plaintiff's evidence that supported her claim that her condition was covered under FHA.



**Sylva, LLC v. Baldwin Court Condominium Association, Inc.,**  
2018 IL App (1st) 170520 (June 4, 2018)

Plaintiff bought condominium unit at a judicial foreclosure sale. Condominium Property Act does not require a condo association to file suit against prior owner to collect unpaid assessments from foreclosure buyer. A condo association is entitled to up to 6 months of unpaid assessments dating from the time the Association took requisite action to enforce its right to collect back assessments from foreclosure buyer, pursuant to Section 9(g)(4) of the Act.

**Radiant Star Enterprises, L.L.C. v. Metropolis  
Condominium Association,** 2018 IL App (1st) 171844  
(June 7, 2018)

Plaintiff company filed declaratory judgment action against condo association to enforce arbitration clause, seeking a ruling that association was required to arbitrate a dispute between parties, who were co-owners of property in downtown Chicago. Court properly found that under language of the parties' arbitration agreement, the party which has allegedly breached an arbitration clause as to one dispute may demand arbitration on a different, unrelated dispute.

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**Boucher v. 111 East Chestnut Condominium Association,**  
2018 IL App (1st) 162233 (June 14, 2018)

Owner of condo unit filed complaint alleging that condo board members and Association violated the Condominium Property Act by fining him for expressing his opinions about condo management. Plaintiff adequately alleged that board members violated the Act by penalizing him for expressing his opinions. Plaintiff presented evidence that could support a finding that board members violated the Act when denying his request for recording of disciplinary hearing, and that Association and board members breached fiduciary duties in failing to disclose to Plaintiff the evidence against him. A plaintiff states a cause of action against Association for violation of his right to free speech by alleging that Association precluded him from expressing his political opinion or that Association penalized him for expressing his opinions.

**Hussey v. Chase Manor Condominium Association,**  
2018 IL App (1st) 170437 (June 14, 2018)

An informal pathway behind a condo building, through and beyond a parking area to the rear entrance of the building is not a "sidewalk" under the Snow and Ice Removal Act's immunity provision for removal of snow or ice from a "sidewalk". A "sidewalk", within meaning of the Act, is limited to the municipal right-of-way, the part of the public street reserved for pedestrian use that abuts private residential property.

**U.S. Bank N.A. v. Quadrangle House Condominium Association,**  
2018 IL App (1st) 171711 (June 26, 2018)

Prompt payment by bank of post-foreclosure sale assessments, several months after purchasing a condominium unit at a judicial foreclosure sale, extinguished lien of condo association for pre-foreclosure sale assessments pursuant to Section 9(g)(3) of Condominium Property Act.

**BMO Harris Bank, N.A. v. Jackson Towers Condominium Association,**  
2018 IL App (1st) 170781 (June 29, 2018)

Bank filed foreclosure as to condominium unit and later was successful bidder at judicial foreclosure sale. Court properly dismissed declaratory judgment action filed by bank, as its payments of post-sale assessments were untimely and thus failed to confirm extinguishment of lien of condo association for delinquent presale assessments under Section 9(g)(3) of Condominium Property Act. Bank cannot use declaratory judgment process to contest validity of a lien for presale assessments that has already been satisfied by payment by bank.

**Ellison v. Fullett Rosenlund Anderson,** 2018 WL 4682336,  
United States District Court, Northern District of Illinois  
(September 28, 2018)

It violates the FDCPA when a debt collector sends notice to a

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homeowner that is misleading as to the personal responsibility for repayment of a discharged debt. The notice here, although prescribed by the Illinois Eviction Act as a prerequisite to filing the lawsuit, could be misleading to the “unsophisticated consumer.” The Eviction Act requirements can be met without violating the FDCPA by either informing the homeowner that she is not personally liable for the debt or by specifying the amount, if any, she is still personally liable for.

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### **Hometown Condominium v. Mohammed**, 2018 IL App (2d) 171030 (November 29, 2018)

Court discussed “prompt payment” and distinguished routine delays from intentional delays in payment. The Court held that Section 9(g)(3) of Condominium Property Act requires full payment of post-judicial sale assessments to extinguish the lien for pre-sale amounts.

## Legislative Changes *(effective date after 1/1/2018)*

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### **Illinois Condominium Property Act** (765 ILCS 605/1, et seq.)

Amendment to Section 18 “Contents of Bylaws”; effective 8/14/18: No substantive change.

Amendment to Section 19 “Records of the Association; Availability for Examination”, effective 8/14/18: Commas added; word “subdivisions” replaced with “subdivision”.

Amendment to Section 27 “Amendments”; Effective 8/14/18: Word “paragraphs” replaced with “paragraph”; word “this” deleted.

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### **Condominium and Common Interest Community Ombudsperson Act** (765 ILCS 615/1, et seq.)

Pursuant to the requirements contained in Section 35, all associations governed by the Condo Act or CICAA must establish and adopt a written policy for resolving complaints made by unit owners no later than January 1, 2019.

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### **Community Association Licensure and Disciplinary Act** (225 ILCS 427/1, et seq.)

Amendment to Section 25, effective 8/14/18: Members of CAMLD Board shall be for 4 years and expire at end of term. No cumulative service to exceed 10 years. Vacancy appointments made by the Secretary. Members currently serving may serve remainder of terms.

Amendment to Section 40, effective 8/14/18: Lowers minimum age for CAM licensure to 18 years.

Amendment to Section 42, effective 8/14/18: Lowers minimum age for supervising CAM licensure to 18 years.

Amendment to Section 85, effective 8/14/18: Provision regarding default on student loan as ground for disciplinary action was deleted. ■

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