

**FUTURE OF ACLPOA
IN COMPLIANCE WITH
COMMON INTEREST
COMMUNITY
ASSOCIATION ACT**

**COMMON INTEREST
COMMUNITY ASSOCIATION
ACT**

BECAME LAW

JULY 29, 2010

PUBLIC ACT 096-1400

**IMPACT OF COMMON
INTEREST COMMUNITY
ASSOCIATION ACT
(CICAA)
ON ACLPOA**

CICAA'S APPLICABILITY

“Unless expressly provided otherwise herein, the provisions of this Act are applicable to all common interest community associations in this state.”

COMMON INTEREST COMMUNITY

DEFINED BY

**CICAA SECTION 1-5,
DEFINITIONS**

“Common Interest Community means **real estate other than a condominium or cooperative with respect to **which any person by virtue of his or her ownership** of a partial interest or a unit therein **is obligated to pay for the maintenance, improvement, insurance premiums or real estate taxes of common areas described in a declaration which is administered by an association.** Common Interest Community may include, but not be limited to, an attached or detached townhome, villa, or single-family home, or master association.”**

ACLPOA DECLARATION OF COMMON PROPERTIES

“Common Properties shall mean and refer to those areas of land shown on any recorded subdivision plat of the Properties as “Tract” followed by an alphabetical designation . . . or by the designation “Open Space” or “Greenway” or other similar term intended to designate a parcel of real estate as devoted to the common use and enjoyment of the owners of the Properties; the lands within and beneath Apple Canyon Lake to the lot lines abutting thereon; and the lake dam conveyed to the Association.”

Declaration of Covenants and Restrictions, Article 1, Sect. 1(c)

ACLPOA OWNERSHIP/MEMBERSHIP

“Membership in the Association shall be the privilege of each natural person, and his or her spouse, who is the legal or equitable owner of any lot or dwelling”

ACLPOA OWNERSHIP/MEMBERSHIP

“Every Member shall have a right and easement of enjoyment in and to the Common Properties . . . and such easement shall be appurtenant to and shall pass with the title to every Lot or Dwelling.”

TITLE TO COMMON PROPERTIES AND RESERVED PROPERTIES

“The Association has acquired legal title to all of the Common Properties and all of the Reserved Properties and is the owner of all of the Common Properties and Reserved Properties”

**With the purchase of property,
one becomes part owner of all
Common Properties and
Reserved Properties and has an
obligation to fund and support
these ACLPOA Properties.**

ACLPOA STRUCTURE

ACLPOA is structured based on ownership of a Lot or Dwelling. Lots and Dwellings have always been treated equally by the Association for assessments and for rights of enjoyment.

PERSONAL OBLIGATION OF ASSESSMENTS

“Each Owner of any Lot or Dwelling by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements; . . .”

PURPOSE OF ACLPOA ASSESSMENTS

“The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and, in particular, for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, the Reserved Properties, or the Dwellings situated upon the Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.”

Compliance with CICA means property ownership does NOT provide a cafeteria menu from which to choose amenities to support financially based on usage of the amenity and payment of fees for the use.

CICAA DEFINES COMMON EXPENSES

“The proposed or actual expenses affecting the property, including reserves, if any, lawfully assessed by the common interest community association.”

CICAA, Section 1-5, Definitions

CICAA MEANS

**Lots and Dwellings are
assessed at a level
needed to operate the
Association.**

CICAA TRUMPS ACLPOA COVENANTS AND RESTRICTIONS

**All Lot owners and Dwelling
owners have equal
responsibility for assessments
and expenses.**

CICAA MEANS A SUBSTANTIAL REDUCTION IN FEES

ACLPOA can no longer use fees, paid by a portion of property owners, to compensate for a shortfall in revenue from annual assessments.

CICAA MEANS BUDGETING FOR RESERVES

“Reserves means those sums paid by unit owners which are separately maintained by the common interest community association for purposes specified by the declaration and bylaws of the common interest community association.”

**CICAA PROVISIONS TO
ASSURE FINANCIAL
REPORTS TO MEMBERS
AND MEMBERS' RIGHTS**

CICAA QUORUM FOR MEETINGS

“Twenty percent of the unit owners shall constitute a quorum, unless the community instruments indicate otherwise.”

CICAA, Section 1-40, (b), (1), Meetings

CICAA FINANCIAL PROVISIONS

“Each unit owner shall receive, at least 30 days prior to the adoption . . . by the board, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes.”

CICAA FINANCIAL PROVISIONS

“The board shall annually supply to all unit owners an itemized accounting of the common expenses for the preceding year”

CICAA, Section 1-45 (b), Finances

CICAA FINANCIAL PROVISIONS

If an adopted budget or any separate assessment results in the sum of all assessments payable in the current fiscal year exceeding 115% of the sum of all assessments in the preceding fiscal year, unit owners' may petition the Board .

CICAA FINANCIAL PROVISIONS

Upon written petition by unit owners with 20% of the votes of the Association delivered to the Board within 14 days of the Board action, the Board shall call a meeting of the unit owners within 30 days of the date of delivery of the petition.

CICAA FINANCIAL PROVISIONS

“Unless a majority of the total votes of the unit owners are cast at the meeting to reject the budget or separate assessment, it shall be deemed ratified.”

CICAA, Section 1-45 (c), Finances

CICAA FINANCIAL PROVISIONS

“Any common expense not set forth in the budget or any increase in assessments over the amount adopted in the budget shall be separately assessed against all unit owners.”

CICAA, Section 1-45 (d), Finances

CICAA FINANCIAL PROVISIONS

“Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the board without being subject to unit owner approval or the provisions of subsection (c) or (f) of this Section.”

CICAA, Section 1-45 (e), Finances

CICAA FINANCIAL PROVISIONS

“Emergency means an immediate danger to the structural integrity of the common areas or to the life, health, safety, or property of the unit owners.”

CICAA, Section 1-45 (e), Finances

CICAA FINANCIAL PROVISIONS

“Assessments for additions and alterations to the common areas or to association-owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of two-thirds of the total votes of all unit owners”

CICAA FINANCIAL PROVISIONS

“The board may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments not governed by subsections (e) and (f) of this Section, the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.”

GENERAL PROPOSED CHANGES IN AMENDMENT TO SENATE BILL 1651

- 1. Addition of definitions of “member” and “membership” to replace “unit owners”**
- 2. Revised “prescribed delivery method” for delivery of information to unit owners**
- 3. Delete (b) in Section 1-25 stating that the terms of at least 1/3 of the Board members shall expire annually**
- 4. Section 1-40 (a), Meetings revised to allow for “any other method that is prescribed in the community instruments” to determine requirements for calling either special meetings of the Board or special meetings of the membership.**

AMENDMENT TO SENATE BILL 1651

5. Section 1-10 moved to Section 1-15 (a) and revised to state: “Except to the extent otherwise provided in this Act, the provisions of this Act are applicable to all common interest communities in this State.”
6. Section 1-15 (b): Clause regarding severability is deleted and replaced with “Any provision of the declaration or of the by-laws of a common interest community that contain provisions inconsistent with this Act are void as against public policy and ineffective.”

AMENDMENT TO SENATE BILL 1651

7. Section 1-45 (a), Finances, revised the time of notification before budget adoption to be “at least 30 days but not more than 60 days prior to adoption”
8. Section 1-45 (b), Finances, addition: “The board shall provide all unit owners with an accounting summary of the receipts, common expenses, and reserves for the preceding year.”
9. Section 1-45 (b), Finances, addition: the option to provide a consolidated annual independent audit report of the financial status of all fund accounts instead of a detailed itemized accounting of revenue and expenses for the preceding year.

AMENDMENT TO SENATE BILL 1651

- 10. Section 1-80, Compliance: Added to Act, “A common interest community association shall be in full compliance with the provisions of this Act no later than January 1, 2012.”**







