

Governor spikes controversial condo 'late charge' bill

By Ed Lowe
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Senate Bill 1915 almost made it — but it found rejection at the Governor's office. The bill would have established a limit on the amount of money that could have been charged condo property owners who are delinquent in paying their assessments to the condo association. Gov. Rod Blagojevich returned the bill, sponsored by local state Sen. John Cullerton and local state Rep. Sarah Feigenholtz, with a veto message that criticized the scope of the bill.

Eugene Fisher, Executive Director of the Diversey Harbor Lakeview Association (DHLA), applauded the Governor's veto of Senate Bill 1915. He criticized the legislation which "would have seriously hamstrung the ability of condo associations to collect delinquent assessment payments, thus inevitably shifting the burden of replacing these lost revenues onto the backs of responsible association members who have already satisfied their own financial obligations."

Fisher went on to criticize the legislators for not having contacted condo based constituents on the subject. "The bill was slipped through the legislature under cover of such heavy security that the people most directly affected only belatedly learned of it."

The bill, originally introduced in the Senate by state Sen. Cullerton, would have limited the amount of late charges that could have been assessed to any condo owner to \$25. Though it was introduced as a consumer friendly bill, Fisher explained that, in many cases, purchasers of condo units who were investors in those units avoided paying assessments when they were due. Instead, those investors waited until they sold the units and paid the delinquent assessments out of their profits. While the associations could ultimately collect the money due them, their operating budgets suffered from the lack of revenue for a time — the period in which the investors were waiting for the market to move up enough to provide them with a profit on the units they had purchased, usually from the original developer.

State Rep. Feigenholtz told Inside about her House sponsorship of the bill which would have affected tens of thousands of condo owners in the state. The bill originated in the Real Property Committee of the Chicago Bar Association, she said. "There were some condo associations that were compounding late charges and the amounts became very large. The bill was designed to put a cap of \$25 or ten percent of the delinquent assessment on such fees. It was a consumer friendly bill."

In response to the objections of Fisher's group, she pointed out, "The law does not impose any restrictions on the charging of interest on late fee and delinquent assessments." However, the amount of interest that can be practically charged would be necessarily small.

When she heard the concerns of association managers that the people who suffer are the owner-occupants of units in the building, because they are negatively impacted by the assessment income shortfall, state Rep. Feigenholtz indicated that she had not previously considered the issues raised by Fisher. In supporting the bill, there was no doubt in her mind that some associations were compounding late charges and that they were collecting substantial fees from people who might have been suffering from temporary financial setbacks. State Rep. Feigenholtz said she "intends to go back to the Bar Association and parse through this issue to consider all sides of the question." She also agreed to consult with Fisher and other condo management groups to get their input on the issue before reintroducing the legislation.

In defense of the bill, state Rep. Feigenholtz assured us that the intent of the law was for consumer protection. She said she would revisit the language of the legislation to take into consideration some

of the concerns of the DHLA.

State Sen. John Cullerton also pointed out to Inside that the rights of a condo association to collect delinquent assessments were not limited by his bill. He also was adamant in the right of a condo association to assess interest charges on any delinquent assessment. "This bill only affects late fees, not the interest on the actual assessment," he said.

"If a condo association is really worried about this, they should amend their by-laws to include a provision to charge interest on delinquent assessments," he continued. "I'm sure that there are other remedies that a condo board can use to get their assessments paid. First of all, they can sue the unit owner. Of course, with an owner occupant, you can evict them. With an investor, it's a different problem.

"My reason for introducing this legislation is clear. If you have no limit whatsoever on late fees, you can have a condo association, if somebody's check is a day late, they can be fined an unlimited amount of money just because the association wants to do it that way."

State Sen. Cullerton kept referring to a provision that permits associations to charge interest on delinquent payments. He indicated that he was willing to look at the different interests of condo owner-residents and condo investors who are not residents of the properties in which they own units. "I just want to make sure that, if late fees are charges, some condo board doesn't go crazy and, in the absence of any reasonable limitation, charges an unreasonable amount. The board could set up an interest rate of 50 percent on delinquent assessments if they wanted to and there's nothing in the bill to stop them from doing that. That's where the real money would be — in the interest they charge on the late assessments.

"We would be willing to talk to the opponents of the bill and then decide not to call for a veto override," he concluded. The Diversey Harbor Lakeview Association hopes to meet with state Sen. Cullerton and state Rep. Feigenholtz to discuss mutually agreeable ways to address the valid consumer issues raised by the legislators.