

Review Of Recent Legislation Affecting Real Estate Law And Practice

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Introduction

In the Spring 2001 Session of the 92nd Illinois General Assembly, members introduced 5,155 bills. Of these, 540 passed both houses and were sent to the Governor for approval, veto, or amendatory veto. The Governor approved 494 new laws. Some of these new laws will affect real estate transactions. This article will describe the new Illinois laws that affect real estate law and practice.

Several caveats are in order. First, the opinions expressed in **Comment** sections of this article are those of the author and do not represent the opinion or policy of Chicago Title Insurance Company. Second, the listing of new real estate related laws should not be viewed as all-inclusive. An important law or two may have slipped past the author. Finally, this article is a summary of new laws. Practitioners are urged to review the entire text of any new law of interest. The full text of all new public acts is available on the General Assembly's website, <http://www.legis.state.il.us/>.

Conveyancing And Related Issues And Documents

Tenancy by the Entirety

Public Act 92-136, effective January 1, 2002, amends the tenancy by the entirety statute, 765 ILCS 1005/1c. The amendment simplifies the language necessary to create a valid tenancy by the entirety in any devise, conveyance, assignment, or transfer. The amendment eliminates the need to recite that the grantees are husband and wife and that they are taking their interest not as joint tenants and not as tenants in common. Instead, after January 1, 2002, the devise, conveyance, assignment, or transfer need only recite that the grantees take their interest as tenants by the entirety. Thus, a conveyance to "Abe Lincoln and Mary Lincoln, as tenants by the entirety" will, after January 1, 2002, be sufficient to create a valid tenancy by the entirety, provided Abe and Mary are married to each other and the subject property is homestead property.

Comment: This amendment eliminates a cumbersome and needless formality. The amendment also eliminates an attorney's fear that failure to include "magic language" may invalidate an estate in tenancy by the entirety. See *Travelers Indemnity Co. v. Engel*, 81 F.3d 711 (7th Cir. 1996) (deed failed to establish tenancy by the entirety when it failed to recite that the grantees were husband and wife). Because the conveyancing language has been simplified, title insurers may ask several questions before insuring an estate in tenancy by the entirety. A title company may wish to verify the marital status of the

grantees, especially if the grantees are married to each other but use different last names. A title company may also wish to verify that the subject property is homestead property.

IRPTA Repeal

Public Act 92-299, effective August 9, 2001, repeals the Responsible Property Transfer Act of 1988, 765 ILCS 90/1 et seq. (variously known as IRPTA or RPTA). Notwithstanding the repeal, any action that may have accrued under IRPTA prior to August 9, 2001, may be maintained as if IRPTA had not been repealed.

Comment: For industrial and commercial real estate transactions, IRPTA had required the delivery and recordation of statutorily prescribed forms (disclosing the presence of large underground storage tanks on the described land or the storage of certain hazardous materials on the described land). With this repeal, Illinois statutes no longer require disclosure and recordation. Now, any such disclosures are merely among the many matters to be negotiated between sellers, buyers, and lenders. Buyers and lenders should realize, however, that title insurers may continue to note on their commitments and policies previously recorded IRPTA disclosure forms.

Probate: Sale of Decedent's Property on the Internet

Public Act 92-97, effective January 1, 2002, amends procedures for the sale of a decedent's real property when a sale is necessary for the proper administration of the decedent's estate. See generally Article XX of the Probate Act and 755 ILCS 5/20-4 specifically. The new Act amends 755 ILCS 5/20-7 relating to the place and terms of sale. The amendment adds a provision stating that the sale may be conducted "by means of the Internet or any other electronic medium as approved by the court." The amendment exempts an Internet sale from the requirement that all sales must be conducted between 10:00 a.m. and 5:00 p.m. The usual notices must be published in a newspaper once each week for three consecutive weeks. In addition, notice of the terms and procedures for sale must be published on the Internet. The Internet notice must also include a statement that public access to the Internet is available at public libraries.

Comment: If this legislation opens a new era in judicial sales, it is slim on details. Any probate court order authorizing an Internet sale should contain specific instructions for advertising and conducting the sale. The Act raises several questions. Is an Internet sale a public sale? Does the Probate Act require a public sale? What is the point of advertising on the Internet that the Internet is available at public libraries? Although the legislature seems concerned for those who do not have personal computers at home, will an overnight or weekend computer user have a competitive advantage over a user who must abide by the business hours of the local public library? How, exactly, does one publish a notice on the Internet? How will this provision interface with the Electronic Commerce Security Act, 5 ILCS 175/1-1 et seq., and other electronic commerce statutes? It is possible that an enforceable contract for the sale of real estate may be created by means of an electronic medium. Nonetheless, the decedent's representative will still have to execute in a low tech manner a hard copy deed, and the buyer will still have to bring the

paper to the recorder's office for recordation the old fashioned way. The brave new world is not fully upon us, yet. What's next in Illinois? Mortgage foreclosure and tax sales on the Internet? Several states do authorize Internet tax sales!

Townhome Declarations

Public Act 92-225, effective August 2, 2001, repeals Section 38c of the Conveyances Act, 765 ILCS 5/38c. That Section had required the inclusion of specified matters within townhome declarations. The specified matters had related to the calculation of maintenance assessments, but the calculation contained elements that were either difficult to ascertain or difficult to apply.

Comment: With the repeal of Section 38c, the only statutory regulation of the contents of townhome declarations is located at Section 18.5(j) of the Condominium Property Act, 765 ILCS 605/18.5(j) (provisions specifically applicable to "common interest community associations" as well as condominiums).

Cook County Tax Divisions

Public Act 92-450, effective August 21, 2001, adds new Section 35d to the Conveyances Act, 765 ILCS 5/35d. This new Section only applies to conveyances of residential property in counties with three million or more inhabitants (Cook County). The new Section provides that whenever a deed or other instrument of conveyance is executed, the grantor shall provide the grantee "with an individual permanent index number or numbers that specifically represent the legal description provided for in the deed or instrument of conveyance." If the permanent index number or numbers "do not specifically represent the legal description in the deed or instrument of conveyance," then the grantor must furnish one of the following:

- proof that the grantor has already applied for a tax division that will result in a permanent index number or numbers that represent the legal description in the deed or instrument of conveyance; or
- a recorded plat of subdivision; or
- a recorded condominium declaration.

The grantor's failure to deliver the required documentation will not invalidate the deed or instrument of conveyance. The grantor will, however, be liable for damages to the grantee until the required documentation is delivered. Damages shall consist of real property taxes plus attorney's fees.

Comment: The intent of new Section 35d seems clear. A purchaser of Cook County residential property should have a permanent index number or numbers that cover his or her land and no other land. How this new provision will work in practice, though, seems problematic. First, the Act does not define residential property. Single-family dwellings and condominium dwelling units are clearly covered. What about structures with multiple dwelling units? Are rental properties covered? What about mixed-use properties?

Townhomes present a special problem. In practice, townhome developments have not always been divided for real property tax purposes. No other statute requires a division. There is no doubt, however, that a tax division is beneficial for townhome owners. Must all townhome developers now apply for a tax division? Will the Cook County Assessor's office be able to keep up with the demand for new tax numbers?

Experience in Cook County shows that the recordation of a plat of subdivision does not always result in a tax division. Will this new Section require a developer to apply for a division simultaneously with the recording of a new plat of subdivision?

Second, the wording of the new Section is somewhat ambiguous. Does the phrase "specifically represents the legal description provided for in the deed," exclude a permanent index number that affects the land and other property? It probably does, considering the statutory intent.

Third, how does a grantor comply with this new disclosure requirement? When the permanent index number equals the land and no other land, is the listing of the permanent index number on the deed (as required by the Recorder of Deeds) and on the transfer tax declarations a sufficient disclosure? Or, is a separate disclosure document required? When a developer conveys a new subdivision lot, is the notation of the plat's recorded document number on title commitment and deed a sufficient disclosure? Or, must the developer provide a copy of the recorded plat?

Finally, can the protections under new Section 35d be waived? Can a seller shift responsibility for a tax division to the buyer?

These questions will all be answered in time.

Real estate practitioners must carefully review new Section 35d. Sellers will want to avoid liability for real property taxes otherwise owed by buyers (not to mention attorney's fees). Sellers will also seek to avoid tax divisions whenever possible. Buyers should not wait for sellers to pay real property taxes that might become seller's responsibility under new Section 35d. Property owners should always pay taxes in full and in a timely manner. If appropriate, reimbursement may be sought later.

Surveyors And Plats

Limitations on Actions Against Surveyors

Public Act 92-265, effective January 1, 2002, amends the limitations statute for actions against surveyors 735 ILCS 5/13-222. The Act distinguishes between causes of action accruing before its effective date and those accruing on or after its effective date.

For causes of action accruing before January 1, 2002, no action may be brought against a registered land surveyor to recover damages for "negligence, errors or omissions" in the making of any survey (nor for

contribution or indemnity related to such negligence, errors, or omissions) more than four years after the person claiming damages actually knows or should have known of the negligence, errors, or omissions.

For causes of action accruing on or after January 1, 2002, no action may be brought against a professional land surveyor to recover damages for "negligence, errors, omissions, torts, breaches of contract, or otherwise" in the making of any survey (nor for contribution or indemnity) more than four years after the person claiming damages actually knows or should have known of the negligence, errors, omissions, torts, breaches of contract, or other actions. This limitation period may be extended to ten years or even longer, depending on when the person claiming damages discovers the errors, omissions, etc., or whether the person claiming damages is a minor or under a legal disability.

Comment: This Act conforms the limitations statute to a change in nomenclature. Regardless of when the cause of action accrues, the defendant in the action will be a person licensed by the State to practice the profession of land surveyor. Various other statutes, past and present, refer to licensed land surveyors, registered land surveyors, and professional land surveyors. All mean the same thing. The current "preferred" term is "professional land surveyor," as reflected in this new Act. Note the language expanding liability for damages in new causes of action to ". . . torts, breaches of contract, or otherwise." The meaning of "otherwise" may require litigation or further amendment.

Plat Approvals

Section 11-12-12 of the Municipal Code, 65 ILCS 5/11-12-12, requires, under specified circumstances, municipal approval of any plat of subdivision showing public streets, alleys, public service facilities, and so on. Municipal approval is required if the municipality has adopted a comprehensive development plan and map pursuant to the Municipal Code, 65 ILCS 5/11-12-4 et seq. When applicable, the requirement of municipal approval extends beyond the municipality's borders to include proposed subdivisions of contiguous land within one and one half miles of the municipality's territory.

Public Act 92-361, effective January 1, 2002, amends Section 11-12-12 to create an exception to extra-territorial municipal approval. Under this amendment, municipal approval is not required if:

1. the plat shows a consolidation of two or more contiguous parcels into a smaller number of parcels, provided the total area does not exceed ten acres and the resulting number of parcels does not exceed ten;
2. the sole purpose of the consolidation is to bring a non-conforming parcel into compliance with local zoning ordinances; and
3. the land lies outside a municipality but within a county that has a subdivision regulation ordinance and a population of more than 250,000 inhabitants.

Comment: This amendment is narrow in scope, suggesting it was drafted to meet a particular set of circumstances. In time, we will know whether it has a broader application.

Trusts: Collateral Assignments Of The Beneficial Interest In An Illinois Land Trust

The 91st General Assembly enacted extensive revisions to Article 9 of the Uniform Commercial Code (UCC). See P.A. 91-893, effective July 1, 2001, re-writing Article 9 of the UCC, 810 ILCS 5/9-101 et seq. Article 9 deals with consensual security interests in personal property. The revisions expand the scope of Article 9, modify some definitions, create new definitions, modernize the filing system for financing statements, provide additional methods for perfection of security interests, provide additional rules for priority among competing security interests, provide clearer rules for the enforcement of security interests, and establish rules for particular transactions.

Revised Article 9 defines categories of collateral. These categories range from the tangible (goods) to the semi-tangible (investment property, instruments, documents, letter-of-credit rights, and chattel paper) to the intangible (accounts, health care insurance receivables, deposit accounts, commercial tort claims, and general intangibles). Revised Article 9 establishes, for each category of collateral, rules for the attachment and perfection of a security interest.

Attachment is the moment at which a security interest becomes enforceable against the *debtor*. For a security interest to attach, the debtor must:

1. receive value,
2. have rights in the collateral, and
3. sign a security agreement.

As an alternative to item 3., the secured party may take possession of the collateral pursuant to a signed agreement or take control of the collateral as that term is defined in Revised Article 9.

Perfection is the method of establishing the priority of a security interest over *third parties*. Revised Article 9 defines four methods of perfection—filing, possession, control, and automatic. Depending on the category of collateral, however, there may be only one means of perfection or several. In other words, for any given category of collateral, there may be an exclusive method of perfection or a choice from among two or more methods of perfection. Practitioners must carefully study Revised Article 9 to determine an appropriate method of perfection, as dictated by the category of collateral.

As originally enacted, Revised Article 9 did not mention trusts or Illinois land trusts. How could a lender perfect a security interest in the beneficial interest in a trust? More precisely, how could a lender perfect a collateral assignment of the beneficial interest in an Illinois land trust? As originally enacted, Revised Article 9 did not address these questions. **Commentators** suggested that under Revised Article 9, a secured party must file a financing statement to perfect a security interest in a trust. Land trust administrators agreed with that analysis. The lending community believed that a lender would have to file a financing statement in connection with a collateral assignment of the beneficial interest in an Illinois land trust. Contrary to many years of established practice, the lodging of the collateral assignment with the land trustee might not be sufficient to perfect the lender's security interest.

Public Act 92-234, effective January 1, 2002, revises Revised Article 9. The new Act adds sections to Revised Article 9 that specifically address perfection and priority of collateral assignments of the beneficial interest in Illinois land trusts. The new Act also conforms existing sections of Revised Article 9 to accommodate the new land trust provisions.

The new Act adds new Section 810 ILCS 5/9-306.1 as a "purpose" section. This new Section provides that Illinois law governs perfection and priority of a collateral assignment of, or other security interest in, a beneficial interest in an Illinois land trust. This new Section "implements the important interest of this State in matters associated with the administration of Illinois land trusts created for the principal purpose of owning an interest in Illinois land and the regulation of restrictions on the transfer of beneficial interests in, and of the power of appointments under, such trusts."

The new Act amends 810 ILCS 5/9-314 to provide that a security interest in beneficial interests in Illinois land trusts may be perfected by control of the collateral under new Section 810 ILCS 5/9-107.1. That new Section declares that a secured party has control of a beneficial interest in an Illinois land trust if:

1. the secured party shall have transmitted to the trustee for the trust a record authenticated by the debtor that contains a collateral assignment by the debtor of, or the grant of a security interest in, a beneficial interest in the trust; and
2. in an authenticated record, the trustee for the trust has accepted the collateral assignment or security agreement.

Control obtained in this manner is not disturbed even if the debtor retains, subject to the terms of the collateral assignment or security agreement, the power of direction of the trustee and the right to receive rents, profits, and income from the land.

This definition of "control" matches long-standing practice whereby the secured party lodged the collateral assignment with the land trustee. To complicate matters, though, the new Act also states that a secured party *may* also perfect a security interest in the beneficial interest in an Illinois land trust by filing a financing statement. See amended 810 ILCS 5/9-312 *permitting* perfection by filing a financing statement for beneficial interests in Illinois land trusts. Thus, a lender may perfect its interest either by taking control (lodging the collateral assignment with the trustee) or by filing a financing statement. A question then arises: if one lender has taken control by lodging a collateral assignment with the land trustee while another lender has filed a financing statement, who has priority?

New Section 810 ILCS 5/9-329.1 answers this question. The new Section provides that a security interest held by a secured party having control of the beneficial interest under Section 9-107.1 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control. Thus, control trumps filing. As between two secured parties who each have control of the beneficial interest, the new Section awards priority to the secured party who first obtained control.

Comment: Revised Article 9 was intended to be a uniform law adopted in all jurisdictions already using the UCC. As a result, the text of originally enacted Revised Article 9 did not take local practices into account. Illinois lenders sought to retain the time-honored method of perfecting collateral assignments of beneficial interests in Illinois land trusts. Public Act 92-234 accomplishes this goal. It fits land trust practice into the rubric of Revised Article 9. The definition of "control" added by new Section 9-107.1 is limited to beneficial interests in land trusts. Perfection by control under this new Section follows the custom and practice of lodging the collateral assignment with the land trustee. While perfection by filing a financing statement is permitted, why would a lender choose this method of perfection? Rules for determining the proper place for filing a financing statement are different from prior law. Even if the lender can determine where to file its financing statement, it may not matter anyway. Under new Section 9-329.1, the lender with a filed financing statement will lose priority to a lender who has lodged its collateral assignment with the land trustee -- even if the lodging took place subsequent to the filing of the financing statement. Thus, filing would seem to be discouraged.

In the definition of "control," new Section 9-107.1 uses the phrase "authenticated record." This phrasing opens the possibility that collateral assignments of beneficial interests in Illinois land trusts may be created, executed, and lodged by electronic means.

One problem remains, however. Revised Article 9 went into effect July 1, 2001. The revisions relating to land trusts will not go into effect until January 1, 2002. For collateral assignments executed and delivered between July 1, 2001, and January 1, 2002, it may be that a lender will have to lodge the collateral assignment with the land trustee and also file a financing statement in the appropriate office. The lender might even have to lodge the same collateral assignment with the land trustee again after January 1, 2002, to be absolutely certain of priority. None of this is clear at all.

Although Revised Article 9 deals with personal property, there are several issues that bear on real estate transactions (beyond the present discussion of collateral assignments of beneficial interests in land trusts). For example, real estate practitioners will need to know where and in what form real estate related financing statements might be filed. In addition, Revised Article 9 may have some impact on real estate transactions involving assignments of mortgages and notes or pledges of mortgages, notes, partnership interests, limited liability company memberships, and so on. There may be others. These matters are beyond the scope of this article. The author recommends further study.

Local Government

Affordable Housing

Public Act 92-142, effective July 24, 2001, creates the Local Government Housing Finance Act, 50 ILCS 465/1 et seq. This new Act permits any county and any municipality to participate in the secondary mortgage market. Pursuant to an ordinance authorized by this Act, any county or any municipality may create and implement a program to assist persons of low or moderate income in acquiring safe, decent, sanitary, and affordable housing. The program is to be known as a Residential Housing Finance Plan.

Under a Residential Housing Finance Plan, a county or municipality may purchase home mortgages, lend money to lenders who will make home mortgage loans, or enter into contracts with lenders for the origination and servicing of home mortgage loans. The county or municipality may issue bonds to provide funding for the Plan. The bonds are to be repaid from returns on the home mortgages, including proceeds of any home mortgages sold by the county or municipality. The Act establishes detailed requirements for the Plan regarding the relationship between the county or municipality and the private lenders and the issuance and repayment of the bonds.

The Plan relates to acquisition mortgages for one-to-four unit dwellings. The Act defines "home" as real property and its improvements located within the county or municipality and consisting of not more than four dwelling units. A four-unit condominium owned by one mortgagor qualifies if the mortgagor occupies or intends to occupy one of the units. A "home mortgage loan" is defined as an interest-bearing loan evidenced by a note and secured by a home mortgage made for the purpose of acquiring a home having a purchase price less than the maximum home value. The "maximum home value" is a dollar amount chosen by the county or municipality and set out in the Plan ordinance.

Townships: Police Powers

Public Act 92-347, effective August 15, 2001, adds new Section 85-50 to the Township Code, 60 ILCS 1/85-50, to authorize townships to demolish, repair, or enclose dangerous or unsafe buildings. The new Section requires that the township board must first request the county board to take specified action against a dangerous or unsafe building located within the township but not within a municipality. See 55 ILCS 5/5-1121 (county's powers with respect to dangerous and unsafe buildings). If the county board declines the township's request (either by specifically rejecting it or by not accepting it within a stated time period), then the township may exercise any of the powers described below which are authorized by new Section 85-50.

The township board may apply to the circuit court of the county in which the subject building is located for an order to demolish, repair, or enclose or to cause the demolition, repair, or enclosure of a dangerous or unsafe building or an uncompleted and abandoned building. The township board may also petition the circuit court for an order to remove or cause the removal of garbage, debris, and other hazardous, noxious, or unhealthy substances or materials from the building. Notice provisions, procedural requirements, lien requirements, and foreclosure procedures for these proceedings are nearly identical to similar court proceedings brought by municipalities, 65 ILCS 5/11-31-1, and counties, 55 ILCS 5/5-1121. There is, however, one important exception. As is the case with municipalities and counties, the township may impose a lien on the land to recover the cost of demolition, repair, enclosure, or removal. New Section 85-50, however, does not give super priority to a township demolition lien. The new Section is silent as to priority, thereby indicating that a township demolition lien takes priority only against subsequent purchasers or lienors who acquire their interest in the land subsequent to the recording date of the township demolition lien. In contrast, municipal and county demolition liens have super priority, taking priority over all liens and encumbrances on the land, including pre-existing liens, except for the liens of real estate taxes and special assessments.

As an alternative, a township may obtain title to the land through an abandoned property proceeding similar in all respects to abandoned property proceedings brought by municipalities, 65 ILCS 5/11-31-1(d), and counties, 55 ILCS 5/5-1121(c). An abandoned property proceeding is a two-step process that resembles a forfeiture. In the first step, the petitioner obtains an order that the property is abandoned and in need of demolition or repair. If no one steps forward to undertake the demolition or repair, the petitioner may obtain a judicial deed conveying title to the subject property. The petitioner's title will be free and clear of the interests of those parties served with notice of the abandoned property proceeding.

New Section 85-50 does not grant townships authority to undertake a "fast track" demolition program. This authority is conferred on municipalities, 65 ILCS 5/11-31-1(e), and counties, 55 ILCS 5/5-1121(d). Also, new Section 85-50 does not confer on townships the authority to undertake environmental clean-up work. See 65 ILCS 5/11-31-1(f), granting authority to municipalities to undertake environmental clean-up work and to impose a super priority lien for recovering the cost of the work. Counties lack this power.

Municipalities: Acquisition of Property by Gift

Public Act 92-102, effective January 1, 2002, adds new Section 11-61-1.5 to the Municipal Code, 65 ILCS 5/11-61-1.5. This new Section permits every municipality to acquire title to real estate by gift, legacy, or grant for any lawful purpose, as the municipal governing body may deem appropriate. The acquired real estate may be located anywhere, even outside the municipality's boundaries. The Act only applies to gifts, legacies, and grants made after January 1, 2002, and does not ratify any previous actions.

This new Section also authorizes municipal acquisition of personal property by gift, legacy, and grant.

A related measure, **Public Act 92-230**, effective January 1, 2002, authorizes park districts (and municipalities) to acquire title to real estate by gift, legacy, or grant but only for the purposes of providing recreational facilities for persons with disabilities. See amended 70 ILCS 1205/8-10b (park districts) and amended 65 ILCS 5/11-95-14 (municipalities).

Comment: Existing law contemplates municipal acquisition by purchase or lease (with payment of consideration), by eminent domain proceedings (with payment of compensation), or by foreclosure proceedings to satisfy a lien. These Acts fill a gap. Notice, however, the restriction on use of acquired land applicable to park districts but not to municipalities.

Minerals

Public Act 92-390, effective August 16, 2001, creates the Coal Rights Act (765 ILCS 540/1 et seq.). This Act establishes a mechanism for resolving deadlocks among co-owners of coal rights and for promoting the development of co-owned coal rights (especially if some of the co-owners are absent and unavailable).

In a "purpose" section, the General Assembly recognizes that coal rights can only be enjoyed if coal products are mined, removed, and sold. Further, the legislature declares that the development of coal rights by one co-owner constitutes use of the coal rights and not the destruction of another co-owner's interest. The new Act is, therefore, intended to preserve the value of coal rights and to maximize the recovery of coal through orderly and efficient development for the benefit of all co-owners in a fair and equitable manner.

The new Act applies when coal rights are owned in fee simple by more than one person or entity, and those owners hold their interests as joint tenants, tenants in common, or as tenants by the entirety. The new Act does not apply when coal rights are held by a leasehold or lesser estate.

The new Act establishes a procedure in which a majority owner or owners of coal rights may petition the circuit court for the appointment of a trustee. The petitioner must be an owner or owners of at least a one-half interest in the coal rights or the lessee of such owner or owners. The petitioner must join as defendants all other persons or entities holding an interest in the coal rights. The court may appoint a trustee who will act for the benefit of all defendants. The trustee shall enter into a coal development lease with the petitioner. The lease terms and provisions must be consistent with local custom and practice. Upon court approval of the lease, the petitioner shall develop the coal rights pursuant to the terms of the lease, paying any income due the defendants directly to them. The lease shall survive the discharge of the trustee, unless it has been terminated at an earlier date under its own provisions.

The lease shall not authorize the mining and removal of coal by the surface method of mining unless all of the owners of the surface consent to the surface method of mining.

In a related measure, **Public Act 92-379**, also effective August 16, 2001, amends the partition provisions of the Code of Civil Procedure, 765 ILCS 5/17-101. This section of the Code provides that if lands, tenements, or hereditaments are owned in joint tenancy or tenancy in common, one co-owner may compel partition. The Act adds a statement, noted as declarative of existing law, that ownership of an interest in the surface of the land by a co-owner of a mineral estate underlying the land does not prevent partition of the mineral estate.

This Act also states that an owner of coal rights cannot mine and remove coal by the surface method of mining without first obtaining the consent of all surface owners.

The Act also modifies the provisions of the Mineral Lease Release of Record Act, 765 ILCS 510/1 et seq. Under amended Section 1, whenever any lease for prospecting, mining, or producing coal, oil, gas, or other minerals terminates under its own terms or otherwise, the lessee must record at the county recorder's office a notice of termination within 60 days of the termination. If the lessee fails to record a notice of termination of lease, under amended Section 2, the lessor or owner of the land may file suit in the circuit court to obtain a judgment of termination. If the court enters a judgment of termination, the lessee may be held liable for court costs, expenses, and attorney's fees. The recording of the judgment shall constitute a sufficient release of record.

Business Entities

Public Act 92-33, effective July 1, 2001, makes numerous changes to the laws governing business entities in Illinois. This lengthy Act (80 pages) amends the Business Corporation Act of 1983, 805 ILCS 5/1.01 et seq. (hereinafter BCA); the General Not for Profit Corporation Act of 1986, 805 ILCS 105/101.01 et seq. (hereinafter NFPA); the Limited Liability Company Act, 805 ILCS 180/1-1 et seq. (hereinafter LLCA); the Uniform Partnership Act, 805 ILCS 205/1 et seq. (hereinafter UPA); and the Revised Uniform Limited Partnership Act, 805 ILCS 210/100 et seq. (hereinafter RULPA). Although the Act is primarily intended to streamline operations at the Secretary of State's office, it does contain some important substantive measures. Practitioners are therefore urged to review the entire Act. Highlights of the Act include the following.

Elimination of Certificates

The Act amends office procedures at the Secretary of State's office so that most of the certificates called for by the business entity statutes will no longer be issued. Forms and applications submitted to the Secretary of State will be reviewed and when approved as to statutory compliance (and payment of fees), will be stamped "filed." The Secretary of State will then file the original of the form or application in the Secretary of State's records and return a stamped duplicate copy to the submitting person. All such "filed" forms and applications become effective upon filing by the Secretary of State.

The Act eliminates the following certificates:

Certificate of Incorporation	Amended 805 ILCS 5/2.10 (BCA) Amended 805 ILCS 105/102.10 (NFPA)
Certificate of Amendment (to Articles of Incorporation)	Amended 805 ILCS 5/10.30 (BCA) Amended 805 ILCS 105/110.30 (NFPA)
Certificate of Merger, Consolidation, or Exchange	Amended 805 ILCS 5/11.25 (BCA) Amended 805 ILCS 105/111.25 (NFPA)
Certificate of Authority (of a foreign corporation to do business in Illinois)	Amended 805 ILCS 5/13.15 (BCA) Amended 805 ILCS 105/113.15 (NFPA)

Certificate of Amendment (to Certificate of Authority of foreign corporation to do business in Illinois)	Amended 805 ILCS 5/13.40 (BCA) Amended 805 ILCS 105/113.40 (NFPA)
Certificate of Withdrawal (of authority of a foreign corporation to do business in Illinois)	Amended 805 ILCS 5/13.45 (BCA) Amended 805 ILCS 105/113.45 (NFPA)
Certificate of Reinstatement (of a foreign entity's authority to do business in Illinois)	Amended 805 ILCS 5/13.60 (BCA) Amended 805 ILCS 105/113.60 (NFPA) Amended 805 ILCS 180/45-65 (LLCA)
Certificate of Dissolution (domestic corporation)	Amended 805 ILCS 5/12.20 (BCA) Amended 805 ILCS 105/112.20 (NFPA)
Certificate of Reinstatement (after administrative dissolution)	Amended 805 ILCS 5/12.45 (BCA) Amended 805 ILCS 105/112.45 (NFPA) Amended 805 ILCS 180/35-40 (LLCA)

The bulk of this Act is devoted to conforming the wording of other statutory sections to the elimination of these certificates. It appears, however, that the Secretary of State may still issue Certificates of Good Standing. See amended 805 ILCS 5/15.95 (BCA); amended 805 ILCS 105/115.20 (NFPA); amended 805 ILCS 180/50-50 (LLCA); and amended 805 ILCS 210/1111 (RULPA).

Entity Names

For new business corporations, not for profit corporations, and limited liability companies, the Secretary of State will run a crosscheck to avoid duplication of names. See amended 805 ILCS 5/4.05 (BCA); amended 805 ILCS 105/104.05 (NFPA); and amended 805 ILCS 180/1-10 (LLCA).

A new not for profit corporation must add the letters "NFP" to the end of its name if there would otherwise be an implication that the entity was a for profit entity. See amended 805 ILCS 105/104.02 (NFPA).

Forms and Applications Submitted to the Secretary of State

On any form or application submitted to the Secretary of State, the signature of one officer will be sufficient. For example, for a corporation, the necessity of a verified signature of an officer plus an attestation by a secretary or assistant secretary has been eliminated. Instead, the document may now be

executed by the corporation's president, vice president, secretary, assistant secretary, treasurer, or other officer authorized by the board of directors. See amended 805 ILCS 5/1.10 (BCA)

In its articles of incorporation, a not for profit corporation must state a corporate purpose which must fit within a statutory list of purposes. The Act adds two new statutory purposes, both relating to activities qualifying for tax-exempt status under the Internal Revenue Code. See amended 805 ILCS 105/103.05 (NFPA).

The name or address of a registered agent of a business corporation or not-for-profit corporation may be changed on its annual report. See amended 805 ILCS 5/5.10, 5.20, and 14.05 (BCA) and amended 805 ILCS 105/105.10, 105.20, and 114.05 (NFPA).

Mergers

The Act permits limited partnerships to merge without the involvement of a limited liability company. Amended 805 ILCS 210/210 (RULPA) states that any one or more limited partnerships may merge into one of such limited partnerships or into or with one or more limited liability companies. The survivor can be one of the limited partnerships or one of the limited liability companies.

Real Estate Taxes

Each session of the General Assembly brings forth numerous amendments to the Property Tax Code, 35 ILCS 200/1-1 et seq. This Session was no exception. Several of the new laws are technical adjustments to the tax deed process, noted as declarative of existing law. For example, Public Act 92-223, effective January 1, 2002, relates to the marketability of tax titles (merger of prior tax delinquencies into the tax title), and Public Act 92-224, also effective January 1, 2002, removes potential conflicts between tax purchasers and units of government interested in the same tax delinquent parcels (sales in error). Practitioners interested in the tax sale-tax deed process should become familiar with these amendments to the Property Tax Code. The following new measure is of more general interest.

Limitation Period

Public Act 92-201, effective January 1, 2002, reduces the limitation period on delinquent real estate taxes from 30 years to 20 years. Amended 35 ILCS 200/20-190 declares that any enforcement action must be commenced within 20 years of the date the real estate tax lien became delinquent. After 20 years, the tax lien "shall be discharged and released." Amended 35 ILCS 200/20-180 authorizes county clerks and county collectors to mark real estate taxes as "uncollectable" provided the taxes are delinquent for 20 or more years and there is no proceeding pending to enforce the tax lien.

Comment: These rules apply to real estate taxes but not to special assessments.

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