by Scott A. Rosenlund, Bartzen Rosenlund Kasten LLC

ADOPTING SPECIAL ASSESSMENTS: Legal and Procedural Considerations

For various financial reasons, many Illinois community associations choose to fund large-scale repair projects or other major common expenses at least in part through special assessments. If an association adheres to the applicable legal requirements for special assessments and follows through on the procedural details for adopting a special assessment, the association should be well positioned to smoothly implement the special assessment and to minimize disputes relating to payment of the special assessment.

General Authority to Adopt Special Assessments

In most cases, an association's board of directors has the authority to adopt special assessments without a unit owner vote, subject to limited unit owner veto rights. The applicable procedures will depend primarily on the purpose of the special assessment and whether the association is a condominium association, a common interest community association subject to the Illinois Common Interest Community Association Act ("CICAA"), a master association, or a common interest community association which is exempt from CICAA.

Relative to Illinois condominium associations, Section 18(a)(8) of the Illinois Condominium Property Act ("ICPA") governs the imposition of special assessments. Under Section 18(a)(8), if a special assessment will cause the sum of regular assessments plus special assessments payable from one fiscal year to the next to increase more than 15 percent, the special assessment may be subject to a unit owner veto procedure.

The unit owner veto procedure for condominium associations is described in Section 18(a)(8) of the ICPA and is summarized as follows. The unit owners representing 20 percent of the total number of votes in the association have 21 days after the board meeting at which the special assessment was adopted to submit to the association a petition for a unit owners' meeting called to vote on whether to overturn the special assessment. At this unit owners' meeting, if the unit owners representing a majority of the total number of votes in the association do not vote to reject the special assessment, the special assessment is deemed