No. 128040

In the

Supreme Court of Illinois

HARRY CHANNON and DAWN CHANNON, Individually and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

WESTWARD MANAGEMENT, INC.,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-21-0176.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 19 CH 4869.
The Honorable **Anna M. Loftus**, Judge Presiding.

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NATURE OF THE CASE

This action arises from Defendant-Appellant, Westward Management, Inc.'s ("Westward"), alleged price-gouging of condominium sellers for fees to provide condo owner-sellers with the statutorily required condominium disclosure documents under the Illinois Condominium Act (the "Act" or "Condo Act") (765 ILCS 605/22.1). Condo sellers in Illinois are statutorily required to provide prospective condo buyers with the disclosure documents set forth in section 22.1 of the Act as their condo association or board of managers provides.

Westward was the property manager, as defined in and provided for in the Act, for Plaintiffs Harry and Dawn Channon's ("Channons") condo association prior to the sale of their condo unit. Westward, acting on behalf of the condo association as its statutory agent under the Act, was responsible for providing the section 22.1 disclosure documents to the Channons. Westward demanded an allegedly excessive and unreasonable fee to provide the Channons with the required 22.1 disclosure documents. The Channons were left with no practical recourse but to pay the fee Westward demanded in order to close the sale of their condo unit, and to prevent statutory liability to the condo buyer.

The Channons' Complaint alleges two claims: (1) a violation under section 22.1 of the Act; and (2) a violation of the Consumer Fraud and Deceptive Practices Act. After an unsuccessful attempt to remove the case to the federal district court, Westward filed a section 2-615 motion to dismiss the Complaint contending, *inter alia*, that nothing in section 22.1 conferred upon the Channons a private right of action to sue Westward under the Act, and that Westward, as agent for the Association, could not be liable under the Act. The circuit court disagreed and denied Westward's motion to dismiss. Westward sought certification of a question under Illinois Supreme Court Rule 308 as to whether the Channons have a private cause of action to pursue their claims under Section 22.1. Upon review of the certified

question, the Appellate Court answered in the affirmative and affirmed the circuit court of Cook County.

CERTIFIED QUESTION

Does Section 22.1 of the Illinois Condominium Property Act provide an implied cause of action in favor of a condominium unit seller against a property manager, agent of a condominium association or board of managers, based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under Section 22.1 of the Act? (A.35).

STATUTES INVOLVED

Section 22.1 of the Illinois Condominium Property Act (765 ILCS 605/22.1); Section 18(a)(5) of the Illinois Condominium Property Act (765 ILCS 605/18(a)(5)). Section 2 "Definitions" of the Illinois Condominium Property Act (765 ILCS 605/2(f), (g), (o), (p)). Section 2Z "Violation of other Acts" of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2Z).

STATEMENT OF FACTS

Westward is a licensed property management company, in the business of assuming statutory duties and general operations of condo associations for compensation. These duties include the duty to create, maintain, manage and provide disclosure documents to condo sellers, which it did in this case pursuant to its Management contract with Kenmore Club Condo Association ("Kenmore Club" or "the Association"). Condo sellers, like the Channons, are thus beholden to property management companies who have complete control over the association's disclosure documents through their management contracts, and because section 22.1 requires condo sellers to obtain the documents from the association or its agent.

A. Channon Files A Class Action Against Westward For Violation Of Section 22.1 Of The Condo Act And The Consumer Fraud Act.

Plaintiffs Harry and Dawn Channon ("Channons") are former condominium owners who, when selling their Chicago condo unit, allege that they were compelled to pay an unreasonable and excessive fee to Westward, their condo Association's property management agent, to obtain the section 22.1 disclosure documents. (A.51 ¶ 1).[1]

Under section 22.1(b) of the Condo Act, the "principal officer of the unit owner's association or such other officer as is specifically designated" has a statutory duty to provide condo sellers with disclosure documents. (A.53 ¶ 8; A.68 ¶ 71). Section 22.1(c) of the Act permits "the Association, or its Board of Managers," to charge condo sellers "a reasonable fee covering the direct out-of-pocket costs" for providing disclosure documents. (A.65 ¶ 59; A.57 ¶ 22).

Section 22.1(a) requires condo sellers, other than the developer, such as the Channons, to "obtain from the Board of Managers" and make the 22.1 disclosure documents "available for inspection" to prospective condo buyers. (A.68 ¶ 71). Section 22.1 requires that the "association or such other officer as is specifically designated shall furnish" the disclosure documents within 30 days of a written request. (A.68 ¶ 71).

The Channons' condo Association, Kenmore Club, is a non-profit corporation managed by a Board of Managers. (A.59-60 ¶¶ 37, 40-41). Sections 18(a)(5) of the Condo Act allows condo associations to delegate their duties and responsibilities to property management agents. (A.60-61, 72, 74 ¶¶ 40-41, 91). Kenmore Club entered into a management contract with Westward Management, a professional property management firm,

[1] Citations to (A._) are references to Westward's Separate Appendix. Citations to Channons' Separate Appendix appear as (SA-_). Citations to (Sup C _) refer to the Supplemental Record on Appeal.

to assume a number of duties and responsibilities, including the statutory duty under section 22.1 to provide disclosure documents to condo sellers. (A.52, ¶¶ 42-46; A.61).

In late February 2016, the Channons placed their condo unit on the market for sale. (A.59-60 ¶ 38). Shortly thereafter, a prospective buyer requested disclosure documents from the Channons. (A.60 ¶ 39). Kenmore Club requires condo owners who are selling their unit to notify the Association's managing agent, Westward, of their intent to sell. (A.53-63 ¶¶ 8, 45, 51). The seller is then required to request directly, and must obtain, disclosure documents from the Association's agent, Westward. (A.61 ¶ 45).

On or about March 16, 2016, at the direction of Kenmore Club, the Channons sent Westward a "Notice of Intent To Sell" and requested the resale disclosure documents directly from Westward. (A.63 ¶ 51; A.130). As part and parcel of the resale package, Westward provided the Channons with a standard form document to complete entitled "Document Request Form" for, among other things, section 22.1 disclosure documents. (A.63 ¶ 52; A.128). The section 22.1 disclosure documents selected therein include: (a) Paid Assessment Letter, (b) Year to Date Income Statement and Budget, (c) Condo Questionnaire/Disclosure Statement, and (d) Insurance Contact Information. (A.63 ¶ 54; A.128).

In total, Westward charged the Channons Two Hundred Forty Five dollars ($245.00) to provide information that they had a statutory duty to furnish to the prospective purchasers. (A.63-64 ¶ 54; A.129). The Channons could not obtain the section 22.1 documents from any other source but Westward. (A.52-65 ¶¶ 3, 9, 14, 19, 21, 27, 46-47, 63).

On April 16, 2019, the Channons filed a two-count complaint against Westward. (A.51). Count I alleged a violation of section 22.1 of the Condo Act. (A.68-75 ¶¶ 70-102).[2]

[2] Westward asserts the Channons did not attach Westward's management contract to their Complaint, but fails to say that such contract was not provided to the Channons in the section 22.1 disclosures and was not produced until discovery, long after the Rule 308 appeal.

Count II alleged a violation of the Consumer Fraud and Deceptive Business Practices Act. (A.75-79 ¶¶ 103-123).

B. Westward Unsuccessfully Attempts To Remove This Case To Federal District Court, Contending The Putative Class Consists Of Hundreds, If Not Thousands, Of Individuals And With A Controversy Exceeding $5 Million.

On August 15, 2019, Westward filed a notice of removal to remove this case to the United States District Court for the Northern District of Illinois, citing to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2). (Sup C 7). To support its jurisdictional argument regarding the sufficiency of the class size under CAFA, Westward relied on the allegations contained in the Channons' Class Action Complaint to assert that "[***t]he Class is likely to consist of hundreds, if not thousands, of individuals*** due to Defendant's management of a number of condominium associations in and around Chicago." (Sup C 9 ¶ 10).[3] Westward further contended that the amount in controversy requirement exceeded the sum or value of $5,000,000.00. (Sup C 11 ¶ 24).

On March 13, 2020, the district court granted the Channons' motion remanding the action to the circuit court of Cook County. On July 31, 2020, Westward filed a Motion to Dismiss the Complaint pursuant to section 2-615. [4] (A.152).

C. The Circuit Court Denies Westward's Motion To Dismiss, Finding Section 22.1 Provides An Implied Cause Of Action For Condo Sellers.

On October 27, 2020, the circuit court entered an Opinion and Order denying Westward's Motion to Dismiss Counts I and II of the Channons' Complaint. (A.43). The circuit court reasoned, in part, as follows:

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[3] Emphasis added unless otherwise noted.

[4] Westward also moved to dismiss Count II (CFA claim) (A.158), which the circuit court denied. In its April 19, 2021 Order, the appellate court indicated that the Rule 308 interlocutory appeal would be confined solely to the question regarding Count I, (A.20), under section 22.1 of the Act.

> Viewed as a whole, the Act protects buyers and sellers alike, And why would it not? Today's buyer becomes tomorrow's seller, and both roles are incentivized to comply with the Act's provisions when each has the means to keep the other in line. Indeed, Section 22.1 itself reflects this reality: it imposes substantial obligations on sellers to secure the provision of certain documents from management, but in turn offers them a shred of protection against price-gouging.
>
> This is consistent with the remainder of the Act. After all, a seller is also definitionally a unit owner. And unit owners may bring other implied statutory causes of action. *E.g., Boucher v. 111 E. Chestnut Condo. Ass'n*, 2018 IL App (1st) 162233, ¶ 20 (establishing cause of action by unit owner against association for violation of First Amendment rights).
>
> And, this conclusion is wholly consistent *with legislative history*. Plaintiffs have provided excerpts from that history on their Response, and it is telling that Defendant does not seriously question the statements therein. The Act protects both sellers and buyers, and was meant to from the start. The fact that those protections take different forms is a simple function of the parties' different roles in a sales transaction, rather than any indication of deliberate omission. (emphasis in original.)
>
> The Court concludes that Section 22.1 was designed to protect sellers, as well as buyers . . . Because (1) Section 22.1 is designed to protect sellers, the Court easily finds that (2) implying a cause of action against the imposition of unreasonable fees is consistent with the purpose of Section 22.1, given that Section 22.1(c) explicitly prohibits the imposition of unreasonable fees; (3) charging an unreasonable fee is exactly the type of injury a statutory prohibition against unreasonable fees is designed to prevent; and (4) establishing a cause of action is the only method to enforce the statutory requirement.
>
> The Court therefore concludes that Section 22.1 permits a cause of action to be brought by a unit owner for the imposition of unreasonable fees in connection with the provision of Section 22.1 documents. (A.30-31, 38-39).

The circuit court further disagreed with Westward's reliance on federal opinions considering whether condo sellers have an implied cause of action under section 22.1 and reasoned:

> *Horist* reads *Nikolopulos* and *D'Attomo* as exhaustive statements as to what Section 22.1 is, permitting no other purpose to be read into the statute. But neither *Nikolopulos* nor *D'Attomo* purports to close out the scope of Section 22.1, such that it would protect buyers *only*, or otherwise say anything about sellers. And reading the Act as a whole—inclusive of the legislative history and

> its other protections to unit owners—it seems apparent that Section 22.1 was intended to protect sellers and buyers alike. (A.40).

On the issue of Westward's agency relationship with the Association and whether the agent should be held liable for its excessive fees, the circuit court reasoned:

> On a Motion to Dismiss, the Court takes Plaintiffs' allegations as true. Plaintiffs have thoroughly alleged not only that Defendant is an agent of Kenmore Club, but that Kenmore Club does not have either the Section 22.1 documents or the means to obtain them. In other words, with respect to Section 22.1, Defendant is both the beginning and end of the equation, and Kenmore has handed over *every* aspect of its Section 22.1 duties—and Defendant accepted those duties. On the allegations, Defendant took on the Section 22.1 duty owed to Plaintiffs.
> . . .
> Regardless of where duties originate, or where they may be owed, Plaintiffs finally point to *Landau* for the proposition that an agent is liable for a duty owed by the principal where the agent "takes some active part in violating some duty the principal owes to a third person." *Landau v. Landau*, 409 Ill. 556, 564 (Ill. 1951).
>
> *Landau* may be seventy years old, but the Court has seen no indication that this core rule is no longer good law. And Plaintiffs here squarely alleged facts within the *Landau* rule: to whatever extent the duty to not charge unreasonable fees remains on Kenmore Club's shoulders, Defendant is the one charging the fees—and, on the allegations, Defendant is the *only* party who can assemble or otherwise provide the document. (A.40-41). (Emphasis in the original).

Thereafter, Westward filed a Motion To Certify Question Pursuant to Supreme Court Rule 308, seeking an interlocutory review of the question of whether section 22.1 of the Condo Act allows condo sellers to bring a private right of action against property management companies who assume the statutory duties of condo associations with respect to fees charged for documents described under section 22.1. (A.333). For purposes of the Certified Question, Westward admitted its agency relationship to Kenmore Club. (A.384). The circuit court granted Westward's Rule 308 motion. (A.35). On April 19, 2021, the appellate court granted Westward's Rule 308 Application as to the question certified, which strictly concerns section 22.1 of the Condo Act. (A.28).

D. The Appellate Court Holds That Section 22.1 Of The Condo Act Provides An Implied Private Right Of Action In Favor Of Condo Sellers Against Property Management Agents.

The appellate court answered the certified question in the affirmative and held that section 22.1 of the Condominium Property Act provides for an implied cause of action in favor of condo sellers against property management agents. (A.4).

In applying this Court's four-factor test for an implied private right of action under *Metzger v. DaRosa,* 209 Ill. 2d 30, 34 (2004), the appellate court made this point clear:

> [W]e find that the plain language of section 22.1 requires us to reject the defendant's argument that its purpose is only for the benefit or protection of potential purchasers of condominium units. Although that may be the statute's primary purpose, ***it is clear from the plain language of this statute that it also has the purpose of benefiting condominium unit owners who wish to sell their units . . .*** (A.16).

> Section 22.1 thus protects unit owners who want to sell their condominium units by ensuring that they have a statutory mechanism to obtain this information form an association to provide in connection with a sale. It protects unit owners who could otherwise be locked into the purchase of a condominium unit, unable to sell it. The statute thus facilitates sales, just as it protects purchasers. (A.17).

The appellate court looked to the plain language of section 22.1(c), finding the terms "reasonable" and "direct out-of-pocket costs" was designed to also protect *condo sellers*:

> The statute also protects unit owners wishing to sell (as well as owners' associations and their boards of managers) by specifying what may be charged for providing the selling unit owner with the information required under section 22.1. Without the last sentence of section 22.1(c), it is not difficult to imagine how disputes could arise between a unit seller and an owners' association or board of managers about whether and how much the unit seller could be charged to receive this information. . . . The fact that the General Assembly chose to specify that only a direct out-of-pocket charge would be considered reasonable is especially indicative of a legislative intent to protect unit sellers needing to obtain this information. (A.17-18).

The appellate court further addressed Westward's reliance on federal decisions to support its position that section 22.1 was intended exclusively to protect only condo

purchasers. (A.14). In doing so, the appellate court made several important points. First, recognizing the "well settled" proposition that "federal decisions are not binding on Illinois state courts." (A.15). Second, nonetheless considering the federal decisions, but finding that it "disagree[d] with the analysis of *Horist v. Sudler & Co.,* 941 F.3d 274, 279-80 (7th Cir. 2019), and other federal cases" and "conclude[d] that they interpreted the purpose of section 22.1 too narrowly." (A.20).

Finding that several Illinois appellate court decisions that Westward cited and relied upon had similarly circumscribed section 22.1 too restrictively, the appellate court reasoned that "[n]either *Nikolopulos* nor *D'Attomo* held that section 22.1 had the exclusive purpose of protecting purchasers of condominium units and had no purpose of providing protection to sellers." (A.20). Accordingly, the appellate court engaged in its own, independent analysis in concluding that section 22.1 also protected condo sellers. (A.16-20).

As to Westward's argument regarding the Consumer Fraud Act, the appellate court noted that Westward's argument shifted from its position in the trial court, where it argued "in its motion to dismiss that the misconduct alleged by the plaintiffs is *not* the type of conduct that falls within the purview of the Consumer Fraud Act." (A.20). Therefore, the appellate court declined to consider Westward's "cursory assertion that the Consumer Fraud Act provides an adequate cause of action for relief under section 22.1" as the issue was not before the court on the certified question and was insufficiently briefed. (A.20).

Turning to the issue of agency, the appellate court agreed with the circuit court's conclusion that a defendant-property management company could be held liable as the condo association's agent for allegedly charging excessive fees in violation of section 22.1(c):

> The trial court cited and quoted *Landau*, 409 Ill. at 564, for the principle that an agent may be held liable for the breach of a duty owed by a principal where the agent "'takes some active part in violating some duty the principal owes to a third person.'" The trial court reasoned that the plaintiffs' allegations fit

> squarely within this rule, that "to whatever extent the duty to not charge unreasonable fees remains on Kenmore Club's shoulders, Defendant is the one charging the fees–and, on the allegations, Defendant is the *only* party who can assemble or otherwise provide the document[s]." (Emphasis in original). (A.21).
>
> We agree with the trial court's reasoning. Although section 22.1 itself does not specifically mention that the statutory duties of a condominium unit owners' association may be performed by its managing agent, ***we see no reason why this would not be one of the "services" for which an association's board of managers may engage a managing agent under section 18(a)(5)***. 765 ILCS 605/18(a)(5) (West 2016). (A.21-22).

The appellate court explained that under agency law principles, when an agent agrees to perform the duties of an association or board of managers under section 22.1, "it cannot be delegated or agree to perform those duties as agent in a way that the association or board would be prohibited from doing as principal." (A.22). The appellate court continued: "An agent's power is inherently limited by the power of the principal to act on its own behalf, since the capacity to do a legally consequential act by means of an agent is coextensive with the principal's capacity to do the act itself." (A.22). The appellate court applied these principles to the facts alleged in the Channons' complaint to explain why Illinois' active-part agency tenets were directly implicated:

> If a property manager used its status as agent to collect a fee from sellers greater than that allowed by the statute and then remitted that fee to the association or board, it would be taking an active part in violating a statutory duty owed by the principal; its defense to liability in that instance would be that the principal had received the money. But, if the property manager charged a unit seller the exact same fee and kept the money instead of remitting it to the association or board, we fail to see how the agent could not be liable under the statute. (A.22).

Lastly, the appellate court addressed Westward's argument that the Channons have a cause of action against the association under section 19 of the Condo Act for allegedly charging excessive fees for disclosure documents, but finding it "unhelpful to [its] interpretation of section 22.1." (A.24). The appellate court explained: "Whether section 19

would permit a cause of action against a managing agent that takes on an association's duties under that section is not before us." (A.24). On March 30, 2022, this Court granted Westward's Application for Leave to Appeal Pursuant to Supreme Court Rule 315. (A.36).

STANDARD OF REVIEW

The issue on this Rule 315 appeal involves review of the appellate court's ruling on a certified question concerning statutory interpretation, which presents pure questions of law that this Court reviews *de novo*. *Dawkins v. Fitness Int'l, LLC*, 2022 IL 127561, ¶ 27.

ARGUMENT

Under Westward's cramped reading of section 22.1, this statutory provision protects only condo buyers. Westward is mistaken. Relying on the plain language of section 22.1, the appellate court rejected Westward's unduly narrow reading and correctly held that section 22.1 protects all members of the public involved in condominium sales transactions, including condo sellers. Based on its reading of the statute, the appellate court properly applied the four-part *Metzger* test and further held that section 22.1 provides for an implied cause of action in favor of condo sellers against property management agents. (A.4). Westward's arguments in opposition to this holding lack merit.

I. Westward's Arguments Regarding An Implied Private Right Of Action.

Westward challenges the appellate court on all four factors of the test utilized in *Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (2004). Westward argues that the appellate court erred because it failed to correctly apply the first *Metzger* factor, which Westward claims distinguishes between "primary and incidental benefits" in determining whether to imply a private right of action. (Def. Br. 22). Westward argues that under the first factor, which they label here as the "primary-incidental" test, the primary *purpose* of section 22.1 is *only* for the benefit of potential buyers. (Def. Br. 9). Thus, Westward argues that because the appellate court found that

potential buyers are the "primary beneficiaries" of section 22.1, it should have concluded that sellers are not, but are at most "incidental beneficiaries" of the entire provision. (Def. Br. 22). Regarding the second and third *Metzger* factors, Westward contends that section 22.1 was not "primarily designed" to protect sellers and, therefore, protecting sellers under the statute does not comport with its "primary purpose," which Westward argues is only to protect buyers. (Def. Br. 10, 23).

Westward also argues that the Channons fail to satisfy the fourth factor under *Metzger* because they have other remedies available including a claim under the Consumer Fraud Act; suing the Condo Association–but not Westward–under sections 22.1 and 19 of the Condo Act. (Def. Br. 24-30, 33-34).

II. Pertinent Statutory Construction Principles To Interpret The Class of Intended Beneficiaries.

The parties disagree about the purposes of section 22.1 and how multiple purposes should be accommodated in this case. To examine the statute's purposes, the context is important. Here, that context is a condo sale transaction, which necessarily involves multiple parties who should have an equal interest in being protected.

This appeal largely centers upon the interpretation of section 22.1. Thus, statutory construction principles are pertinent. The primary rule is to give effect to the legislative intent of the statute. *Dawkins*, 2022 IL 127561, ¶ 27. To ascertain an Act's purpose, the Court looks to the statutory language used therein and gives the words their plain and ordinary meaning. *Id.* In that connection, the Court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. *Id.*

The Court presumes that the legislature in enacting legislation did not intend absurdity, inconvenience, or injustice. *Roberts v. Alexandria Transp., Inc.*, 2021 IL 126249, ¶ 29. And

"[w]hen a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the reading leading to absurdity should be rejected." *Dawkins,* 2022 IL 127561, ¶ 27. Nor can the meaning of a word in a statute be determined in isolation, but must be drawn from the context in which it is used. *Corbett v. Cty. of Lake*, 2017 IL 121536, ¶ 27. Courts give statutes the fullest, rather than the narrowest, possible meaning to which they are susceptible. *Landis v. Marc Realty, L.L.C*, 235 Ill. 2d 1, 11 (2009).

If the legislative intent cannot be readily determined from the statutory language alone, the Court may refer to other recognized sources—including, among other things: the statute's history; legislative record; the structure of the statute, meaning how one or another interpretation of the provision in question fits with subsections within the provision, or with other provisions in the statute whose meaning is uncontested; the general purposes behind the statute, and the goals of the statute as a whole. *Royal Glen Condo. Ass'n v. S.T. Neswold & Assoc.*, 2014 IL App (2d) 131311, ¶¶ 19, 21.

When interpreting the purpose of a specific *provision* within a statute, the court looks to the purposes of the Act *as a whole* to ascertain the provision's intent. *Royal Glen*, 2014 IL App (2d) 131311, ¶ 21. Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. *Id.* Courts should not depart from the plain terms of a statute to read in a condition that would conflict with, or defeat the meaning and intent of the provision at issue. S*choll's 4 Season Motor Sports, Inc., v. Ill. Motor Vehicle Review Bd.*, 2011 IL App (1st) 102995, ¶ 32. Therefore, in determining the legislative intent of section 22.1, the Court should consider the entire statutory scheme of the Condo Act, and "in a manner that renders the statute consistent, useful, and logical." *Royal Glen*, ¶ 21.

III. Statutes May Have Dual, And Not Merely A Single, Legislative Purpose.

A centerpiece to Westward's thesis is that a statute's provision, such as section 22.1, can have but a single purpose and protect but a single class. (Def. Br. 8-9, 12, 21-23). And, since several courts have already held that section 22.1 protects condo buyers, Westward contends that disposition automatically forecloses the statute from protecting any *other* party involved in the condo sale transaction, such as corresponding condo sellers. (Def. Br. 13-16). But that conclusion conflicts with established precedent that recognizes statutes may have dual, and not exclusively single, purposes. A dual-purpose statute is one in which the class members may have competing interests, all of which are protected under the statute, such as different parties to the same transaction. Additionally, a dual-purpose statute may seek to accomplish multiple goals, such as regulating an industry and supporting economic growth.

This Court has long held that, when interpreting statutes, the legislature may have intended to protect more than a single interest. *See*, *e.g.*, *Italia Foods, Inc. v. Sun Tours, Inc.*, 2011 IL 110350, ¶ 13 ("[] *purposes* of the TCPA 'are to protect the privacy interests of residential telephone subscribers . . . *and* to facilitate interstate commerce . . .'"); *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 504 (1988) (an Act can have multiple purposes which are reflected in its specific provisions).

Statutory provisions do not operate in silos. *Barnett v. Zion Park Dist.*, 171 Ill. 2d 378, 389 (1996) (evaluate the Act as a whole; construe each provision in connection with every other section). Each provision may protect multiple categories of class members within the general intended class at once. *See*, *e.g.*, *Boyer v. Atchison T. & S. F. Ry. Co.*, 38 Ill. 2d 31, 37-38 (1967) (an Act can intend to protect more than one beneficiary at the same time). To argue otherwise, that a statutory provision must protect only *one* category of members within the general class, would render a dual-purpose statute ineffectual. Such a wooden approach is not

a functional means of statutory interpretation and would prevent dual-purpose statutes from fully realizing the breadth of protections for which they were enacted. *Boyer*, 38 Ill. 2d at 37 (""This Act, fairly interpreted, must be held to protect all who need protection from dangerous results"" proscribed by the Act) (citation omitted); *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1087-88 (4th Dist. 2009) (legislature intended to protect homeowners considered "prey" and codify a sound business practice "***for the protection of both*** the honest contractor and the informed consumer").

This Court has recognized that a fair interpretation of an Act assumes that the provisions of a statute will protect all those who need protection. *Boyer*, 38 Ill. 2d at 37. Likewise, a fair interpretation of the Condo Act will seek to protect class members, such as condo owners who seek to sell their unit and are in need of protection. *Id.*; *Noyola v. Bd. of Educ. of Chi.*, 179 Ill. 2d 121, 129-31 (1997) (court's role when interpreting statutes is to protect those intended to be benefitted).

Thus, determining the scope of the class intended to be protected under a particular provision depends on the type of statute enacted, and its overall intended purposes. *Boyer*, 38 Ill. 2d at 36-38. Neither a statute nor its provisions need always have but a single purpose to its enactment; rather, they may have multiple purposes to accomplish a variety of goals and, to effectuate these goals, protect members of different categories within the benefited class all at the same time. As the appellate court held, section 22.1 is such a provision.

IV. A Plain Language Reading of Section 22.1 and the Act's Legislative Record Establish that the Underlying Dual Purposes of Section 22.1 Is To Protect Those Parties Involved in Condominium Sales Transactions.

In identifying statutory purposes, the court may look to the statute's history and the legislative record of the Act as a whole. In discussing the Act's purposes as a whole, the circuit court noted, "Plaintiff's exhortation to examine the Act through a broader lens comes into

play." (A.38). The circuit court found that "viewed as a whole, the Condo Act protects buyers and sellers alike." (A.38). The circuit court further held that protecting condo owners against price-gouging under section 22.1 is "consistent with the remainder of the Act" and "wholly consistent with the legislative history." (A.39 fn. 2). Likewise, the appellate court correctly recognized that examining the underlying purposes of the Condominium Property Act (765 ILCS 605/1 *et seq.*), and of section 22.1 specifically, was essential to determining whether condo owners/sellers have an implied private right of action. (A.7, 18-19; *Channon* ¶¶ 7, 24).

Accordingly, the legislative history of the Condo Act as a whole may assist this Court in making its own determination as to whether condo owners who are selling their units are protected under section 22.1.[5]

The Illinois Condominium Property Act is intended to protect multiple parties throughout the life of the condo sale transaction and condo ownership. 765 ILCS 605/1, *et seq*. The Condo Act is intended to protect the parties identified and/or defined in the Act's definition section, which include persons such as: condo owners, purchasers, the condo association, and its board of managers. 765 ILCS 605/2(f), (g), (o), (p) (2017). One of the purposes of the Condo Act as a whole is "to govern the affairs of Illinois Condo Associations" and "to establish procedures for the creation, sale, and operation of condominiums." *Royal Glen*, 2014 IL App (2d) 131311, ¶ 22. (A.16-17, *Channon* ¶ 21) (["]the statute facilitates sales[.]"). Section 22.1 was enacted on January 1, 1980 to address the resale of condo units. *Mikulecky v. Bart,* 355 Ill. App. 3d 1006, 1011-12 (1st Dist. 2004). While it is undisputed that disclosure

[5] Westward asserts "the circuit court referred to incomplete portions of legislative debates to support its ruling[.]" (Def. Br. 14). However, Westward never says *what* "incomplete" portions it is purportedly referring to. Significantly, legislative history was raised *as to the entire Act,* not just section 22.1. The circuit court noted: "Plaintiffs have provided excerpts from [the legislative] history on their Response, and it is telling that Defendant does not seriously question the statements therein". (A.39).

requirements that section 22.1 imposes protect potential buyers, the plain language of the provision and the legislative record of the Condo Act as a whole clearly demonstrates that it was also intended to protect owners who wish to sell their units (*i.e.*, condo sellers). 765 ILCS 605/2(f),(g); 765 ILCS 605/22.1(a). (A.7, 16-18; *Channon* ¶¶ 7, 21-22). 83rd Ill. Gen. Assem., H. Proceedings., Jul. 2, 1983, at 4 (amending the Condo Act to "strengthen the ***rights of unit owners***").

Thus, the Act has afforded protection to both the buyer and seller. *Boucher v. 111 E. Chestnut Condo. Ass'n*, 2018 IL App (1st) 162233, ¶ 20 (a statutory cause of action under the Condo Act by unit owner against association); *Kai v. Bd. of Dirs. of Spring Hill Bldg. 1 Condo. Ass'n*, 2020 IL App (2d) 190642, ¶ 29 (sellers in a condominium bulk sale transaction were protected under section 15 of the Condo Act). As both the circuit and appellate courts recognized, the semantics of buyers and sellers is beside the point; the issue is section 22.1 protects both buyers and sellers at once (*i.e.*, even handedly or *equally*). (A.16-18, *Channon* ¶¶ 21-22) (detailing protections afforded to multiple parties under section 22.1 in a condominium resale transaction); (A.37-38).

V. The Appellate Court Correctly Applied *Metzger* in Finding Condo Sellers Have An Implied Private Right Of Action Against Property Management Companies For Violating Section 22.1.

The appellate court considered the requisite four factors under *Metzger*, 209 Ill. 2d at 36, in determining whether to imply a private right of action for condo sellers under section 22.1: (1) the plaintiffs are members of the class for whose benefit the statute was enacted, (2) the plaintiff's injury is one the statute was designed to prevent, (3) a private right of action is consistent with the underlying purpose of the statute, and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute. (A.9-10, 12, *Channon* ¶¶ 13, 15).

First, nothing in this Court's *Metzger* decision establishes that every statute or its provisions must have exactly one "primary" purpose or one "primary" beneficiary. Nor does Westward cite to any such principle, because *Metzger* held that the plaintiff did not have an implied private right of action because they were not ***within*** the class the Act in question ***as a whole,*** was enacted to benefit. *Metzger*, 209 Ill. 2d at 38 ("viewed as a whole, it is clear the Personnel Code was primarily designed to benefit the state and the people of Illinois").

Second, an individual who arguably receives some secondary or incidental benefit from a statute differs from being a member of a *class* for whose benefit the statute was specifically enacted. *Boyer*, 38 Ill. 2d at 37-38 (plaintiff-passengers were undoubtedly ***within*** the class to be protected, which included more than just railroad employees); *Corgan v. Muehling*, 143 Ill. 2d 296, 313 (1991) (plaintiff was ***within*** the particular class of individuals the Act was enacted to protect because she was both a member of the public and a patient); *Sawyer Realty Grp., Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 390-91 (1982) (purchasers were ***within*** the class of persons for whose benefit the Act was enacted because they were an "aggrieved person" under the Act).

In contrast to the cases cited above, the only time a court has found that a plaintiff is an "incidental beneficiary" or receives "incidental benefits" is when it has already determined that the plaintiff is ***not within*** the class of individuals which the Act as a whole was enacted to protect. *Cf. Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 462-464 (1999) (plaintiffs were ***not within*** the class of persons the Act as whole was enacted to protect, despite that provision prohibited retaliation against employees); *Marque Medicos Fullerton, LLC v. Zurich Am. Ins. Co.*, 2017 IL App (1st) 160756, ¶¶ 57-61 (plaintiffs were ***not within*** class for whose benefit the Act as a whole was enacted; any benefit plaintiffs derived from the Act's provision was incidental to its main purpose); *Tunca v. Painter*, 2012 IL App (1st) 110930, ¶¶ 21-22 (plaintiff was ***not within*** the class of persons the Act as a whole was enacted to benefit, although they

incidentally benefitted from statute's confidentiality provision).

When analyzing the first factor for an implied private right cause of action under a statute, the Court does not ask whether the plaintiff is an "incidental beneficiary" of the statute. Rather, the Court asks whether the Act as a *whole* intended to protect that particular plaintiff from the particular harm they allegedly suffered, not narrowly examining the provision in question. *Fisher*, 188 Ill. 2d at 462-63 (error to focus on one single provision rather than looking at the statute as a whole).

Metzger first examined whether the plaintiff, a state employee, was within the class of members that the ***Code*** was enacted to benefit as a ***whole***. *Metzger*, 209 Ill. 2d at 38. The Court found they were not because, as a whole, the Code was enacted to benefit "the state and the people of Illinois"—not state employees. *Metzger*, at 38. Upon examining the specific section of the statute at issue, the Court found that while the provision did offer protections to the plaintiff, a state employee, from retaliatory action for reporting wrongdoing, those protections were "incidental to the overall purpose." *Id.* ("[a]lthough section 19c.1 protects state employees from retaliatory action, it does so to advance the ***Personnel Code's*** central purpose of advancing the interest of the state and the public by encouraging state employees . . . to report the wrongdoing").

In other words, the plaintiff (in their status as a state employee) in *Metzger* could not bring a claim against the defendant under ***any*** provision of the Code because the legislature intended for the *Code's* protections ***as a whole*** to extend only to the state and the people of Illinois–not employees of the state. *Metzger*, 209 Ill. 2d at 42-43 (Administrative Review Law was the exclusive remedy for employees with claims of retaliation). *Accord Fisher*, 188 Ill. 2d at 464 ("[] the Act was not intended to protect these plaintiffs nor prevent the injuries they allegedly suffered); *Marque*, 2017 IL App (1st) 160756, ¶ 60 (all of the Act's provisions were

designed to protect injured employees; Act was not enacted to protect workers compensation insurers); *Tunca*, 2012 IL App (1st) 110930, ¶ 22 (Act's "main purpose" was not to protect physicians; thus, physicians were not members of the class the Act was enacted to benefit).

Here, the appellate court correctly found that the Channons are within the class which the Condo Act ***as a whole*** intended to protect, and are not merely incidental beneficiaries. *Tassan* v. *United Dev. Co.*, 88 Ill. App. 3d 581, 596-97 (1st Dist. 1980) (individual unit owners had standing under Condo Act). Moreover, the court found that the Channons satisfied all four factors of *Metzger*. (A.20, *Channon* ¶ 27).

A. First *Metzger* Factor: Condo Sellers Are Members of the Class Which the Condo Act as a Whole and Section 22.1 Intends to Protect.

The appellate court correctly determined that the Channons are members of the *class* for whose benefit the Condo Act—as a whole and specifically section 22.1–was enacted to protect based on a plain reading of the statute. (A.6-7, 16-18, *Channon* ¶¶ 7, 21, 23). The first *Metzger* factor asks whether the plaintiffs are members of the class for whose benefit the statute was enacted. *Metzger*, 209 Ill. 2d at 36.

First, the appellate court considered the purpose of the Condo Act as a *whole* in making its determination regarding protections afforded to various individuals under the Act. The appellate court found that the Condo Act contained protections for both buyers and sellers alike, and agreed with the trial court that "today's buyer becomes tomorrow's seller." (A.6-7, 16-17, *Channon* ¶¶ 7, 21). The appellate court also correctly recognized that under the Condo Act, the condo seller is, by definition, a unit owner. (A.7, *Channon* ¶ 7). 765 ILCS 605/2(f) ("Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property); 765 ILCS 605/2(g) ("Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a unit, or, in the case of a leasehold condominium, the lessee or lessees of a unit

whose leasehold ownership of the unit expires simultaneously with the lease described in item (x) of this Section").

Specifically, section 22.1(a) provides that "[i]n the event of any *resale* of a condominium unit *by a unit owner other than a developer* such owner . . . shall make available . . . to the prospective purchaser," the 22.1 disclosure documents, and thus defines the sellers who are obligated to provide resale disclosure documents *as unit owners*. 765 ILCS 605/22.1(a). Section 22.1(c) goes on to specify that "[a] reasonable fee covering the direct-out-of-pocket costs of providing such information . . . may be charged . . . to the *unit seller* . . " . 765 ILCS 605/22.1(c). By defining these owners and sellers in the Act, and within the provision itself, the legislature demonstrated an intent to protect individuals such as the Channons under the Act and in the statute's provisions. Thus, the appellate court consistently referred to condo sellers as "owners who want to sell their unit" in its analysis and thereby acknowledged that condo sellers, as owners, are members of the class for whom the Condo Act as a *whole* and section 22.1 were enacted to benefit. (A.16-19, *Channon* ¶¶ 21-22, 24).

Second, turning to section 22.1, the appellate court found that the plain language of section 22.1 as a whole demonstrates that it has multiple purposes. (A.16-17, *Channon* ¶ 21) ("[] the plain language of section 22.1 requires us to reject the defendant's argument that its purpose is only for the benefit or protection of potential purchasers of condominium units."). The appellate court concluded "[a]lthough that may be the statute's primary purpose, it is clear from the plain language of ***this statute*** that it ***also has the purpose of benefiting condominium owners who wish to sell their units.*** (A.16-17, *Channon* ¶ 21). The appellate court's use of the term "primary purpose" does not mean that under *Metzger*, section 22.1 can only have an *exclusive* purpose to benefit one group—prospective purchasers. *Landis*, 235 Ill.2d at 11-12 (in absence of any indication that legislature intended a term to have a narrow

meaning, proper inference is that it intended the broader meaning). Rather, the appellate court looked at the statutory scheme of section 22.1 as a whole and determined that it had multiple purposes. (A.16-17, *Channon* ¶ 21).

The appellate court explained that section 22.1 imposes substantial obligations on sellers to ***obtain*** the information required under section 22.1(a), most of which is not within the knowledge or possession of an individual owner. (A.16-17, *Channon* ¶ 21). A condo owner who wants to sell his unit would be significantly hindered in doing so if he has no legal method to acquire this information from the party in possession of it (in this case Westward) to provide to a potential buyer. (A.6-7, 16-18, *Channon* ¶¶ 7, 21-22). Furthermore, a seller without a mechanism to obtain critical information about the financial status of the condo association, or the condition of the property in advance of a sale will likely be unable to sell it. (A.16-17, *Channon* ¶ 21). Thus, the appellate court found that one of the purposes of section 22.1 is to "protect[] unit owners who could otherwise be locked into the purchase of a condo unit, unable to sell it", because it mandates the statutory mechanism to *obtain* this information to provide their potential buyer who would undoubtedly insist on having it. (A.14-17, *Channon* ¶¶ 18, 21).

Next, in analyzing section 22.1(c) in relation to the statute as a whole, the appellate court reasoned that 22.1(c) in particular protects unit owners who want to sell their condo unit, the condo association, and its board of managers because it specifies what may be charged for providing the owner with the information required under section 22.1(a), and thereby prevents disputes over the costs. (A.17-18, *Channon* ¶ 22). Section 22.1(c) further protects unit sellers because it specifies that only "direct out-of-pocket costs" would be considered reasonable. (A.17-18, *Channon* ¶ 22). Thus, unit sellers are members of the class that the

Condo Act as a whole and section 22.1 was enacted to protect. (A.18, *Channon* ¶ 23).

Third, turning to the federal court cases interpreting section 22.1, the appellate court acknowledged that it may consider federal decisions interpreting state law, but in this case, it declined to do so. (A.15, *Channon* ¶ 19). The appellate court correctly rejected *Horist*, 941 F.3d 274, 276-80; *Murphy*, WL 3428084, at *3; and *Ahrendt*, 2018 WL 2193149, at *2.[6] All of these cases are federal decisions attempting to interpret an Illinois statute on an issue of first impression. *Bridgeview Health Care Ctr., Ltd. v. State Farm Fire & Cas. Co.*, 2014 IL 116389, ¶ 16 (federal opinions that make an "Erie guess" on a question of first impression interpreting state law are not binding on Illinois courts). Only Illinois courts authoritatively determine Illinois law; what a federal court says about Illinois law is not binding on any Illinois court. *People ex. rel. Ryan v. World Church of the Creator*, 198 Ill. 2d 115, 127 (2001) (Illinois Supreme Court makes final determination on state statutes).

Horist's analysis was confined to section 22.1, which when read in isolation, does not aid this court in resolving the issues presented in this case. (A.14-15, *Channon* ¶ 18). Significantly, *Horist* failed to apply general rules of statutory interpretation; what is more startling, the court did not read the Condo Act as a whole, nor consult the Act's legislative history. *Horist*, 941 F.3d at 279. Despite these glaring analytical deficiencies, *Horist* concluded

[6] When this Court vacates an appellate court opinion, that opinion "carries no precedential weight." *Quigg v. Walgreen Co.,* 388 Ill. App. 3d 696, 701 (2nd Dist. 2009). Surely, if a vacated appellate court opinion has no precedential value, then a vacated federal district court opinion cannot have any precedential value, either. Here, the *Ahrendt v. Condocerts.com, Inc.*, 17-cv-08418, 2018 WL 2193140 (N.D. Ill. May 14, 2018), opinion upon which Westward relies was vacated three years ago. On July 5, 2018, the Northern District Court of Illinois vacated its order dismissing plaintiff's complaint and was never reinstated. (SA-1). After the Seventh Circuit's *Horist* ruling, the district court granted the plaintiff's notice to voluntarily dismiss the case *without prejudice*. (SA-2-4). Thus, *Ahrendt* offers no support on the issue certified for appeal.

that the "manifest statutory purpose" of section 22.1 is to protect potential buyers, and not condo sellers. *Id.* at 280. Effectively, *Horist* draws the implausible conclusion that the statute works as an integrated whole only if sellers are excluded from protection. *Id.* The appellate court rejected *Horist's* crabbed interpretation of section 22.1 and held: the purpose of section 22.1 is *both* for the protection of prospective purchasers and condo owners wishing to sell their units. (A.18-19, *Channon* ¶ 24).

Moreover, *Horist* ignores the plain language of section 22.1, and, in effect, holds that the "reasonable fee covering the direct out-of-pocket costs" requirement is superfluous. *Horist*, 941 F.3d at 280. But it is axiomatic that courts are not to ignore express language in a statute. *Scoby v. Civil Serv. Comm'n*, 253 Ill. App. 3d 416, 418 (5th Dist. 1993) (courts are not free to ignore a statute's plain language). This is precisely what the court did in *Horist* by erroneously rewriting section 22.1 when it effectively eliminated the "reasonable" term from its express provisions. *Horist*, at 280. Courts are not to engage in such judicial fiat. *Ill. State Treasurer v. Ill. Workers' Comp. Comm'n*, 2015 IL 117418, ¶ 28 (no rule of statutory construction authorizes a court to rewrite a statute to add provisions or limitations the legislature did not include).

Even assuming, arguendo, that the primary purpose of the "reasonable fee" language was not included out of concern for the seller as *Horist* suggests, this language still has the direct impact of protecting sellers from unreasonable fees. *Horist*, 941 F.3d at 280. Under section 22.1(c), condo associations or their boards of managers are restricted to charging only a "reasonable fee" covering the "direct out-of-pocket costs" for copying and providing disclosure documents to condo sellers. 765 ILCS 605/22.(c). This is a restriction on what may be charged to the unit seller. (A.17-18, *Channon* ¶ 22). The appellate court recognized

this very principle when it stated, "[t]he fact that the General Assembly chose to specify that only a direct out of pocket charge would be considered reasonable is especially indicative of a legislative intent to protect unit sellers needing to obtain this information." (A.17-18, *Channon* ¶ 22).

The appellate court next addressed *Murphy v. Foster Premier, Inc.*, No. 17-cv-8114, 2018 WL 3428084, at *3 (N.D. Ill. July 16, 2018). (A.15, *Channon* ¶ 19). *Murphy* found that condo owners/sellers were within the class for whose benefit section 22.1 was enacted, but concluded that "*the goal* of the statute was to increase disclosure" and thus, condo sellers' injury of being charged excessive fees to obtain resale documents was not one the statute was designed to prevent. *Murphy,* 2018 WL 3428084, at *3. (A.15, *Channon* ¶ 19). Such an assertion ignores the fact that excessive fees stand directly in the way of a seller's ability to fulfill the very duty of disclosure. The appellate court recognized as much when it stated that "section 22.1 thus protects unit owners who want to sell their condominium units by ensuring that they have a statutory mechanism to obtain this information" and also protects unit owners "by specifying what may be charged" which prevents disputes over the fee and protects all parties in the process. (A.16-18, *Channon* ¶¶ 21-22).

Murphy further held that while limiting costs is "consistent with the purpose of the Act," it is not what motivated the legislature when it enacted section 22.1. *Murphy*, 2018 WL 3428084, at *3. *Murphy's* position that legislation may only exist for a singular, specific purpose is illogical. The appellate court appreciated the trial court's point that "today's buyer is tomorrow's seller," recognizing the life cycle of the condo sale transaction and the necessity for various parties to enforce their protections in the different classifications they will take on

during that cycle. (A.7, *Channon* ¶ 7). Thus, the appellate court determined that the ***class*** of intended beneficiaries under section 22.1 is not exclusive to prospective purchasers, but also includes other individuals who receive the benefit of protection under section 22.1–including condo owners who wish to sell their units. (A.16-20; *Channon* ¶¶ 21-22, 24, 27).

Lastly, the appellate court reasoned that the federal court opinion in *Horist*, 941 F.3d at 276-77, and the other federal district court cases interpreting section 22.1 had read *Nikolopulos v. Balourdos*, 245 Ill. App. 3d 71 (1st Dist. 1993), and *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, too narrowly as permitting no other purpose to be read into the statute than protecting purchasers.[7] (A.20, *Channon* ¶ 27). Specifically, the appellate court noted that, while *D'Attomo* had extended the holding of *Nikolopulos* to recognize an implied private right of action in favor of a purchaser under section 22.1 *post-closing* (*i.e.*, to a former buyer who is now definitionally a unit owner), neither case held that section 22.1 had the exclusive purpose of protecting purchasers and had no purpose of providing protection to condo sellers. (A.13-14, 20, *Channon* ¶¶ 17, 27).

Accordingly, the appellate court correctly found that condo owners who want to sell their condo unit are *also* members of the class for whose benefit section 22.1 was enacted to protect.

[7] Westward references the circuit court's Apr. 1, 2021 decision in *Friedman v. Lieberman Mgmt. Srvs. Inc.*, No 2016 CH 15920. (Def. Br. 20). But the appellate court in *Channon* effectively rejected the reasoning of that decision. Moreover, Westward failed to mention that Judge Moreland's decision in *Freidman* is currently pending on appeal before the First District.

B. Second *Metzger* Factor: Sellers Have A Private Right Of Action Against Property Managers Under 22.1 Because Plain Language of Section 22.1(c) Demonstrates That It Was Designed To Protect Condo Sellers From Excessive or Unreasonable Fees.

The second *Metzger* factor asks whether the plaintiff's injury is one the statute was designed to prevent. *Metzger*, 209 Ill. 2d at 36. When interpreting a statute's provisions, the court views the Act as a whole to determine the purposes that the Act was designed to accomplish. *Ramirez v. Chi. Bd. of Election Comm'rs*, 2020 IL App (1st) 200240, ¶ 14. Some of the purposes of the Condo Act are "to govern the affairs of Illinois Condo Associations" and "to establish procedures for the creation, *sale*, and operation of condominiums." *Royal Glen*, 2014 IL App (2d) 131311, ¶ 22. Moreover, the Condo Act seeks to protect buyers and sellers alike. (A.6-7, 16-18, *Channon* ¶¶ 7, 21, 22). *Kai*, 2020 IL App (2d) 190642, ¶ 22 (section 15 of Condo Act operates to equally protect condo sellers in a sale transaction).

The Channons allege in their class action complaint that under section 22.1, condo associations or their boards of managers and their agents are restricted to charging only a "reasonable fee covering the direct out-of-pocket cost" for providing disclosure documents to condo sellers. 765 ILCS 605/22.1(c). The Channons further alleged that Westward charged them an excessive fee for providing documents required by section 22.1(a) to sell their condo unit, which did not reflect Westward's direct out-of-pocket costs, and therefore, was an unreasonable fee. (A.71-72, ¶ 87; A.75, ¶ 102).

The appellate court's plain reading of the purposes of the Condo Act as whole, in conjunction with the language of the provision, demonstrates that section 22.1 is designed to also inure to the benefit of condo sellers. *First*, the Condo Act facilitates sales and provides protections; charging excessive fees interferes with the sale transaction of the condominium—and one of the purposes of the Act is to facilitate the *sale* of condominiums. (A.16-18, *Channon* ¶¶ 21-22). *Royal Glen*, 2014 IL App (2d) 131311, ¶ 22. When enacting the section 22.1 "Resale"

provision, the legislature intended to protect condo owners in obtaining the resale documents and information specified in section 22.1(a). (A.16-18, *Channon* ¶¶ 21-22). Therefore, section 22.1 protects condo owners/sellers by ensuring that they can acquire this information from the party in possession of it to provide to their prospective purchaser. (A.17-18, *Channon* ¶ 22). The appellate court explained: a seller without the ability to obtain the resale documents is likely to have difficulty finding a buyer. (A.16-18, *Channon* ¶¶ 21-22). Thus, section 22.1 is designed *also* to protect condo owners who would otherwise be locked into the purchase, unable to sell it. (A.16-18, *Channon* ¶¶ 21-22).

Second, the design of section 22.1 promotes a public policy of protecting condo sellers in particular from the injury of being charged excessive or unreasonable fees in the condo resale transaction. The plain language of section 22.1(c) includes highly pertinent terms (*i.e.*, "may", "reasonable", "direct out-of-pocket costs") that should not be regarded as inconsequential. 765 ILCS 605/22.1(c). *Alliance Great Lakes v. Ill. Dep't of Nat. Res.,* 2020 IL App (1st) 182587, ¶ 42 (statute should not be construed to render any part of it meaningless or superfluous). Section 22.1(c) specifies that the condo association *may* charge the unit seller for copying and providing documents and information, and further provides for "general parameters of what the amount may be charged." (A.17-18, *Channon* ¶ 22). As the appellate court explained, because the plain language of section 22.1 limits the charge to a reasonable fee of the "direct out-of-pocket cost" the legislature intended that section 22.1 protect condo sellers in particular from the injury of being charged an excessive or unreasonable fee to receive documents and information under section 22.1(a). (A.17-18, *Channon* ¶¶ 22-23). 765 ILCS 605/22.1(c).

Thus, the appellate court's determination was correct; being charged an excessive or unreasonable fee to obtain resale documents is an injury that the statute was designed to

prevent. (A.17-18, *Channon* ¶¶ 22-23). Protecting condo sellers under section 22.1 is thus consistent with one of the underlying purposes of the Condo Act as a whole. 765 ILCS 605/22.1(c). (A.17-18, *Channon* ¶¶ 22-23).

C. Third *Metzger* Factor: A Private Right Of Action Under Section 22.1 Is Consistent With The Underlying Purposes Of The Condo Act as Whole, and that of Section 22.1.

The third *Metzger* factor inquires whether a private right of action is consistent with the underlying purpose of the statute. *Metzger*, 209 Ill. 2d at 36. The meaning of a specific statutory provision is derived from an examination of the language and purposes of the Act as a whole. *In re Liquidations of Reserve Inc. Co.*, 122 Ill. 2d 555, 558 (1988).

The appellate court correctly held that implying a private right of action in favor of unit sellers who are charged excessive or unreasonable fees under section 22.1 is consistent with the statute's dual purposes to protect multiple parties. (A.18-19, *Channon* ¶ 24). The appellate court determined that the purposes of section 22.1 embraced protecting *both* the prospective buyer and the condo owner. (A.16-19, *Channon* ¶¶ 21-24). Section 22.1 protects sellers because it ensures that the seller has a legal mechanism to obtain critical information and documents about the condo association, the property as a whole and the individual unit to provide to the buyer. (A.16-19, *Channon* ¶¶ 21, 24). The seller is further protected because the statute specifies what may be charged for providing the unit seller with the information under section 22.1, and therefore, sets the parameters of the parties' expectations and obligations owed to one another. (A.17-19, *Channon* ¶ 22, 24).

The purchaser, on the other hand, is protected when the unit seller provides this information. Such information, to be sure, necessarily impacts the prospective purchaser's decision to buy a unit within a particular condo association. The prospective purchaser is protected because he or she is "fully informed and satisfied with the financial stability of the

condominium as well as the management, rules, and regulations which affect the unit he is seeking to purchase." (A.16-17, *Channon* ¶ 21). The underlying purposes of section 22.1 would be furthered if this Court were to find an implied private right of action on behalf of condo sellers such as the Channons. By protecting condo owners/sellers, the rights of all parties to the condo transaction are being recognized and the purposes of the statute as a whole are strengthened. Yet, if condo owners are stripped of their protections under section 22.1, they are left without an adequate remedy to enforce the statute, thereby not only eliminating one of its purposes, but the effectiveness of the Condo Act as whole.

Therefore, the appellate court correctly held that protecting sellers from excessive or unreasonable fees is consistent with one of the underlying purposes of section 22.1.

D. Fourth *Metzger* Factor: The Appellate Court Correctly Found That Without A Private Right Of Action Against The Property Management Company, No Adequate Remedy Exists For A Violation Under Section 22.1(c).

The court may imply a private right of action where the statute would be ineffective, as a practical matter, unless such an action were implied. *Metzger*, 209 Ill. 2d at 39-40.

The appellate court held that section 22.1 provides no penalty or other enforcement mechanism for charging an excessive or unreasonable fee for resale documents and information. (A.19, *Channon* ¶ 25). Thus, as the appellate court reasoned, without an implied private right of action in favor of a seller, the statutory prohibition on charging an excessive fee would be ineffective. (A.19, *Channon* ¶ 25). *Rodgers v. St. Mary's Hosp. of Decatur*, 149 Ill. 2d 302, 309 (1992) (implied private right of action was necessary to effectuate statute's purposes because Act contained no remedies). The Condo Act proclaims a public policy designed to prohibit excessive and unreasonable fees under section 22.1 because it expressly states that only "a *reasonable fee for the direct out-of-pocket costs* for providing such information" may be charged to the condo seller. 765 ILCS 605/22.1(c). An implied private right of action is

necessary to enforce that policy, to protect condo sellers from excessive and unreasonable fees from those persons, such as Westward, who are designated as being responsible for providing the condo seller the requisite information to comply with section 22.1. (A.16-17, *Channon* ¶ 21).

However, even where an express remedy *is* present in the statute (which in section 22.1 it is not), courts may nonetheless find an implied cause of action because the remedy is inadequate to enforce the Act's underlying purposes, and only the threat of liability would deter the defendant from violating the statute. *Kelsay* v. *Motorola*, 74 Ill. 2d 172, 185 (1978) (implying private right of action was necessary to effectuate statute's purpose because defendants might risk the threat of a nominal penalty to escape their statutory responsibility); *Pilotto v. Urban Outfitters West, L.L.C*, 2017 IL App (1st) 160844, ¶¶ 37, 42 (implied private right of action necessary to enforce statute where it had an express remedy, but was inadequate to enforce the Act's purposes).

Section 22.1 contains no express remedies against a property management company that would otherwise act as a deterrent from violating the statute. *Rodgers*, 149 Ill. 2d at 309; *Pilotto*, 2017 IL App (1st) 160844, ¶ 40 (nothing in statute would ensure that the Act is not repeatedly violated). Westward manages more than 500 condominium, townhomes, and homeowner associations in Illinois, ranging in size from large to small.[8] Westward certainly has the financial wherewithal to simply refuse to comply with section 22.1 when confronted with a condo owner who contests their fee for providing resale documents and information because no effective remedy exists. *Pilotto*, ¶ 40 (nationwide retail store business had financial means to simply refuse to comply with the Act). It is conceivable that Westward would risk

[8] Westward 360, *Community Management Frequently Asked Questions*, https://www.westward360.com/association-management/ (last visited May 24, 2022).

the threat of a seller's complaint to escape their statutory duty under section 22.1(c) to only charge a reasonable fee for the direct out-of-pocket cost. *Kelsay*, 74 Ill. 2d at 185 (private right of action necessary where statute did not contain adequate remedy to deter defendant's harmful conduct).

Absent a private right of action, property managing agents would have little incentive to comply with section 22.1(c). Consequently, property managers could continue demanding fees that are unreasonable or excessive, despite the statutory prohibition. (A.16-17, *Channon* ¶ 22). In short, it is the lack of an opportunity for practical redress against the wrongdoer that persuades courts to find an implied cause of action for enforcing the statute. *Corgan*, 143 Ill. 2d at 315 (implied private right of action was necessary to enforce statute when the expressed remedy did nothing to make plaintiff whole again for harmed already sustained). *Pilotto*, 2017 IL App (1st) 160844, ¶ 38 (private right of action necessary where remedy was inadequate to assure plaintiff could revisit store because defendant would not be subjected to increased penalty and would risk imposition of another fine).

Moreover, an appellate court has already found that section 15 of the Condo Act protects condo owners/sellers in a sale transaction. *Kai*, 2020 IL App (2d) 190642, ¶ 22. Allowing Westward to circumvent protections for condo owners/sellers involved in a sale transaction under section 22.1 would be inconsistent with the overall statutory scheme of the Condo Act. Reading one provision of the Act as protecting sellers, but not in another provision that concerns the same parties in a similar sales transaction is an incongruent reading of the Condo Act as a whole, and does not give the class beneficiaries, such as condo owner/sellers, assurance that they are protected in a condominium sales transaction. It would be further inconsistent with case law that now confers private rights of action for condo sellers in connection with a condo transaction under section 22.1 to hold that *only* buyers have

protections. (A.13-14, 16-17, 20; *Channon* ¶¶ 17, 21, 27); *Nikolopulos*, 245 Ill. App. 3d at 77; *D'Attomo*, 2015 IL App (2d) 140865, ¶ 39.

The purpose of the Condo Act in general and section 22.1 in particular–to facilitate sales transactions and protect condo sellers–would be seriously undermined if Westward were permitted to act with impunity and charge condo sellers excessive and unreasonable fees for seeking the requisite information they have a statutory duty to provide under section 22.1 to their prospective buyer. (A.16-17, *Channon* ¶ 21). Indeed, the Condo Act also "regulates the duties of boards of managers, as well as condominium associations and ***unit owners***." *Royal Glen*, 2014 IL App (2d) 131311, ¶ 22. A statute should be interpreted to promote its essential purposes and to avoid a construction that would raise doubts as to its validity. *Morton Grove Park Dist. v. American Nat'l Bank & Trust Co.,* 78 Ill. 2d 353, 363 (1980). Therefore, the appellate court was correct in holding that the lack of an independent enforcement mechanism in section 22.1 supports implying a private right of action on behalf of sellers.

1. Consumer fraud claim is not an adequate remedy for a violation of section 22.1 of the Condo Act.

Westward argues that implying a private right of action under section 22.1 of the Condo Act is unnecessary because the Channons have an adequate remedy under the Consumer Fraud Act. The appellate court rejected Westward's "cursory assertion" that the pending Consumer Fraud Act claim is an adequate remedy in lieu of a private right of action under section 22.1 because Westward took inconsistent positions in the circuit court, arguing in its motion to dismiss that the Channons did not state a claim under the Consumer Fraud Act because the misconduct alleged is not the type that falls within the purview of the Act. (A.19-20, *Channon* ¶ 26). The question certified is expressly limited to Count I alone. (A.3-4, *Channon* ¶ 1). Thus, the appellate court noted that "the issue is not before us on the certified question" and therefore, had not been briefed by the parties. (A.19-20, *Channon* ¶ 26).

First, the Consumer Fraud Act is a separate and distinct claim from section 22.1 of the Condo Act, with a different standard of proof for claims based on unfairness. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 416-18 (2002) (discussing the prongs for unfairness that need be satisfied). Moreover, damages available under the Consumer Fraud Act may be different from recovery under the Condo Act. *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33, 69 (1994) (punitive damages and attorney fees under Consumer Fraud Act).

Second, the Consumer Fraud Act serves interests that are qualitatively different from those of the Condo Act. *Robinson*, 201 Ill. 2d at 416-17 (Consumer Fraud Act is a regulatory and remedial statute). The Consumer Fraud Act serves the purpose of broadly eroding harmful business practices from a multitude of business industries. *Martin*, 163 Ill. 2d at 68 (Consumer Fraud Act intended to afford a broader range of protection than common law). On the other hand, the Condo Act seeks to protect the interests and rights of a variety of people who fall within the ambit of condominium property ownership and operation, and to uniformly facilitate the transactions and relationships among these various parties. *See, e.g.,* 765 ILCS 605/2(f), (g), (o), (p); *Royal Glen*, 2014 IL App (2d) 131311, ¶ 22. The title of the Condo Act itself expresses the context and subject matter which the legislature intended it to govern: members of the Illinois public involved with property designated by law as a condominium. 765 ILCS 605/2.1 ("Applicability." '[u]nless otherwise expressly provided in another Section, the provisions of this Act are applicable to all condominiums in this State . . .' ").

If the legislature had intended a violation of the Condo Act to automatically, without more, constitute an unfair business practice under the Consumer Fraud Act, it would have said so explicitly. Indeed, the legislature did just that when it enacted section 2Z. 815 ILCS 505/2Z (2021) (list of Acts enumerated as bases for violation of Consumer Fraud Act); (SA-5). R*osenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶ 25 ("[w]hen the General Assembly

has wanted to impose such a requirement in other situations, it has made that intention clear"). But the legislature omitted the Condo Act from section 2Z. Given that omission, it could not have been the legislature's intent to effectively nullify the various protections afforded to the public at large *under the Condo Ac*t by limiting a plaintiff's claim under section 22.1 to the Consumer Fraud Act. The Channons should not be required to go outside of the Condo Act to another, independent statute as the *exclusive* means to enforce their rights under section 22.1. Nothing in the Condo Act so states, and nothing in the Consumer Fraud Act so demands.

The Channons seek to enforce their rights under section 22.1 of the Condo Act. The appellate court correctly found that section also protects condo sellers. That determination should not be disturbed.

2. Section 19 is neither an alternative nor adequate remedy for a violation of section 22.1.

The appellate court addressed Westward's argument that section 19 provides the Channons with adequate recourse under the Condo Act, finding it "unhelpful to [its] interpretation of section 22.1, which [the court has] held permits an implied cause of action." (Def. Br. 26-27); (A.24, *Channon* ¶ 35). The appellate court rejected Westward's contention that section 19 demonstrates a legislative intent that *only* a condominium association or its board of managers may be held liable for violation of section 22.1. (A.24, *Channon* ¶ 35). Rather, the appellate court held that Westward's reliance on section 19 could not be reconciled with this Court's decision in *Landau*, 409 Ill. at 564, that an agent (Westward) could be held independently liable for taking an active part in violating a statutory duty that the condo association owes to unit owners. (A.24, *Channon* ¶ 35). This analysis should be affirmed.

First, section 19 is not a substitute for condo owners to request and obtain section 22.1(a) resale documents and information. *In re Estate of Swiecicki,* 106 Ill. 2d 111, 120 (1985) (court's function is to interpret statute as enacted, not substitute different ones which depart

from its plain meaning). Section 19 establishes a unit owner's *right to inspect* the records of the association upon written notice to the association board. 765 ILCS 605/19(a), (b). This section was intended to be a mechanism for a unit owner to force their condo association's board of managers to turn over association documents relating to the operation of the association. *Boucher*, 2018 IL App (1st) 162233, ¶ 28 (condo owner denied board minutes had private right of action under section 19). As the appellate court explained, section 19(b) contemplates that a unit owner who is denied the right to inspect, examine, or make copies of the listed records may bring an enforcement action against the association. (A.23-24, *Channon* ¶ 34). But that is not the issue that the certified question presents. The Channons have *no*t brought an action under section 19 because they have not alleged that the association denied them access to the statutory records. Thus, Westward's section 19 argument is nothing but a red herring. Instead, the issue has always been about a condo owner's right to obtain the documents and information described in section 22.1(a) ***for a reasonable fee of the direct out-of-pocket costs*** of providing such information as section 22.1(c) mandates.

Second, section 22.1(a) includes the production of documents and information that is specific to the resale of that particular condo unit; section 19 does not. *Compare* 765 ILCS 605/19(a), (e) (2018) (requiring only documents that are common to the association), *with* 765 ILCS 605/22.1(a)(2) (matters relating to the unit itself). Thus, even if a unit owner were to seek the information for their resale through section 19(b), which Westward argues is a sufficient remedy for the seller, the condo owner would fail to fulfill her obligation under section 22.1. The reason is elemental: because section 19 does not encompass the universe of documents required for a resale of a property under section 22.1. It would be a pointless endeavor to request documents and information under a statutory provision that is deficient in meeting the requirements of section 22.1. *Moehling v. Pierce*, 3 Ill. 2d 418, 423 (1954) (the

law does not require doing a useless act). In short, the legislature did not intend section 19 to be a statutory substitute for section 22.1 documentation and requirement; each addresses distinct issues. Westward's blurring of the sections should be rejected.

Third, by pointing the finger at the association, Westward attempts to deflect from its own individual liability for allegedly violating section 22.1—the statutory provision at issue. Westward argues that the Channons have a claim under section 19 against the association for its alleged failure to comply with the fee provision under section 19. (Def. Br. 28). But the appellate court saw through Westward's ploy, recognizing that whether Westward could also be held liable as an agent under section 19 is not before the court on the question certified on appeal. (A.24, *Channon* ¶ 35). Moreover, the appellate court noted that section 19(b) concerns a unit owner who is denied access to relevant documents entirely, not a unit owner who is overcharged for the documents. (A.23-24, *Channon* ¶ 34).

Mixing and matching the obligations and the rights of condo owners (including the association and its board of managers) in the manner Westward suggests would not further the Condo Act's goal of uniform facilitation of condominium sale transactions. Nor would it serve the purpose of providing broad, even-handed protection to persons having an interest that fall under the umbrella of the Condo Act and its various statutory provisions.

The bottom line is straightforward. Section 19 might be under the roof of the Condo Act, but it is not in the same room as section 22.1. The two provisions serve completely different purposes and Westward's continual efforts to conflate the two sections should be rejected. Thus, the appellate court correctly found section 19 unhelpful to interpreting section 22.1 and so also should this Court. (A.24, *Channon* ¶ 35).

3. Condo sellers should not be required to sue the Condo Association instead of Westward for the latter's alleged violation of Section 22.1(c).

The appellate court correctly rejected Westward's argument that, if the Channons were

dissatisfied with the charges for documents, they should have sought recourse from the Condo Association.[9] (A.23, *Channon* ¶ 33). But, whether the Channons could *also* assert a cause of action against the Condo Association based on Westward's alleged violation of its duties under section 22.1 was not the Rule 308 issued certified question before the appellate court. (A.23, *Channon* ¶ 33). And, in any event, it is settled agency law that the Channons are not obliged to sue Westward's principal, the condo association, to hold Westward, as its agent, to be independently liable for an alleged violation of section 22.1(c). *Fortech L.L.C v. R.W. Dunteman Co.*, 366 Ill. App. 3d 804, 809-13 (1st Dist. 2006) (it makes no difference to the agent's liability if the principal may also be liable).

Westward expressly assumed the duty to be knowledgeable of its principal's governing duties under the Condo Act. *Alliance Prop. Mgmt. Ltd. v. Forest Villa of Countryside Condo. Ass'n*, 2015 IL App (1st) 150169, ¶¶ 27, 34 (managing agents have duty to comply with Condo Act, just as the association would). The appellate court accurately stated the tenet of agency law—a tenet that *Landau*, codified—that a property manager that a condo association engages as an agent cannot be delegated or agree to perform duties as agent in a way that the association or board would be otherwise prohibited from doing as principal. (A.22, *Channon* ¶ 31). This is the principle of being independently responsible for the actions one wrongfully causes, as this Court held over seventy years ago. *Landau*, 409 Ill. at 564 (1951) (independent liability for an agent taking active part in violating duty owed by the principal to another); *Buckner v. Atlantic Plant Maint.*, 182 Ill. 2d 12, 29 (1998) (Freeman, J., concurring and dissenting in part) ("'[] it would distort tort doctrine to impose liability on a wrongdoer's principal but not the wrongdoer himself'").

The appellate court noted that the Condo Act separately grants the board of managers

[9] Westward filed a third-party complaint against the Kenmore Club.

the ability to "engage the services of a manager or managing agent." 765 ILCS 605/18(a)(5). (A.21, *Channon* ¶ 29). It is undisputed Westward was acting as an agent of the Kenmore Club Association in providing the documents and information required under section 22.1 to the Channons, and that Westward charged them for doing so. (A.21, *Channon* ¶ 29). Relying on *Landau,* the appellate court held that an agent may be held liable for the breach of a duty that the principal owes where the agent "'takes some active part in violating some duty the principal owes to the third person.'" (A.21, 23, *Channon* ¶¶ 29, 32-33). Thus, having agreed to act as agent, the appellate court determined that Westward can independently be held liable if it took an active part in violating a statutory duty that Kenmore Club owed to the Channons. (A.23, *Channon* ¶ 33). This is precisely what the Channons alleged it did.

It is ***Westward's*** conduct—and not the association's—that needs to be deterred. Therefore, having to sue the association does little to deter Westward from continuing to charge condo sellers excessive and unreasonable fees for disclosure documents and thereby violating section 22.1. Not finding a private right of action on behalf of sellers against Westward would only further embolden them to continue charging unreasonable or excessive fees. The effectiveness of section 22.1, which is to protect buyers and sellers alike, hinges on Westward being held accountable for their alleged violation under section 22.1(c). To say that Plaintiff may only sue the association, regardless of the whether or not the agent took an active part in violating a duty that its principle owned to a third party, would imply that the legislature intended for the Act to be circumvented—rendered useless—if any agent is involved, making all requirements and regulations obsolete to the agent. This would make no sense, given that section 18 of the Condo Act gave the association the ability to designate an agent—as if the legislature said, "here are the rules, but ignore the rules if you hire an agent." 765 ILCS 605/18(a)(5).

In short, the Channons have always sought to enforce their right to a reasonable fee of the direct out-of-pocket costs for providing disclosure documents against Westward. (A.51-52, 68 ¶¶ 1, 4, 73; A.136-37). No reasoned basis exists for requiring a former condo owner to file suit against the association as a condition precedent to recovering under section 22.1(c) when the association did not charge the fee for which the Channons complain.

VI. Westward Misapplies the Four Factor Test In *Metzger*.

A. Factor 1: Westward Erroneously Contends that Section 22.1's Provisions can Have *Only One* Intended Beneficiary of Protection.

Westward argues that the Channons are not members of the class that section 22.1 was enacted to "primarily" benefit. (Def. Br. 8). Westward cites *Metzger* and states, "an implied right of action only extends to those persons the legislature primarily intended to benefit," and interprets this to mean that only one, and exactly one, group of persons can be "primarily intended to benefit." (Def. Br. 9). Westward has not offered any reasonable rationale for suggesting that prospective buyers are exclusively the "primary" intended beneficiary of section 22.1. If any reasonable policy or purpose for the legislative classification may be gleaned from a plain reading of the Condo Act and its provisions, it is that the legislature has chosen to equally protect the beneficiaries identified and defined in the Condo Act's statutory provisions. Thus, once a class of intended beneficiaries is established, the statute must apply equitably to all of its intended beneficiaries—not just one class member. *Boyer*, 38 Ill. 2d at 37.

Nowhere in *Metzger* does it say that the primary beneficiary can be only one narrow class of persons. Westward's own explanation of *Metzger* acknowledges that the Court found that the Personnel Code was primarily intended to protect the state *and* its people—two distinct groups who, presumably, enjoyed the Code's protections simultaneously. (Def. Br. 9). *Metzger* does not hold that the intended class beneficiaries of a statute as a whole are placed in different classes of protection based on an arbitrary distinction of "primary" and "incidental."

The Court in *Metzger* used the terms "primary" and "primarily" because it had already found that the plaintiff was not a member of the "primary class" which the ***Code*** was enacted to protect. *Metzger*, 209 Ill. 2d at 38 ("viewed as a whole it is clear that the Personnel Code was primarily designed to benefit the state and the people of Illinois . . . Metzger is not a member of the primary class for whose benefit the statute was enacted"). In other words, the *Metzger* court used the term *primary* to describe people already ***within*** the class—not to distinguish between some sort of hierarchy of protections afforded to class members who have already been deemed to be an intended beneficiary of the Code. *Metzger*, 209 Ill. 2d at 38. Thus, when the Court held, "protections afforded to state employees under the Personnel Code are *incidental* to the Code's overall purpose" it was because state employees were not recognized as being within the Code's class of identifiable beneficiaries (*i.e.*, plaintiffs were neither "the state" nor "the people of Illinois") which the Code was enacted to benefit. *Id.* The same is true for the other cases which Westward cites in addition to *Metzger*. (Def. Br. 22).

Westward ignores a fundamental rule of statutory construction: when interpreting the purpose of a specific *provision* within a statute, the court looks to the purpose of the Act as whole to ascertain the provisions intent. *In re Liquidations of Reserve Inc. Co.,* 122 Ill. 2d at 558. Westward errs in focusing solely on section 22.1(a) to identify "primary" beneficiaries, despite acknowledging that the issue at hand is whether "the Act, *read as a whole*," supports an implied private right of action. (Def. Br. 8-9). *Fisher*, 188 Ill.2d at 462-63. And that statute can have multiple purposes. (Def. Br. 9). Westward's proposed "primary-incidental" test only works if one were to conclude that the *Channons* were not members of the class for whose benefit the Condo Act as a whole was enacted to benefit.

Here, unlike the plaintiffs in *Metzger*, the Channons are undeniably a "primary" beneficiary of the Condo Act. The Channons, as condo owners, should be included in the

general class of intended beneficiaries which the Condo Act was enacted to benefit. *Sherman v. Field Clinic*, 74 Ill. App. 3d 21, 28-29 (1st Dist. 1979) (plaintiffs were defined in the Act, thus, it was "obvious plaintiffs are within the class of persons the statute is designed to protect"). Westward ignores the Act's clearly stated and defined intended class of beneficiaries. Condo owners/sellers are persons expressly identified and defined in the definition section of the Condo Act, and thus, are members of the class which the Act as a whole intends to benefit—along with the association, board members, and prospective buyers. 765 ILCS 605/2(f)-(g), (o), (p).

Even when looking only at section 22.1, it identifies condo sellers as "unit owners other than the developer." 765 ILCS 605/22.1(a). Other parties that are subject to section 22.1 are defined in the Condo Act. 765 ILCS 605/2(f)-(g), (o), (p); *see also* 765 ILCS 605/18(a)(5) ("board may engage the services of a manager or managing agent").

Nor can it be argued that the detriment the Channons incurred as condo owners when they were allegedly charged an excessive and unreasonable fee to obtain necessary documents under section 22.1 was only "incidental." No case law supports Westward's position that when the condo owner seeks to sell, their protections under the Condo Act become subsidiary (or incidental) to the greater benefit of other intended beneficiaries to the Act. Such an argument would be an inconsistent interpretation of *Metzger* and the Condo Act itself. While section 22.1(a) primarily has the impact of protecting the potential buyer through the provision of disclosures needed for an informed decision, sections 22.1(b) and (c) protect other parties to this blossoming transaction, namely the association and the unit owner who seeks to sell. Accepting that unit owners who seek to sell their units lose their status as intended beneficiaries under one provision–section 22.1 which contains their statutory duty to the buyer and the association–would fly in the face of the even-handed protection that the Act intends

for all parties to the condo sale transaction. 765 ILCS 605/22.1(a)-(c).

Westward invokes an unnecessary preferential standard into the four-factor test for a private right of action. To have only one "primary" intended beneficiary here (in a real estate transaction), one would have to ignore the plain language of the provision, rendering any construction of the Condo Act absurd and its terms superfluous. Reading *Metzger* as Westward proposes would effectively strip innocent condo owners from the protections which the Act intended them to have. Westward's interpretation does not accomplish the legislature's purpose "to establish procedures for the creation, *sale*, and operation of condominiums" when it enacted the Condo Act. *Royal Glen*, 2014 IL App (2d) 131311, ¶ 22. Nor does Westward's reading accomplish the legislature's goal to "strengthen the rights of unit owners" if condo owners are unable to protect themselves from those in possession and control of resale documents who might use their position to shake down condo owners for excessive and unreasonable fees to obtain section 22.1 documents. 83rd Ill. Gen. Assem., H. Proceedings., Jul. 2, 1983, at 4. Condo owners being charged an excessive and unreasonable fee to obtain section 22.1 documents is not an incidental harm that the legislature intended when it enacted section 22.1. It is the exact harm the legislature intended to prevent.

Westward's statutory interpretation of private right of action would negatively impact dual-purpose statutes in Illinois because it would weaken the ability of such statutes to protect all class members falling under their purview. The results of Westward's "primary-incidental" test is an incoherent conclusion, one wholly divorced from legislative intent.

B. Factor 2: Westward Incorrectly Claims Section 22.1 was not Designed to Protect Condo Sellers.

Illinois case law interpreting the dual purposes of statutes does not support Westward's conclusion that section 22.1 was designed to only protect prospective buyers. The Condo Act protects all members of a class—not just a subset of "more" vulnerable individuals.

Westward's confusing "primary-incidental" test would not further the legislature's goals in enacting the Condo Act: uniform facilitation while at the same time providing protection to various parties. Although the Condo Act's scheme creates classifications of intended beneficiaries (i.e., owners, purchasers, sellers, the association, and association's board members), its ultimate goal is to protect all of the various parties equally at once. Westward points to no evidence in the legislative record, in Illinois case law interpreting section 22.1, or the Condo Act itself that the legislature "primarily" designed section 22.1 to make prospective buyers the sole intended beneficiary of the provision.

When looking at the entirety of the provision at issue, here section 22.1, it is inconceivable that owners/sellers—who are identified in subsection (a), (b), and (c) of section 22.1–are not protected from being price-gouged on their way out the door. 765 ILCS 605/22.1(a)-(c). The Condo Act's scheme is even-handed protections for all parties falling under the Act's purview. The reasonable fee for a direct out-of-pocket costs requirement set forth in section 22.1(c) will surely benefit some class members more than others, but that does not mean one class must sacrifice their protections under the statute for the benefit of another intended class beneficiary.

Contrary to Westward's suggestion that this Court should follow the holding in *Nikolopulos*, *Mikulecky*, and *D'Attomo* because they are factually "close enough," this Court's analysis of the statue's design should not be confined to an arbitrary comparison of legislative purposes to these cases. (Def. Br. 16). As the appellate and trial court recognized, these cases did not hold that condo sellers were not protected under section 22.1 because that was not the question before them. Nor should this court confine its analysis for an implied private right of action to *Metzger*—which never addressed the statute involved here and did not involve a plaintiff who was a member of the class which the Act was enacted to benefit. *Metzger* is not

the universal test for an implied private right of action. *Corgan*, 143 Ill. 2d at 313; *Rodgers*, 149 Ill. 2d at 308. Indeed, Westward cited to *Sawyer*, 89 Ill. 2d at 388-89, and *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 393 (1999), in their opening appellate brief for the four-factor test, not *Metzger*. (Def. Op. App. Br. 11-12).

Rather, the Court's analysis should be directed toward the nexus between the intended beneficiaries of the statute, and such purposes that the Act purports to serve as a whole.

C. Factor 3: Westward Misinterprets the Condo Act's Intended Beneficiaries in Arguing that a Private Right of Action is Inconsistent with the Act's Purpose.

Westward incorrectly applies *Metzger* to essentially create a new test for a private right of action, where an Act and its provisions can only protect one narrow class of beneficiaries. The law is not so parsimonious.[10] *See, e.g.,* Section 1.01 of the Statute on Statutes ("All general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out.") 5 ILCS 70/1.01. This Court has recognized that such liberal construction is necessary to protect the rights of beneficiaries of a statutory regime. S*ee, e.g., Matsuda v. Cook County Employees' & Officers' Annuity & Benefit Fund*, 178 Ill. 2d 360, 365-366 (1997) (stating that "the language of Illinois' pension statutes must be liberally construed in favor of the rights of the pensioner.").

Westward's interpretation negates the very premise underlying the enactment of a public law such as the Condo Act—to offer broad, even-handed protection for the individuals

[10] Illinois courts have consistently interpreted other statutes to protect as large a group of beneficiaries as possible. *See*, *e.g.*, *A.Y. McDonald Mfg. Co. v. State Farm*, 225 Ill. App. 3d 851, 858 (4th Dist. 1992) ("[t]he scope of persons . . . entitled to the statutory protection [under the Mechanic Lien's Act] is not expressly limited to those in direct contractual relation with the original contractor so as to exclude second-tier subcontractors . . . those, like plaintiff, in the third or still more remote degree."); *Wang v. Williams*, 343 Ill. App. 3d 495, 498 (5th Dist. 2003) (the Security Deposit Return Act was not enacted solely for the benefit of individuals but rather for a class of people in the public at large–who rent from large property owners).

that the particular provision at issue impacts. In arguing that a private right of action does not further the underlying purpose of the statute, Westward fails to explain how enforcing the statute for a seller would deprive the buyer from protections under the Act. Indeed, finding that sellers are protected under section 22.1 in no way diminishes the protections afforded to prospective buyers under the same provision.

The plain language of section 22.1 seeks to strike an even-handed balance of protections for all parties involved in the sale transaction. These expressly identified parties in section 22.1—the association, the condo owner/seller, and the prospective buyer—are all at once the class of individuals the statute intends to protect. (SA-8-10). Limiting the fees chargeable to condo owners for obtaining documents necessary to their condo transaction protects such sellers and, moreover, comports with the underlying legislative purposes to protect various parties while at the same time uniformly facilitating the sale transaction. (A.16-18, *Channon* ¶¶ 21-22).

D. Factor 4: Westward is Wrong to State that a Private Right of Action is Unnecessary to Effectuate the Statute's Purpose to Protect Condo Sellers.

For the same reasons as stated above in Section V (D)(1)-(3), Westward misapplies the fourth factor in *Metzger*. Westward contends that the Channons have adequate remedies for their injury for Westward's statutory violation of section 22.1, such as: sue in small claims court; sue the condo association; request a reduction in the fee; sue Westward under the Consumer Fraud Act; sue the condo association under section 19. (Def. Br. 3, 34). Westward has even suggested in prior briefing that the condo seller should just shift the cost onto the prospective buyer, for this bizarre remedial suggestion. (A.160).

None of the so-called "remedies" that Westward proposes are contained in section 22.1. Even if they were, such proposed remedies are inadequate to compensate for the harm caused to the Channon's and all other similarly situated class members in Illinois. Whether a

statute is ineffective without implying a private right of action does not solely concern the availability of remedies–it also concerns ***adequacy*** of the remedy if any are found in the statute. *Pilotto*, 2017 IL App (1st) 160844 ¶¶ 34, 38. While a court can consider remedies outside of a statute in determining whether an adequate remedy exists, the analysis of this factor "is not whether a particular plaintiff could recover from a particular defendant." *1541 N. Bosworth Condo. Ass'n v. Hanna Architects, Inc.*, 2021 IL App (1st) 200594, ¶ 56. Rather, the focus is on the statute and whether an implied right of action is necessary to enforce the provisions of *that* statute. *Id.*

Small claims court is inadequate–the Channon's class action complaint is not just about recovering the monies which they were allegedly overcharged, it is also about specifically penalizing ***Westward*** for their alleged statutory violation under the Condo Act. Small claims that a few former condo sellers may file is ineffective because it is highly unlikely that an individual condo seller would go to small claims court and pay a filing fee to recover a nominal amount of money. *Pilotto*, 2017 IL App (1st) 160844, ¶ 37. Westward price gouges people knowing that condo sellers are unlikely to file claims in small claims court. In fact, Westward relies on Condo owners not filing claims in any court to enforce their rights under the Condo Act. Here, the threat of a class action lawsuit is a strong deterrent to Westward's alleged statutory violation. *Rosenbach*, 2019 IL 123186, ¶ 37. Without a private right of action, condo owners who are selling their units are at the mercy of property management companies, such as Westward, who wield a significant amount of power over the condo sale transaction because they control condo owners' ability to obtain disclosure documents. The Court should not permit such a reading of the Condo Act that it questions the statute's very legitimacy, in a manner that would yield an unnecessarily unjust result for condo sellers.

Requesting a reduction in the fee is also inadequate. The very suggestion of a seller

having to bargain for disclosure documents undermines the plain language of section 22.1(c) which sets the parameters for how much may be charged to the seller for documents–a reasonable fee for the direct out-of-pocket costs of providing such information. 765 ILCS 605/22.1(c); (A.17-18, *Channon* ¶ 22) ("[t]he fact that the General Assembly chose to specify that only a direct out-of-pocket charge would be considered reasonable is especially indicative of a legislative intent to protect unit sellers [.]").

A statute which has no expressed remedy or penalty for a violation of it, such as here in section 22.1, the concern is about the ***enforcement*** aspect of the provision. How the statue is enforced absent a private right of action becomes critical to the Court's analysis. *Pilotto*, 2017 IL App (1st) 160844, ¶ 41. Under this factor, the Court considers the Act's underlying purposes and the harms it seeks to prevent. *Dawkins*, 2022 IL 127561, ¶ 27. Section 22.1 has no penalty (criminal or civil) for overcharging condo owners. Nor does section 22.1 contain an administrative process for condo sellers to lodge a complaint after they have sold their unit and are no longer a member of the association. (A.308). *Friedman v. Lieberman Mgmt. Servs.*, 2019 IL App (1st) 180059-U, ¶ 36 (Walker, J., dissenting).

Lastly, shifting the cost for documents on to the buyer is not a remedy or alternative to a seller's statutory duty under the Condo Act, which is to request and obtain the documents under section 22.1 and provide them to their prospective buyer. Westward's suggestion would only make prospective buyers their new price gouging victims. *Friedman,* 2019 IL App (1st) 180059-U, ¶ 34 (Walker, J., dissenting) (if unit owners could charge purchasers higher amounts to cover the document costs, "only makes the buyer a new victim of the statutory violation").

Placing the obligation to obtain the documents on the seller, while placing a limit on how much a seller can be charged for the documents, protects both the buyer and seller and facilitates a smooth sales transaction–as is consistent with the purpose of the Condo Act.

VII. Westward's Agency Argument Is Contrary to this Court's Decision in *Landau* And Should Be Rejected.

Westward argues that because a principal is responsible for its agent's conduct, a private right of action against Westward is unnecessary. (Def. Br. 32). Westward further argues that an association cannot rid itself of their statutory duties under sections 19 and 22.1 by "assigning it to an alleged agent." (Def. Br. 31). This is an inaccurate application of the fourth factor in *Metzger*, 209 Ill. 2d at 36. It also misses the point: Westward assumed the association's delegation of *every aspect* of its duties under section 22.1. (A.21, *Channon* ¶ 29). This includes a property manager charging, as agent, a fee to unit sellers that the association would be statutorily prohibited from charging, as principal for performing the same duty itself. (A.21, *Channon* ¶ 29).

Westward argues that because a principal is responsible for its agent's conduct, implying a private right of action against Westward is unnecessary. (Def. Br. 32). Tellingly, Westward fails to cite *Landau*, 409 Ill. at 564, in their discussion of Illinois law on agent liability for active wrongdoers. That, in itself, should doom their position. But, as the appellate court correctly pointed out, while Westward was not *required* to assume the association's statutory responsibilities under section 22.1, it is undisputed they did. (A.23, *Channon* ¶ 32). And having expressly agreed to act as the association's agent, *Landau* has long held that an agent, such as Westward, can be held liable if, as here, it takes an active part in violating a statutory duty that its principal owes to a third party. *Landau*, 409 Ill. at 564. (A.23, *Channon* ¶ 33). *Landau* effectively ends Westward's agency inquiry.

Westward's theory that agency principles absolve it from liability is squarely contrary to *Landau*'s active agent principle, which states that an agent can be held independently liable for taking an active part in violating a duty that its principal owed to a third party. *Landau*, 409 Ill. at 564. Both the circuit and appellate courts recognized this conclusion when they applied

Landau. (A.21-23, *Channon* ¶ 29-32); (A.41). Both lower courts found that Westward may independently be held liable for violating section 22.1 because, as the association's agent, Westward is alleged to have taken an active part in violating a statutory duty its principal owed to a third-party. (A.23, *Channon* ¶ 32); (A.41). In other words, whether or not the association may or may not be liable, under *Landau*, liability fastens directly on Westward. *Vancura v. Katris*, 238 Ill. 2d 352, 377 (2010) (citing *Noyola*, 179 Ill. 2d at 129) (if a statutory violation proximately causes an injury of the nature statue was designed to prevent, the offending party alone is liable for the injury). Westward's brief openly ignores this settled proposition of Illinois agency law. Its strategy should fail. This Court should affirm the certified question as to Westward's liability as an agent for their alleged statutory violation of section 22.1.

CONCLUSION

This Court should affirm the appellate court's opinion; answer the certified question in the affirmative; and remand to the circuit court for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 50 pages.

/s/ Terrie C. Sullivan
Terrie C. Sullivan

SUPPLEMENTAL APPENDIX

TABLE OF CONTENTS TO SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.2.2
Eastern Division

Robert Ahrendt

Plaintiff,

v.

Case No.: 1:17−cv−08418
Honorable John Robert Blakey

Condocerts.com, Inc.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, July 5, 2018:

MINUTE entry before the Honorable John Robert Blakey: This Court grants Plaintiff's motion for reconsideration [51] and vacates its prior order dismissing Plaintiff's complaint [47]. The 7/12/18 notice of motion date is stricken and the parties need not appear. This case is set for a status hearing on 11/6/18 at 9:45 a.m. in Courtroom 1203. The case is stayed through and including 11/6/18, pending a decision from either the Seventh Circuit or the Illinois Appellate Court on whether the Illinois Condominium Property Act creates a private right of action for condominium sellers. Plaintiff shall contact this Court promptly before that date if either court issues its decision. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION

ROBERT AHRENDT, individually and on behalf of all other persons similarly situated,	
Plaintiff,	
	Case No. 1:17-cv-8418
	Honorable John Robert Blakey
v.	
OMAFIN, INC. formerly known as CONDOCERTS.COM, INC., a Mutual of Omaha Bank Company,	
Defendant.	

PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL OF COMPLAINT WITHOUT PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(1)(i)

Plaintiff, Robert Ahrendt, individually and on behalf of other persons similarly situated, through his undersigned counsel, hereby voluntarily dismisses without prejudice the complaint against Omafin, Inc., pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), where a class has not yet been certified, and where Omafin, Inc. has not yet filed an answer or a motion for summary judgment in this action.

Respectfully submitted this 13th day of November 2019.

/s/ Donald J. Pechous
One of the Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.3.2
Eastern Division

Robert Ahrendt

Plaintiff,

v.

Case No.: 1:17−cv−08418
Honorable John Robert Blakey

Condocerts.com, Inc.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, April 16, 2020:

MINUTE entry before the Honorable John Robert Blakey: For the reasons explained in the accompanying order, this Court grants Plaintiff's request to voluntarily dismiss this case without prejudice [62] under Fed. R. Civ. P. 41(a)(2). This case is hereby dismissed without prejudice. Civil case terminated. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

West's Smith Hurd Illinois Compiled Statutes Annotated
Chapter 815. Business Transactions
Deceptive Practices
Act 505. Consumer Fraud and Deceptive Business Practices Act (Refs & Annos)

815 ILCS 505/2Z

505/2Z. Violations of other Acts

Effective: March 23, 2021
Currentness

§ 2Z. Violations of other Acts. Any person who knowingly violates the Automotive Repair Act,[1] the Automotive Collision Repair Act,[2] the Home Repair and Remodeling Act,[3] the Dance Studio Act,[4] the Physical Fitness Services Act,[5] the Hearing Instrument Consumer Protection Act,[6] the Illinois Union Label Act,[7] the Installment Sales Contract Act, the Job Referral and Job Listing Services Consumer Protection Act,[8] the Travel Promotion Consumer Protection Act,[9] the Credit Services Organizations Act,[10] the Automatic Telephone Dialers Act,[11] the Pay-Per-Call Services Consumer Protection Act,[12] the Telephone Solicitations Act,[13] the Illinois Funeral or Burial Funds Act,[14] the Cemetery Oversight Act, the Cemetery Care Act,[15] the Safe and Hygienic Bed Act,[16] the Illinois Pre-Need Cemetery Sales Act,[17] the High Risk Home Loan Act,[18] the Payday Loan Reform Act,[19] the Predatory Loan Prevention Act, the Mortgage Rescue Fraud Act,[20] subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act,[21] subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act,[22] the Electronic Mail Act,[23] the Internet Caller Identification Act,[24] paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code,[25] Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150, or 18d-153 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act,[26] the Automatic Contract Renewal Act,[27] the Reverse Mortgage Act,[28] Section 25 of the Youth Mental Health Protection Act,[29] the Personal Information Protection Act,[30] or the Student Online Personal Protection Act[31] commits an unlawful practice within the meaning of this Act.

Credits

Laws 1961, p. 1867, § 2*O*, added by P.A. 82-346, § 15, eff. Jan. 1, 1982. Amended by P.A. 83-928, § 35, eff. July 1, 1984; P.A. 84-517, § 7, eff. Jan. 1, 1986; P.A. 85-995, § 8, eff. Jan. 5, 1988; P.A. 85-1367, § 13, eff. Sept. 1, 1988; P.A. 85-1384, § 17, eff. Jan. 1, 1989; P.A. 85-1440, Art. II, § 2-46, eff. Feb. 1, 1989; P.A. 87-275, § 35, eff. Jan. 1, 1992; P.A. 87-452, § 100, eff. Jan. 1, 1992. Renumbered § 2Z and amended by P.A. 87-895, Art. 2, § 2-72, eff. Aug. 14, 1992. Amended by P.A. 88-288, § 30, eff. Jan. 1, 1994; P.A. 89-72, § 30, eff. Dec. 31, 1995; P.A. 89-615, § 25, eff. Aug. 9, 1996; P.A. 90-426, § 190, eff. Jan. 1, 1998; P.A. 91-164, § 905, eff. July 16, 1999; P.A. 91-230, § 900, eff. Jan. 1, 2000; P.A. 91-233, § 905, eff. Jan. 1, 2000; P.A. 91-810, § 15, eff. June 13, 2000; P.A. 92-426, § 10, eff. Jan. 1, 2002; P.A. 93-561, § 845, eff. Jan. 1, 2004; P.A. 93-950, § 5, eff. Jan. 1, 2005; P.A. 94-13, Art. 90, § 90-15, eff. Dec. 6, 2005; P.A. 94-36, § 900, eff. Jan. 1, 2006; P.A. 94-280, § 30, eff. Jan. 1, 2006; P.A. 94-292, § 5, eff. Jan. 1, 2006; P.A. 94-822, § 300, eff. Jan. 1, 2007; P.A. 95-413, § 85, eff. Jan. 1, 2008; P.A. 95-562, § 10, eff. July 1, 2008; P.A. 95-876, § 400, eff. Aug. 21, 2008; P.A. 96-863, § 90-57, eff. Jan. 19, 2010; P.A. 96-1369, § 10, eff. Jan. 1, 2011; P.A. 96-1376, § 10, eff. July 29, 2010; P.A. 97-333, § 615, eff. Aug. 12, 2011; P.A. 99-331, § 935, eff. Jan. 1, 2016; P.A. 99-411, § 90, eff. Jan. 1, 2016; P.A. 99-642, § 635, eff. July 28, 2016; P.A. 100-315, § 50, eff. Aug. 24, 2017; P.A. 100-416, § 915, eff. Jan. 1, 2018; P.A. 100-863, § 675, eff. Aug. 14, 2018; P.A. 101-658, § 15-90-40, eff. March 23, 2021.

Formerly Ill.Rev.Stat.1991, ch. 121 ½, ¶ 262Z.

Footnotes

1 815 ILCS 306/1 et seq.

2 815 ILCS 308/1 et seq.

3 815 ILCS 513/1 et seq.

4 815 ILCS 610/1 et seq.

5 815 ILCS 645/1 et seq.

6 225 ILCS 50/1 et seq.

7 815 ILCS 425/1 et seq.

8 815 ILCS 630/1 et seq.

9 815 ILCS 420/1 et seq.

10 815 ILCS 605/1 et seq.

11 815 ILCS 305/1 et seq.

12 815 ILCS 520/1 et seq.

13 815 ILCS 413/1 et seq.

14 225 ILCS 45/1 et seq.

15 760 ILCS 100/1 et seq.

16 410 ILCS 68/1 et seq.

17 815 ILCS 390/1 et seq.

18 815 ILCS 137/1 et seq.

19 815 ILCS 122/1-1 et seq.

20 765 ILCS 940/1 et seq.

21 35 ILCS 130/3-10.

22 35 ILCS 135/3-10.

23 815 ILCS 511/1 et seq.

24 815 ILCS 517/1 et seq.

25 625 ILCS 5/6-305.

26 765 ILCS 77/70 et seq.

27 815 ILCS 601/1 et seq.

28 765 ILCS 945/1 et seq.

29 405 ILCS 48/25.

30 815 ILCS 530/1 et seq.

31 105 ILCS 85/1 et seq.

815 I.L.C.S. 505/2Z, IL ST CH 815 § 505/2Z
Current through P.A. 102-730 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Smith Hurd Illinois Compiled Statutes Annotated
Chapter 765. Property
Condominiums
Act 605. Condominium Property Act (Refs & Annos)

765 ILCS 605/2
Formerly cited as IL ST CH 30 ¶ 302

605/2. Definitions

Effective: January 1, 2017
Currentness

§ 2. Definitions. As used in this Act, unless the context otherwise requires:

(a) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such declaration as from time to time amended.

(b) "Parcel" means the lot or lots, tract or tracts of land, described in the declaration, submitted to the provisions of this Act.

(c) "Property" means all the land, property and space comprising the parcel, all improvements and structures erected, constructed or contained therein or thereon, including the building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the unit owners, submitted to the provisions of this Act.

(d) "Unit" means a part of the property designed and intended for any type of independent use.

(e) "Common Elements" means all portions of the property except the units, including limited common elements unless otherwise specified.

(f) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(g) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a unit, or, in the case of a leasehold condominium, the lessee or lessees of a unit whose leasehold ownership of the unit expires simultaneously with the lease described in item (x) of this Section.

(h) "Majority" or "majority of the unit owners" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common elements. Any specified percentage of the unit owners means such percentage in the aggregate in interest of such undivided ownership. "Majority" or "majority of the members of the board of managers" means more than 50%

of the total number of persons constituting such board pursuant to the bylaws. Any specified percentage of the members of the board of managers means that percentage of the total number of persons constituting such board pursuant to the bylaws.

(i) “Plat” means a plat or plats of survey of the parcel and of all units in the property submitted to the provisions of this Act, which may consist of a three-dimensional horizontal and vertical delineation of all such units.

(j) “Record” means to record in the office of the recorder or, whenever required, to file in the office of the Registrar of Titles of the county wherein the property is located.

(k) “Conversion Condominium” means a property which contains structures, excepting those newly constructed and intended for condominium ownership, which are, or have previously been, wholly or partially occupied before recording of condominium instruments by persons other than those who have contracted for the purchase of condominiums.

(*l*) “Condominium Instruments” means all documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the declaration, bylaws and plat.

(m) “Common Expenses” means the proposed or actual expenses affecting the property, including reserves, if any, lawfully assessed by the Board of Managers of the Unit Owner's Association.

(n) “Reserves” means those sums paid by unit owners which are separately maintained by the board of managers for purposes specified by the board of managers or the condominium instruments.

(*o*) “Unit Owners' Association” or “Association” means the association of all the unit owners, acting pursuant to bylaws through its duly elected board of managers.

(p) “Purchaser” means any person or persons other than the Developer who purchase a unit in a bona fide transaction for value.

(q) “Developer” means any person who submits property legally or equitably owned in fee simple by the developer, or leased to the developer under a lease described in item (x) of this Section, to the provisions of this Act, or any person who offers units legally or equitably owned in fee simple by the developer, or leased to the developer under a lease described in item (x) of this Section, for sale in the ordinary course of such person's business, including any successor or successors to such developers' entire interest in the property other than the purchaser of an individual unit.

(r) “Add-on Condominium” means a property to which additional property may be added in accordance with condominium instruments and this Act.

(s) “Limited Common Elements” means a portion of the common elements so designated in the declaration as being reserved for the use of a certain unit or units to the exclusion of other units, including but not limited to balconies, terraces, patios and parking spaces or facilities.

(t) “Building” means all structures, attached or unattached, containing one or more units.

(u) "Master Association" means an organization described in Section 18.5 whether or not it is also an association described in Section 18.3.

(v) "Developer Control" means such control at a time prior to the election of the Board of Managers provided for in Section 18.2(b) of this Act.

(w) "Meeting of Board of Managers or Board of Master Association" means any gathering of a quorum of the members of the Board of Managers or Board of the Master Association held for the purpose of conducting board business.

(x) "Leasehold Condominium" means a property submitted to the provisions of this Act which is subject to a lease, the expiration or termination of which would terminate the condominium and the lessor of which is (i) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (ii) a limited liability company whose sole member is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended,[1] or (iii) a Public Housing Authority created pursuant to the Housing Authorities Act that is located in a municipality having a population in excess of 1,000,000 inhabitants.

(y) "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in paper form by the recipient through an automated process.

(z) "Acceptable technological means" includes, without limitation, electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the association, is deemed to provide reasonable security, reliability, identification, and verifiability.

Credits

Laws 1963, p. 1120, § 2. Amended by P.A. 80-1102, § 1, eff. Jan. 1, 1978; P.A. 83-358, § 25, eff. Sept. 14, 1983; P.A. 83-833, § 1, eff. July 1, 1984; P.A. 83-1271, § 1, eff. Aug. 30, 1984; P.A. 83-1362, Art. II, § 25, eff. Sept. 11, 1984; P.A. 84-722, § 1, eff. Sept. 21, 1985; P.A. 84-1431, Art. 20, § 1, eff. Nov. 25, 1986; P.A. 84-1464, § 2, eff. Jan. 13, 1987; P.A. 88-417, § 10, eff. Jan. 1, 1994; P.A. 88-626, § 5, eff. Sept. 9, 1994; P.A. 89-89, § 60, eff. June 30, 1995; P.A. 93-474, § 5, eff. Aug. 8, 2003; P.A. 98-1042, § 10, eff. Jan. 1, 2015; P.A. 99-612, § 10, eff. Jan. 1, 2017.

Formerly Ill.Rev.Stat.1991, ch. 30, ¶ 302.

Footnotes

1 26 U.S.C.A. § 501.

765 I.L.C.S. 605/2, IL ST CH 765 § 605/2

Current through P.A. 102-730 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

HARRY CHANNON and DAWN CHANNON, Individually and on behalf of all others similarly situated,	)	
Plaintiffs-Appellees,	)	
v.	)	No. 128040
WESTWARD MANAGEMENT, INC.,	)	
Defendant-Appellant.	)	

The undersigned, being first duly sworn, deposes and states that on June 8, 2022, there was electronically filed and served upon the Clerk of the above court the Brief of Plaintiffs-Appellees. On June 8, 2022, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Terrie C. Sullivan
Terrie C. Sullivan

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Terrie C. Sullivan
Terrie C. Sullivan