NEW ILLINOIS LAWS FOR 2024 AFFECTING REAL ESTATE

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US Real Estate Alert

Illinois has passed a number of laws effective 1 January 2024 that impact commercial real estate and development. These new laws range from new requirements for residential landlords, first of its kind electric vehicle requirements, to far-reaching revisions to the Illinois Property Tax Code. Entities that own or intend to develop commercial real estate in the state should be mindful of these new Illinois laws.

NEW RESIDENTIAL LANDLORD REQUIREMENTS

No Electronic Transfer Requirements

Section 4 of the Illinois Landlord and Tenant Act[1] is amended to prohibit Illinois landlords from requiring tenants to pay rent via electronic funds. The new Section 4 of this act defines “electronic funds transfer” as one would expect: a transfer of funds through a mean other than a check, draft, or other paper instrument, that is initiated through an electric terminal, email, computer, or telephone. A violation of this section of the Illinois Landlord and Tenant Act is a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act,[2] consequential in that it exposes the landlord to potential compensatory damages, punitive damages, and attorneys' fees.

Radon Disclosures for Tenants

The Illinois Radon Awareness Act,[3] was amended to require landlords to provide radon disclosures (similar to those given to buyers in residential real estate purchases) to residential tenants. The Radon Awareness Act now includes under the definition of “Dwelling Unit” mobile homes or a dwelling unit in a multi-unit or mixed-use building. Upon request by a prospective tenant, the property owner is required to provide the “Radon Guide for Tenants” prepared by the Illinois Emergency Management Agency and copies of any records pertaining to radon concentrations or radon remediation at the property.

The new provisions to the Radon Awareness Act also allow a tenant or prospective tenant to conduct radon testing in the dwelling unit for a period of 90 days after commencement of the lease. If the results of the test show levels that exceed the recommended radon action levels, the landlord is not required to remediate; however, the tenant has the right to terminate the lease if the landlord does not hire a radon testing contractor to disprove the tenant's results. A tenant may conduct radon testing after the initial 90-day period, but the tenant has no right to terminate the lease if the testing was done after the initial 90 days of the tenancy.

New Security Deposit Requirements

New changes to the Illinois Security Deposit Return Act[4] include expansion of the purview of the act to include all parties who lease any residential property regardless of size, and not just owners of buildings containing five or more units. Any deductions from the security deposit due to damage must be accompanied by an itemized list of

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the costs to repair such damage with receipts, which must be sent 30 days from the later of the date tenant vacated or the date the tenant's right of possession ends. The security deposit (or portion thereof) must be returned within 45 days of such tenant vacancy date. This act may be, and often is, superseded by more stringent local laws, including without limitation, the Cook County Residential Tenant and Landlord Ordinance[5] and the Chicago Residential Landlord and Tenant Ordinance.[6]

Heating and Cooling Requirements

Section 20 was added to the Illinois Landlord and Tenant Act[7] and requires any residential rental property with a centralized heating or cooling system to maintain heating and cooling systems during relevant seasons when the outdoor temperatures reach certain levels. Alternatively, if there is no centralized heating or cooling system, the property must include an indoor common area that complies with the temperature requirements. Currently, this section only applies to rental property limited to persons 55 years and older.

No Discrimination for Immigration Status

The Illinois Human Rights Act[8] has been amended to prohibit any party from discriminating against any person in a real estate transaction on the basis of that person's immigration status.

WATER, WATER EVERYWHERE...

The Illinois Plumbing License Law,[9] added Section 40.5, which requires water bottle filling stations to be included in any location that requires a drinking fountain. As currently enacted, this requirement only applies to new construction and is not being applied retroactively. The rules for these requirements shall be promulgated by the Illinois Department of Public Health and will be effective 1 July 2026.

MAKING EVERYTHING EV-FRIENDLY

Illinois enacted the Electric Vehicle Charging Act,[10] effective 1 January 2024. A few states have enacted electric vehicle (EV) charging requirements, but Illinois is the first to require every newly constructed residential parking space to be EV capable. So-called “EV capable” spaces include the requisite infrastructure, conduit, circuit breakers, junction box, and voltage capacity to avoid the need to retrofit spaces or garages for an EV charging unit. Conversely, “EV ready” parking spaces are “EV capable” but also include all wiring and a dedicated EV charging outlet to install an EV charging station or EV car plug-in. The Illinois law requires only “EV capable” spaces but is significant in that it applies to all new construction residential parking spaces, in both single family and multifamily structures, as of its effective date of 1 January 2024.

Furthermore, the new act prohibits landlords and condominium/homeowner associations from restricting their tenants and unit owners from installing EV infrastructure. A landlord or association may enact reasonable rules regarding EV installation and seek reimbursement for costs spent in connection with a tenant or unit owner's EV installation, but nonetheless cannot unreasonably prohibit EV infrastructure installation.

THE NEW ADDITIONS TO THE PROPERTY TAX CODE

No Illinois statute related to real estate has been amended more this past year than the Illinois Property Tax Code.[11] Most of the changes come in response to criticism of underserved communities losing their homes for

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unpaid real estate taxes to predominately wealthy scavenger tax buyers. The tax buyers have been criticized because either they purportedly do little with the property purchased at cents on the dollar or they can easily back out of the sale through loopholes in the act (as a "sale in error"), but still recover all of their investment plus interest. Below are some points from the 2024 amendment:

- Interest rates on delinquent taxes in counties with over 3,000,000 people (i.e., only Cook County) will be reduced from 18% per annum to 9% per annum for taxes due after the 2023 tax year.
- Real estate scavenger tax sales (properties delinquent three or more tax years) conducted by counties are now optional. Previously, the scavenger tax sales were required to be conducted every two years.
- Counties have greater latitude to sell property acquired through tax sales to municipalities, land banks, and nonprofit developers versus selling the property to for-profit third parties through scavenger sales.
- Any tax buyer who obtains a tax deed must record the deed within four years of the tax sale otherwise the tax sale certificate is void and the property will be resold.
- A list of allegations for a party asserting a sale in error of a tax parcel is modified to reduce or eliminate some means by which a sale in error is allowed. Previously, a tax buyer could successfully challenge a tax sale as a sale in error for such reasons as a US$100 lien on the property for failure to mow the grass; one-word, immaterial errors in the property's legal description; or minor discrepancies in the government's records of the property (e.g., government website indicates no air conditioning when the property does have air conditioning).
- A tax buyer seeking to receive interest and costs for a sale in error now has more limited means to do so, and a number of additional steps to take in order to prove a sale in error. If a tax buyer successfully asserts a sale in error, the county must repay the tax buyer's full investment, 12% per annum interest, and the fees incurred by the tax buyer for the period of time the property was owned.

Real estate investors and developers have a number of considerations presented to them from the Illinois legislature. Real estate tax parcel investors have a large loophole closed in asserting a sale in error. All residential developers must now include EV capability. Residential landlords must heed added pro-tenant requirements. Our Real Estate team stands ready to assist in navigating these new Illinois laws.

FOOTNOTES

[1] 765 ILCS 705/4.

[2] 815 ILCS 505/1 through 12.

[3] 420 ILCS 46/1 through 99.

[4] 765 ILCS 710/0.01 through 2.

[5] Cook County Code § 42-801, *et seq*.

[6] Municipal Code of Chicago § 5-12-010, *et seq*.

[7] 765 ILCS 705/20.

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[8] 775 ILCS 5/1-101 through 10-105.

[9] 225 ILCS 320/0.01 through 43.

[10] 765 ILCS 1085/1 through 35.

[11] 35 ILCS 200/1-1 through 32-20.

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