

# Real Property

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

## Here we go again: Timeliness of post-foreclosure sale assessment payments left unresolved in *Andersonville South Condominium Assoc. v Federal Nat'l Mortg. Assoc.*

Here we go again: Timeliness of post-foreclosure sale assessment payments left unresolved in *Andersonville South Condominium Assoc. v Federal Nat'l Mortg. Assoc.*

1

Who really regulates attorneys in Illinois?

1

Reprint of our very first issue

8

Upcoming CLE programs

10

BY BARBARA STARKE TISHUK, MEMBER OF ISBA'S REAL ESTATE LAW SECTION

**Affirming the trial court**, the Illinois Appellate Court, First District, ruled in October, 2017, that the Federal National Mortgage Association ("Fannie Mae")

was required to pay a condominium association's delinquent pre-foreclosure assessments, late fees, and the costs

*Continued on next page*

## Who really regulates attorneys in Illinois?

The Supreme Court? The ARDC? The IDFPR? Perhaps Illinois Lawyers Should Be Afraid . . . Very Afraid

BY RALPH J. SCHUMANN, MEMBER OF ISBA'S REAL ESTATE LAW SECTION

### Introduction

In April, 2017, the Illinois Department of Financial and Professional Regulation ("IDFPR") initiated prosecutions of two Illinois attorneys for alleged violation of the Real

Estate Appraisal Licensing Act of 2002 (225 ILCS 458/Art. 1) (the "Appraisal Act"). The two attorneys were engaged in representation of clients and were attempting to obtain reductions in

*Continued on page 6*

If you're getting this newsletter by postal mail and would prefer electronic delivery, just send an e-mail to Ann Boucher at [aboucher@isba.org](mailto:aboucher@isba.org)



## Timeliness of post-foreclosure sale assessment payments...

CONTINUED FROM PAGE 1

associated with refurbishing and repairing a unit for purposes of renting it out.<sup>1</sup>

Plaintiff Andersonville South Condominium Association (the “Condo Association”) brought a forcible entry and detainer (“FED”) action<sup>2</sup> against Fannie Mae to obtain possession of a condominium unit that had been the subject of mortgage foreclosure proceedings and which Fannie Mae had purchased at the ensuing foreclosure sale roughly ten months before the Condo Association filed its action. The Condo Association also sought damages of more than \$63,000, consisting in part of almost \$40,000 in late fees and an additional \$9,000 for repairs and refurbishing the unit. The Condo Association had been collecting rent from tenants and applying their rental payments to the balance owed for the prior owner’s unpaid assessments and late fees until Fannie Mae directed the tenants to send rent payments to Fannie Mae.

Prior to the trial date, Fannie Mae, among other things, filed an emergency motion for a continuance of the trial, claiming that it lacked material evidence needed to prepare for trial. Fannie Mae also filed its answer and affirmative defenses, disputing the amount owed and arguing that the claims were barred for equitable reasons, that the late fees constituted an unenforceable penalty, and that the damages for the repairs to the unit were not part of a permissible statutory lien. On the day of trial, Fannie Mae again requested a continuance in part because it had not obtained the Condo Association’s responses to discovery and that counsel was not prepared for trial.

First, noting that Fannie Mae had failed to appear to present its emergency motion for a continuance of the trial date—set for the following day—and finding no abuse of discretion in the lower court’s denial of Fannie Mae’s oral request for a continuance on the day of trial, the Appellate Court reasoned that neither the Code of Civil Procedure nor the Illinois Supreme Court

Rules supported Fannie Mae’s assertion that the lower court erred in denying its request for a continuance of the trial.<sup>3</sup> In so doing, the Appellate Court stated in part that “the record is fraught with evidence of Fannie Mae’s lack of diligence” and that the only evidence the Condo Association presented at the bench trial had been tendered to Fannie Mae well in advance of trial.

Turning to the substantive issue before it, the Appellate Court relied in part on the Illinois Supreme Court’s decision in *1010 Lake Shore Ass’n v. Deutsche Bank Nat’l Trust Co.* (“*1010 Lake Shore*”) for its interpretation of the Illinois Condominium Association Act’s provision regarding extinguishment of unpaid pre-foreclosure assessments.<sup>4</sup> Although Fannie Mae never disputed that it was liable for assessments accruing after its purchase of the condominium unit, it challenged the lower court’s conclusion that it was also liable for pre-foreclosure assessments and the late fees that applied to those assessments.<sup>5</sup>

Although the late fees in this case added up to a staggering amount relative to the amount owed for unpaid assessments (i.e., \$43,832.65 in late fees and \$24,398.80 in assessments), the Court, in relying on *1010 Lake Shore*, reasoned that, because the Condo Association had a statutory lien pursuant to Section 9(g)(3) of the Illinois Condominium Act, Fannie Mae could have extinguished that lien by paying the post-foreclosure assessments due the month following its purchase of the unit.<sup>6</sup> As the Court stated, in *1010 Lake Shore* the mortgagee’s “failure to confirm the extinguishment of the association’s lien by paying postforeclosure sale assessments rendered it liable for the entirety of the association’s lien—i.e., the presale assessments, including the late charges.”<sup>7</sup>

Notable, however, are the questions the Appellate Court left unanswered, namely: (1) when, precisely, must any post-foreclosure sale assessments be *paid* in order to extinguish, *once and for all*, a condominium association’s pre-foreclosure

## Real Property

Published at least four times per year. Annual subscription rates for ISBA members: \$25.

To subscribe, visit [www.isba.org](http://www.isba.org) or call 217-525-1760.

### OFFICE

ILLINOIS BAR CENTER  
424 S. SECOND STREET  
SPRINGFIELD, IL 62701  
PHONES: 217-525-1760 OR 800-252-8908  
[WWW.ISBA.ORG](http://WWW.ISBA.ORG)

### EDITORS

Michael J. Maslanka  
Joel L. Chupack

### MANAGING EDITOR / PRODUCTION

Katie Underwood

✉ [kunderwood@isba.org](mailto:kunderwood@isba.org)

### REAL ESTATE LAW SECTION COUNCIL

Adam B. Whiteman, Chair  
Ted M. Niemann, Vice Chair  
William J. Anaya, Secretary  
Erica C. Minchella, Ex-Officio  
Greg C. Anderson  
Kim M. Casey  
Karen G. Courtney  
Nora A. Devine  
Sharon L. Eiseman  
Mauro Glorioso  
Leslie A. Hairston  
Daniel A. Huntley  
Myles L. Jacobs  
Shara Danielle Kamal  
Matthew R. Kerbis  
Ellis B. Levin  
Samuel H. Levine  
Michael J. Maslanka  
Margery Newman  
John G. O'Brien  
Frank Pellegrini  
Paul LS Peterson  
Terry S. Prillaman, Jr.  
Michael J. Rooney  
Ralph J. Schumann  
Bruno W. Tabis, Jr.  
Tiffany G. Thompson  
Barbara Starke Tishuk  
Vincent R. Vidmer  
Adam J. Wilde  
Adrian P. Zeno  
David A. Zulkey  
David B. Sosin, Board Liaison  
Blake Howard, Staff Liaison  
Ted M. Niemann, CLE Coordinator  
Diana Elizabeth Rdzanek, CLE Committee Liaison

DISCLAIMER: This newsletter is for subscribers’ personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.



# Your Office

## AWAY FROM THE OFFICE

At ISBA Mutual, you can find it all...a quiet & secure space to meet, a convenient place for your next event, or just a friendly spot to relax. Equipped with state-of-the-art technology and centrally located in downtown Chicago, our spaces are designed just for Illinois lawyers.

- ▶ **Micro-offices**
- ▶ **Conference rooms**
- ▶ **Café with a view**
- ▶ **Free WiFi**

For more information, or to request our space brochure, call 800 473-4722 or drop by, today!



**ISBAMutual**  
Lawyers' Malpractice Insurance

lien; and (2) will a subsequent failure to make a single payment, or perhaps multiple payments, revive the pre-foreclosure sale assessment lien? Here, the Court simply points to Fannie Mae's failure to extinguish the statutory lien "by not paying any assessments following its purchase of the unit at the judicial foreclosure sale" (emphasis added).<sup>8</sup> Thus, in referring, on the one hand, to the fact that the purchaser in *1010 Lake Shore* "did not pay assessments beginning the first of the month following the sale"<sup>9</sup> and, on the other, to "payment of assessments due following the sale,"<sup>10</sup> the Court muddied the waters further by not specifying whether, in order to confirm the extinguishment of the lien, *payment* for any post-foreclosure assessments is *due* the first of the month following the sale or whether post-foreclosure assessments merely accrue as of the month following the sale with payment due sometime thereafter.<sup>11</sup>

Turning to Fannie Mae's assertion that the late charges assessed by the Condo Association were unreasonably high and thus an unenforceable penalty, the Court distinguished the facts presented here from those in *Hidden Grove Condominium Assoc. v. Crooks*, 318 Ill. App. 3d 945, 946 (3rd Dist. 2001), on which Fannie Mae relied. Unlike the situation in *Hidden Grove*, where a condominium association charged a flat monthly late fee of \$25 for each month an assessment remained unpaid, regardless of the amount of recoverable expenses or harm caused by late payments,<sup>12</sup> the Court here found that:

1. the Condo Association's late fee was lower than the generally acceptable 5-10% range of interest rates;
2. although the amount of monthly assessments increased over a period of almost 10 years, the late fee charged remained at a steady 4% interest rate; and
3. in light of the factual circumstances presented in *Andersonville*, the harm caused to the Condo Association was not simple to estimate.<sup>13</sup>

Accordingly, the Court affirmed the lower court's award of the late charges.

Finally, addressing Fannie Mae's argument that the award of almost \$9,000

to the Condo Association for renovating and repairing the unit was improper, the Court analyzed these costs in terms of mitigating damages, rather than as a component of any statutory lien arising out of common area assessments, as Fannie Mae had urged.<sup>14</sup> In so doing, the Court noted that the Illinois Forcible Entry and Detainer Act allows a condominium association to rent out a property upon entry of judgment in its favor in order to mitigate its damages.<sup>15</sup> Agreeing with the Condo Association that the repairs to the unit were part of the effort to rent out the unit so as to recoup some of the delinquent assessments, the Court also observed that the Condo Association, by applying rent payments as an offset on amounts owed, actually benefited Fannie Mae, which "failed to pay a single assessment for nearly a year after its purchase of the unit."<sup>16</sup>

In light of case law developments addressing the murky intersection of Illinois condominium and mortgage foreclosure law and assuming that the amounts of post-foreclosure assessments are ascertainable, the best course of action for purchasers of foreclosed condominium units to take is to pay any post-foreclosure assessments no later than the first day of the first month following the confirmation of the foreclosure sale.<sup>17</sup> ■

1. 2017 IL App (1<sup>st</sup>) 161875, Oct. 11, 2017 ("Andersonville").

Noteworthy, for reasons unrelated to the particulars of this case, is the basis for state court jurisdiction over Fannie Mae, a federally chartered corporation. See *Lightfoot v. Cendant Mortgage Assoc.*, No. 14-1055, Jan. 18, 2017 (noting in a unanimous opinion that Fannie Mae's sue-and-be-sued clause in its corporate charter allows Fannie Mae "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal").

2. Starting January 1, 2018, the Illinois Forcible Entry and Detainer Act will be the Illinois Eviction Act see 735 ILCS 5/9-101 *et. seq.* (as amended by Pub. Act. 100-0173 effective Jan. 1, 2018).

3. See 735 ILCS 5/2-1007 (West 2014) (providing generally that, prior to judgment and on good cause shown, the court has discretion to grant additional time to parties and that the granting of continuances, and the time and manner for requesting continuances, "shall be according to rules"); and Ill. S. Ct. R. 231(f) (providing that "[n]o motion for continuance of

a cause made after the cause has been reach for trial shall be heard, unless a sufficient excuse is shown for the delay"). The Appellate Court also noted that the Condo Association had provided to Fannie Mae well before trial its accounting ledger itemizing expenses, including assessments and late fees.

4. *1010 Lake Shore Ass'n v. Deutsche Bank Nat'l Trust Co.*, 2014 IL App (1st) 130962 (holding that the Condominium Act's extinguishment of a condominium association's lien for pre-foreclosure sale assessments depends on the foreclosure purchaser paying all assessments that accrue after the foreclosure sale but leaving unanswered the question of what is considered "prompt" payment); 765 ILCS 605/9(g)(3) (West 2014).

5. Without the benefit of reading Fannie Mae's pleadings and briefs, one cannot be certain of the basis for Fannie Mae's position. Nevertheless, it is worth noting that at the time of the proceedings at issue in *Andersonville*, the timing of payments for post-foreclosure assessments was an open question and remains so to this day.

6. *Andersonville* at ¶ 37-42; 765 ILCS 605/9(g)(3) (West 2014).

7. *Andersonville* at ¶ 39 (citing *1010 Lake Shore*, 2015 IL 118372, ¶ 41).

8. *Andersonville* at ¶ 36.

9. *Andersonville* at ¶ 37.

10. *Andersonville* at ¶ 39.

11. See, e.g., *Sheridan Road Condominium Assoc. v. U.S. Bank*, 2017 IL App (1st) 160279 (purchaser fully paid amounts it owed for post-sale "common expenses" sixteen months after judicial sale, thereby confirming the extinguishment of association's lien) and *Penbrook Condominium Assoc. One v. NorthShore Trust & Savings*, 2013 IL App (2d) 130288 (payment made after purchaser obtained title, about a month and a half after first payment became due, was reasonable and sufficient to extinguish association's lien).

12. See *Hidden Grove Condominium Assoc. v. Crooks*, 318 Ill. App. 3d 945, 946 (2001) (concluding, in contrast to *Andersonville*, that late charges reflecting 28% interest on unpaid monthly assessments were not a reasonable forecast of just compensation for nonpayment of assessments and that the harm caused by the late assessment payments "was neither difficult nor impossible to estimate").

13. Unlike the situation in *Hidden Grove*, where the unit owner stayed in the unit, consistently paying assessments in arrears, the unit owner in *Andersonville* had stopped paying assessments, and once foreclosure proceedings began, no assessments or late charges were paid, even after the judicial sale. *Andersonville* at ¶ 44.

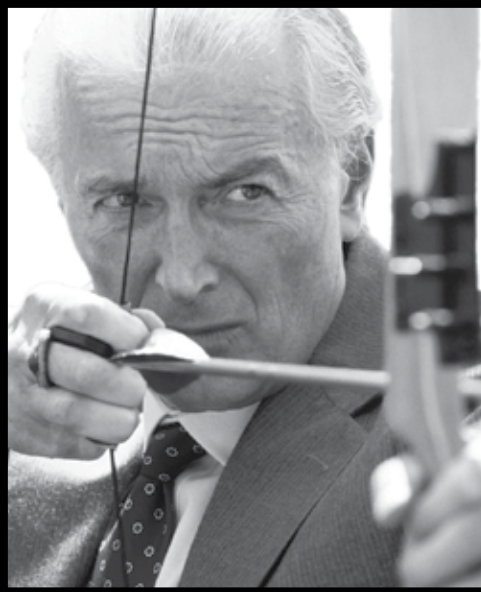
14. *Id.* at ¶ 46.

15. See 735 ILCS 5/9-111.1 (West 2014) (providing, in reference to the Condominium Property Act, that "the board of managers shall have the right and authority, incidental to the right of possession of a unit under the judgment, but not the obligation, to lease the unit to a bona fide tenant"). Here, as the Appellate Court pointed

out, not only did Fannie Mae fail to present any evidence to rebut the Condo Association's evidence showing how much money the Condo Association spent in mitigating its damages, but Fannie Mae also contended that the Condo Association had "assumed the risk" of the costs of repairs. The Appellate Court also opined that Fannie Mae may have taken advantage of the Condo Association's attempts to mitigate its damages, whether through the offsetting of the delinquent assessments against the rental income or by collecting the rent directly from the new tenant, while failing to pay any assessments for almost a year after its purchase of the unit. See *Andersonville* at ¶ 49.

16. *Andersonville* at ¶ 49.

17. For a stellar and informative discussion of unresolved issues following the Supreme Court's decision in *1010 Lakeshore*, see the article by Joseph R. Fortunato in the February 2016 Real Estate Law Section's Newsletter: *When Worlds Collide—Condominium Law vs. foreclosure law and 1010 Lake Shore Association v. Deutsche Bank National Trust Company*.




**YOU'VE GOT  
ONE SHOT.**

**Make it count.**

Call Nancy to find out how  
an ad in an ISBA  
newsletter can make  
the difference in  
your business.

**800-252-8908  
217-747-1437**



Looking for a title  
underwriter that offers  
ease of use, superior  
service, and a 50+ year  
history of supporting  
lawyers?

**There's only one.**



**Consider this:** ATG agents make more money, receive individual training, use intuitive ATG technology, and have access to the finest underwriting staff in the business. ATG is the only title insurance company that advocates the interests of lawyers and the clients they serve. Join ATG today, you'll be glad you did.



ATTORNEYS' TITLE GUARANTY FUND, INC.

Offices throughout the Chicago area,  
Champaign and Belleville, Illinois,  
and Waukesha, Wisconsin.

800.252.0402 [www.atgf.com](http://www.atgf.com)

## Who really regulates attorneys in Illinois?

CONTINUED FROM PAGE 1

the assessed value of certain real estate parcels. In the same manner that they have proceeded in dozens of prior cases in their practices, and in the same manner that hundreds of other Illinois attorneys have proceeded and continue to proceed in similar cases, they submitted briefs in support of their positions setting forth legal arguments on the basis of relevant information, much of it publicly available, urging reductions.

The IDFPR prosecutions claim that the attorneys were engaged in the unlicensed practice of real estate appraisal and seek “cease and desist” orders against the attorneys, as well as civil penalties of up to \$25,000 per violation.

Far from purporting to act as appraisers, or engaging in the development of appraisals, however, the attorneys were engaging in the practice of law. It is not likely anyone was fooled into thinking they were appraisers. They were representing their clients. Yet the prosecutions continue.

Should you be afraid? Totally.

### Regulation of the Practice of Law

The regulation of the practice of law in Illinois, and its definition, are the exclusive province of the Judicial Branch of Government, specifically, the Illinois Supreme Court. *Chicago Bar Ass’n v. Goodman*, 366 Ill. 346, 349, 8 N.E.2d 941 (1937); *King v. First Capital Financial Services Corporation*, 215 Ill.2d 1, 828 N.E.2d 1155 (2005).

Following the inception of the prosecutions of Illinois attorneys, the Illinois State Bar Association, Chicago Bar Association, and the Illinois Real Estate Lawyers Association communicated to IDFPR representatives their concerns about the apparent impropriety of the decision to prosecute the attorneys in the manner it chose, but the IDFPR was not dissuaded, and the prosecutions continued. The IDFPR was not persuaded by the observation that, since the attorneys selected for prosecution were engaged in the practice of law and were representing

clients in the tax assessment matters, a more appropriate mechanism might be the filing of appropriate complaints with the Illinois Attorney Registration and Disciplinary Commission. If there were really a risk of harm to the public, or if the IDFPR were concerned that the actions of the selected attorneys were bringing the profession into disrepute in some manner, filing complaints with the ARDC would be more appropriate.

“That would take too long,” came the response. The prosecutions continued.

On July 11, 2017, the Illinois State Bar Association filed a complaint in the Chancery Division of the Cook County Circuit Court against the Illinois Department of Financial and Professional Regulation (“IDFPR”), Bryan A. Schneider, in his official capacity as Secretary of IDFPR, and Kreg T. Allison, in his official capacity as Director of the Division of Real Estate of IDFPR, seeking injunctive and declaratory relief (2017CH09418). The ISBA action is not limited to the two proceedings involving the real estate tax attorneys, but more broadly seeks a judicial declaration that the province of defining and regulating the practice of law in Illinois is that of the Illinois Supreme Court, and that the IDFPR lacks the authority to prosecute, discipline or sanction lawyers for engaging in conduct, like the challenged activities in the two prosecutions, that entails legal representation of clients and not the development or rendering of an appraisal.

The Illinois Real Estate Lawyers Association (IRELA) shares the concerns of the ISBA, and stands ready to take whatever steps are needed to assist the ISBA in protecting Illinois real estate practitioners from what it sees as an overreach in prosecutorial activity beyond the scope of IDFPR’s authority. Again, under the Illinois Constitution, regulation and discipline of attorneys is the exclusive province of the Judicial Branch, specifically the Illinois Supreme Court—not the Executive Branch or an agency thereof.

To its credit, the IDFPR agreed to a moratorium on its prosecutions of

Illinois attorneys in this area pending resolution of the *ISBA v. IDFPR* action, obviating temporarily the necessity of the ISBA seeking any temporary restraining order or injunctive relief in the pending prosecutions.

Said moratorium notwithstanding, the ISBA and IRELA remain concerned about the IDFPR’s claim that it has proper authority to prosecute attorneys in these circumstances. At its core, the allegation that an attorney who is seeking a reduction in assessed value of a parcel of real estate is violating the Appraisal Act is an allegation that the attorney is offering an opinion on the value of the real estate in the manner in which licensed appraisers offer such opinions. In fact, however, the attorneys who engage in this area of practice are offering legal arguments to support a different assessed value, and simply bring to bear information, much of which is publicly available, to support their positions. To claim that such activity, which goes on in thousands of proceedings throughout the state, constitutes the practice of “appraisal” is to misconstrue the nature of the professional activity.

The logic of the IDFPR, carried only slightly further, would result in prosecutions of Illinois attorneys engaged in estate planning, or engaged in typical real estate transactional work, where a component of the analysis and representation requires awareness of the value of real estate parcels. Acknowledgment of such real property values may be necessary for proper representation in these areas, but such acknowledgment does not involve acting as an appraiser, nor does it constitute the rendering of an appraisal.

The potential scope of the IDFPR prosecutions is indeed troubling. Thousands of Illinois attorneys are potentially at risk of being blindsided. The chilling effect on the practice of law in any area touching upon or incorporating an awareness of real estate values is significant. The resulting windfall to appraisers of having an appraisal required in every proceeding seeking a reduction

in assessed value of a parcel of real estate, no matter how small, might be welcomed by appraisers, but the cost to the public of having to incur this expense cannot be justified on the basis of avoiding harm to the public, which is the touchstone of the Appraisal Act's licensing requirements. It would hamper the ability of members of the public to obtain effective legal representation in the area of real property tax issues. Far from protecting the public from harm, the IDFPR's actions would make it more difficult, and in some cases impossible, for members of the public to obtain needed relief.

The complaints summarizing the charges against the selected attorneys give extremely short shrift to the issue of harm to the public. Did any client of the attorneys selected for prosecution hire his or her attorney really thinking the individual being hired was an appraiser, and then suffer damages as a consequence? It is more likely that each client was fully aware that the individual he or she hired was an attorney who would be engaged in the practice of law on their behalf.

## Questionable Reasoning

While it is a given that attorneys representing clients in tax assessment reduction matters cannot act as appraisers without proper licensing, it is likely that only the IDFPR thinks the two attorneys selected for prosecution were acting as appraisers. The attorneys were acting as attorneys, representing their clients. Moreover, in the opinion of this writer, even if the two attorneys selected for prosecution had labeled the appendices to their briefs in large, all-cap letters as "APPRAISAL," this would not demonstrate that any client was fooled somehow into hiring an attorney when they really intended to hire an appraiser, or that they received gratuitous legal representation in connection with their real estate tax assessment matter when they had thought they were just paying for a written appraisal.

The reasoning employed by the IDFPR seems to "beg the question" (in the traditional logical fallacy sense). The IDFPR seems to be arguing something along the following lines:

IDFPR "SYLLOGISM":

1. *Real Estate Tax Assessment reduction matters (and associated attorney representation) involve consideration of the value of a parcel of real estate;*
2. *Appraisers develop written appraisals that discuss the value of a parcel of real estate;*

THEREFORE:

3. *An attorney who comments on the value of a parcel of real estate in the context of legal representation of a client in a real estate assessment matter may be engaging in the unlicensed practice of appraisal.*

As President of a state-wide bar association of Illinois real estate practitioners with thousands of attorney members (IRELA -- [www.irela.org](http://www.irela.org)), I worry that the prosecutorial possibilities of the IDFPR approach are limitless. If not curtailed now, where will it stop? In addition to the risk of prosecution for unlicensed practice of appraisal, what about other areas?

Suppose, for example, that one of IRELA's members, in the context of representing a client in a real estate sales transaction, were to happen to comment on a statement in a report from a licensed professional home inspector that the kitchen outlets in the subject 75-year-old residence need to be replaced with new GFCI outlets. Suppose the IRELA member attorney were to opine that the inspector's statement perhaps should be "taken with a grain of salt" (because current building code requirements for new construction may not automatically dictate that this type of upgrade of an existing, older residence be undertaken). Has that attorney now offered an opinion regarding an issue relating to a residential home inspection issue that makes the attorney subject to IDFPR prosecution for the unlicensed practice of home inspection?

## Where Do We Go From Here?

Because the possible permutations of the IDFPR approach in these prosecutions extend to almost any area of legal work

where the value of real estate is involved in any way, the ISBA has opted to seek a Declaratory Judgment, Injunctive relief, and a Writ of Prohibition. The IDFPR has suggested that the ISBA action is inappropriate, and that each attorney should simply defend the individual prosecution, exhaust administrative remedies, and then seek to appeal if he or she is unhappy with the final result. It makes no sense, however, to have Illinois attorneys be at risk of this type of improper prosecution. Why become embroiled in an endless game of "whack-a-mole" trying to exhaust administrative remedies in a parade of individual prosecutions? Better to address the jurisdictional problem head on.

Since the definition of what constitutes the practice of law, and its regulation, are the exclusive province of the Illinois Supreme Court, the IDFPR may have overstepped its bounds. The argument that the IDFPR has advanced in the prosecutions that it is entitled to define the practice of law to the extent necessary to discharge its regulatory responsibility to enforce the Appraisal Act's licensing requirements proves too much, and must be rejected.

If allowed to proceed, the proffered exception to the rule would swallow the entire rule. This dangerous approach must be curtailed. IRELA will continue to monitor these actions and take appropriate action to protect the interests of Illinois consumers and of Illinois real estate practitioners.

IRELA continues to remind consumers of the importance and value of having an independent attorney representing their interests in a real estate transaction, and works to protect consumers from the effects of the unauthorized practice of law in the real estate area. ■

---

©2017, Law Offices of Ralph J. Schumann  
Ralph Schumann, a solo practitioner in Schaumburg, Illinois, serves as President of the Illinois Real Estate Lawyers Association ([www.irela.org](http://www.irela.org)).

His practice has concentrations in real estate, estate planning, and representation of businesses.

Schumann also serves as an expert witness in litigation involving complex real estate matters and professional responsibility matters.

Tel: 847.273.8700 | E-mail: [rjs@SchumannLaw.com](mailto:rjs@SchumannLaw.com).

Editor's note:

A little holiday gift for our readers. Here is our Section's very FIRST newsletter from 62 years ago ENJOY! →



Volume 1

October, 1955

Number 1

It is the desire of the Executive Committee of the Real Estate Law Section to double the Section membership and they realize that to do this it is necessary to sponsor projects of interest and value and to present outstanding programs. The Executive Committee has approved of certain basic changes in the policy of the Section. Section Committees will now work on specific subjects and the Section Committees and the Executive Committee will devote their efforts to projects which will help the real estate lawyers in their every day work and with their individual problems.

\* \* \* \*

The Section Committees

We have some new committees. They plan some activities which are timely and interesting. The committees and the chairmen are:

Program Committee - Chairman, Jack Sidney Morris, Chicago

Following the pattern of the University of Illinois Law Forum, we are going to plan entire programs about various phases of a single large subject. The first such will be at the Chicago meeting on November 4, 1955, and the subject will be "LEASES."

The speakers will be:

John T. Evan, of Chicago, an outstanding specialist in insurance law, who will talk about the insurance provisions for leases;

W. D. Bodman, of Wilson & McIlvaine, Chicago, will discuss the effect of condemnation in connection with leasehold estates;

Frank C. Bernard, of Sonnenschein, Berkson, Lautmann, Levinson & Morse, Chicago, speaks on special lease provisions.

Each of these speakers is a recognized expert. Everyone is an able speaker. We are sure their talks will be interesting and profitable.

If you have ideas for Section programs or for possible speakers, please get in touch with Jack.

Illinois Bar Journal Articles - Chairman, William A. Thuma, Chicago

The Journal and our Section are looking for interesting subjects dealing with real estate and also for authors. If you have any suggestions, or have or would like to prepare an article of general interest, please write the committee chairman.

Title Merchantability - Chairman, Stuart M. Mamer, Champaign

This committee will work on some of the problems concerned with standards and rules relating to title marketability. This is a field in which there are new developments.

Partition Proceedings - Chairman, Ross S. Welch, Chicago

The project of this committee is the possible simplification of partition proceedings. Anyone who has handled a partition knows there may



be room for procedural improvement. For example; The problem of whether or not proceedings could be completed without making mortgage holders parties defendant where it is the desire to continue the mortgage in effect and also whether or not it would be possible to have one decree instead of two.

Landlord and Tenant - Chairman, Thomas D. Ahern, Chicago

This committee will assemble various commonly used lease forms with the ultimate object of making suggestions and comments on these forms, for use of the Bar.

Esthetics - Chairman, Victor S. Peters, Jr., Chicago

Modern subdivisions and community development plans seek to assure continued desirability and beauty of the area through deed and plat restrictions on type of structure and use of premises. There may be a trend to extend these limitations by law, without agreements. This field is new and commonly known as "esthetics." It is the plan to develop ideas and knowledge through this committee.

Shopping Centers - Chairman, Jack Sidney Morris, Chicago

Shopping centers are one of the newest developments in real estate use. They are being built and planned throughout the state. The work of this committee should be of interest to the entire Bar. Mr. Morris has been a student of this subject for a number of years and has just delivered a talk on the subject at the recent meeting of the American Bar Association.

Farm Leases - Chairman, Philip H. Ward, Sterling

This committee will analyze various farm lease forms and will make suggestions concerning them. Interested members of the Section are invited to participate. Programs concerning this may later be presented at meetings of the Section.

Newsletter - Chairman and Editor, William B. Garrett, Chicago

This is our first Newsletter and obviously there is room for suggestions and ideas. Send yours to the Editor.

Legislation - No chairman yet appointed.

This committee will act with reference to legislation in the 1957 session, in which our Section is particularly interested.

There may be other fields of interest where committees could act with profit. If you have any suggestions, please send them to the Section Chairman.

\* \* \* \*

Current decisions of interest.

In each Newsletter there will be mention of some new and interesting decisions in the real estate field. Here are some:

Partition: A leasehold estate may be partitioned. Pierce v. Pierce, 4 Ill. 2d, 497.

Revival of Judgments: Must be completed prior to the end of the 20-year life of the judgment. Smith v. Carlson, 6 Ill. App. 2d, 271.

Reverter Statute Constitutional. The 50-year statutory limitation on reverters is constitutional. Trustees of Schools v. Batdorf, June 1955. Docket No. 33411-33412 (not yet published); petition for rehearing allowed on Sept. 21, 1955.

Surviving Joint Tenant, entitled to proceeds of sale. Watson v. Watson, 5 Ill. 2d, 526.

\* \* \* \*

We Want Section Committee Members

There is almost universal interest in real estate law among lawyers. Real estate practice has paid a lot of rent and stenographers salaries and has bought many an automobile for members of the Bar. Actually our Section is not overcrowded, probably because not enough members have participated in our activities. Try serving on one of our committees and find out for yourself how much you will benefit. We are going to try some new ideas which we hope will interest a lot of Illinois lawyers. You will observe some of them in reading this Newsletter. There will be others.

# Upcoming CLE programs

TO REGISTER, GO TO WWW.ISBA.ORG/CLE OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

## January

**Tuesday, 01-09-18 Webinar**—Fight the Paper. Practice Toolbox Series. 12:00-1:00 PM.

**Wednesday, 01-10-18 – LIVE Webcast**—On My Own: Starting Your Solo Practice as a Female Attorney. Presented by WATL. 12-2 PM.

**Thursday, 01-11-18 – ISBA Chicago Regional Office**—Six Months to GDPR – Ready or Not? Presented by Intellectual Property. 8:45 AM – 12:30 PM.

**Friday, 01-12-18, Chicago, ISBA Regional Office**—How to Handle a Construction Case Mediation. Presented by the Construction Law Section, co-sponsored by the Alternative Dispute Resolution Section. 8:30 am – 5:00 pm.

**Friday, 01-12-18, Chicago, Live Webcast**—How to Handle a Construction Case Mediation. Presented by the Construction Law Section, co-sponsored by the Alternative Dispute Resolution Section. 8:30 am – 5:00 pm.

**Tuesday, 01-16-18 – LIVE Webcast**—Proper Pleadings: Complaints, Answers, Affirmative Defenses, Motions for a More Definite Statement, Motions to Strike, and Motions for Judgement on the Pleadings. Presented by Labor and Employment. 1:30-3 PM.

**Wednesday, 01-17-18 – LIVE Webcast**—Clearing the Skies: How to Fly with the Mandatory Initial Pilot Program. Presented by Intellectual Property. 12-1 PM.

**Thursday, 01-18-18 – ISBA Chicago Regional Office**—Closely Held Business Owner Separations, Marital and Non-Marital. Presented by Business and Securities. 9AM - 12:30 PM.

**Tuesday, 01-23-18 Webinar**—Before the Technology Buy, Understand the Why. Practice Toolbox Series. 12:00-1:00 PM.

**Thursday, 01-25-18 – ISBA Chicago Regional Office**—Starting Your Law Practice. Presented by General Practice. 8:50 AM – 4:45 PM.

**Tuesday, 01-30-18 LIVE Webcast**—Concerted Activity in the Age of Social Media and Online Systems: Employee Rights, Employer Pitfalls, Remedies and Penalties. Presented by Labor and Employment. 2-4 PM.

**Wednesday, 01-31-18 ISBA Chicago Regional Office**—Recent Developments in State and Local Taxation - Explosive Issues and the Steady Drip, Drip, Drips. Presented by SALT. 9AM – 1PM.

**Wednesday, 01-31-18 LIVE Webcast**—Recent Developments in State and Local Taxation - Explosive Issues and the Steady Drip, Drip, Drips. Presented by SALT. 9AM – 1PM.

**Wednesday, 01-31-18 ISBA Chicago Regional Office**—Recent Developments in State and Local Taxation - Explosive Issues and the Steady Drip, Drip, Drips. Presented by SALT. 9AM – 1PM.

**Wednesday, 01-31-18 LIVE Webcast**—Recent Developments in State and Local Taxation - Explosive Issues and the Steady Drip, Drip, Drips. Presented by SALT. 9AM – 1PM.

## February:

**Thursday, 02-01-18 – LIVE Webcast**—Storm Water Regulation Under the National Pollutant Discharge Elimination System (NPDES). Presented by Environmental Law. 11AM – 12PM.

**Thursday, 02-01-18 – LIVE Webcast**—The Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) Permit Program. Presented by Business Advice and Financial Planning. 1:30PM – 2:30PM.

**Friday, 02-02-18 – Normal, IL**—Hot Topics in Agriculture Law – 2018. Presented by Agriculture Law. All-day.

**Friday, 02-02-18 – ISBA Chicago Regional Office**—2018 Federal Tax Conference. Presented by Federal tax. All Day.

**Friday, 02-02-18 – LIVE Webcast**—2018 Federal Tax Conference. Presented by Federal tax. All Day.

**Feb 6 - June 26**—Fred Lane's ISBA Trial Technique Institute.

**Wednesday, 02-07-18 – Webinar**—TITLE INSURANCE 101: HOW TO HANDLE COMMON TITLE INSURANCE AND COVERAGE ISSUES IN RESIDENTIAL REAL ESTATE TRANSACTIONS—A Primer for New Attorneys and Those 'New' to Real Estate Law Practice. Presented by Real Estate. Time: 2-3 PM.

**Friday, 02-09-18 – SIU Carbondale**—Central and Southern Illinois Animal Law Conference. Presented by Animal Law. 8:00AM to 5:30PM.

**Monday, 02-12 to Friday, 02-16**—ISBA Chicago Regional Office—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

**Tuesday, 02-13-18 Webinar**—Cloud Services. Practice Toolbox Series. 12:00-1:00 PM.

**Monday, 02-19-18 – Chicago, ISBA Regional Office**—Workers' Compensation Update – Spring 2018. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

**Monday, 02-19-18 – O'Fallon**—Workers' Compensation Update – Spring 2018. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

**Tuesday, 02-27-18 Webinar**—Security. Practice Toolbox Series. 12:00-1:00 PM.

## March

Friday, 03-02-18 – ISBA Chicago Regional Office—9th Annual Animal Law Conference. Presented by Animal Law. 9:00AM to 4:30PM.

**Thursday, 03-08-18 – ISBA Chicago Regional Office**—The Complete UCC. Master Series, Presented by the ISBA. 8:30-5:00.

**Monday, 03-12 to Friday, 03-16**—Pere Marquette Lodge, Grafton IL—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

**Friday, 03-16-18 – Holiday Inn & Suites, Bloomington**—Solo and Small Firm Practice Institute. All day.

**Wednesday, 03-21-18 – LIVE Webcast**—Topics in Professionalism 2018: Mental Health and Substance Abuse Impacting Lawyers, and Diversity and

Inclusion in the Legal Profession. Presented by General Practice. 12:00-2:00 PM.

**Friday, 03-23-18 – ISBA Chicago Regional Office**—Applied Evidence: Evidence in Employment Trials. Presented by Labor and Employment. 9:00 am – 5:00 pm.

**Friday, 03-23-17 – LIVE Webcast**—Applied Evidence: Evidence in Employment Trials. Presented by Labor and Employment. 9:00 am – 5:00 pm.

## June

**Friday, 06-01-18 – NIU Naperville, Naperville**—Solo and Small Firm Practice Institute. All day. ■

## ORDER YOUR 2018 ISBA ATTORNEY'S DAILY DIARY TODAY!

*It's still the essential timekeeping tool for every lawyer's desk and as user-friendly as ever.*

**A**s always, the 2018 Attorney's Daily Diary is useful and user-friendly.

It's as elegant and handy as ever, with a sturdy but flexible binding that allows your Diary to lie flat easily.

The Diary is especially prepared for Illinois lawyers and as always, allows you to keep accurate records of appointments and billable hours. It also contains information about Illinois courts, the Illinois State Bar Association, and other useful data.



The ISBA Daily Diary is an attractive book, with a sturdy, flexible sewn binding, ribbon marker, and rich, dark green cover.

**Order today for \$30.00** (Plus \$5.94 for tax and shipping)

*The 2018 ISBA Attorney's Daily Diary*

**ORDER NOW!**

Order online at

<https://www.isba.org/store/merchandise/dailydiary>  
or by calling Janet at 800-252-8908.

# REAL PROPERTY

ILLINOIS BAR CENTER  
SPRINGFIELD, ILLINOIS 62701-1779

DECEMBER 2017

VOL. 63 NO. 6

Non-Profit Org.  
U.S. POSTAGE  
PAID  
Springfield, Ill.  
Permit No. 820



*THE ONLY BAR ASSOCIATION  
REPRESENTING THE INTERESTS  
SOLELY OF REAL ESTATE  
ATTORNEYS IN ILLINOIS*

**ILLINOIS REAL ESTATE  
LAWYERS ASSOCIATION**  
1701 East Woodfield Road | Suite 910  
Schaumburg, Illinois 60173  
312.600.7720 | 847.273.8701 Fax  
[www.irela.org](http://www.irela.org)