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Real Property

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

Here Comes the Flood

BY BOB FLOSS II

IT HAS BEEN 56 YEARS SINCE George Harrison first wrote "Here Comes The Sun." Had he been a real estate attorney, the verse would read, "Here Comes the Flood." It is an unfortunate reality that every real estate attorney must face at some point in their career: a client who recently purchased or sold a home, and there is water in the basement.

Two appellate court cases have offered some clarity for practitioners counseling their clients on the possibility of litigation.

Hahn v. McElroy

First, we look to *Hahn v. McElroy*, 2023 IL App (2d) 220403. A cautious tale that reminds us that litigation can come with consequences for the plaintiff. Put simply, the plaintiffs purchased a home and discovered mold in the property. They filed suit against the sellers for failing to disclose this issue on the Residential Real Property Disclosure.

At trial, the defendants presented evidence that they had issues with water in the home, but corrected those problems three years prior. The case centered upon a crawl space, which the sellers stated they fixed, but then never re-entered. The plaintiff hired a home inspector who inspected the crawl space, but nothing was discovered. It was not until after the plaintiffs purchased the home that a crack was discovered in the crawl space.

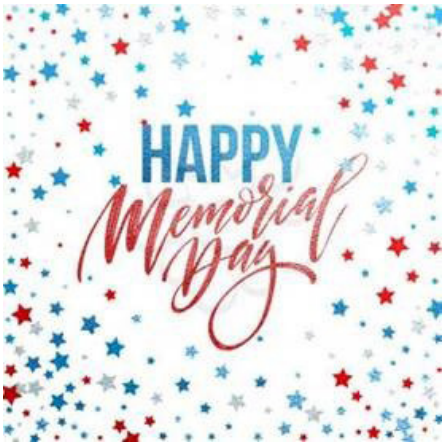
When questioned on the Residential Real Property Disclosure, the defendants testified that they completed the form

Continued on next page

Caveat Searcher

RECENTLY, I HAD TO SEARCH FOR a decedent's estate and/or filed a last will. I inserted the decedent's name, first and last names, (Clerk of the Circuit Court of Cook County website), and no results were produced for any last will having been filed. HOWEVER, when I added the decedent's middle initial…PRESTO! The information on the filed last will was produced. Needing a person's middle initial in order to search and find documents and cases related to that person is onerous, to say the least. It could have been a fluke. However, if it is a standard search policy, it should be fixed to delete the need to have the middle initial.

For real estate matters (clearing judgments, liens, etc.), much information needs to be searched. For now, at least, searchers need to be extra careful and diligent and expand search terms, as needed. ■



Here Comes the Flood

CONTINUED FROM PAGE 1

based on the condition of the house at the time they filled out the form, not its status before repairs. Almost immediately after purchasing the home, the plaintiffs noticed an odor in the room above the crawl space. After calling in a mold expert, the crack was discovered, along with a disconnected vent to the dryer, and extensive mold was found in the joists and crawlspace. The mold expert testified that the mold had been growing for at least six months to a year. Interestingly, due to this fact, the plaintiffs' homeowner's insurance carrier denied the claim for being a preexisting condition.

Despite the plaintiffs best efforts and paying for expert testimony, the trial court entered a directed verdict for the defendant. The plaintiffs presented ample evidence of the existence of mold, but failed to provide any evidence that the sellers were aware of the mold and had actual knowledge of the same. To add insult to injury, the defendants' counsel filed a petition for attorneys' fees. The court awarded attorneys' fees to the defendants in the amount of $27,250.97.

The plaintiffs appealed, stating there was more than enough circumstantial evidence to support going to trial. The appellate court agreed with the trial court and found that the plaintiffs' evidence did not show how the defendants could have had knowledge of the issues. The problems could only be discovered after cutting away the drywall and were missed by the home inspector.

The appellate court has a long, detailed analysis of awarding attorneys' fees in a real estate contract that should be essential reading for every real estate attorney. In short, the contract allows for the awarding of attorneys' fees for "any action with respect to this Contract." The plaintiffs argued that their complaint was not based upon the contract, but on the disclosure, and a count for fraudulent inducement to enter into the contract, and, therefore, the attorneys' fees clause in the contract did not apply. The appellate court disagreed. They found that the Disclosure Act provides the buyer with the remedy to cancel the contract. The plaintiffs claimed that if the defendants had disclosed the issue, this would have allowed the plaintiffs to exercise the contract remedy to terminate; therefore, the contract and the attorneys' fees clause are a part of the complaint.

Poundstone v. Cook

Second, we turn to the recent decision of *Poundstone v. Cook*, 2025 IL App (3d) 240322. I view these as companion cases and a stark reminder that litigation is subjective. The facts are similar. A plaintiff buyer, defendant seller, and nothing disclosed in the Real Property Disclosure Report. A few important details are different. The buyer here did not perform a home inspection, and the seller was the original contractor that built the home.

The buyer had experienced water entering the basement. On investigation, the buyer discovered rotting deck boards, studs, and plywood, indicating prolonged water damage in the home. In this instance, the plaintiff was able to show boards and joists that had been replaced in the area, which showed that the defendant had haphazardly attempted to fix the problem. The testimony took an odd turn and focused on a patch of drywall that had been replaced in the exact location of the leak in the basement.

It should be pointed out that the defendant attempted to introduce an "as-is" document into evidence. He claimed it was provided at closing. The plaintiff denied ever signing the document, and the buyer's attorney stated they had no record of the document at the closing. I point this out because the defendant appears to have offered testimony on several occasions that likely caused the court to question his truthfulness. The court also used the doctrine of merger to state that if the contract did utilize the as-is clause, any claim for "as-is" did not survive.

This leads to the testimony of the

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OFFICE
ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS
Michael J. Maslanka
Nicolette L. Sonntag

COMMUNICATIONS MANAGER
Celeste Niemann
✉ cniemann@isba.org

ART DIRECTOR
Ticara Turley
✉ tturley@isba.org

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drywall patch. The defendant stated that the room in question contained his treadmill. He fell from the treadmill around 2011 or 2012 and damaged the drywall, which he patched. At no time did he see any mold or water damage and did not disclose it when the property was sold in 2016. After expert testimony from contractors and structural engineers, the court determined that because of the extent of the wood rot and damage this condition must have been present at the time of the incident. The court also determined the evidence suggested that the homeowner attempted to correct the wood rot in several places, but made no attempt to correct the water damage causing the wood rot.

The court awarded damages to the plaintiff in the amount of $104,000 and awarded attorneys' fees in the amount of $34,559.18.

On appeal, the defendant stated that he made repairs, but did not have actual knowledge of any damage behind the walls. The court disagreed and found his intimate knowledge of the home as the original homeowner and general contractor that built the home meant he knew, or should have known. This analysis could prove problematic for future cases that may attempt to cite the court's use of "knew or should have known." The correct analysis was that the defendant was aware of the problem and fixed the result of the problem (rotten wood) instead of the cause of the problem (water). His ignorance of the root cause of the issue does not amount to a defense of no actual knowledge.

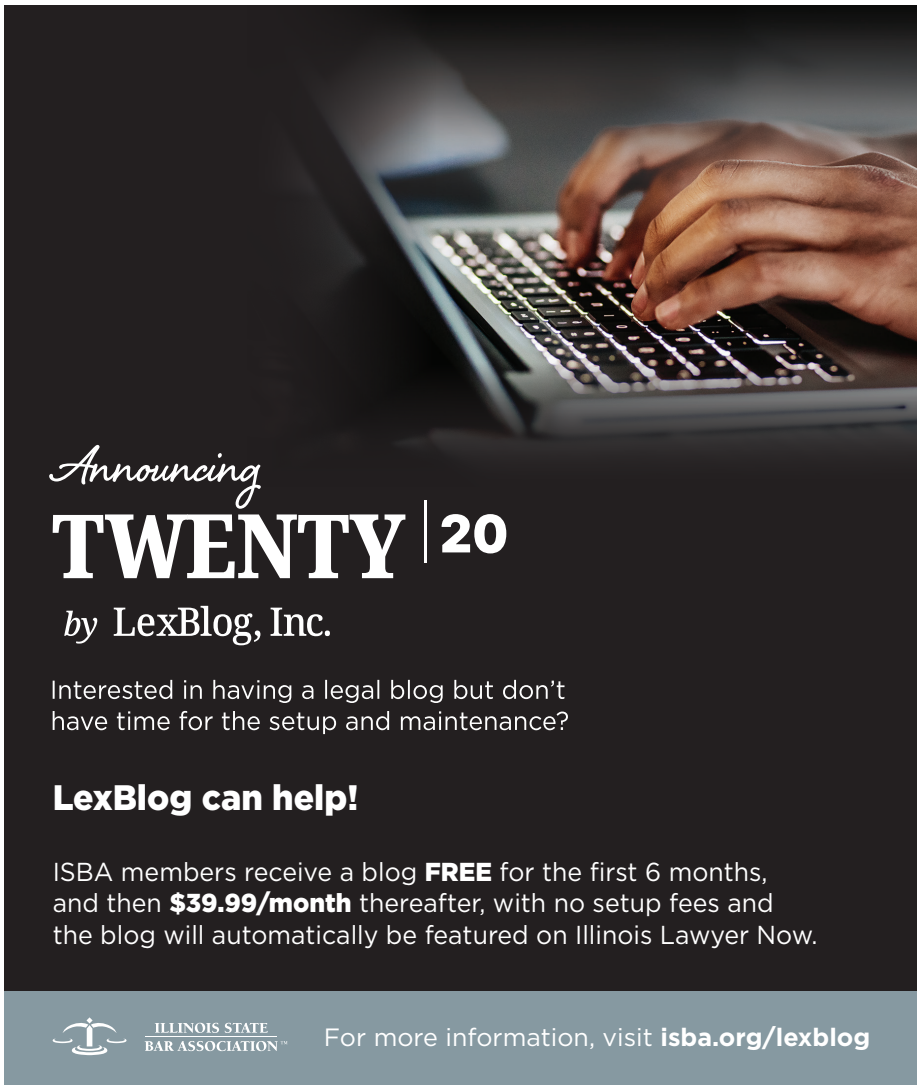
The appellate court examined the testimony of the defendant, stating he had made several repairs to the deck to repair rotted wood. The court took note that he did not testify about making an investigation or correcting the water damage that caused the wood to rot. The court used this to conclude that the homeowner was aware of something causing damage to the home, but chose to ignore it.

Conclusion

Reading both cases together offers excellent insight for real estate attorneys counseling a client experiencing a flooded basement or responding to a demand letter for a flooded basement. Circumstantial evidence, no matter how convincing it is to the client, is not sufficient to prove their case. Unless the buyer can prove that the homeowner had actual knowledge of the issue, they run the risk of paying the prior homeowner's attorneys' fees after trial.

However, it is also a reminder that all cases are subjective and require looking at the unique facts of each situation. In *Poundstone*, the plaintiff was able to show that the prior homeowner made repairs to the area of the flooding. Turning a blind eye to a problem is not the same thing as lacking knowledge.

The difficult job for each attorney is to weigh the evidence. In both cases, the prevailing party had several expert witnesses and carefully gathered evidence. They did not rely upon eyewitness testimony from a neighbor or the time honored "this obviously is not the first time" argument. The client must be prepared to invest time and money into investigating their claim. As their attorney, we must also be prepared to advise them if their investigation did not produce sufficient evidence, even after considerable cost. If they disagree, the *Hahn* decision may help offer them some clarity. ■



Air Rights Development

Practical Use of "Air Rights"

BY R. KYMN HARP

PART II

In *Part I* of this series, the legal foundation for "air rights" development was introduced. The following hypotheticals illustrate practical examples of air rights development.

As discussed in Part I, air rights development is a combination of black letter real estate law and the applicable zoning code of the community in which the property is located. Because zoning codes are legislative pronouncements, they are subject to change as local municipal governments determine appropriate. For this reason, the current zoning classification and its attributes for every project, and certainly for any project involving air rights development, must be examined as part of the due diligence investigation.

The following hypothetical facts and scenarios are for illustration only. They are not intended as legal advice and may not be relied upon as such.

Hypothetical Facts:

Suppose you are planning to acquire a 20,000 square foot parcel in Chicago, Illinois, zoned DC-12 or DX-12. Your purchase price is $7,500,000. You believe it is a perfect location for a restaurant and entertainment complex serving food and liquor, with live entertainment and dancing. You visualize a state-of-the-art venue spread out over 2 floors, with about 18,000 square feet of usable space per floor, for a total restaurant and entertainment venue of 36,000 square feet. For simplicity of illustration, assume you can build to the lot lines.

Fortunately, adequate parking is close by and available. Demand for retail, offices, and apartments is growing in the vicinity of your parcel, which you believe will further enhance the chances of success of your planned business by bringing more customers through your doors. Although retail, offices, and apartments represent "hot" development opportunities and might also be an excellent investment, you have no experience or interest in developing retail, or offices, or apartments, and really just want to develop and open your dream restaurant and entertainment complex. You have calculated your costs of construction and operation and believe the project is economically feasible, although you would like to find a way to reduce your costs or otherwise increase your return on investment.

Consider this: The restaurant and entertainment complex you wish to construct is a permitted use in the applicable zoning classification under the Chicago Zoning Ordinance. Also permitted are a wide array of other business and service uses, as well as apartments, as long as they are not below the second floor.

The permitted floor area ratio (FAR) for a parcel zoned DC-12 or DX-12 under the Chicago Zoning Ordinance is 12; which means that the total square footage of the building or buildings permitted on your 20,000 square foot parcel (the "Entertainment Parcel") is 240,000 square feet. You are utilizing only 36,000 square feet, which means, from a zoning standpoint at least, you are underutilizing the Entertainment Parcel to the extent of 204,000 square feet. If you could sell the right to develop that 204,000 square feet without interfering with your planned restaurant and entertainment complex, you may be able to recover a significant portion of your land cost. Almost free money.

How could this work?

Scenario No. 1: With the hypothetical facts presented, it may be possible to market and sell the "air space" above your proposed restaurant and entertainment complex for development as offices and/or apartments, and possibly even retail. As mentioned, under the applicable zoning classification, 204,000 square feet remains available for development on your site. Assume prevailing land values of $375 per square foot (represented by your purchase price of $7,500,000 for a 20,000 square foot parcel). A developer of offices and/or apartments, and possibly retail, may plausibly view your "air space parcel" as a bargain at +/- $4,000,000 ($200 per square foot – measured in two dimensions for 20,000 square feet) since it would still enable construction of 204,000 square feet of floor area above the second floor.

Obviously, to make the "air space" usable, adequate means of access and support must be planned, which will require detailed planning for design and construction of both the ground level development and the "air space" development (which do not necessarily need to be constructed at the same time, although simultaneous construction may be more efficient and practical). Creation of legally sufficient easements of support, and easements (or fee title conveyances) for ingress and egress, utilities, loading and unloading, mail delivery, a street level lobby, elevators, standpipes, etc., would be needed, as well as development of specific covenants running with the land to promote non-interference and compatibility of use of each parcel.

While sale of an "air rights parcel" will require added expense for engineering (much of which will likely be undertaken by the proposed developer of the air rights parcel) and attorneys' fees to negotiate and draft a workable declaration of easements, covenants, and restrictions to legally facilitate the development and use of each parcel, the economic advantage of being able to sell the air rights parcel may more than justify the added effort and development expense involved.

Scenario No. 2. Assume the same hypothetical facts as in Scenario No. 1, except that instead of being the owner of the Entertainment Parcel referred to in Scenario No. 1, you own and wish to develop a parcel adjacent to the Entertainment Parcel. Perhaps the Entertainment Parcel has already been

developed with the restaurant and entertainment complex referred to in Scenario No. 1. Assume your parcel (the "High Rise Parcel") is 40,000 square feet with a zoning classification that allows a floor area ratio (FAR) of 12 and, for simplicity of illustration, you can build to the lot lines. You wish to construct (or to sell your parcel to a developer to construct) a mixed-use development with first-floor retail, two floors of office space, and 9 floors of apartments. Because zoning for the High Rise Parcel allows an FAR of 12, you determine that a twelve-story building (if built to the lot lines) would be 480,000 square feet, the maximum you will be able to construct on your 40,000 square foot lot.

[Note that a stated FAR does not require building to the lot lines. You might also build a 480,000 square foot building on, for example, 60% of the High Rise Parcel, by building a 20-story building (60% of 40,000 sq. ft. = 24,000 sq. ft. x 20 floors = 480,000 sq. feet).]

In conducting your pre-construction due diligence, you determine that market demand is high and that if you could add another 200,000 square feet of apartments or other permitted uses, you could generate a substantially greater return on your investment. Still, you are faced with the maximum FAR of 12 for the High Rise Parcel as established by the Chicago Zoning Ordinance.

A possible solution may be the following:

The Chicago Zoning Ordinance defines a "Zoning Lot" as follows: "*A 'zoning lot or lots' is a single tract of land located within a single block, which (at the time of filing for a building permit) is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership or control.*"

Therefore, 'zoning lot or lots' need not coincide with a lot of record.

One solution may be to approach the owner of the Entertainment Parcel with a proposal to vertically subdivide the Entertainment Parcel into three sub-parcels (this would require compliance with the Chicago Subdivision Ordinance and may require Planned Development approval). *Sub-Parcel A* would be that part of the Entertainment Parcel lying *above* a horizontal plane located "x" feet (*e.g.,* +100 feet) above Chicago City Datum ("CCD") [the "x-plane"]; *Sub-Parcel B* would be that part of the Entertainment Parcel lying *below* the x-plane and *above* a horizontal plane lying "y" feet below the Chicago City Datum (*e.g.,* -20 feet CCD) [the "y-plane"]; and *Sub-Parcel C* would be that part of the Entertainment Parcel lying *below* the y-plane.

As owner of the High Rise Parcel you might propose that, upon subdivision of the Entertainment Parcel as described above, you would purchase the entire Entertainment Parcel except Sub-Parcel B for a purchase price of $4,000,000, and then include the Entertainment Parcel in a Zoning Lot with the High Rise Parcel; with specific covenants running with the land specifying that the owner of the High Rise Parcel shall control future development of the Entertainment Parcel with a reservation to the Sub-Parcel B owner, and its successors and assigns, of the right to continue to own and operate the restaurant and entertainment complex, and any replacement of those improvements, and to convey or encumber Sub-Parcel B.

The "Zoning Lot" would then be 60,000 square feet [comprised of the 40,000 square foot High Rise Parcel and the 20,000 square foot Entertainment Parcel]. Because the FAR for each remains 12, the maximum floor area on the total Zoning Lot is 720,000 square feet.

Because 36,000 square feet has been used (or is to be used) within the Zoning Lot for the restaurant and entertainment complex (within Sub-Parcel B), 684,000 square feet remain available for development on the Zoning Lot. Remember that the 12-story maximum resulted from application of the FAR of 12, not by a height restriction. Therefore, instead of being able to construct only a 480,000 square foot project on the High Rise Parcel if developed alone, the developer may now be able to construct a total of 684,000 square feet on the High Rise Parcel – an additional 204,000 sq. ft. [Note, however, that some zoning districts have height restrictions so, once again, it is critical that you carefully examine the applicable zoning ordinance and building codes in all particulars.]

* * *

Of course, if the developer does construct 684,000 square feet of floor area on the High Rise Parcel (in addition to the 36,000 square feet constructed on the Entertainment Parcel – Sub-Parcel B) under the foregoing Scenario No. 2, all floor area available for development of the combined Zoning Lot pursuant to the zoning ordinance will have been fully utilized. As a result, since the Zoning Lot is fully developed as a whole, no further opportunity exists to expand the square footage of improvements on Sub-Parcel B of the Entertainment Parcel. If the restaurant and entertainment complex fails, or is destroyed or otherwise demolished, the replacement improvements will be limited to a maximum square footage of 36,000 square feet.

To avoid this outcome, consider negotiating an "air rights transfer" that raises the elevation of the delimiting x-plane at, say, +200 feet CCD instead of +100 feet CCD, with an express covenant running with the land that reserves to Entertainment Parcel – Sub-Parcel B an additional portion of the potential FAR, for future development subject to applicable zoning approvals and the likely planned development ordinance.

Under Scenario No. 2, the sale of "air rights" is more akin to the sale of "development rights", but the legal principal is substantially the same as in Scenario No. 1. In each case, a property owner is selling the right to develop "the air above" while retaining the ground level development parcel.

* * *

"Air rights" are valuable property rights included in the bundle of rights comprising fee simple title. They can be unbundled and sold, purchased, transferred, and owned separate and apart from other rights in the bundle. Under the right circumstances, "air rights" may represent a substantial untapped resource with great value to those who recognize their potential. ■

[Part I appeared in the April 2025 issue.]

Tax Increment Financing:

A Valuable Development Tool – Illinois

BY R. KYMN HARP

TAX INCREMENT FINANCING (TIF) is a development tool often misunderstood by real estate developers and the public at large. TIF is authorized in every state (except Arizona) and the District of Columbia. TIF is authorized in Illinois by the Tax Increment Allocation Redevelopment Act.[1]

Why TIF?

TIF is a public funding mechanism designed to help municipalities overcome and prevent commercial blight.[2] Commercial blight leads to commercial properties becoming a drain on public revenue by producing a smaller share of taxes,[3] and requiring excessive and disproportionate expenditures of public funds for crime prevention, public health and safety, fire and accident protection, and other public services.[4] The eradication and prevention of commercial blight and the construction of redevelopment projects financed by private capital with financial assistance from governmental bodies are a public use essential to the public interest.[5]

Areas of commercial blight are often situated in older and centrally located areas of towns and, once existing, spread unless eradicated.[6] Though intended primarily as a tool for municipalities to eliminate and prevent blight within its territorial boundaries, TIF can benefit real estate developers and investors as well by bridging the financial gap to make otherwise marginal projects feasible for development.

Commercial Blight

Blighted areas are described as "*areas where a major portion of the commercial buildings and structures are detrimental to the health, safety and welfare of the occupants and the welfare of the urban community because of age, dilapidation, overcrowding or faulty arrangement, or lack of ventilation, light, sanitation facilities, adequate utilities or access to transportation, commercial marketing centers or to adequate labor supplies.*"[7] Use of TIF may be available if a blighted area encompasses at least 1½ acres.[8]

TIF can be also be used to prevent commercial blight through redevelopment of "conservation areas" – which are areas that do not yet constitute a blighted area but in which 50% or more of the structures have an age of 35 years or more and risk becoming a blighted area through the presence of 3 or more (out of 13) listed factors detrimental to the public safety, health, morals or welfare.9

Public Purpose

Public funds may be used only for a public purpose.[10] Economic development to eliminate or prevent commercial blight is a legitimate public purpose.[11]

Before a redevelopment project[12] can qualify for TIF reimbursement of redevelopment project costs[13] ("TIF Eligible Costs") the municipality must have a comprehensive program ("Redevelopment Plan")[14] for development or redevelopment to reduce or eliminate the existing conditions that qualified the redevelopment project area[15] ("TIF District") as a blighted area or a conservation area, or a combination of both.[16] TIF Districts have a statutory maximum duration of 23 years[17] but can be extended by the General Assembly for an additional 12 years.[18]

The "*But For*" Test

A condition to using TIF funds for commercial development is that "*but for*" the TIF incentive the development project will not proceed. If the project proceeds in all events, no public purpose is served by allocating public funds. The fact that the TIF incentive will also benefit private interests will not disqualify its use as a proper public purpose.[19]

How TIF Works – A (Very) Simple Overview

TIF allocates only *incremental* taxes generated within the TIF District for use in reimbursing TIF Eligible Costs. This means that if the equalized assessed valuation ("EAV") of all property within a TIF District on the date the TIF District is established totals, for example, $1,500,000, property taxes derived from that EAV (the "Base EAV") will continue to support local taxing districts throughout the term of the TIF District. Only taxes generated from EAV in excess of the Base EAV can be allocated to reimburse the developer for TIF Eligible Costs.

Hypothetical Example:

- *Assumption #1*: The combined property tax rate in the county is 5.7% of EAV.
  Based on that assumption, the Base EAV ($1,500,000) multiplied by the assumed tax rate will generate $85,500 per year in property taxes.
- *Assumption #2*: The TIF District is in Cook County, Illinois. Commercial property located in Cook County is assessed at 25% of fair market value (FMV).[20]
- *Assumption #3*: The state equalization factor (multiplier) for Cook County is three (3);[21] resulting in commercial property in Cook County having an average EAV of 75% of FMV.[22]
- *Assumption #4*: Developer proposes to build a new project within the TIF District at a cost of $20,000,000, with $6,000,000 of those costs incurred for demolition of functionally obsolete buildings, clearing the land, remediation of environmental contamination, installation of new sidewalks and drives, upgrading or replacing existing utility systems, resolving existing drainage and flooding issues, and adding a public gathering area as requested by the

municipality. The project can be completed and stabilized within 36 months from the date the TIF District is established, leaving a remaining term of 20 years.

- *Assumption #5*: Upon completion and stabilization, the fair market value of the newly developed commercial property will be $24,000,000, implying a new EAV of $18,000,000 ("Total EAV") based on 75% of FMV.
  Applying the Assumption #1 property tax rate of 5.7% to the Total EAV would generate total estimated annual real estate taxes of $1,026,000.
  Because TIF allocates only taxes from the *incremental* increase in EAV to pay TIF Eligible Costs, the annual TIF increment would be $940,500 ($1,026,000 on Total EAV *minus* $85,500 on Base EAV) – with the tax revenue from the Base EAV still reserved for the combined local taxing districts.
- *Assumption #6*: Developer has established to the satisfaction of the municipality that it cannot proceed with the project unless it receives reimbursement for $6,000,000 of the TIF Eligible Costs plus interest[23] at 9% per annum (approximately $8,000,000 through full repayment), for a total TIF payout to developer over the life of the TIF District aggregating $14,000,000, with 100% of the incremental taxes applied to the TIF payout until full reimbursement.
- *Assumption #7*: The first TIF payment will be 24 months after substantial completion of the project.[24]
- *Assumption #8*: If redevelopment does not occur, the commercial blight will continue, limiting property taxes to those generated by the Base EAV.

If everything goes as planned, the developer will receive the full TIF reimbursement in approximately 15 years ($14,000,000/$940,500 per year = 14.88 years) once TIF payments commence, which in this hypothetical is 17 years after substantial completion and 20 years after the TIF District was established. After full reimbursement or expiration of the TIF District, all real estate taxes generated by the property will inure to the combined taxing districts encompassing the TIF District.

If the TIF District were to rapidly increase in value, generating an average of, say, $1,100,000 per year in taxes on the incremental EAV during the remaining 20-year life of the TIF District, the TIF Eligible Costs could be fully reimbursed in approximately 13 years after substantial completion.[25]

If real estate taxes on incremental EAV were to, instead, average only $640,000 per year, the developer would recover only $12,800,000 over the 20-year post-completion period without further recourse against public funds because the sole source of payment of the TIF reimbursement obligation is the incremental increase in property taxes during the life of the TIF District.[26]

Conclusion

Elimination of commercial blight within Illinois communities is in the public interest. Tax Increment Financing is a valuable tool to eradicate and prevent commercial blight. ■

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1. 65 ILCS 5/11-74.4-1 *et seq*.
2. 65 ILCS 5/11-74.4-2(b)
3. 65 ILCS 5/11-74.2-1(c)
4. 65 ILCS 5/11-74.2-1(d)
5. 65 ILCS 5/11-74.2-1(f)
6. 65 ILCS 5/11-74.2-1(b)
7. 65 ILCS 5/11-74.2-1(a); the indices of which are detailed in 65 ILCS 5/11-74.4-3(a).
8. 65 ILCS 5/11-74.4-3(p)
9. 65 ILCS 5/11-74.4-3(b)
10. Illinois Constitution, Article VIII § 1(a)
11. *Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005); *People ex rel. City of Urbana v. Paley*, 368 N.E. 2d 915, 920-21 (Ill. 1977).
12. 65 ILCS 5/11-74.4-3(o).
13. 65 ILCS 5/11-74.4-3(q). Not all redevelopment costs qualify for reimbursement. In fact, Illinois is significantly more restrictive than many other states, including the nearby states of Indiana and Wisconsin, in that, generally, Illinois does not permit reimbursement for the cost of construction of any new privately-owned buildings while other states do. 65 ILCS 5/11-74.4-3(q)(12).
14. 65 ILCS 5/11-74.4-3(n)
15. 65 ILCS 5/11-74.4-3(p)
16. 65 ILCS 5/11-74.4-3(n)
17. 65 ILCS 5/11-74.4-3.5(a)
18. 65 ILCS 5/11-74.4-3.5(c)
19. *Clayton v. Vill. of Oak Park*, 453 N.E. 2d 937, 943 (1983).
20. Property Classification Codes https://www.cookcountyassessor.com/classifications-real-property.
21. In 2023, the Cook County equalization factor was 3.0163
22. 35 ILCS 200/17-25 requires average property values in each Illinois county to be assessed at 33 1/3% of Fair Market Value (FMV). To provide uniformity between counties, the Illinois Department of Revenue (IDOR) is required to calculate an equalization factor for each county. Unlike all other Illinois counties, Cook County is permitted to assess property at different levels based on differing property types (Property Class). In Cook County, there are numerous Property Classes. At the low end are residential and vacant properties assessed at 10% of FMV; and at the higher end, commercial and industrial properties assessed at 25% of FMV. With much more residential property than commercial/industrial property in Cook County, the weighted average assessment of all Cook County property is roughly 11% of countywide FMV. IDOR has assigned an equalization factor of just over three (3) for Cook County, meaning that whatever the determined assessed value is for any property, the equalized assessed value (EAV) will be roughly three (3) times that amount.
23. The developer would have incurred most or all the TIF Eligible Costs early in the construction period. It is typical to reimburse the developer for the time value of money (interest) as permitted at 65 ILCS 5/11-74.4-3(q)(6). Interest at 9% per annum accrues during the 24 to 36 month construction period on the $6,000,000 in TIF Eligible Costs as incurred (estimated. $1,000,000) and another estimated $1,000,000 in interest between substantial completion of the project and the first bi-annual payment from TIF proceeds 24 months after substantial completion, and then an estimated $6,000,000 in interest paid during the reimbursement period = $14,000,000 total payment amount from incremental taxes.
24. Property taxes will be based upon the completed project, which in the hypothetical is assumed to occur 36 months after creation of the TIF District. Illinois taxes are assessed one year in arrears – and Cook County taxes are payable in two installments.
25. Assumes the taxes average the higher amount throughout the first 13 years, which may not be likely, but any material increase in taxes over the projected $$940,400 per year will shorten the payment period.
26. 65 ILCS 5/11-74.4-8

Chicago Northwest Side Preservation Ordinance

BY BOB FLOSS II

FOR ATTORNEYS PRACTICING OUTSIDE THE CITY OF CHICAGO, please do not disregard this article. We are going to review an extremely controversial ordinance now in effect in one ward of Chicago. Before we get into the ordinance, I think it is beneficial to review why this topic is important to all attorneys in Illinois.

The concept of government awarding tenants a right of first refusal is not new. The first Tenant Opportunity to Purchase Act (TOPA) was introduced in Washington D.C. in 1980. The law gained some traction in the east coast, expanding to Takoma Park, Maryland, in 1987, but remained isolated to those areas. Recent sentiment for housing as a human right has renewed interest in the law and sudden expansion. Below is a list of states and municipalities that have added a right of first refusal (ROFR). It's obvious this issue is expanding and will continue to expand.

Location	Year	Status
Washington D.C.	1980	Passed
Takoma Park, Maryland	1987	Passed
Prince George County, Maryland	2013	Passed
Montgomery County, Maryland	2018	Passed
San Francisco, California	2019	Passed
Woodlawn, Chicago, Illinois	2020	Passed
East Palo Alto, California	2021	Policy Campaign
Berkeley, California	2022	Policy Campaign
Baltimore, Maryland	2023	Passed
Philadelphia, Pennsylvania	2023	Passed
Minneapolis, Minnesota	2024	Passed
Maryland (Statewide)	2024	Passed
Colorado (Statewide) (Only 5+ units)	2024	Passed
San Diego, California (5+ subsidized housing only)	2025	Passed
New York (Statewide)	2025	Under Consideration
New York, New York	2025	Under Consideration
Somerville, Massachusetts	2025	Under Consideration
Massachusetts (Statewide)	2025	Under Consideration
Fresno, California	2025	Policy Campaign

An interactive map can be found at https://www.policylink.org/topa-copa-map

Each law has its own unique spin. San Francisco's law is a Community Opportunity to Purchase Act (COPA) that gives a right of first refusal to qualified non-profits registered with the municipality. Sellers must provide notice to all the qualified non-profits and they are allowed the right of first refusal to purchase.

We must all be aware of this growing trend and its impact as it continues to expand into our practice areas. The ordinance could expand to other wards in Chicago, Cook County, or across Illinois.

Background

In September, 2024, the City of Chicago passed the Northwest Side Preservation Ordinance without warning. The ordinance immediately went into effect with the expressed intent of giving property owners no opportunity to find ways to navigate around the new ordinance. Instead, the ordinance was postponed as it became obvious to everyone involved that the City had instituted a dramatic rule change without established procedures.

The real estate community was expected to comply with an ordinance restricting the sale of real estate without documentation or procedures to comply with the ordinance. Attorneys and title insurance companies were left to wonder how to verify that a seller had complied with the ordinance and move forward with closing. The effective date had to be delayed to allow creation of forms and procedures, which allowed groups like the Chicago Association of Realtors to lobby for an amendment. While the amendment corrected several problems, many still remain. After several delays, the ordinance went into effect as of March 1, 2025.

Overview of Ordinance

The ordinance requires sellers of real property with a residential tenant to provide that tenant the opportunity to purchase the property. The tenants must receive a Notice of Intent to Sell to alert the tenants of the seller's intention to offer the property for sale. Upon accepting an offer from a third-party buyer, the seller must deliver a Notice of Third-Party Purchaser Offer. The Notices must be delivered "in person, or mailed, by certified or registered mail, return receipt requested." The Notice of Third-Party Purchaser Offer must provide each tenant the purchase contract, rent roll, including rent charged for each unit, a list of vacant units, income and expense report for the prior 12 months, and "any other information the Commissioner may specify by rule."

Below is a graph laying out the time period granted for each property and each notice. Please note that, at any time during the process, the tenants can sign a waiver releasing their rights to purchase and allow the seller to complete the sale to a third-party purchaser. If 50% of the occupied units waive their right, the rights are waived for all tenants in the building. The graph below provides the maximum number of days the ordinance provides the tenants.

	5+ Units	3-4 Units	1-2 Units
Notice of Intent to Sell	60	30	30
Right of First Refusal	90	30	15
Time to Closing	120	60	60
Total Days	**270**	**120**	**105**

Despite the City of Chicago Department of Housing receiving all documents, the seller has the burden of keeping receipts of all documents and notices for review by the City of Chicago Department of Housing for up to three years after the sale of the property. I expect this burden will shift to the seller's attorney, who becomes the de facto custodian of all records from a transaction.

In addition to the notice delivered to tenants, a general Public Notice of Intent to Sell must be posted in a high-traffic, easy-to-see area of the property for all tenants to view. The City of Chicago Department of Housing states it does not require a copy of this Notice, but it would be advisable to keep a record that the notice was posted in compliance with the ordinance.

If the tenants decide to exercise their right of first refusal, the terms must match the offer from the third-party purchaser. In the first version of the ordinance, no proof of financing was required. However, the amendment to the ordinance requires a Letter of Intent from a financial institution for 5+ units, and a preapproval lender for any property 4 units or under. I'll reserve discussion of earnest money to a later section on policy application. The ordinance controls the time for mortgage contingency and closing. The seller is under no obligation to grant an extension of the mortgage contingency or closing date once the tenants go beyond the time limit granted under the ordinance.

One detail that remains unanswered at the time of writing this article is handling an "as-is" contract. The City of Chicago Department of Housing has not commented if a tenant offer must be "as-is" if the third-party purchaser offer is "as-is." I don't see the debate. To exercise a ROFR, the party must accept the terms of the contract and stand in the place of the third-party purchaser. Accepting a property "as-is" is a material issue of the contract that cannot be overlooked. If the tenants wish to purchase the property, they must be willing to purchase it under the same terms.

Another change from the first version of the ordinance to the amendment deals with attorney review and home inspection. How do we handle a third-party purchaser that requests a closing cost credit or reduction in purchase price? Does a change in the terms of the third-party contract reinstate the tenants' ROFR? The amendment clarified a material change in the contract. A 10% reduction of the asking price is not considered material, and the sale may continue.

At every step of the process, the seller and tenants must provide copies to the City of Chicago Department of Housing for their review. All documents must be submitted via email to DOH@cityofchicago.gov with the subject line: "Notice of Intent To sell: (Rental property address) (606 District).

Exceptions

The ordinance does provide a long list of exceptions to the ordinance. These exceptions include any transfer related to a foreclosure sale, bankruptcy, tax sale, devise to transfer to heirs or intestacy, a transfer among family, revocable trust, beneficiary of trust, eminent domain, a change in the entity owning the property, or transfer pursuant to court order or court-approved settlement.

Before anyone thinks they have found a loophole, the definition of sale of property under the ordinance includes the transfer of a majority interest in an owner. The change in entity owning the property is reserved for partnerships or companies removing or adding a party. Attempting to sell a property by selling the company instead of the land will be a violation of the ordinance.

Representing Tenants

In researching this topic, I came across extensive analysis of the Washington D.C. program. Pulling from 45 years of data allows us a look into the future of this ordinance. One topic that comes up often in research and articles from Washington D.C. is the frustration over lack of legal representation for tenants. Frequently, community groups advise tenants on their rights and how to proceed with purchasing the property. Tenant groups expressed a lack of attorneys willing to assist them with the process.

The ordinance grants, and in some places requires, the tenants to form a tenant association. The association must include 75% of the tenants in a property 5+ units and 50% of tenants in 4 units or less. When counting tenants, the count is per occupied unit, not the number of tenants in the building. A unit with three tenants has one vote, not three. However, the count includes any occupied rental unit "as a separate living quarter with cooking, sleeping, and sanitary facilities within the unit." The ordinance is not interested if a unit is a non-conforming use or approved by zoning, only that it is occupied.

The tenant association must sign a consent to form and provide a copy to the City of Chicago Department of Housing. The time period to form a tenant association falls during the ROFR noted above. Failure to properly register the tenant association within the time allotted will result in automatic loss of ROFR. For more information on tenant associations, please refer to the section on policy concerns.

The assumption is any tenant association purchasing 5+ unit buildings will need the aid of public funds to finance the purchase. In other jurisdictions, tenants of 5+ unit properties rely upon public funding to complete their purchase. However, use of public funds will trigger recording a 30-year restrictive covenant on the property to remain affordable housing. While this is attractive for tenants, I have some concerns over the lasting impact for the value of the building. No information is available on the financial details from the public funding option. We cannot offer any opinions on the terms of the mortgage or requirements from the tenants or tenant association.

What if you cannot meet the tenant association quorum or the tenants simply do not want to purchase the property? As I learned from D.C., there is still room for negotiation. The third-

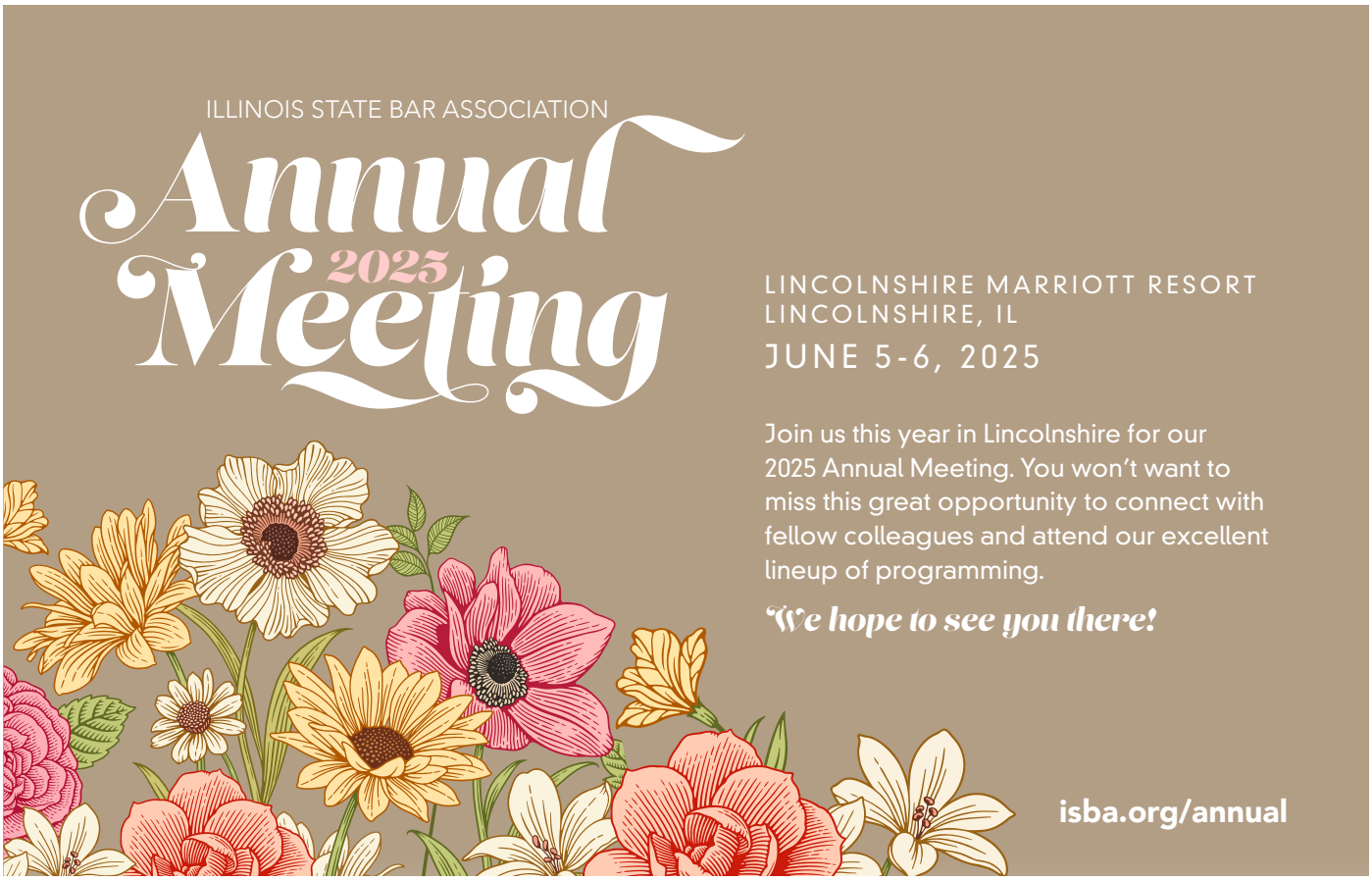
party purchaser may tour the property for inspection and request the tenants to sign the waiver of their rights. At this time, the tenants and purchaser engage in what is referred to as 'cafeteria style' negotiations. Each unit is like a different station of the cafeteria with their own unique offering. A purchaser may offer one tenant new windows, one tenant a new refrigerator, and another tenant a lease extension (possibly under market value), in order to obtain their waiver. Tenants are able to use their waiver to bargain and gain while the third-party purchaser obtains the waivers needed to timely complete the purchase.

Policy Concerns

The unfortunate reality of putting a law or ordinance into action, is the eventual contradiction between the law and the policy that is put into place. As the City of Chicago Department of Housing tries to put this law into action, there are several key details where their policy does not match the ordinance. I have expressed these contradictions in several venues, and I hope by the time this article goes to publishing, it is no longer up for debate. On February 28, 2025, the Commission of Housing signed the Pilot Program Rules that set the policy for their office enforcement of the ordinance. For easy reference, I will refer to the Commissioner's publication as the Commissioner Policy since the rules are a product of the Commissioner's office and are not contained in the ordinance.

Policy Concerns: Service

The City of Chicago Department of Housing has been informing realtors and sellers that notice to tenants can be accomplished with an email or a text message. My apologies for being cynical, but this seems like a dangerously relaxed approach. The ordinance calls for personal service, or service by certified mail or registered mail with return receipt, but now a text message is sufficient. Let us put aside the presentation at the last ISBA Solo and Small Firm Conference that displayed how absurdly easy it is to create a fake text message screen that looks authentic. When faced with a contentious closing or tenant having a change of heart, do you want to follow the ordinance and serve the tenants, or do you want to be the person arguing over a text message being sufficient because someone told you that it was ok? I can personally attest to municipal employees offering their seal of approval, only to find out later that person no longer works in the office and their replacement has different ideas. An internal policy is only as enforceable as the person working behind the desk. A possible middle ground being floated by the City of Chicago Department of Housing is a docusign signature from the tenant accepting receipt of the document. A docusign with a certificate showing authenticity of the signor may be an acceptable alternative to show personal



service on the tenant. Obtaining signatures from tenants can be difficult, and utilizing docusign may be necessary. However, I would prefer the ordinance be amended to prevent future confusion.

If you closely read the ordinance, you may be left confused when the seller is required to serve the Notice of Intent to Sell. Is it 60 days before acceptance of contract, before offering for sale, or before signing a listing agreement? The Commissioner Policy states the Intent to Sell must be delivered prior to listing the property for sale. How soon after a third-party contract is accepted must notice go out to the tenants? The ordinance is silent, but Commissioner Policy states within 5 days of acceptance for 1-4 unit properties and 10 days of acceptance of 5+ unit properties.

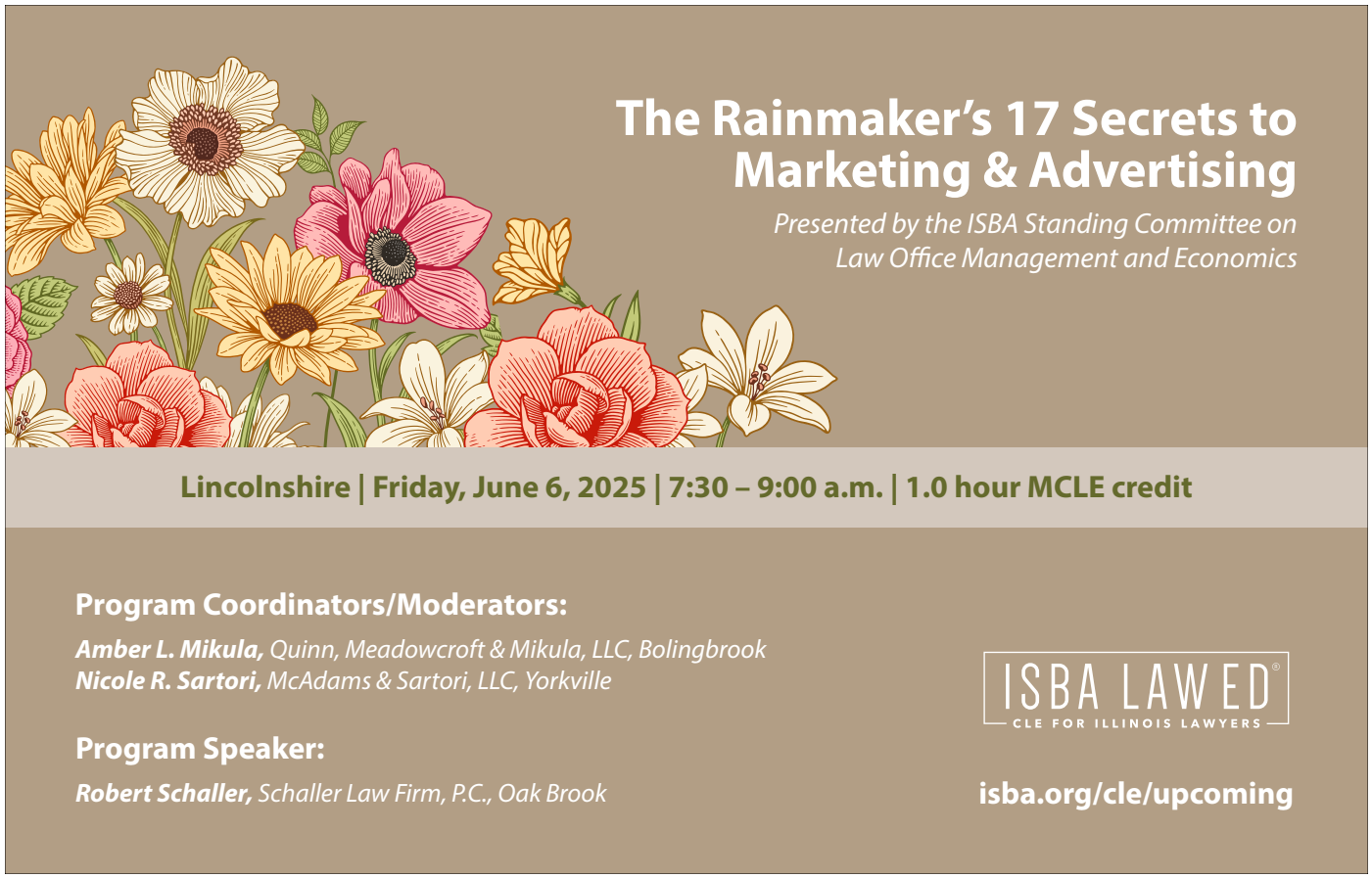
Policy Concerns: Penalties

We previously reviewed the list of documents required to be delivered to the tenants, and I noted it allows for 'any other documents' required by the Commissioner. The Commissioner Policy includes tenants must receive a detailed income and expense report that includes capital improvements, taxes, charges, and any fines owed to the city or governmental agency, information on the property financial condition, architectural and engineering plans and specifications, and a list of any building code violations or litigation on the property.

It should be noted that the Commissioner Policy for both tenant notices contains a caveat. Any submissions to the City of Chicago Department of Housing that do not contain all the required documents will be deemed incomplete and subject to penalties in Article 7 of the Commissioner Policy. This may be difficult to enforce since Article 7 is the section on the 30-year covenant for rent restricted affordable housing. I am guessing that the Commissioner intended to reference Article 6 that explains penalties for non-compliance. The Commissioner does not provide guidance for how penalties will be assessed. It merely states a fine may be imposed. It does not offer a range, a limitation, who may impose the fine, or who may determine if a fine can be placed on the property. Property owners, attorneys, and title companies attempting to comply with the ordinance should be given a right to cure any missing documents. A subjective power for governmental employees to impose a fine creates opportunity for personal agendas and corruption.

Policy Concerns: Tenant Associations

In case you thought Commissioner Policy was isolated to seller concerns, you would be wrong. The tenants of a property with 3 or more units must form a tenant association to purchase the property. For a 3-4 unit property, the tenants have 30 days, and for a 5+ unit property, they have 90 days per the ordinance. Or do they? The Commissioner requires that the tenant association registration form be submitted



to their office at least 7 business days prior to the expiration of their deadline. The tenants of a three flat believe they have 30 days, but their completed tenant association form is due in 23 days. Even though this is a tenant requirement, the seller must also comply by sending the same tenant registration with the names of all the tenants and contact information. To hopefully avoid issues with tenant groups, the City of Chicago Department of Housing will allow tenant associations to form at any time, regardless of receiving a notice from the owner. The City of Chicago Department of Housing will issue a certificate for the tenant association that will remain valid for 12 months and must be renewed.

Policy Concerns: Waivers

The tenant waiver appears on two different forms from the City of Chicago Department of Housing, creating some confusion. The Notice of Intent to Sell contains a section for the tenant to waive their rights. The Notice of Third Party Purchaser also contains a section for the tenant to waive their rights. I have already received push back from clients stating if the tenants waive their rights during the Notice of Intent to Sell, the rest is not necessary. I disagree. The ordinance does not have a section that waives the tenant right to receive the Notice of Third Party Purchaser. The tenant may elect to sign the waiver on the first notice, but sellers should be discouraged from attempting to cut corners. Regardless of if the tenant signs the waiver of the Notice of Intent to Sell, every attorney should require proper delivery of the Notice of Third Party Purchaser and obtain the waiver signature. I view the tenants' signatures on the first notice as an early indicator if the transaction will be able to close quickly rather than a waiver of ROFR.

The Commissioner Policy further creates confusion on this issue. It states the owner may seek a waiver on either form, however, it also states the tenant may waive at any time during the time period to form a tenant association or prepare for closing. Both periods only begin to run after the seller has tendered a Notice of Third Party Purchaser. Owners should also be aware that it is considered a violation of Commissioner Policy to request a waiver as a condition of offering, maintaining, or renewing a lease.

Commissioner Policy also expressly states that an owner may not request a waiver during the time for tenants to form an association. How can this be true? The time period after providing the Notice of Third Party Purchaser to the tenants is expressly for allowing the tenants to form an association. This is also the period when the owner may request waivers. How can the seller obtain a waiver if they cannot request it during the time period for forming an association? The expiration to form a tenant association is the expiration of the ROFR period. If a seller delivers notice they are under contract, and requests a waiver, they have committed a violation. This item was likely added in haste and should be immediately removed.

Policy Concerns: 5-11-060(b)(3)

This section of the ordinance is probably my biggest gripe. One that could have been avoided by a simple, detailed reading of the ordinance by the policy makers. Three key sections of the ordinance refer back to one section, 5-11-060(b)(3). This section provides "at least one tenant of a rental property consisting of *one or two dwelling units* (emphasis added) shall have 15 calendar days to inform the owner of its intent to exercise its right of first refusal." The preceding sections deal with 3 to 4-unit properties and 5+ unit properties. This section exclusively deals with one or two-unit rental properties.

Keep this in mind as we examine three sections of the ordinance under scrutiny.

Section 5-11-070 addresses the tenant requirement to provide a Letter of Intent from a community organization or preapproval letter from a lender. It also addresses the aforementioned requirement of earnest money. Most publications offering information or FAQs on the ordinance state that earnest money is capped at 5% of the purchase price. This is not true. The ordinance states that under 5-11-060(b)(3), the owner shall not require the tenant or tenant association to pay more than 5% of the purchase contract. The drafters of the ordinance specifically referenced the section on one or two-unit properties. In my opinion, the language clearly states the cap on earnest money only applies to one or two-unit properties.

The Commissioner Policy again restates the misinterpretation that all properties are capped at 5% earnest money. A detailed reading of the ordinance references one or two unit properties and should only be enforced against one or two unit properties, absent an amendment to the ordinance.

Section 5-11-080 starts out with the same problem. This section gives tenants the right to assign their rights to purchase. The first line of the ordinance states under Section 5-11-060(b)(3), again referencing one to two-unit properties. In fact, this section of the ordinance references 5-11-060(b)(3) in five different places. I'm happy to see the Commissioner Policy agreed with this point and has stated only one or two-unit properties may assign their rights. The ability for a tenant to assign their rights is not isolated to an entity they create. It can be assigned to any party, investor, builder, or buyer. Turning back to Washington D.C., it is acceptable for a tenant to exercise their right to purchase, including receiving value for their tangible benefit. In other words, a tenant may exercise their right of first refusal and assign, or wholesale, the property to a third party. Let that sink in. The tenant may exercise their right for the express purpose of profiting from the sale of the contract.

Section 5-11-130 addresses the sale of a property to a third-party purchaser. Again, the first line of the section states "under Section 5-11-060(b)(3)", if the property is sold to a third-party purchaser, the tenants may stay in the property for the longer of six months or the expiration of the lease. In every publication I have seen, the general public has been told this section applies to all sales. I must again point out, the ordinance states in the first line that it applies to one or two-unit properties as defined in 5-11-060(b)(3). Any other interpretation is ignoring the plain language of the ordinance.

The City of Chicago Department of Housing recognized the correct interpretation with tenants' right to assign,

but has completely ignored it for earnest money and lease duration after closing.

In case I haven't made my position clear, the Commissioner states it for me in Article 9 of the Commissioner Policy. "These rules may be updated at any time at the discretion of the Commissioner of Housing."

Seller Considerations

In my analysis of the ordinance, I am surprised by a glaring omission. At no point does it attempt to address an owner of a property with urgency. How does an attorney advise their client with a delinquent mortgage at a high interest rate? How do I advise my client who has an approaching foreclosure sale? The transfer from foreclosure sale is exempt, but what if your client wants to short sale the property? If a client is in financial straits or has a job relocation, what are their rights? When dealing with larger properties, what does a client do if a lender decides not to exercise the option on their note and must either refinance or sell quickly?

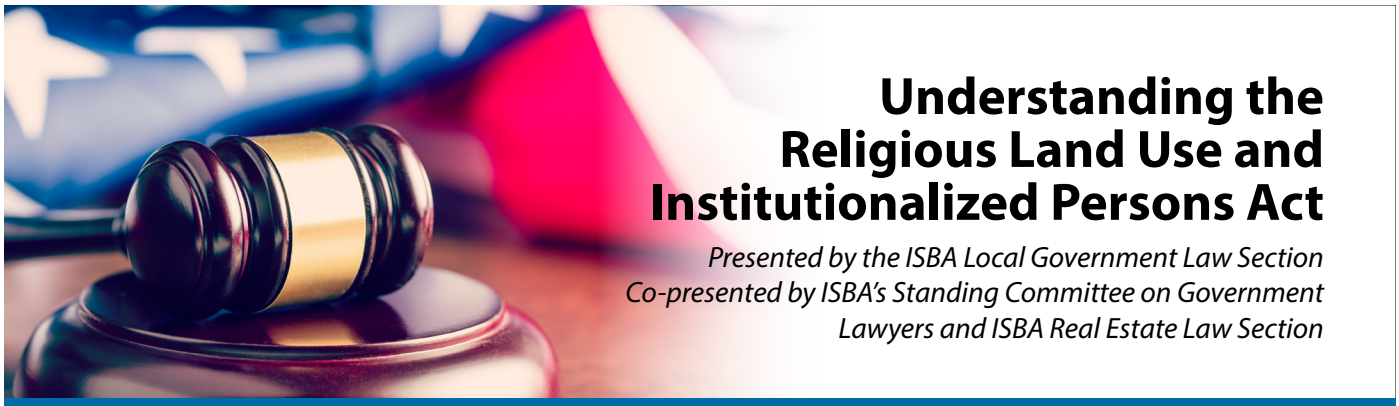
All good questions. All scenarios I have dealt with directly in practice. All are clients who would see their burden take a backseat to the rights of their tenants. Giving rights to tenants should not be at the expense of the suffering of the property owner.

Owner Occupied

Many of the clients I represent who purchase two flat or three flats are using owner-occupied financing and live in one of the units. Given the stance by the Commission to allow tenants six months to stay in the property, unless the property is sold with one unit vacant, FHA will not allow the purchaser to close. In a presentation to the Chicago Association of Realtors, the City of Chicago Department of Housing represented that they had talked to lenders who would allow the transaction to close. As much as I would like to believe that, I think the City of Chicago Department of Housing is overstepping its authority, thinking it can obtain a special review from FHA to approve loans in the 606 area of Chicago. In every FHA closing, the underwriter must verify the borrower's ability to occupy the property within 60 days.

Public Reaction

Property owners are concerned about how this ordinance and policy will play out. For owners of smaller properties, such as a two flat, they have voiced their intention, the property will be vacated before they put it up for sale. The object of this ordinance is to preserve affordable housing. In reality, it may do the exact opposite. Several property owners I spoke with intend to handle the eventual sale of their property by not having tenants exercise the right of first refusal. Several Realtor groups have already begun tracking vacancy rates in the area. The concern is that owners intending to sell will begin vacating properties. The same groups are tracking sales data to see if the ordinance will result in a decrease in prices relative to neighboring areas of the city.



Understanding the Religious Land Use and Institutionalized Persons Act

Presented by the ISBA Local Government Law Section
Co-presented by ISBA's Standing Committee on Government Lawyers and ISBA Real Estate Law Section

Live Webcast | Wednesday, June 11, 2025 | 9:00 – 10:05 a.m. | 1.0 hour MCLE credit

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1031 Exchange

Representing a buyer using a 1031 Exchange? Not within the boundaries of the ordinance. Can your client take the risk of the tenants exercising the right of first refusal and time running out? Any buyer utilizing a 1031 Exchange will need two viable back up properties identified in the event they need to change course. What then for the seller? Is it advisable for the seller to accept a contract from a 1031 buyer? If the process is delayed and the 1031 buyer is forced to go with another identified property, the owner is right back where they started.

The City of Chicago Department of Housing has expressed no interest in assisting 1031 exchanges. They view it as an investment vehicle utilized by large investors. In reality, 1031 exchanges are often used by 'mom and pop' investors who own a few properties. The vast majority of 1031 exchanges in my office have been with a client who owns two or three properties, not a large investment group. It is the client who purchased using FHA owner-occupied financing many years ago and now wants to roll it into a bigger property.

Taking

The biggest issue of all. What is a taking? For many attorneys, this ordinance amounts to an unconstitutional taking. Our property professors taught us about the bundle of sticks we receive when we purchase a property. The ordinance effectively takes one of those sticks away. The owner of a property cannot freely sell their property. A lawsuit was filed for an unconstitutional taking against the Washington D.C. ordinance. (560 A.2d 530. *Hornstein v. Barry*, No.83-242. District of Columbia Court of Appeals). In that case, the court ruled the constitution gives you the right to profit from your property, but it does not give you the right to the most profitable use of your property. I think the court misinterpreted the ordinance. We have public policy constraints on property use, such as zoning and health and safety, which limit use for public policy. This ordinance is not a limit on the most profitable use, it is a transfer of profit and property rights from the owner to the tenant. It creates a process by which the government strips the owners' rights and grants them to the tenant for the tenant's personal and financial gain.

I understand the authors of the ordinance want to create affordable housing. I think we all want to encourage ways to create affordable housing for all. This ordinance calls itself affordable housing, but it is a transfer of wealth. The transfer of wealth from the undeserving property owner to the deserving tenant. The dissenting opinion in the Washington D.C. case agreed the ordinance is not an unconstitutional taking, but it offered a different argument. The ordinance impermissibly delegates legislative authority to private citizens. The tenants are free to act to promote their own self-interest, not the public interest. There are no standards for tenants to grant or withhold their waiver to prevent tenants using it for selfish or malicious reasons. This ability by the tenants to operate without standards denies the property owners due process and renders it unconstitutional.

I regret that opposing this ordinance will be viewed as opposing affordable housing. If the City of Chicago wishes to address affordable housing, they can begin with easing zoning restrictions that frustrate owners attempting to add affordable housing units to their existing properties. We all benefit from affordable housing. However, affordable housing should not be granted by stripping rights away from properties owners.

Epilogue

I must confess writing on this topic has been frustrating. Every time I believed this article to be completed, something would change. At the time of writing this article, I have learned the City of Chicago Department of Housing enforcement of the ordinance does not match their own Commissioner Policy. I spoke with attorneys that currently have pending deals in the ordinance area. The Notice of Intent to Sell was properly served to the tenants via certified mail with return receipt. One attorney recommended having the seller notify the tenant of the content of the letter to ensure the tenant signs the green card (often a difficult task). Attorneys submitting proof of service of the Notice of Intent to Sell, with tenant waivers on the notice, are being issued approval to proceed with closing. The process of providing notice of the third party purchaser and corresponding information is skipped entirely, as long waivers are obtained.

We are left with an ordinance, policy, and real world application in conflict with one another. Does this mean the City of Chicago Department of Housing does not plan on enforcing the ordinance and policy as intended? Is this a temporary measure until they hire more dedicated staff? Will the enforcement of the ordinance be subjective depending upon the property? We as practitioners are put in a difficult position of navigating an unpredictable process. It begs the question. If the parties responsible for passing the ordinance, do not wish to enforce the ordinance, then why does the ordinance exist? At a minimum, the ordinance, and any attempt to expand the ordinance, requires a significant amendment. ■

Bob Floss II
Floss Law, LLC
1200 Shermer Road, Ste 206
Northbrook, IL 60062
224-326-2903
bob@flosslaw.com

Tower of Babel: Trump Tariff Impact on the Illinois Real Estate Attorney

BY DONALD HYUN KIOLBASSA AND EMILY HOLMES

GLOBALIZATION IS GOING TO COLLAPSE, and there is nothing anyone can do about it. As small business owners, small to mid-sized law firms must be prepared for the consequences.

At the conclusion of World War II, the United States provided the world with the necessary security needed for economic globalization in exchange for influence in drafting a country's security policy.

Globalization allowed many countries to thrive. For example, the United States would offshore our covenanted manufacturing jobs overseas in exchange for cheaper goods. In no universe would some of these countries experience their relative success without the infrastructure created by the United States.

However, it would appear that the tides are turning.

As evidenced by the recent tariffs, the United States has lost interest in globalization. I believe this will reshape the global economy and the future practice of the Illinois real estate attorney.

Before we go further, let us start with a sidebar. I believe the story of the Tower of Babel can lend a lesson.

In the Old Testament of the Bible, The Book of Genesis gives us a story of the Tower of Babel.

> There was once a time when all of humanity spoke one language. All humanity decided to build a tower that reaches the heavens. In reaction, God confuses them by giving them multiple languages so they can no longer understand each other. The people all scatter around the earth.

This story teaches us the fragmentation of humanity.

Ladies and gentlemen of the jury, I submit to you that the tariffs will cause the same fragmentation of humanity as the Tower of Babel.

Globalization was the one language, and tariffs are the equivalent of giving everyone different languages, scattering everyone throughout the earth.

A tariff is a tax on imported goods from other countries. The current administration is threatening reciprocal tariffs on countries. These threats have sent the stock market into correction territory.

These tariffs will act as the final nail in the coffin of globalization. The inflation caused by the tariffs and the overall sentiment of nationalism will push manufacturing back to the Midwest.

For the sake of clarity, this is not a political piece. The authors believe that some tariffs in reaction to several bad actors in the market are healthy. It would be nice for the administration to give a more defined path instead of this off-the-cuff approach.

The scope of this article is to discuss the influence of these tariffs on the Illinois real estate attorney. I am wildly bullish on Midwestern real estate. Try as they may, our local politicians are not able to destroy the natural and human-made assets of Illinois.

The United States is a consumption, white collar economy. We shipped our

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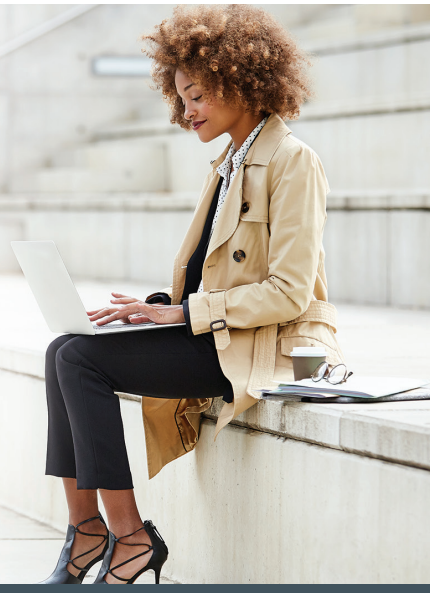

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manufacturing jobs overseas, and we are ill-equipped to return to this dominance. Our competitive advantage is technology. As of now, we continue to lead the world in technology.

In the authors' opinion, we are in the second Inning of "next" Industrial Revolution. We are entering the "Agentic Artificial Intelligence Revolution" (Agentic AI).

Agentic AI systems can operate without constant human supervision or interface. Agentic AI can make decisions and take actions based on its own understanding.

Long term, this will have huge implications for the labor market. In theory, companies will become more profitable by increasing volume and decreasing their labor costs. This will decentralize the power of conglomerates by decreasing the barrier of entry for smaller, more nimble entrepreneurs.

Short term, we will need massive investment in land and human power, which should create massive opportunities for our residents, if the policy is drafted properly.

First, we will have to build out data centers to teach the Agentic AI systems. A data center is a physical facility that houses applications and data that the Agentic AI systems use to operate and train. If I were to stay with the analogy to baseball, a data center is like the home team stadium and the spring training grounds rolled into one.

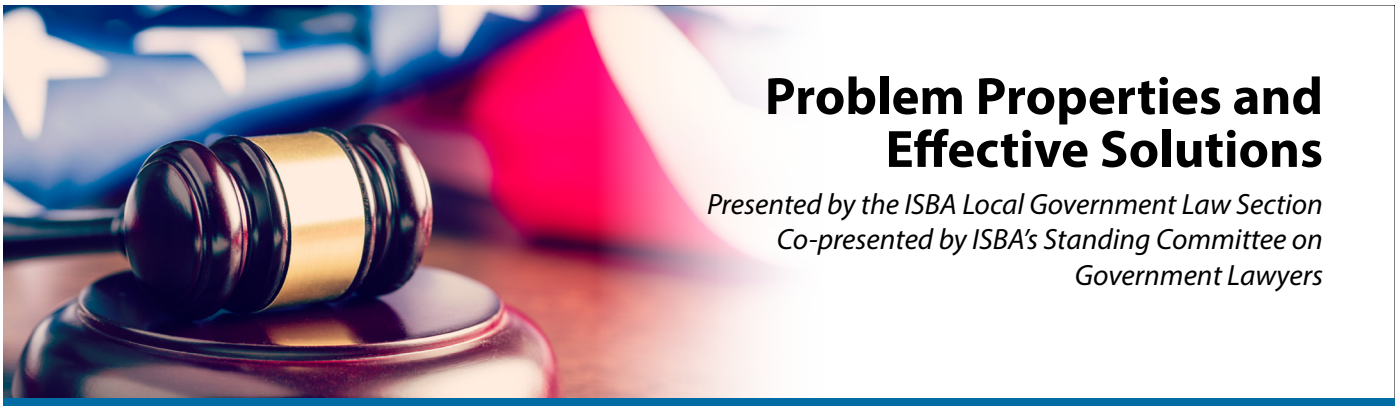
Second, we will need massive amounts of energy to support the data centers, while not diluting the current needs of the citizens.

Agentic AI applied through robots will fill the holes caused by demographics and the lack of manufacturing skills. This will create an incredible opportunity for people positioned correctly. I have such conviction in this hypothesis that I am suggesting that my three children learn skills related to energy.

Building out data centers and energy infrastructure is already happening in Illinois. I believe these buildouts will occur outside of Chicago, giving smaller towns with less bureaucracy more opportunities to grow.

As real estate attorneys, we should look to areas getting in front of this build-out. For example, see data center buildouts quietly coming to Hoffman Estates, Mount Prospect, and Grayslake. Real estate attorneys must turn their attention to areas that are often overlooked relative to the Chicago Metro.

I am not saying that I agree with tariffs. I am saying that there is no stopping them or turning back the consequences. The Illinois real estate attorney should take note that emerging markets are coming, and we need to be well-positioned for them. The Tower of Babel needs to be built, and we do not want to find ourselves scattered to the far ends of the earth. ■



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