



**** ALERT ****

Date: February 27, 2013

From: Legislative Action Committee of the
Central Indiana Chapter/Community Associations Institute

To: All Indiana Residents

RE: HB 1084

Dear Indiana Homeowner:

The Legislative Action Committee of the Central Indiana Chapter of the Community Associations Institute would like to **ALERT** all homeowners in Indiana of a pending bill in the Indiana Legislature for the 2013 session.

HB 1084 (Synopsis of Bill is below) (Actual language of bill is attached)

Gives the Indiana Attorney General and each member of a homeowners association the right to inspect and copy all financial records, including all contracts, invoices, bills, receipts, and bank records upon request.

No such request may be denied even if the person making the request refuses to state the purpose behind their request.

The Association may charge no more than (\$0.10) per page for making copies per such a request.

In addition, if there is a dispute between a homeowner and the association, the officers of the association must make all of their communications concerning the dispute available to the homeowner, except for attorney-client protected communications between the association and its legal counsel and other communications considered attorney work product prepared in anticipation of litigation.

LAC's additional comments regarding HB 1084

HB 1084 singles out homeowner associations and creates member inspection rights for records most corporations would want to keep private. No other type of nonprofit corporation in Indiana is subject to these broad membership inspection rights. Currently, the Indiana Nonprofit Corporations Act of 1991 requires a member to make a demand to inspect most financial records in good faith, for a proper purpose, and describe

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with reasonable particularity the purpose and records to be inspected. The records being requested must be directly connected with the stated purpose.

HB 1084 opens all financial records of an association to inspection by any member for any reason. This opens the board and association up to “fishing expedition” requests by any member who may, for whatever reason, be disgruntled or upset with the association. Currently, the Indiana Nonprofit Corporations Act of 1991 protects many of these records from being open for member inspection due to the importance of keeping these records private.

HB 1084 places no time limit on a member’s right to inspect all financial records, which means a member may request to inspect records as far back as the corporation maintains them.

By making all contracts open for inspection at any time, even during the bidding process, HB 1084 appears to end the right of an association to conduct confidential bidding for contract services.

HB 1084 does not allow an association to recover from the member requesting these records the additional costs to the board or to the association for the time, management processing charges, professional fees, etc. that may be incurred to process and produce the documents for a request.

HB 1084 essentially ends a board’s right to conduct “executive sessions” to discuss an issue involving an owner. The bill requires the officers to produce all of their communications, except for those communications protected by the attorney-client privilege or the attorney work-product rule. This means any conversations, minutes, emails, etc. exchanged between board members prior to bringing a matter to the association’s attorney would be open for inspection.

This HB 1084 has already passed out of the House of Representatives and is currently set for a hearing in front of an Indiana Senate Committee on **Monday, March 4, 2013, @ 10:00 a.m. in Room 130 of the Statehouse in Downtown Indianapolis.**

We feel it is important that every homeowner be aware of this pending legislation that could have such a negative impact on associations and their boards of directors. We would ask that anyone receiving this **Alert**, especially board members, either appear in Room 130 on 3/4/13 @ 10am to let the Senate know how much you oppose this bill, or at the very least, send an email to these representatives and senators to let them know your thoughts on the bill. We have attached a list of all committee members involved with this bill in both the House of Representatives and the Senate along with their email addresses.

If you have any further questions, please contact the Central Indiana Chapter of CAI at the phone number or email listed on this **ALERT!** Thank you for your time and consideration.

Compiled for the Legislative Action Committee by:

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January 29, 2013

HOUSE BILL No. 1084

DIGEST OF HB 1084 (Updated January 28, 2013 1:50 pm - DI 84)

Citations Affected: IC 24-5.5; IC 24-9; IC 25-1; IC 32-25.5.

Synopsis: Various property issues. Makes changes to the mortgage rescue protection fraud act to make it consistent with the credit services organization act and the home loan practices act, including providing that the statute of limitations on filing claims runs for five years from the occurrence of the violation and not from the time the home loan is made. Allows for suspension of the license of an individual licensed under the real estate licensing law for an emergency period if the licensee has engaged in material and intentional misrepresentations or omissions. (The law currently allows for emergency suspension of the licenses of real estate appraisers only.) Makes changes to the law governing homeowners associations to make the financial and certain legal records of an association available to members of the association and to the office of the attorney general.

Effective: July 1, 2013.

Burton

January 7, 2013, read first time and referred to Committee on Employment, Labor and Pensions.
January 22, 2013, reported _ Do Pass.
January 28, 2013, read second time, amended, ordered engrossed.

(2) by proxy; or

(3) by any other means allowed under:

(A) state law; or

(B) the governing documents of the homeowners association.

(f) If the number of members of the homeowners association in attendance at a meeting held under subsection (d) does not constitute a quorum as defined in the governing documents of the homeowners association, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred percent (100%) of the amount of the last approved homeowners association annual budget. However, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget if the governing documents of the homeowners association allow the board to adopt an annual budget under this subsection for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget.

(g) The financial records, including all contracts, invoices, bills, receipts, and bank records, of a homeowners association must be available for inspection and copying by:

(1) each member of the homeowners association; and

(2) the office of the attorney general;

upon request. The homeowners association may charge a fee for copies made under this subsection that may not exceed ten cents (\$0.10) per page. A request for inspection or copying must identify with reasonable particularity the information being requested. No request may be denied because the person making the request refuses to state the purpose of the request.

(h) If there is a dispute between a homeowner and a homeowners association, the officers of the homeowners association must make all communications concerning the dispute available to the homeowner.

(i) A homeowners association must make all communications and information concerning a lot available to the owner of the lot or a home on the lot.

(j) Notwithstanding subsections (h) and (i), a homeowners association is not required to make:

(1) communications between the homeowners association and the legal counsel of the homeowners association; and

(2) other communications or attorney work product prepared

in anticipation of litigation;

available to the owner of a lot or home.

Jurisdiction (#)

Sponsored Key Votes (#)

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- **Sen. John Broden (/candidate/34378/john-broden)** (s10@in.gov)
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- **Sen. Ronald Grooms (/candidate/113754/ronald-grooms)** (s46@in.gov)
(Republican-IN 46) Member
- **Sen. Frank Mrvan, Jr. (/candidate/18459/frank-mrvan-jr)** (s1@in.gov)
(Democratic-IN 1) Member
- **Sen. Allen Paul (/candidate/4526/allen-paul)** (s27@in.gov)
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- **Sen. Greg Walker (/candidate/56821/greg-walker)** (s41@in.gov)
(Republican-IN 41) Member
- **Sen. Brent Waltz (/candidate/34387/brent-waltz)** (s36@in.gov)
(Republican-IN 36) Member
- **Sen. R. Michael Young (/candidate/4728/r-michael-young)** (s35@in.gov)
(Republican-IN 35) Member
- **Sen. Greg Taylor (/candidate/102846/greg-taylor)** (s33@in.gov)
(Democratic-IN 33) Ranking Minority Member

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