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## Real Property and Real Estate Transactions

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# Real Property and Real Estate Transactions

*Crystal Pruess Bush\**  
*and Lisa O'Keefe\*\**

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## I. INTRODUCTION

Illinois courts addressed a variety of real property law issues during the *Survey* period.<sup>1</sup> In the area of landlord-tenant law, the Illinois Supreme Court expanded landlord liability for criminal acts of third parties.<sup>2</sup> The court also resolved a number of real estate tax issues.<sup>3</sup> In the appellate courts, the most noteworthy cases involved an interpretation of a provision of the Township Open Space Act.<sup>4</sup> Appellate court decisions also involved landlords' waiver of strict compliance with lease terms,<sup>5</sup> real estate brokers' entitlement to commissions,<sup>6</sup> real estate tax assessments,<sup>7</sup> and the recording system.<sup>8</sup>

Environmental concerns dominated Illinois legislative developments during the *Survey* year. The legislature enacted the Responsible Property Transfer Act, which imposes environmental disclosure requirements on the owners of property in connection with its sale, mortgaging or other transfer.<sup>9</sup> In addition, the legislature adopted certain amendments to the Environmental Protection Act which, among other things, create environmental reclamation liens.<sup>10</sup> The State also enacted the Home Equity Assurance Act to guarantee homeowners the value of their homes upon sale.<sup>11</sup>

## II. EMINENT DOMAIN<sup>12</sup> AND OPEN SPACE

The Township Open Space Act ("Act") authorizes a township to acquire interests in real property by purchase or through eminent domain proceedings.<sup>13</sup> During the *Survey* period the Illinois Appellate Court for the Second District decided five cases challenging Libertyville Township's power under the Act to acquire

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1. The *Survey* year is from July 1, 1988 to June 30, 1989.

2. See *infra* notes 58-77 and accompanying text.

3. See *infra* notes 125-71 and accompanying text.

4. See *infra* notes 13-56 and accompanying text.

5. See *infra* notes 78-101 and accompanying text.

6. See *infra* notes 102-25 and accompanying text.

7. See *infra* notes 141-61 and accompanying text.

8. See *infra* notes 172-92 and accompanying text.

9. See *infra* note 193-223 and accompanying text.

10. See *infra* notes 224-34 and accompanying text.

11. See *infra* notes 238-47 and accompanying text.

12. The Illinois eminent domain statute may be found at ILL. REV. STAT. ch. 139, paras. 322 -25 (1987), amended July 29, 1988, see ILL. REV. STAT. ch. 139, paras. 322-28 (West Supp. 1988).

13. *Id.* para. 324.02.

various parcels of land.<sup>14</sup> Although the same court decided all of the cases, the holdings are not consistent.

*Town of Libertyville v. First National Bank*<sup>15</sup> arose when, in November 1985, a majority of voters voting in a referendum conducted in Libertyville Township approved the adoption of an open-space district and the acquisition of open land by purchase, condemnation or otherwise. The Act allows a township to acquire real property that is "open land" as defined in section 2(b) of the Act.<sup>16</sup> Section 2(b) defines open land as any "area of land . . . of an area of 50 acres or more, the preservation or the restriction of development or use of which would . . ." promote certain objectives, including conservation of natural and scenic resources, enhancement of outdoor recreation opportunities, protection of flora and fauna, and preservation of historic sites.

Following the referendum, litigation arose in connection with the Township's attempt to condemn or purchase parcels of land less than fifty acres in size. Owners of property in Libertyville contended that the Township could acquire only parcels of fifty or more acres. The Township took the position that the Act permits acquisition of smaller parcels provided that they are part of larger parcels of at least fifty acres.

Libertyville instituted an eminent domain action against the First National Bank of Lake Forest as trustee under an Illinois land trust.<sup>17</sup> Pursuant to the Act, Libertyville attempted to acquire a parcel of real estate from the Bank. The circuit court dismissed the action because the 2.985 acre parcel did not constitute "open land" as defined in the Act.<sup>18</sup>

The appellate court agreed with the property owners that the Township could not acquire a parcel less than fifty acres in size.<sup>19</sup> Libertyville had argued that section 2(b) of the Act is ambiguous and that the fifty-acre provision is "[o]nly intended to impose a minimum acreage requirement upon a township's entire open

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14. *Egidi v. Town of Libertyville*, 181 Ill. App. 3d 542, 537 N.E.2d 369 (2nd Dist. 1989); *Town of Libertyville v. Blecka*, 180 Ill. App. 3d 677, 536 N.E.2d 1271 (2nd Dist. 1989); *Town of Libertyville v. Connors*, 185 Ill. App. 3d 317, 541 N.E.2d 250 (2nd Dist. 1989); *Town of Libertyville v. Ypma*, 181 Ill. App. 3d 305, 536 N.E.2d 1275 (2nd Dist. 1989); *Town of Libertyville v. First Nat'l Bank*, 178 Ill. App. 3d 591, 533 N.E.2d 54 (2nd Dist. 1988), *aff'd*, 133 Ill. 2d 356, 549 N.E.2d 1274 (1990).

15. 178 Ill. App. 3d 591, 533 N.E.2d 54 (2d Dist. 1988).

16. ILL. REV. STAT. ch. 139, para. 322(b) (1987).

17. *First Nat'l Bank*, 178 Ill. App. 3d at 591, 533 N.E.2d at 54.

18. *Id.* at 592, 533 N.E.2d at 54.

19. *Id.* at 593, 533 N.E.2d at 54.

space program.”<sup>20</sup> The appellate court affirmed the circuit court’s decision, stating that the statute is not ambiguous and that words used in section 2(b) should be given their plain and ordinary meaning; therefore, only areas of land consisting of fifty acres or more can qualify for condemnation as open space.<sup>21</sup>

Three months later, in *Town of Libertyville v. Blecka*,<sup>22</sup> the same appellate court, without mentioning *First National Bank*, held that section 2(b) of the Act is ambiguous and that a ten-acre tract may be subject to Libertyville’s right of eminent domain.<sup>23</sup> The ten-acre parcel involved in *Blecka* abutted 285 acres of land already part of the Township’s open space and was adjacent to a seventy-acre tract under condemnation by Libertyville.<sup>24</sup>

In reversing the lower court’s dismissal of the complaint, the appellate court stated that Libertyville could acquire parcels of less than fifty acres if they are portions of tracts of “50 acres or more being contemporaneously condemned,” or if “the land abuts or adjoins a tract 50 acres or more already owned by [a township] as part of its open-space program.”<sup>25</sup> The court noted that this interpretation of “open space” would facilitate the Act’s objectives to transfer or acquire land for open-space purposes.<sup>26</sup>

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20. *Id.* at 593, 533 N.E.2d at 55.

21. *Id.* The dissent disagreed and argued that section 2(b) is ambiguous with regard to the meaning of the word “area” the second time it is used in the section. *Id.* at 594-95, 533 N.E.2d at 56-57. According to the dissent, it is not clear whether the legislature intended the term “area” to mean “region” both times it is used in the definition or if it was meant to mean “region” the first time it appears and “size” the second time. *Id.* The dissent reasoned that if the word “area” means “size” the second time it is used, the phrase “of an area” is rendered superfluous because the meaning would have been imparted more clearly had the definition of open land simply read any “area of land . . . of 50 acres or more.” *Id.* The dissent stated that the language should be construed to facilitate the Act’s objectives to conserve large areas of open space and that the fifty-acre provision should be interpreted to mean that a parcel may be acquired if it is part of a larger region of fifty acres or more. *Id.* at 595-96, 533 N.E.2d at 57. To require that a parcel must contain at least fifty acres before it may be condemned pursuant to the Act may necessitate dealing with multiple property owners and may make acquisition less likely. *Id.*

22. 180 Ill. App. 3d 677, 536 N.E.2d 1271 (2nd Dist.), *appeal denied*, 545 N.E.2d 132 (1989).

23. *Id.* at 681-82, 536 N.E.2d at 1274-75. *Blecka* thus tracked the dissenting opinion in *First Nat’l Bank*.

24. *Id.* at 678, 536 N.E.2d at 1272. The trial court found that the parcel was not open land as defined under the Act because it was less than fifty acres in size.

25. *Id.* at 682, 536 N.E.2d at 1275. The court stated that to determine if the parcel was large enough to satisfy the Act’s acreage requirements, the adjoining parcels, the 285-acre existing open space tract, and the 70-acre parcel being contemporaneously condemned, could be taken into account. *Id.*

26. *Id.* at 682, 536 N.E.2d at 1274.

In yet another case, *Town of Libertyville v. Ypma*<sup>27</sup> the appellate court refused to allow Libertyville to condemn land that was neither part of a fifty-acre tract being contemporaneously condemned nor abutting or adjoining a tract of at least fifty acres already owned by the Township as part of its open-space program.<sup>28</sup> The trial court had granted the property owners' motion to dismiss the condemnation action, holding that because the parcel was only nineteen acres and the open-space property it adjoined was only three, the fifty-acre provision was not satisfied.<sup>29</sup> On appeal, Libertyville repeated its *First National Bank* argument that the fifty-acre requirement was a statutory minimum.<sup>30</sup> It also contended that because the open-space program included well over fifty acres, the Township could exercise its powers of eminent domain over a nineteen-acre parcel.<sup>31</sup>

Libertyville further argued that the *Ypma* property was part of a contiguous area of more than fifty acres of open land,<sup>32</sup> including a Roman Catholic cemetery that abutted existing township open-land parcels located just north of and adjoining the cemetery. Concluding that it had met the fifty-acre requirement, Libertyville argued that the property could be condemned.<sup>33</sup> The appellate court disagreed, stating that Libertyville could not include the cemetery in its open-space program because it did not own the cemetery.<sup>34</sup> The court also rejected Libertyville's argument that various parcels north of the cemetery should be considered contiguous to the subject parcel.<sup>35</sup> The court commented that Libertyville could not piece together totally unrelated pieces of property in order to satisfy the fifty-acre requirement.<sup>36</sup>

The appellate court addressed the contiguity requirement again in *Egidi v. Town of Libertyville*,<sup>37</sup> and once more it held that the Act's fifty-acre requirement was not satisfied because the parcels

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27. 181 Ill. App. 3d 305, 536 N.E.2d 1275 (2nd Dist.), *appeal denied*, 545 N.E.2d 133 (1989).

28. *Id.* at 310-11, 536 N.E.2d at 1279.

29. *Id.* at 308, 536 N.E.2d at 1277.

30. *Id.* at 309, 536 N.E.2d at 1278. *See supra* note 20 and accompanying text.

31. 181 Ill. App. 3d at 309, 536 N.E.2d at 1278.

32. *Id.* at 310, 536 N.E.2d at 1279.

33. *Id.*

34. *Id.* at 311, 536 N.E.2d at 1279. Furthermore, Libertyville could not acquire the cemetery through condemnation because the Act expressly exempts property owned by religious organizations from a township's eminent domain powers. *Id.*

35. *Id.*

36. *Id.*

37. 181 Ill. App. 3d 542, 537 N.E.2d 369 (2nd Dist.), *appeal denied*, 545 N.E.2d 108 (1989).

involved were not contiguous. The plaintiff brought an action on behalf of all residents and taxpayers of Libertyville.<sup>38</sup> The complaint alleged that Libertyville had purchased certain property without authority under the Act.<sup>39</sup> According to the plaintiff, the property did not satisfy the fifty-acre provision in the Act.<sup>40</sup> The trial judge found that despite a physical separation of 270 feet, the parcels were contiguous and that their combined area exceeded fifty acres.<sup>41</sup> The judge concluded that the Township had authority to purchase the property because the fifty-acre requirement was satisfied.<sup>42</sup>

The appellate court reversed, holding that the parcels were not contiguous and, taken separately, neither constituted an area of land 50 acres in size.<sup>43</sup> The court stated that "two regions of land completely separated by a 270-foot right away held by a different entity cannot be considered an 'area of land'."<sup>44</sup> Libertyville had argued that because these parcels would be considered contiguous for certain purposes, including annexation under the Illinois Municipal Code ("Code"),<sup>45</sup> they were to be considered contiguous under the Act. Although it acknowledged that "[i]n the law of municipal annexations, two parcels separated by a road . . . could be considered contiguous, or connected, because of the common boundary of the road," the court did not consider the Code's provisions relevant to the Act.<sup>46</sup>

Three months later, in *Town of Libertyville v. Connors*,<sup>47</sup> the court held that the Code's definition of contiguity, as used for purposes of municipal annexation, may apply to condemnation.<sup>48</sup> As a result, the court found contiguous two parcels (one comprising

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38. *Id.* at 543, 537 N.E.2d at 370.

39. *Id.* The fifty-acre provision applies whether the township condemns or simply purchases the property. *Id.*

40. *Id.* at 544, 537 N.E.2d at 371. The property in question in *Egidi* consisted of two parcels: one measured approximately 49.5 acres; the other measured approximately 1.25 acres. *Id.* A 270-foot wide right-of-way owned by a utility company separated the two parcels. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 545, 537 N.E.2d at 372.

44. *Id.*

45. ILL. REV. STAT. ch. 24, para. 7-1-1 (1987). Annexation is discussed in Troy and Fehringer, *State and Local Government*, 21 LOY. U. CHI. L.J. 601, 621 (1990).

46. *Egidi*, 181 Ill. App. 3d at 545, 537 N.E.2d at 372 (citing *Town of Libertyville v. Connors*, 185 Ill. App. 3d 317, 325, 541 N.E.2d 250, 254 (2nd Dist. 1989)). See *infra* notes 47-56 and accompanying text (for a discussion of *Connors*).

47. 185 Ill. App. 3d 317, 541 N.E.2d 250 (2nd Dist.), *appeal denied*, 545 N.E.2d 132 (1989).

48. *Id.* at 326, 541 N.E.2d at 255.

approximately forty acres and the other totalling almost twenty-nine acres) even though they were separated by a road.<sup>49</sup> Because of the separation, the trial court held that Libertyville did not have authority to condemn the property.<sup>50</sup> The trial judge excluded evidence that the owner considered the property contiguous for purposes of annexation.<sup>51</sup>

The appellate court reversed and held that the parcels were contiguous. First, the court was influenced by the owner's belief that both parcels were one tract for purposes of annexation.<sup>52</sup> Second, the court concluded that the Code's definition of "contiguous," as used in connection with municipal annexation, should be applied in interpreting the Act. The court pointed to amendments to the Act that added the word "contiguous" and provided that it should be given the same meaning as it has for purposes of annexation under the Code.<sup>53</sup>

After holding that the parcels were contiguous, the court attempted to distinguish *Egidi* by pointing out that the *Connors* parcels were separated only by a two-lane roadway; the *Egidi* parcels were separated by a right-of-way held by another owner.<sup>54</sup> The *Connors* dissent found the majority's attempt to distinguish *Egidi* unconvincing.<sup>55</sup> Commenting on the inconsistent holdings in this area and the need for resolution by the Illinois Supreme Court, the

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49. *Id.*

50. *Id.* at 320, 541 N.E.2d at 251.

51. *Id.* at 326, 541 N.E.2d at 255. The property owner had previously filed a petition seeking to annex his property to the City of Waukegan. *Id.* The trial court may have relied on a case decided three months earlier in which the court held that the principles of municipal annexation were not relevant to the Act. *See Egidi v. Town of Libertyville*, 181 Ill. App. 3d 542, 537 N.E.2d 369 (2d Dist. 1989) discussed *supra* at notes 37-46 and accompanying text.

52. *Connors*, 185 Ill. App. 3d at 326, 541 N.E.2d at 255.

53. *Id.* For purposes of annexation, The Illinois Municipal Code considers property contiguous even when such property is separated by a public right of way. ILL. REV. STAT. ch. 24, para. 7-1-1 (1987). Thus the parcels in *Connors* would have been contiguous for annexation under the Code. The term "contiguous" recently was added to another provision in the Act. *See* ILL. REV. STAT. ch. 139, para. 324.02(b) (West Supp. 1989). The amendment provides that "contiguous" shall have the same meaning as it does for purposes of municipal annexation. The *Connors* court concluded that it could infer that if the term "contiguous" had been used in the definition of open space, it would be given the same meaning as it has in another section of the Act. 185 Ill. App. 3d at 325, 541 N.E.2d at 255.

54. *Id.* at 325, 541 N.E.2d at 254 (citing *Egidi v. Town of Libertyville*, 181 Ill. App. 3d 542, 537 N.E.2d 369 (1989)).

55. *Id.* at 331, 541 N.E.2d at 258 (Reinhard, J., dissenting). The dissent reviewed the cases interpreting the fifty acre provision as well as *Herbes v. Graham*, 180 Ill. App. 3d 692, 536 N.E.2d 164 (2d Dist. 1989), in which the Act's constitutionality was challenged. *Connors*, 185 Ill. App. 3d at 332, 541 N.E.2d at 259 (Reinhard, J., dissenting).



dissent suggested that the court's interpretation of the Act and its constitutionality should be re-examined.<sup>56</sup>

The inconsistent holdings in the five Libertyville cases indicate the need for clarification of the meaning of "open space" under the Township Open Space Act. A uniform interpretation is required before the Libertyville example is repeated in other townships.

### III. LANDLORD AND TENANT

#### A. *Landlord's Liability for Criminal Acts of Others*

In Illinois, generally, a landlord owes no duty to protect its tenants from criminal activity on the leased property.<sup>57</sup> During the *Survey* period, however, the Illinois Supreme Court held in *Rowe v. State Bank of Lombard*,<sup>58</sup> that a landlord who has created a situation in which criminal acts of third parties are foreseeable has a duty to warn its tenants or to take reasonable precautions against such acts.<sup>59</sup>

In *Rowe*, the landlord leased office space in a building in an office park.<sup>60</sup> The landlord maintained master keys to all of the offices, and the evidence indicated the landlord could not account for every key.<sup>61</sup> An intruder assaulted two employees of a tenant on the leased premises, and one of the employees died.<sup>62</sup> The assailant was employed at the office park prior to the crime. On the day of the assault, he was seen inside other buildings at the park. On one occasion, a witness saw him entering one of the office park buildings with a set of keys.<sup>63</sup>

The victims brought actions for wrongful death and personal injury against the landlord, owner, and the managing agent.<sup>64</sup> Stating that a landlord has no duty to protect a tenant's employees from third-party criminal acts, the trial court granted the owner's and agent's motion for summary judgment. The appellate court affirmed.<sup>65</sup>

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56. *Id.*

57. *Rowe v. State Bank*, 125 Ill. 2d 203, 215, 531 N.E.2d 1358, 1364 (1988). *See* Bingle and Meyer, *Torts*, 21 LOY. U. CHI. L.J. 661, 662 (1990) (for further discussion of *Rowe*).

58. *Rowe*, 125 Ill. 2d 203, 531 N.E.2d 1358.

59. *Id.* at 221, 531 N.E.2d at 1367.

60. *Id.* at 208, 531 N.E.2d at 1360.

61. *Id.* at 222, 531 N.E.2d at 1367.

62. *Id.* at 208, 531 N.E.2d at 1360.

63. *Id.* at 223, 531 N.E.2d at 1367.

64. *Id.* at 208, 531 N.E.2d at 1361.

65. *Id.* at 211-13, 531 N.E.2d at 1361-63.

The supreme court reversed the order granting summary judgment and remanded the case to the circuit court for further proceedings.<sup>66</sup> The court stated that in negligence actions, the plaintiff must establish that the defendant breached a duty owed to the plaintiff, which proximately caused the plaintiff's injury.<sup>67</sup> The *Rowe* plaintiffs alleged that by instituting some security measures throughout the office park, the landlord voluntarily assumed a duty to protect the tenants from criminal acts on the premises.<sup>68</sup> The court noted a series of cases in which landlords who voluntarily undertook to provide security measures for tenants, but performed the work negligently, were held liable for criminal acts of third parties.<sup>69</sup>

Nevertheless, the court concluded that no evidence had been presented to indicate that the landlord "did anything which could reasonably be considered as constituting a voluntary assumption of protecting" the victims from the criminal acts of third parties.<sup>70</sup> The court, however, found that there was sufficient evidence to raise a genuine issue of material fact as to whether the landlord breached the duty by failing to maintain proper control over the distribution of the master keys.<sup>71</sup> According to the court, "by retaining access to the individual office units and manufacturing master and grandmaster keys . . . [the landlord had] assumed a duty to take reasonable precautions to prevent unauthorized entries by individuals possessing those keys."<sup>72</sup>

After determining that a duty existed that may have been breached, the court turned its attention to the requirement of proximate cause. The court considered persuasive certain cases in which a landlord's negligence facilitated reasonably foreseeable third-party criminal acts.<sup>73</sup> In applying those cases to *Rowe*, the court stated that it was reasonable to infer that the landlord's fail-

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66. *Id.* at 230, 531 N.E.2d at 1370-71.

67. *Id.* at 215, 531 N.E.2d at 1364 (citations omitted).

68. *Id.* at 217, 531 N.E.2d at 1364-65. The landlord had maintained lighting near the entrances, investigated complaints about criminal activity on the premises, covenanted to keep the locks and doors in repair, and maintained security devices on the premises. *Id.*

69. *Id.* at 217, 531 N.E.2d at 1365. See *Phillips v. Chicago Housing Authority*, 89 Ill. 2d 122, 431 N.E.2d 1038 (1982); *Cross v. Wells Fargo Alarm Servs.*, 82 Ill. 2d 313, 412 N.E.2d 472 (1980); *Pippin v. Chicago Housing Authority*, 78 Ill. 2d 204, 399 N.E.2d 596 (1979).

70. *Rowe*, 125 Ill. 2d at 218, 531 N.E.2d at 1365.

71. *Id.* at 222, 531 N.E.2d at 1367.

72. *Id.* at 221, 531 N.E.2d at 1367.

73. *Id.* at 224, 531 N.E.2d at 1368. See *Duncavage v. Allen*, 147 Ill. App. 3d 88, 497 N.E.2d 433 (1986), *appeal denied*, 505 N.E.2d 352 (1987); *Cross v. Wells Fargo Alarm Servs.*, 82 Ill. 2d 313, 412 N.E.2d 472 (1980); *Stribling v. Chicago Housing Authority*, 34

ure to take precautions against unauthorized use of the master keys facilitated the assailant's entry.<sup>74</sup> The landlord was aware that master keys were unaccounted for and that numerous office burglaries not involving forced entry recently had been committed in the office park.<sup>75</sup> Consequently, the court determined that triable issues of fact existed as to the crimes' foreseeability and as to whether the landlord's failure to take reasonable precautions against such crimes proximately caused the death and injuries.<sup>76</sup>

Although the Illinois Supreme Court in *Rowe* found circumstances that might impose liability on a landlord, it clearly distinguished itself from other state courts that have imposed a general duty on landlords to protect tenants from the criminal acts of others.<sup>77</sup> Although the court did not recognize this general duty, it did impose on a landlord who retains keys to the leased premises a duty to maintain proper control over those keys. Thus the Illinois Supreme Court in *Rowe* has carved out an exception to the rule that a landlord may not be held liable for the criminal acts of third parties on the leased premises.

### B. Landlord's Waiver of Strict Compliance with Lease

In *McGill v. Wire Sales Co.*<sup>78</sup> and *Baird and Warner, Inc. v. Al-Par, Inc.*,<sup>79</sup> the Illinois Appellate Court for the First District addressed situations in which landlords filed forcible entry and detainer actions. In each case, the landlord's conduct, prior to filing the action, had led the tenant to believe that the landlord would not insist on strict compliance with the lease terms. The court held that possession will be awarded to a landlord only if, after waiving strict compliance, the landlord subsequently notifies the tenant that it expects the tenant to strictly adhere to the lease terms.

After several months of tolerating non-payment of rent and notices of building code violations, the landlord in *McGill* provided written notice to his residential tenant that he had terminated the

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Ill. App. 3d 551, 340 N.E.2d 47 (1975); *Mims v. New York Life Ins. Co.*, 133 Ill. App. 2d 283, 273 N.E.2d 186 (1971).

74. *Rowe*, 125 Ill. 2d at 225, 531 N.E.2d at 1369.

75. *Id.* at 226, 531 N.E.2d at 1369.

76. *Id.* at 228, 531 N.E.2d at 1370.

77. *Id.* at 216, 531 N.E.2d at 1364. The plaintiffs had urged the court to impose a general duty on a landlord to protect tenants from criminal activity on the leased premises. The court refused, commenting that an overwhelming majority of courts similarly have rejected this general duty. *Id.*

78. 175 Ill. App. 3d 56, 529 N.E.2d 682 (1st Dist. 1988).

79. 183 Ill. App. 3d 467, 539 N.E.2d 192 (1st Dist.), *appeal denied*, 545 N.E.2d 104 (1989), *cert. denied*, 110 S. Ct. 1135 (1990).

lease.<sup>80</sup> The tenant responded by sending the landlord a check for unpaid rent and a notice that the tenant had elected to exercise its option under the lease to purchase the property.<sup>81</sup> The landlord returned the portion of the money representing rent for the remainder of the month after the landlord had declared the lease terminated but retained the balance.<sup>82</sup> In addition, the landlord informed the tenant that because the lease was terminated, the tenant could not exercise the option to purchase the property. The tenant then filed a complaint seeking specific performance of the option provision,<sup>83</sup> and the landlord filed a forcible entry and detainer action.<sup>84</sup> The trial court granted the tenant's motion for summary judgment on the issue of specific performance.<sup>85</sup>

The appellate court affirmed.<sup>86</sup> In support of its ruling, the court stated that because the law does not favor forfeitures, the courts will interpret as an intentional waiver of forfeiture any act of a landlord that acknowledges the lease's existence, following a breach of which the landlord has knowledge.<sup>87</sup> In this case, by accepting back rent, the landlord waived his right to a forfeiture. Of particular interest was the court's refusal to enforce a lease provision that allowed the landlord to accept back rent following lease termination. In the court's view, the landlord's actions waived the particular lease provision as well as the forfeiture.<sup>88</sup>

Moreover, the landlord was estopped from terminating the lease when he did. He had not required strict performance of the lease terms with regard to the timeliness of rental payments and compliance with laws; therefore, the option still existed when the tenant exercised it.<sup>89</sup> Based upon the landlord's acquiescence in the defaults, the tenant was entitled to believe that the landlord was not requiring strict compliance with the lease terms. Under such circumstances, unless the landlord notifies the tenant that he will require strict compliance in the future, the court will not permit a forfeiture for the tenant's failure to adhere strictly to the lease terms.<sup>90</sup>

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80. *McGill*, 175 Ill. App. 3d at 58, 529 N.E.2d at 683-84.

81. *Id.* at 58-59, 529 N.E.2d at 684.

82. *Id.* at 59, 529 N.E.2d at 684.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 57, 529 N.E.2d at 683.

87. *Id.* at 59, 529 N.E.2d at 684.

88. *Id.* at 60, 529 N.E.2d at 685.

89. *Id.* at 61, 529 N.E.2d at 685.

90. *Id.*

In contrast to *McGill*, the court in *Al-Par* permitted a forfeiture because the landlord had provided the tenant with notice that it intended to hold the tenant strictly to the lease.<sup>91</sup> After almost five years of tolerating late rent payments and use violations of the lease,<sup>92</sup> the landlord wrote to the tenant demanding strict compliance with the lease.<sup>93</sup> More than one month later, after the tenant failed to commence any cure of the violations, the landlord served a ten-day notice to quit and subsequently filed a complaint for possession.<sup>94</sup> In its factual findings, the trial court stated that the tenant had failed to comply with certain lease provisions and did not comply even after the landlord demanded strict compliance.<sup>95</sup> The trial court also stated that the landlord's waiver of strict compliance during the lease term was negated by the landlord's subsequent written demand for strict compliance.<sup>96</sup>

On appeal, the tenant argued that in cases involving use violations, letters demanding strict compliance were of "no legal significance."<sup>97</sup> In addition, the tenant argued that it would be inequitable to give possession to the landlord after more than four years of the lease term had elapsed.<sup>98</sup> The appellate court, however, disagreed with the tenant's arguments and affirmed the lower court's decision.<sup>99</sup> The appellate court held that although the landlord had waived its right to strict enforcement of the use provisions in the lease, the subsequent demand letter nullified the waiver.<sup>100</sup> In response to the tenant's allegation of inequity, the court stated that allowing a tenant to sell virtually anything in vio-

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91. *Al-Par*, 183 Ill. App. 3d 467, 539 N.E.2d 192. The tenant leased the premises for use as a health and beauty aide store. The lease prohibited the premises to be used for any other purpose. The lease also required the landlord's consent to the tenant's display of signs, and it obligated the tenant to maintain the premises in a clean, sightly, and healthy condition. *Id.* at 468-69, 539 N.E.2d at 194.

92. *Id.* The evidence revealed that the premises were not maintained in a clean, sightly condition. The evidence also revealed that the tenant sold radios, motor oil, food, paint brushes, and radial tire repair kits on the premises. *Id.*

93. *Id.* at 469, 539 N.E.2d at 194.

94. *Id.* at 470, 539 N.E.2d at 194.

95. *Id.*

96. *Id.*

97. *Id.* at 472, 539 N.E.2d at 196. In response to this contention, the appellate court stated that the tenant was "simply wrong." *Id.* The court cited two cases involving use violations "where a demand for strict compliance was effective in nullifying previous waivers. . . ." *Id.* See *222 East Chestnut Corp. v. Murphy*, 341 Ill. App. 430, 94 N.E.2d 364 (1950); *Burch v. Hickman*, 330 Ill. App. 155, 70 N.E.2d 421 (1947).

98. *Al-Par*, 183 Ill. App. 3d at 472, 539 N.E.2d at 196.

99. *Id.*

100. *Id.* at 470, 539 N.E.2d at 194.

lation of his lease would be the "most glaring inequity."<sup>101</sup>

The decisions in *McGill* and *Al-Par* resulted in tenant victory in the former case and defeat in the latter. In each case, however, the court found that a landlord's waiver of its right to strict enforcement of lease terms may be overcome by a subsequent demand for strict compliance.

#### IV. REAL ESTATE BROKERS AND LISTING AGREEMENTS

A real estate broker is an agent for a principal in a transaction involving disposition of property. Generally, a broker is paid compensation in the form of a commission as specified in an agreement between the parties.<sup>102</sup> During the *Survey* period, the appellate court decided three cases involving real estate brokers who sought to be paid commissions pursuant to their listing agreements.

In *Coldwell Banker v. Jepsen*,<sup>103</sup> the seller contacted a broker's sales associate by telephone four days after signing a listing agreement. During the conversation, the seller told the sales associate that he had changed his mind about selling his home.<sup>104</sup> The sales associate agreed to take the house off the market. Later, she became aware that the seller was showing the house. She contacted the seller and advised him that the listing was still in effect and that if the home were sold, a commission would be due. The seller closed on the sale of the home shortly thereafter.<sup>105</sup>

When the seller refused to pay the commission, the broker filed a suit for breach of contract.<sup>106</sup> The seller alleged in his defense that the listing had been revoked during his conversation with the broker's sales associate. At trial, the jury found that the broker was entitled to the commission.<sup>107</sup> The judge denied the seller's motion for judgment notwithstanding the verdict and motion for a new trial.<sup>108</sup> The first district affirmed, holding that although the listing agreement was a unilateral offer that could have been revoked in good faith at any time by the seller,<sup>109</sup> the seller's conversation did

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101. *Id.* at 472, 539 N.E.2d at 196.

102. *See* *Bennett and Kahnweiler Ass'n v. Ratner*, 133 Ill. App. 3d 316, 319, 478 N.E.2d 1138, 1140-41 (1st Dist. 1985).

103. 172 Ill. App. 3d 662, 527 N.E.2d 79 (2nd Dist. 1988).

104. *Id.* at 663, 527 N.E.2d at 81.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* at 665, 527 N.E.2d at 82. The notice of revocation may be oral or written and need not be express, if the agent knows or should know of an event occurring "from which the inference of termination could reasonably be drawn." *Id.*

not constitute a sufficient revocation.<sup>110</sup> A sufficient revocation must be more than an expression by the seller of his desire not to sell his house.

The Illinois Appellate Court for the First District denied a broker's claim for commission in *Grayway Real Estate Corp. v. Dickey*.<sup>111</sup> In April 1985, the broker and the owners of a condominium unit entered into an exclusive agency agreement for the sale of the unit.<sup>112</sup> In August 1985, the owners terminated the listing agreement. Later that same year, the owners sold the unit to a buyer who originally had been shown the unit by the broker.<sup>113</sup> The broker claimed a commission in connection with the sale. When the sellers refused to pay, the broker sued.<sup>114</sup>

The owners contended that the listing agreement was void because it provided for automatic extension rather than automatic termination.<sup>115</sup> The broker argued that the listing agreement provided for automatic termination at the end of one year. The circuit court determined that the listing period was for 90 days and that after that period expired, the agreement was to be automatically renewed. Consequently, the trial court entered a summary judgment.<sup>116</sup>

The appellate court affirmed the lower court's holding that the listing agreement was void because automatic extension, rather than automatic termination, of the listing period violated the Real Estate License Act of 1983 ("Act").<sup>117</sup> The appellate court commented that the Act's intent would be circumvented if agreements could be renewed automatically for short periods as long as they eventually terminated.<sup>118</sup>

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110. *Id.*

111. 178 Ill. App. 3d 477, 533 N.E.2d 100 (1st Dist. 1988).

112. *Id.* at 478, 533 N.E.2d at 100.

113. *Id.* at 478, 533 N.E.2d at 101.

114. *Id.*

115. *Id.* at 479, 533 N.E.2d at 101. The listing agreement provided that:

[t]he Term of this Agreement ("Term") shall commence on the date of execution hereof and shall continue for 90 days thereafter. After the expiration of said period, the Term shall continue in effect, unless and until terminated by either party with at least ten days prior written notice to the other, provided, however, that, notwithstanding the foregoing, this Agreement shall terminate one year from the date of execution.

*Id.* at 478, 533 N.E.2d at 100.

116. *Id.* at 479, 533 N.E.2d at 101.

117. *Id.* (citing ILL. REV. STAT. ch. 111, para. 5819 (1987), which provides "[a]ny listing contract not containing a provision for automatic expiration shall be void").

118. *Id.* at 479, 533 N.E.2d at 101. The Act's intent is to prevent a property's marketability from stagnating in the hands of one broker. *Id.*

Although the *Dickey* court did not address whether the broker was entitled to equitable relief for having been the procuring cause of the sale, the court did address this issue in *Paine/Wetzel v. Dockside Development Corp.*<sup>119</sup> The *Dockside* court held that a real estate broker cannot base an equitable claim for a commission on an expired listing agreement. Rather, the claim must be based on the assertion that the broker was the procuring cause of the sale.<sup>120</sup> The broker in *Dockside* filed a claim for a commission due under a listing agreement that had expired four days before the seller sold the property.<sup>121</sup> The trial judge, relying on the principle that a court may ignore the expiration date in the interest of equity,<sup>122</sup> granted the broker's motion for summary judgment. The appellate court also agreed that a broker should be compensated for service benefitting the principal, even if the listing agreement has expired.<sup>123</sup> It reversed, however, on the grounds that the trial judge had misapplied the rule in *Bennet and Kahnweiler Ass'n v. Ratner.*<sup>124</sup> A broker's claim cannot be founded on the expired listing agreement; it must be a claim for equitable relief based upon on the broker's being the procuring cause of the sale.<sup>125</sup>

The net effect of these decisions is that listing agreements must be for specific periods of time and must contain exact termination dates. They may be revoked by sellers, but the revocation must involve more than an express desire to take the property off the market. Finally, a broker may be entitled to a commission, even if the listing agreement between the parties has expired if the broker was the procuring cause of the sale and is seeking equitable relief.

## V. REAL ESTATE TAX

During the *Survey* year, taxpayers brought actions against various county officials in connection with the procedures used in real estate tax sales and for tax assessment of real property. Taxpayers also sought relief in the courts when their properties were denied tax exempt status.

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119. 174 Ill. App. 3d 999, 529 N.E.2d 588 (1st Dist. 1988).

120. *Id.* at 1000-01, 529 N.E.2d at 589.

121. *Id.* at 1000, 529 N.E.2d at 589.

122. *Id.* (citing *Bennett and Kahnweiler Ass'n v. Ratner*, 133 Ill. App. 3d 316, 478 N.E.2d 1138 (1st Dist. 1985)). *Ratner* held that a court may look beyond the formality of an expiration date in order to fairly and equitably compensate the broker for service that benefitted the principal. *Ratner*, 133 Ill. App. 3d at 321, 478 N.E.2d at 1141-42.

123. *Dockside*, 174 Ill. App. 3d 1000, 529 N.E.2d at 589.

124. *Id.*

125. *Id.* at 1000-01, 529 N.E.2d at 589.



### A. Tax Sales

Section 235a of the Revenue Act of 1939 authorizes a county treasurer to conduct sales of properties that are tax delinquent for five or more years.<sup>126</sup> In *Rosewell v. Park Place Investments*,<sup>127</sup> owners of various interests in tax delinquent property sought to prevent Rosewell, the Cook County Treasurer, from including their respective properties in the 1987 scavenger sale. The properties had all been sold previously at the 1980 and 1983 sales.<sup>128</sup>

The purchasers of the properties at the 1980 and 1983 scavenger sales received certificates of sale but did not petition for, or receive, tax deeds.<sup>129</sup> Because the purchasers failed to secure deeds within the time prescribed by the Act, their certificates, and the sales on which they were based, were null and void.<sup>130</sup> Accordingly, the Treasurer attempted both to include these properties in the 1987 scavenger sale and to include as part of Cook County's current tax lien the taxes that had been unpaid at the time of the 1980 and 1983 scavenger sales.<sup>131</sup>

The owners of the properties argued that the tax liens on the properties sold in 1980 and 1983 had been extinguished upon confirmation of those sales, thus preventing the Treasurer from including them as current tax liens.<sup>132</sup> Relying on a provision in the Act stating that the *in rem* lien of the real estate taxes shall be extinguished upon confirmation of the scavenger sale, the trial judge entered an order stopping the sale.<sup>133</sup>

126. The owner is personally liable for the remaining tax delinquency. ILL. REV. STAT. ch. 120, para. 716a (1987).

127. 127 Ill. 2d 404, 537 N.E.2d 762 (1989). See also Berry and Wooding, *Taxation*, 21 LOY. U. CHI. L.J. 633, 649 (1990) (additional discussion of *Park Place*).

128. *Park Place*, 127 Ill. 2d at 406, 537 N.E.2d at 763.

129. *Id.* at 407, 537 N.E.2d at 763.

130. *Id.* at 408, 537 N.E.2d at 764. The Act states that:

[u]nless the holder of the certificate for real estate purchased at any tax sale under this Act takes out the deed in the time provided by law, and files the same for record within one year from and after the time for redemption expires, the certificate or deed and the sale on which it is based, shall, from and after the expiration of such one year be absolutely null and void with no right to reimbursement.

ILL. REV. STAT. ch. 120, para. 752 (1987).

131. *Park Place*, 127 Ill. 2d at 408, 537 N.E.2d at 763. The Treasurer included those taxes to satisfy the Act's five-year delinquency requirement. See *supra* note 126 and accompanying text.

132. *Id.* at 407, 537 N.E.2d at 764.

133. *Id.* Section 235a of the Act states that "[u]pon confirmation, a sale pursuant to this Section shall extinguish the *in rem* lien of the general taxes, special taxes and special assessments for which judgment has been entered and a redemption shall not revive the lien." ILL. REV. STAT. ch. 120, para. 716a (1987).

On direct appeal to the Illinois Supreme Court,<sup>134</sup> the Treasurer argued that because the 1980 and 1983 sales were null and void pursuant to section 271 of the Act, the tax liens were not extinguished.<sup>135</sup> The court stated that the Act, being a revenue statute, must be strictly construed and that any ambiguity should be resolved against the Government.<sup>136</sup> The court was not persuaded that section 271 of the Act made the sales retroactively void. The section's plain language provides that such sales are null and void "from and after" one year following the redemption period's expiration.<sup>137</sup> Consequently, the court held that the *in rem* tax liens are extinguished upon confirmation of sale in accordance with section 235a of the Act, and they are not retroactively revived by section 271.<sup>138</sup> This will be true even if the purchaser of the property at a scavenger sale subsequently fails to secure a tax deed.<sup>139</sup> Although the property is free from the tax liens, the owners are still personally liable for the remaining tax deficiency.<sup>140</sup>

### B. Tax Assessment

The Illinois Department of Revenue uses a "multiplier"—an equalization factor—to minimize the differences in property values between the counties.<sup>141</sup> The Illinois Supreme Court rejected an attack by taxpayers on the Cook County multiplier in *Advanced Systems, Inc. v. Johnson*.<sup>142</sup> The taxpayers objected to the Department's methodology for determining the median level of assessments and the administrative procedures and review process employed by the Department in computing the multiplier.<sup>143</sup> The taxpayers also attacked the equalization process on due process

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134. The Treasurer's motion for direct appeal was granted pursuant to Illinois Supreme Court Rule 302(b), which allows direct appeals when the public interest requires prompt adjudication by the supreme court. ILL. REV. STAT. ch. 110A, para. 302(b) (Supp. 1988).

135. *Park Place*, 127 Ill. 2d at 408, 537 N.E.2d at 765.

136. *Id.*

137. *Id.* at 409, 537 N.E.2d at 765.

138. *Id.* at 410, 537 N.E.2d at 765.

139. *Id.* at 411, 537 N.E.2d at 765.

140. *Id.* (citing ILL. REV. STAT. ch. 120, para. 716a (1987)).

141. ILL. REV. STAT. ch. 120, paras. 627, 630 (1987).

142. 126 Ill. 2d 484, 535 N.E.2d 797 (1989).

143. *Id.* at 490, 535 N.E.2d at 799. The court explained that

The Department is directed to equalize assessments between [Illinois'] 102 counties so that the assessed valuation of real property in each county will, in aggregate, be at the specified level of 33 1/3% of its fair cash value. (citations omitted) To equalize the property values between counties, the Department annually calculates an equalization factor, or "multiplier", to be applied to the aggregate assessed valuation of property in each county. In other words, the

and constitutional grounds.<sup>144</sup> The supreme court granted the taxpayer's motion for direct review of the circuit court's decision in the Department's favor.<sup>145</sup> The court, nevertheless, rejected each of the taxpayers' arguments and upheld the methodology and administrative review process implemented by the Department in its calculation of the multiplier.<sup>146</sup>

First, the court held that the Department has no statutory duty to use property appraisals to ascertain the median level of assessment.<sup>147</sup> Second, the Department's failure to stratify each subdivision of a property class did not render its studies unrepresentative and statistically invalid.<sup>148</sup> Third, the Department was not required by statute to verify information regarding personal property reported on the real estate transfer declaration.<sup>149</sup> Fourth, the Department's practice of editing out transactions that are not made at arm's-length or convey only a part of a parcel of property was acceptable.<sup>150</sup> Finally, the Department's use of the array median, rather than a weighted median, to measure central tendency was proper.<sup>151</sup>

In response to the taxpayer's objection to the multiplier on due process grounds, the court held that the Department did not adjudicate any individual rights in calculating the county-wide multiplier, thus the Department did not deny the taxpayers due process.<sup>152</sup>

Cook County's real estate tax assessment procedure fell under attack again in *Rosewell v. Twin Manors*.<sup>153</sup> Once more, the procedure was upheld. The Illinois Appellate Court for the First District held that the county is the proper geographic area for

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multiplier may raise or reduce the aggregate assessed valuation of property within a county to meet the statutory level of 33 1/3% of fair cash value.

*Id.*

144. *Id.* at 491, 535 N.E.2d at 799-800.

145. *Id.* The supreme court granted direct review pursuant to Illinois Supreme Court Rule 302(b). ILL. REV. STAT. ch. 110A, para. 302(b) (Supp. 1988). See *supra* note 134 (for a discussion of Rule 302(b)).

146. *Advanced Systems*, 126 Ill. 2d at 507, 535 N.E.2d at 807.

147. *Id.* at 492-506, 535 N.E.2d at 802-05.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 507, 535 N.E.2d at 807. The court also rejected the taxpayers' contention that the statute establishing the multiplier is invalid because it embraces more than one subject matter. *Id.*

153. 175 Ill. App. 3d 564, 529 N.E.2d 1104 (1st Dist. 1988), *cert. denied*, 109 S. Ct. 3244 (1989).

determining if assessments are disproportionate. A condominium association, Twin Manors, contended that Cook County assessed its real estate at a higher level than comparable real estate located in the same township.<sup>154</sup> The County responded by stating that taxpayers must compare their properties' assessed valuations to those of other properties within the entire county and not only the township.<sup>155</sup> The trial court granted the County's motion for summary judgment.

On appeal, Twin Manors presented statistical evidence to support the argument that its property was being disproportionately assessed compared to other properties in the same township.<sup>156</sup> The appellate court affirmed the circuit court's order, holding that Twin Manors' evidence failed to show that a township level of assessment, rather than a county-wide level, is the proper one.<sup>157</sup>

The court stated that the 1970 Illinois Constitution provides for assessments to be made at the county level and that ample case law supports the use of county-wide assessments.<sup>158</sup> The court rejected the condominium association's argument that, because various sections of the Illinois Revenue Act of 1939 ("Act")<sup>159</sup> provide, among other things, for the division of counties into assessment districts along township lines, that the assessments are to be made according to townships. The court commented that assessment districts are created for practical purposes. The Act indicates that "a county-wide level of assessment is to be utilized."<sup>160</sup> Thus, in an era of successful taxpayer revolts, and despite what the trial judge in *Advanced Systems* described as an assault using "excellent legal craftsmanship . . . [and] a high-powered caliber Howitzer,"<sup>161</sup> Illi-

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154. *Id.* at 566, 529 N.E.2d at 1105. Cook County contains thirty-eight townships. It assesses residential property at 16% of its fair market value. COOK COUNTY REAL PROPERTY ASSESSMENT CLASSIFICATION ORDINANCE §§ 2, 3 (1980). Twin Manors determined that its property was assessed at only 15.35% of fair market value. This exceeded the median level of assessment for comparable properties within the township. *Twin Manors*, 175 Ill. App. 3d at 566-67, 529 N.E.2d at 1106.

155. *Id.* at 566, 529 N.E.2d at 1107.

156. *Id.* at 567, 529 N.E.2d at 1106.

157. *Id.* Twin Manors had presented no evidence that its property was disproportionately assessed compared to other properties within the entire county.

158. *Id.* at 568-69, 529 N.E.2d at 1106-07. "Counties with a population of more than 200,000 may classify . . . real property for purposes of taxation. . . . The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county." *Id.* (citing ILL. CONST. of 1970, art. 9, § 4(b)).

159. ILL. REV. STAT. ch. 120, paras. 482 -82.7a (1987).

160. *Twin Manors*, 175 Ill. App. 3d at 571, 529 N.E.2d at 1108 (citing ILL. REV. STAT. ch. 120, para. 524 (1987)).

161. *Advanced Systems*, 126 Ill. 2d at 489-90, 535 N.E.2d at 799 (1989).

nois property owners lost two battles during the *Survey* year.

### C. Tax Exemptions

In a consolidated action, *Harrisburg-Raleigh Airport v. Department of Revenue*,<sup>162</sup> the Illinois Supreme Court held that airport hangars leased to private individuals were exempt from taxation. To reach this conclusion, the court examined the meaning of section 19.20 of the 1939 Revenue Act,<sup>163</sup> which exempts from taxation "all property of every kind belonging to any Airport Authority and used for Airport Authority purposes."<sup>164</sup> The court's decision turned upon whether the hangars were being used for "Airport Authority purposes." The Department of Revenue contended that, because the hangars were leased or rented to private individuals, they were not tax exempt.<sup>165</sup> According to this argument, only a public use of the airport facilities provides a tax exemption.<sup>166</sup> The court stated that the legislature's creation of a separate airport-authority exemption suggested that the exemption should be construed broadly enough to include non-public uses, provided those uses further airport authority purposes.<sup>167</sup> That the hangars were leased to private parties was not inconsistent with the notion of a "public" airport.<sup>168</sup>

Illinois courts also decided several other cases involving taxpayers who claimed that their properties were exempt from real estate taxation under exemption provisions of the Revenue Act. For example, in *Cantigny Trust v. Department of Revenue*,<sup>169</sup> the court stated that employee residences on the grounds of a charitable institution were not necessary to perform the institution's charitable functions and were used primarily as residences. In *DePaul University, Inc. v. Rosewell*,<sup>170</sup> the court held that a university's tennis courts were not used primarily for school purposes because the University leased the tennis courts to a private tennis club that used the courts more than the University's tennis team and physical education classes. In *DuPage Art League v. Department of Rev-*

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162. 126 Ill. 2d 326, 533 N.E.2d 1072 (1989). This decision affirmed the appellate court's decision. See Berry and Wooding, *Taxation*, 21 LOY. U. CHI. L.J. 633, 646 (1990) (for an extensive discussion of *Harrisburg-Raleigh*).

163. ILL. REV. STAT. ch. 120, para. 500.20 (1987).

164. *Id.*

165. *Harrisburg-Raleigh*, 126 Ill. 2d at 332, 533 N.E.2d at 1074.

166. *Id.*

167. *Id.* at 334-35, 533 N.E.2d at 1076.

168. *Id.* at 335, 533 N.E.2d at 1075.

169. 171 Ill. App. 3d 1082, 526 N.E.2d 518 (2nd Dist. 1988).

170. 176 Ill. App. 3d 755, 531 N.E.2d 884 (1st Dist. 1988).

enue,<sup>171</sup> the court held that the county art league's primary purpose was to benefit its members and that any benefits the league conferred on the public were secondary.

In each case of this type, the court ruled that the taxpayers used the property for a primarily non-exempt purpose. Illinois appellate courts continue to deny tax exempt status on the well-established principle that in order to qualify for tax exempt status, a mixed-use property must be used primarily for a tax exempt purpose.

## VI. RECORDING

When various parties have interests in the same real estate, a court is often called upon to decide which party has the paramount interest or lien against the property. The cases often turn upon whether any of the parties had constructive notice of the other parties' interest. A party will be deemed to have constructive notice of a prior recorded interest. During the *Survey* year, an appellate court resolved two cases involving disputes over whether mortgages had constructive notice of other parties' interests in the mortgaged properties.

In *Security Savings and Loan Association v. Hofmann*,<sup>172</sup> Security Savings made a loan to Hofmann and his second wife secured by a mortgage on property in which Hofmann had an interest, pursuant to a contract for deed.<sup>173</sup> Before the mortgage was recorded, a court awarded the first wife alimony secured by a lien on the property. She filed a notice of pending suit, but not the judgment itself, in the county where the real estate was located.<sup>174</sup> Later, when Hofmann and his second wife were in default under the mortgage, Security Savings attempted to foreclose on the property. Hofmann's parents, to whom the first Mrs. Hofmann had assigned the judgment relating to the property, were joined as defendants in the foreclosure proceedings. They filed a counterclaim, asserting that the first wife's lien, now theirs by assignment, was superior to that of the lender.<sup>175</sup> The circuit court granted the lender's motion for summary judgment and Hofmann's parents appealed.

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171. 177 Ill. App. 3d 895, 532 N.E.2d 1116 (2nd Dist 1988).

172. 181 Ill. App. 3d 419, 537 N.E.2d 18 (3d Dist. 1989).

173. *Id.* at 420, 537 N.E.2d at 19.

174. *Id.* A judgment does not become a lien against Illinois real property until a certified copy or memorandum of judgment is recorded with the county recorder. *Id.* at 422, 537 N.E.2d at 19-20 (citing ILL. REV. STAT. ch. 110, para. 12-101 (1987)). The first wife recorded a certificate of judgment approximately three months after the mortgage was recorded. *Id.* at 422, 537 N.E.2d at 19.

175. *Id.*

The lender argued that its lien was superior because the first wife's judgment was not recorded prior to the mortgage, and her filing of a *lis pendens* notice was insufficient to create a lien on the property.<sup>176</sup> The appellate court agreed with the lender that a proper lien had not been created, but it noted that Security Savings had constructive notice of the first wife's interest in the property as a result of her recording the *lis pendens* notice prior to the recording of the mortgage.<sup>177</sup> Based on the presence of constructive notice of the prior lien, Security Savings was not a bona fide purchaser but "stood in the shoes" of the mortgagor and took subject to the judgment lien that eventually attached to the property.<sup>178</sup> Accordingly, the trial court should have entered summary judgment in favor of Hofmann's parents on the issue of the priority of the liens.<sup>179</sup>

In *Skidmore, Owings and Merrill v. Pathway Financial*,<sup>180</sup> two companies, Pathway Financial ("Pathway") and Skidmore, Owings and Merrill ("Skidmore"), made loans to the same borrower, Talbot, for the purchase of certain property.<sup>181</sup> Both lenders obtained mortgages on the property to secure their respective loans.<sup>182</sup> When Talbot defaulted on both loans and each lender attempted to foreclose, litigation arose to determine which lender had the superior lien.<sup>183</sup> Both lenders denied having actual notice of the other's mortgage.<sup>184</sup> The outcome then depended upon which lender, if either, had constructive notice of the other's mortgage.<sup>185</sup> Although the appellate court stated the general rule that "[t]he primary means of charging any party with [constructive] notice of an interest in real property is to record that interest,"<sup>186</sup> it agreed with the trial court's ruling that Skidmore's prior recording

176. *Id.* at 422, 537 N.E.2d at 19-20.

177. *Id.*

178. *Id.*

179. *Id.* at 423, 537 N.E.2d at 20.

180. 173 Ill. App. 3d 512, 527 N.E.2d 1033 (3d Dist. 1988).

181. *Id.* at 513, 527 N.E.2d at 1034.

182. *Id.* At the closing of the purchase, Talbot received a deed to the property and then delivered his note and mortgage to Pathway. The deed to Talbot and Pathway's mortgage were recorded fourteen days after the closing. The balance of the purchase price Talbot paid at closing was paid with cash he obtained from Skidmore. *Id.* Pathway was unaware that Skidmore was funding the down payment. Two days after the closing, Talbot executed a note and mortgage in favor of Skidmore for the amount of the down payment. Skidmore recorded its mortgage ten days after the closing. *Id.*

183. *Id.* at 514, 527 N.E.2d at 1034.

184. *Id.* The first party to give notice of its lien has the senior lien. *Id.* Generally, when any party has notice of a prior lien, it will take subject to that lien. *Id.*

185. *Id.*

186. *Id.* at 514, 527 N.E.2d at 1034.

of its mortgage did not constitute notice to Pathway and that Pathway's lien had priority over Skidmore's.<sup>187</sup>

The appellate court supported its holding in two ways. First, the court held that Skidmore's recording did not constitute constructive notice to Pathway because Skidmore's mortgage was recorded outside of the chain of title.<sup>188</sup> Talbot was not the record owner at the time of Skidmore's recording.<sup>189</sup> Pathway, however, recorded its mortgage immediately after recording the deed to Talbot. The court stated that Pathway could not have expected that an intervening lien recorded outside of the chain of title would somehow gain priority.<sup>190</sup> Second, the appellate court relied upon *Continental Investment and Loan Society v. Wood*<sup>191</sup> for the proposition that "the party which executed its mortgage simultaneously with the transfer of the warranty deed had the senior lien".<sup>192</sup>

*Security Savings* and *Skidmore* emphasize the importance of the recording system. Even if an interest properly is not a lien on real estate, if some evidence of that interest is recorded, the recording will constitute constructive notice of the interest. Subsequent purchasers or mortgagees are charged with such notice and will take their interests in the property subject to the prior interest. Conversely, if an interest is not properly recorded, it will not constitute constructive notice and will not be given priority over subsequently recorded interests.

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187. *Id.* at 515-16, 527 N.E.2d at 1034-35.

188. *Id.* Although Skidmore recorded its mortgage ten days after Talbot had closed on the purchase of the property, the deed to Talbot had not yet been recorded. *Id.*

189. *Id.* at 515, 527 N.E.2d at 1034. The appellate court's conclusion that Skidmore's mortgage was outside the chain of title may not be correct. The court implied that in searching the grantor index, Pathway would be required to search only for transfers Talbot made after the date of the recording of his deed. A title searcher, however, would be required to search the grantor index for transfers made by Talbot from the date of the deed to Talbot and afterward. See *The Chain of Title: A Real Property Law Basic Revisited*, 34 REAL PROPERTY, ILL. STATE BAR ASS'N No. 6 (February 1989).

190. *Skidmore*, 173 Ill. App. 3d at 515, 527 N.E.2d at 1035.

191. 168 Ill. 421, 48 N.E. 221 (1897).

192. *Skidmore*, 173 Ill. App. 3d at 515, 527 N.E.2d 1035. (citing *Continental*, 168 Ill. 421, 48 N.E.2d 221 (1897)). In *Continental*, the sellers took back a purchase money mortgage at closing but did not record the deed or mortgage until several months later. Following the closing, the purchasers executed a mortgage to another lender that was recorded before the deed or the purchase money mortgage. *Id.* The Illinois Supreme Court held that second mortgage's recording did not constitute notice to the sellers. *Id.*



## VII. LEGISLATION

### A. *Responsible Property Transfer Act*

The Responsible Property Transfer Act of 1988 ("RPTA")<sup>193</sup> requires disclosure of the environmental condition of certain real property prior to its conveyance. The RPTA focuses on disclosure of the condition of real property and not on correction of environmental problems. The RPTA does not make cleanup of contaminated property a prerequisite to its transfer.

#### 1. Purpose of the RPTA

The RPTA's purpose is to "ensure that parties involved in certain real estate transactions are made aware of the existing environmental liabilities associated with ownership of such properties, as well as the past use and environmental status of such properties."<sup>194</sup> In addition, its purpose is to inform property owners of environmental problems, thereby encouraging environmentally responsible behavior.<sup>195</sup> Although not a cleanup statute itself, the RPTA is intended to foster cleanup activities consistent with the purpose and intent of existing environmental cleanup laws.<sup>196</sup>

#### 2. Scope of the RPTA

Prior to transferring property, the parties involved in the transaction need to determine if the property involved and the type of transfer contemplated are subject to the RPTA. Not all property is subject to the RPTA. The statute covers properties that contain one or more facilities that are subject to reporting under section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986,<sup>197</sup> and federal regulations promulgated thereunder. The RPTA<sup>198</sup> also covers properties which have underground storage tanks that require notification under section 9002 of the Solid Waste Disposal Act as amended.<sup>199</sup>

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193. ILL. REV. STAT. ch. 30, paras. 901 -07 (West Supp. 1988), amended September 1, 1989. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, paras. 901 -07). The RPTA became effective on November 1, 1989.

194. ILL. REV. STAT. ch. 30, para. 902 (West Supp. 1988).

195. *Id.*

196. *Id.*

197. 42 U.S.C. §§ 11001 -050 (1986). Section 312 of the Act appears at 42 U.S.C. § 11022.

198. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 903(e)).

199. 42 U.S.C. §§ 6901 -6992k. Section 9002 of the Act appears at 42 U.S.C. § 6991a (1986).

The first group of covered properties are those for which safety records for hazardous chemicals must be compiled and maintained in accordance with the Occupational Safety and Health Act of 1970.<sup>200</sup> Such facilities include those that use certain threshold quantities of particular hazardous chemicals. The thresholds are established by the Administrator of the Illinois Environmental Protection Agency ("IEPA").<sup>201</sup>

The second group of covered properties are those that have underground tanks holding certain regulated substances<sup>202</sup> including petroleum.<sup>203</sup> Properties containing underground tanks holding heating oil for use on the premises are exempt.<sup>204</sup> Also exempt are farm or residential properties with tanks storing less than 1,100 gallons of motor fuel for noncommercial purposes.<sup>205</sup>

Although not many properties are subject to the RPTA, almost all transfers of subject properties are covered. The RPTA defines transfers as follows: sales, including assignments of more than twenty-five percent of the beneficial interest in an Illinois land trust; leases for terms, including all options, exceeding forty years; mortgages; and collateral assignments of beneficial interests in Illinois land trusts.<sup>206</sup>

### 3. Disclosure Under the RPTA

If it is determined that both the property and the transfer (occurring after January 1, 1990) are subject to the RPTA, then the

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200. 29 U.S.C. §§ 651 -678. See 42 U.S.C. § 11022 (1986).

201. 42 U.S.C. § 11022(b) (1986).

202. "Regulated substances" are defined in section 9001 of the Solid Waste Disposal Act as "hazardous substances" as defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980. 42 U.S.C. § 9601(14) (1986).

203. 42 U.S.C. § 6991(2)(B) (1986).

204. *Id.*

205. 42 U.S.C. § 6991(1)(A) (1986).

206. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 903(g)). A "transfer" does not include release deeds; deeds, mortgages or collateral assignments which, without additional consideration, confirm, correct, modify or supplement a previously recorded document; tax deeds; deeds of partition; conveyances occurring as a result of a foreclosure of a security interest in real property, including mortgages, trust deeds and other real property liens; Uniform Commercial Code sales or other foreclosure of collateral assignments of beneficial interests in land trusts; advances by a lender secured by a previously recorded mortgage, trust deed or by a prior collateral assignments; amendments to previously recorded mortgages or trust deeds or prior collateral assignments if no new advances are made; easements; and conveyances of interests in minerals, oil or gas. *Id.* Corporate transactions such as stock sales are not specifically excluded, but they do not fall within the definition of a "transfer," and, therefore, appear by implication to be excluded.

transferor must provide to the transferee<sup>207</sup> a disclosure document.<sup>208</sup> The disclosure document must be delivered within thirty days following the execution of a written contract for transfer of the property, but not later than thirty days prior to the transfer.<sup>209</sup> This time period may be waived by the parties to the transfer, but the document still must be delivered prior to the recording of a conveyance document.<sup>210</sup> If a transfer involves multiple transactions, the duty to disclose is satisfied if the primary transferor executes and delivers a disclosure document to each transferee.<sup>211</sup> The transferor must record the disclosure document with the Recorder of Deeds of the county in which the transferred property is located, and he must file it with the IEPA within thirty days of the transfer or upon recording of a deed or other instrument of conveyance, whichever occurs first.<sup>212</sup>

The disclosure statement is in questionnaire format and is set forth in the RPTA.<sup>213</sup> On the disclosure statement, the transferor must respond to four categories of questions relating to the past and present environmental condition of the property. In response to the first category of questions, the transferor describes the property and its current use. This description includes information about the improvements (and containers) located on the property and the operations conducted on the property.<sup>214</sup> The second category of information to be provided in the disclosure document pertains to past violations of environmental regulations and existing variances or special permits issued to the transferor for certain reg-

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207. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 903(h)).

208. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 904(a)).

209. *Id.*

210. ILL. REV. STAT. ch. 30, para. 904(b) (West Supp. 1988).

211. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 904(a)). Multiple transactions include, by way of example, a sale and mortgage, and a sale and lease back. *Id.*

212. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 906). Responsibility for recordation rests equally on the transferor and transferee, not including a mortgagee. *Id.*

213. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 905).

214. *Id.* The description of the property must include: its size; the type of improvement located on the property; the location of any units used to manage waste including storage tanks, landfills, waste piles, septic tanks and incinerators. In describing the use of the property, the transferor must disclose: releases of hazardous substances on the site; operations on the property involving generation, manufacture, processing, treatment, storage of certain hazardous substances including petroleum; and filings made by the transferor with governmental agencies of chemical safety contingency plans, chemical inventories or chemical release forms. *Id.*

ulated activities.<sup>215</sup> The questions in the third category ask the transferor about any attempted cleanup of contamination on the property. The fourth group of questions relates to the previous ownership of the property and the type of activity conducted on the property by the prior owner.<sup>216</sup> The disclosure statement contains space for explanation of the transferor's responses.

#### 4. Remedies and Penalties Under the RPTA

Any party to a transfer subject to the RPTA may, in its discretion, void any obligation to accept a transfer or finance a transfer of the property if the disclosure statement has not been produced or if the disclosure statement reveals environmental defects in the real property that previously were unknown.<sup>217</sup> In addition, if a violation of the RPTA by any person results in damage to another person, such other person may bring an action against the violator.<sup>218</sup> The court, in its discretion, may award monetary damages.<sup>219</sup>

The RPTA also subjects the transferor to civil penalties of up to \$1000 per day for failing to deliver the disclosure document in accordance with section 4.<sup>220</sup> Failure to record the disclosure document in accordance with section 6 of the RPTA results in joint and several liability for civil penalties in an amount not to exceed \$10,000.<sup>221</sup> Stiffer penalties are imposed for false statements made on a disclosure statement.<sup>222</sup> Actions to recover civil penalties and to compel compliance with the RPTA are to be brought by the

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215. *Id.* In response to this category of questions the transferor must list: notices received or actions taken by governmental agencies regarding alleged contamination on or emanating from the property; variances issued by the Illinois Pollution Control Board; permits held by the transferor for discharges of waste water, emissions to the atmosphere or waste storage, treatment or disposal. *Id.*

216. *Id.* The transferor need only respond to the questions in this category if he has knowledge of prior activities.

217. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 904(c)). Nothing contained in this subsection (c) of section 4 of the RPTA "shall be deemed to release a party to the real property transfer from the obligation to pay or reimburse the lender for fees, costs, and expenses." *Id.* Nor will the failure to comply with any provision of the RPTA "invalidate . . . or affect the lien or the priority of any mortgage, trust deed, or collateral assignment of beneficial interest in an Illinois land trust." 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 904(d)).

218. 1989 Ill. Legis. Serv. 86-679 (West) (to be codified at ILL. REV. STAT. ch. 30, para. 907(e)).

219. *Id.* In addition to damages, the court may award reasonable attorneys' fees and costs to the prevailing party.

220. ILL. REV. STAT. ch. 30, para. 907(a) (West Supp. 1988).

221. *Id.* para. 907(c) (West Supp. 1988).

222. *Id.* para. 907(b) (West Supp. 1988). Any person or transferor who with actual knowledge makes a false statement on the disclosure statement shall be liable for civil

State's Attorney for the county in which the violation has occurred, or the Attorney General on his own motion, or at the request of the IEPA or a citizen of the county.<sup>223</sup>

### B. *Environmental Protection: Land Pollution*

In addition to enacting the Responsible Property Transfer Act, the Illinois legislature took another step during the *Survey* year toward making property owners more environmentally responsible. The legislature amended parts of the Environmental Protection Act ("Act")<sup>224</sup> and added two new sections.<sup>225</sup> By way of the amendment and additions to the Act, the legislature created environmental reclamation liens<sup>226</sup> and authorized the IEPA to acquire real property.<sup>227</sup>

#### 1. Environmental Reclamation Liens

Under sections 22.2 and 22.18 of the Act, owners of real property in Illinois may be liable to the State for fees collected by the State for hazardous waste disposal and costs the State incurred in the preventive action or cleanup of the owner's contaminated property.<sup>228</sup> The recent amendments provide that all unpaid costs and damages for which a person is liable to the State pursuant to sections 22.2 and 22.18 now constitute an environmental reclamation lien against the property in favor of the State of Illinois.<sup>229</sup> The amount of the lien may not exceed the amount of the State's expenditures<sup>230</sup> plus interest thereon, accruing at the rate of twelve per cent per annum beginning on the date the State files the lien.<sup>231</sup> The IEPA will file the lien with the county official responsible for recording judgments against real property in the county where the

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penalties not to exceed \$10,000 for such violation and \$10,000 for each day such violation continues. *Id.*

223. *Id.* para. 907(d) (West Supp. 1988).

224. ILL. REV. STAT. ch. 111 1/2, paras. 1001 -52 (West Supp. 1988). The 1988 amendment is to ILL. REV. STAT. ch. 111 1/2 para. 1020.

225. Sections 21.3 and 21.4 are new. ILL. REV. STAT. ch. 111 1/2, paras. 1021.3, 1021.4 (West Supp. 1988).

226. *Id.* paras. 1020(a)(10), 1021.3 (West Supp. 1988).

227. *Id.* para. 1021.4 (West Supp. 1988).

228. *Id.* paras. 1022.2, 1022.18 (West Supp. 1988). Section 22.2 created the Hazardous Waste Fund which consists fees collected by the State from property owners in connection with their disposal of hazardous waste. Under section 22.18, the State may take preventive or corrective measures in the event of a release or substantial threat of release of substances from underground tanks.

229. ILL. REV. STAT. ch. 111 1/2, para. 1021.3 (West Supp. 1988).

230. *Id.* para. 1021.3(d) (West Supp. 1988).

231. *Id.* para. 1021.3(h) (West Supp. 1988).

property is located.<sup>232</sup> The environmental reclamation lien is superior to all other liens and encumbrances other than real estate taxes and the liens of subsequent bona fide purchasers, mortgagees and other lienors whose rights arose prior to the environmental reclamation lien's filing.<sup>233</sup> The lien may be foreclosed on in the same manner as other real property liens.<sup>234</sup>

## 2. Acquisition of Property by the IEPA

Section 21.4 of the Act authorizes the IEPA to acquire real property or any lesser interest therein, including an easement, to "protect human health or the environment" or "to respond to the release or substantial threat of release of any hazardous substance or petroleum into the environment."<sup>235</sup> This standard is very broad and will permit a great deal of discretion. In addition, the IEPA may acquire real property through foreclosure of environmental reclamation liens.<sup>236</sup> Section 21.4 also authorizes the agency to convey, assign or transfer any real property interest acquired pursuant to this section. The IEPA may place environmentally related restrictions upon the use of the property so transferred.<sup>237</sup>

### C. Home Equity Assurance Act

During the *Survey* year, the Illinois legislature created the Home Equity Assurance Act.<sup>238</sup> The Act provides a mechanism through which homeowners can guarantee their home values. The purpose of the statute is to provide homeowners relief from adverse local housing markets.<sup>239</sup> The Act does not provide homeowners with relief from falling home values related to nationwide or city-wide housing market depression. The condition of the local housing market must "differ from municipal-wide, regional, or national housing conditions."<sup>240</sup>

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232. *Id.* para. 1021.3(c) (West Supp. 1988). Prior to filing the lien, the IEPA must send notice to the property owner. *Id.*

233. *Id.* para. 1021.3(g) (West Supp. 1988). The filing of a lien will not preclude the State from bringing an action for damages against the property owner. *Id.*

234. *Id.*

235. *Id.* para. 1021.4 (West Supp. 1988).

236. *Id.* para. 1021.3 (West Supp. 1988).

237. *Id.*

238. ILL. REV. STAT. ch. 24, paras. 1601 -20 (West Supp. 1988).

239. *Id.* para. 1602 (West Supp. 1988).

240. *Id.* The Act is not intended to provide relief from physical perils, natural disasters, acts of God or depreciation due to the homeowner's failure to maintain his home, nor is the Act intended to serve as homeowner's hazard or liability insurance. *Id.*

The mechanism through which the homeowners are able to guarantee their home values is called a home equity program. Residents of municipalities with populations of one million or more may vote to establish a home equity program in their neighborhood.<sup>241</sup> When residents adopt a home equity program in a particular area, a commission (the "Commission") is appointed to serve as the governing body.<sup>242</sup>

### 1. Participation and Procedure

An owner of a residence within a neighborhood that has adopted a home equity program may apply for membership in the program by submitting an application and an application fee to the Commission.<sup>243</sup> Upon the receipt of the application and fee, the Commission arranges for the property to be appraised. After an acceptable appraisal is prepared, a certificate of participation is issued to the homeowner. The certificate states the guaranteed value and the registration date.<sup>244</sup> Once a resident is a member in the home equity program, the resident, upon sale of the house, will be paid 100% of the difference between the guaranteed value and the selling price of the property.<sup>245</sup> The member must notify the Commission when he or she intends to sell the property and must list the home for sale in accordance with guidelines established by the Act.<sup>246</sup> If the owner has complied with the guidelines established for sale of the property, and the property is sold for less than the guaranteed value set forth in the certificate, the owner may make a claim against the guarantee fund.<sup>247</sup>

### 2. The Guarantee Fund

Each governing Commission will create and maintain a guaran-

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241. ILL. REV. STAT. ch. 24, para. 1604 (West Supp. 1988). The registered voters in a neighborhood or territory may petition the municipality to have a referendum at a regular election on the question of creating a home equity program in their area. The home equity program will be enacted if a majority of the voters approve the referendum. *Id.*

242. *Id.*

243. *Id.* para. 1606 (West Supp. 1988). The owner of the residence must continuously occupy or have a family member who continuously occupies the home as a principal place of residence. *Id.*

244. *Id.*

245. *Id.* para. 1607 (West Supp. 1988). The resident must be a member of the program for five years before seeking benefits. Any benefits paid to a member will be reduced by the percentage of depreciation attributed to the member's failure to maintain the property. *Id.* para. 1608(e)(3) (West Supp. 1988).

246. *See id.* para. 1608 (West Supp. 1988).

247. *Id.*

tee fund for purposes of administration and payment of claims.<sup>248</sup> The money may not be used for any other purpose and an annual independent audit of the fund must be conducted. The money in the fund will be raised by levying a tax on all residential property containing one to six dwelling units within the neighborhood or territory that formed a home equity program. The rate of the tax is determined by the Commission.<sup>249</sup>

Voters may terminate the home equity program at an election in the same manner that they created the program.<sup>250</sup> The Act prohibits any municipality with a population of one million or more from establishing a home equity program other than as provided by the Act.<sup>251</sup>

## VII. CONCLUSION

During the *Survey* year, the Illinois courts and legislature addressed a number of significant issues dealing with real property. The Illinois Supreme Court focused on the issue of a landlord's liability for the criminal acts of third parties on the leased premises. Although the court did not adopt the position of other jurisdictions that have imposed a general duty on landlords to protect their tenants against such acts, it did expand such duty in the case of foreseeable crimes when the landlord's failure to take precautions is a proximate cause of resulting damage. The supreme court also determined that a county's *in rem* tax lien is extinguished upon confirmation of a tax sale whether or not the purchaser later obtains a tax deed, and it rejected a taxpayer attack on the process for calculating the Cook County tax multiplier. Finally, the court upheld a tax exemption for airport hangars leased to private individuals.

The most significant development in the appellate courts during the *Survey* period involved a series of cases in which the definition of "open land" under the Township Open Space Act was at issue. The appellate court's indecisiveness regarding which property is subject to township acquisition pursuant to the Act may result in reluctance to adopt such programs or voters' hesitancy to approve them.

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248. ILL. REV. STAT. ch. 24, para. 1611 (West Supp. 1988).

249. *Id.* In no event can the tax be more than the lesser of (1) .12% of the equalized assessed valuation of all residential property within the program's territory or neighborhood or (2) the maximum rate approved by the voters in the referendum by which the program is created. *Id.*

250. *Id.* para. 1612 (West Supp. 1988).

251. *Id.* para. 1620 (West Supp. 1988).



The Responsible Property Transfer Act is the one piece of legislation enacted in Illinois during the *Survey* period that will have the greatest impact on real estate transactions. Although it requires environmental disclosure only for limited categories of properties, it applies to a broad range of transactions involving such properties. As a result, real estate practitioners must carefully evaluate the Act's applicability to the transaction in which they are involved and, if applicable, ensure compliance.