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Real Property and Real Estate Transactions

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Real Property and Real Estate Transactions

Denise L. Berdelle*
and Nancy M. Hoffman**

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I. INTRODUCTION

The most significant developments in Illinois real property law during the *Survey* period involved legislation. The most important legislative development was the enactment of the Residential Mortgage License Act of 1987.¹ The purpose of this act was to bring all of the various entities engaged in residential mortgage lending

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1. See *infra* notes 101-53 and accompanying text.

under appropriate regulatory control.² A second notable piece of legislation is the Abandoned Housing Rehabilitation Act, which provides charitable organizations with a method of taking possession of tax delinquent abandoned housing in order to rehabilitate it for low- and middle-income housing.³

In addition, the Illinois Supreme Court addressed several different issues involving real property law during the *Survey* period. The court assessed the validity of use restrictions in a case involving adult use zoning⁴ and a case involving a landowner's exclusion of neighboring owners from waters overlying the lake bed of a private, non-navigable lake.⁵ In the area of taxation, the court evaluated the procedure of refunding a property tax overpayment by offsetting the refund amount against additional taxes due on the same piece of property.⁶ Finally, the court determined the legal significance of the term "heirs" in a deed clause that created an alternative contingent remainder.⁷

II. USE RESTRICTIONS

A. *Amortization of Non-Conforming Adult Uses Under a Zoning Plan*

In *County of Cook v. Renaissance Arcade & Bookstore*,⁸ the owners of several adult uses⁹ challenged the constitutionality of provisions of the 1981 Ordinance Amending Certain Sections of the Cook County Zoning Ordinance of 1976 ("1981 Ordinance").¹⁰ The Illinois Supreme Court affirmed the circuit court's order, which enjoined the owners from continuing to operate in violation of the ordinance. The supreme court held that the zoning plan and its amortization requirements¹¹ did not violate the defendants' right to distribute materials that are protected by the first

2. *Id.*

3. *See infra* notes 154-79 and accompanying text.

4. *See infra* notes 8-39 and accompanying text.

5. *See infra* notes 40-50 and accompanying text.

6. *See infra* notes 51-71 and accompanying text.

7. *See infra* notes 72-100 and accompanying text.

8. 122 Ill. 2d 123, 522 N.E.2d 73 (1988).

9. The 1981 Ordinance defines "adult uses" as "adult bookstores, adult entertainment cabarets, adult mini motion picture theaters and adult motion picture theaters." *Id.* at 129, 522 N.E.2d at 75 (citing COOK COUNTY ZONING ORDINANCE § 14.2 (1981)).

10. *Id.* The defendants challenged sections 13-10, 13-17, 13.16-1, and 13.16-4-1 to 13.16-4-5. *Id.*

11. Amortization under a zoning ordinance means relocation of nonconforming, pre-existing uses to sites permitted by the ordinance.

amendment.¹²

The plaintiff, Cook County, filed separate complaints seeking injunctions against several owners of non-conforming adult uses for zoning violations.¹³ The plaintiff's zoning ordinance restricted adult uses in unincorporated Cook County to seventy-eight specified industrially zoned areas¹⁴ and 245 specified commercially zoned areas.¹⁵ Moreover, the ordinance required that the owner obtain a special use permit from the County Board of Commissioners to operate an adult use in a commercially zoned area. Finally, the ordinance prohibited operation of more than two adult uses within 1000 feet of each other in a commercially zoned area.¹⁶

In addressing compliance with these requirements, the 1981 Ordinance contained an amortization provision that mandated the relocation of each non-conforming use to a conforming site within six months after the county put the owner on notice. Owners could apply for an automatic six-month extension or for a discretionary extension of one year or more.¹⁷ The Illinois Supreme Court assessed the constitutionality of the 1981 Ordinance by applying the standard set forth by the United States Supreme Court in *City of Renton v. Playtime Theaters*.¹⁸ The *Renton* Court recognized that restricting the geographical area in which adult uses can operate furthers substantial government interests, such as preventing crime, protecting retail areas, and protecting property values.¹⁹ However, a zoning ordinance may not be used to attempt to suppress the content of the materials distributed by adult uses. The *Renton* standard therefore requires that an ordinance "refrain from effectively denying . . . a reasonable opportunity to open and operate an adult theater within the city."²⁰

The defendants relied on three federal cases which struck down zoning ordinances that unconstitutionally restricted access to protected materials.²¹ The court found the ordinances that were

12. *Renaissance*, 122 Ill. 2d at 139-41, 522 N.E.2d at 80.

13. *Id.* at 128-29, 522 N.E.2d at 75.

14. The permitted industrial areas covered 10.8 square acres, which is 8.9% of the available land in unincorporated Cook County. *Id.* at 134, 522 N.E.2d at 77.

15. *Id.* at 129-30, 522 N.E.2d at 75.

16. *Id.* at 130, 522 N.E.2d at 75.

17. *Id.*

18. 475 U.S. 41 (1986).

19. *Renaissance*, 122 Ill. 2d at 133, 522 N.E.2d at 77.

20. *Id.* (quoting *Renton*, 475 U.S. at 54).

21. See *Basiardanes v. City of Galveston*, 682 F.2d 1203 (5th Cir. 1982) and *Purple Onion, Inc. v. Jackson*, 511 F. Supp. 1207 (N.D. Ga. 1981) (ordinances imposed additional restrictions that had the effect of excluding adult uses from 80% to 90% of the

struck down to be factually distinguishable from the plaintiff's 1981 Ordinance. The court concluded that the invalidated ordinances cited by the defendants were significantly more restrictive than the 1981 Ordinance, which allowed adult uses to locate freely within seventy-eight specified industrial areas.²² The court held that the 1981 Ordinance provided the defendants with a reasonable opportunity to relocate and, therefore, did not interfere with the defendants' first amendment rights.²³

The defendants also argued that the provisions of the Cook County Zoning Ordinance of 1977²⁴ combined with the provisions of the 1981 Ordinance to impose further restrictions on locating within the areas specified by the 1981 Ordinance.²⁵ The defendants contended that the unconstitutional provisions of the 1977 Ordinance, which were stricken in *County of Cook v. World Wide News Agency*,²⁶ were severable from the remaining provisions of the ordinance, which continued to be effective.²⁷ The court rejected this argument and stated that the county would not have adopted the 1977 Ordinance without the invalidated provisions.²⁸ The court concluded that the County Zoning Board intended the 1981 Ordinance to supersede the 1977 Ordinance completely.²⁹

The court also rejected the defendant's argument that the absence of a "grandfather clause"³⁰ in the 1981 Ordinance rendered the ordinance unconstitutional.³¹ The court pointed out that pursuant to its prior decision in *Village of Oak Park v. Gordon*,³² amortization provisions are presumed to be valid.³³ A party may overcome this presumption only by showing that the governmental interest furthered by the ordinance does not outweigh the economic hardship the ordinance would impose on the property

permitted areas); *North Street Book Shoppe, Inc. v. Village of Endicott*, 582 F. Supp. 1428 (N.D.N.Y. 1984) (ordinance permitted adult uses in only two industrial areas).

22. *Renaissance*, 122 Ill. 2d at 137-38, 522 N.E.2d at 79.

23. *Id.* at 139-40, 522 N.E.2d at 80.

24. The 1977 Ordinance prohibited locating more than two adult uses within 1000 feet of each other or locating any adult use within 1000 feet of an area zoned for residential or church use. *Id.* at 145-46, 522 N.E.2d at 82.

25. *Id.* at 146, 522 N.E.2d at 83.

26. 98 Ill. App. 3d 1094, 424 N.E.2d 1173 (1st Dist. 1981).

27. *Renaissance*, 122 Ill. 2d at 146, 522 N.E.2d at 82.

28. *Id.* at 148, 522 N.E.2d at 83-84.

29. *Id.* at 148-49, 522 N.E.2d at 84.

30. A "grandfather clause" is a provision that would allow existing businesses to continue to operate at their present locations by exempting them from the restrictions of the new zoning ordinance. *Id.* at 140, 522 N.E.2d at 80.

31. *Id.* at 141, 522 N.E.2d at 80.

32. 32 Ill. 2d 295, 205 N.E.2d 464 (1965).

33. *Renaissance*, 122 Ill. 2d at 143, 522 N.E.2d at 81.

owner.³⁴ The defendants in *Renaissance* failed to present any evidence that relocation would cause economic hardship.³⁵ The County, on the other hand, presented evidence of the harmful effects of concentrated adult uses on surrounding residential and commercial areas.³⁶ Consequently, the court concluded that the defendants failed to overcome the presumptive validity of the amortization provision.³⁷

The defendants did prevail on one argument. The court agreed with the defendants that the 1981 Ordinance unconstitutionally vested the County Board of Commissioners with impermissible discretion to grant or deny special use permits in commercially zoned areas.³⁸ Nevertheless, the court held that this provision was severable from the rest of the ordinance, which could stand on its own without violating the defendants' constitutional rights.³⁹

In the end, the defendants' only victory in *Renaissance* led to broader restrictions on where the defendants could locate their businesses. If the defendants had not challenged the 1981 Ordinance, they would at least have had some opportunity to operate in a commercially zoned area. The court's holding that the provision for special use permits was severable, however, left the defendants with no opportunity to locate within commercially zoned areas. Adult uses in unincorporated Cook County are now restricted to the seventy-eight industrial areas specified in the 1981 Ordinance. Clearly, such areas generally are not considered desirable locations for movie theaters or bookstores. However, the court has correctly emphasized the ill effects of these establishments on their surrounding areas.

B. *Land Use Restrictions on Overlying Waters of a Private, Non-Navigable Lake*

*Beacham v. Lake Zurich Property Owners Association*⁴⁰ presented a question of first impression for the Illinois Supreme Court. The court considered whether a lake bed owner has the

34. *Id.*

35. Factors that could have been considered are purchase price, cost of improvements and relocation, depreciation, and lost income. *Id.* at 143-44, 522 N.E.2d at 81-82.

36. *Id.* at 144, 522 N.E.2d at 82.

37. *Id.* at 144-45, 522 N.E.2d at 82.

38. *Id.* at 151-52, 522 N.E.2d at 85. The court concluded that the ordinance lacked sufficiently narrow, objective, and definite standards to guide county officials in granting or denying special use permits. *Id.*

39. *Id.* at 152, 522 N.E.2d at 85. The court concluded that the 78 industrially zoned areas provided the defendants with a sufficient alternative avenue of communication. *Id.*

40. 123 Ill. 2d 227, 526 N.E.2d 154 (1988).

right to exclude neighboring owners from his overlying waters.⁴¹ The *Beacham* court held that the owner of a portion of a private, non-navigable lake bed is entitled to reasonable use of the entire lake, so long as that use does not interfere with the reasonable use of the waters by other owners and their licensees.⁴²

The plaintiff, Beacham, was the owner of approximately fifteen to twenty percent of the lake bed of Lake Zurich, a private, non-navigable lake.⁴³ The plaintiff operated a public boat rental business at the lake. The defendant controlled a majority of the lake bed and attempted to exclude others from its overlying waters by issuing warnings to violators, including the plaintiff and her licensees. The defendant also brought trespass actions against persons who were repeatedly warned.⁴⁴ The plaintiff sought injunctive relief and a declaration that, as owner of a part of the lake, she and her licensees were entitled to reasonable use of the whole lake.⁴⁵

The court noted that other jurisdictions were divided over the respective rights of lake bed owners. The common law view endorsed an owner's right to exclude others from the waters above the owner's portion of the lake bed.⁴⁶ The civil law view provided that partial lake bed owners had the right to enjoy the use of the whole lake surface as long as their use did not unduly interfere with the use of the lake by other lake bed owners.⁴⁷ The *Beacham* court adopted the civil law rule because it promoted mutual enjoyment of a shared resource and because of the myriad of practical

41. *Id.* at 229-30, 526 N.E.2d at 156.

42. *Id.* at 230, 526 N.E.2d at 157. The court pointed out that the Illinois Supreme Court's holding in *Leonard v. Pearce*, 348 Ill. 518, 181 N.E. 399 (1932), was not dispositive, as the defendants contended. The *Leonard* court merely held that Lake Zurich was non-navigable and that lake bed owners had a right to exclude members of the general public. The court distinguished the present case, which dealt with a dispute among lake bed owners, from the dispute in *Leonard* between the lake bed owners and the public. *Beacham*, 123 Ill. 2d at 230, 526 N.E.2d at 157.

43. *Beacham*, 123 Ill. 2d at 228, 526 N.E.2d at 155-56.

44. *Id.* at 228, 526 N.E.2d at 155.

45. *Id.*

46. *Id.* at 230, 526 N.E.2d at 157. The common law view applied the traditional property law concept that ownership includes everything above and below the land surface. *Id.* at 231, 526 N.E.2d at 156 (citing *Medlock v. Galbreath*, 208 Ark. 681, 187 S.W.2d 545 (1945); *Lanier v. Ocean Pond Fishing Club*, 253 Ga. 549, 322 S.E.2d 494 (1984); *Sanders v. De Rose*, 207 Ind. 90, 191 N.E. 331 (1934); *Baker v. Normanoch Ass'n*, 25 N.J. 407, 136 A.2d 645 (1957); *Commonwealth Water Co. v. Brunner*, 175 A.D. 153, 161 N.Y.S. 794 (1916); *Smoulter v. Boyd*, 209 Pa. 146, 58 A. 144 (1904); *Taylor Fishing Club v. Hammett*, 88 S.W.2d 127 (Tex. Civ. App. 1935); *Wickowski v. Swift*, 203 Va. 467, 124 S.E.2d 892 (1962)).

47. *Id.* at 230, 526 N.E.2d at 157 (citing *Duval v. Thomas*, 114 So. 2d 791 (Fla. 1959); *Johnson v. Seifert*, 257 Minn. 159, 100 N.W.2d 689 (1960); *Snively v. Jaber*, 48 Wash. 2d 815, 296 P.2d 1015 (1956)).

problems associated with the common law rule.⁴⁸

The view adopted by the *Beacham* court is the more practical and workable of the two alternatives. This civil law view sensibly creates an exception to the general rule that one of the incidents of ownership is the right to exclude others, given the particular situation involved.⁴⁹ The court correctly pointed to the difficulties in settling border disputes that would accompany the common law rule. The standard of reasonableness underlying the civil law rule gives the court a great deal of latitude to fashion solutions to the problems that do arise. For example, the *Beacham* court seemed troubled by the plaintiff's rental of boats to the general public. On remand, the supreme court instructed the trial court to determine whether this practice interfered with the other property owners' reasonable use of the waters of this private lake.⁵⁰

III. PROPERTY TAX COLLECTION PROCEDURES

In *Lake County Board of Review v. Property Tax Appeal Board*,⁵¹ a taxpayer, Marriott Corporation ("Marriott"), challenged the Lake County Tax Collector's (the "Collector") use of an offset to refund an overpayment of property taxes.⁵² Marriott asserted that the procedure constituted an unlawful deviation from the Collector's statutorily-defined refund and collection procedures.⁵³ The Lake County Board of Review argued that the Collector had the discretion to use an offset procedure. The court rejected Marriott's challenge, holding that a tax collector may use an offset to refund money owed to a taxpayer and contemporaneously to collect money owed by that taxpayer on the same piece of property.⁵⁴

The Illinois Property Tax Appeal Board (the "Appeal Board") ordered a reduction of the 1981 real estate tax assessment of Marriott's Great America Theme Park.⁵⁵ The circuit court subsequently

48. *Id.* at 232, 526 N.E.2d at 157. The problems include determining where property lines fall on the surface water and enforcing exclusive possession. In addition, the court indicated that adopting the common law view would lead lake bed owners to erect barriers across the surface waters. *Id.*

49. The appellate court noted that these cases invariably involve an owner of a majority of the lake bed who is attempting to restrict the other owners to the small portions of the lake overlying their own property. *Beacham v. Lake Zurich Property Owners Ass'n*, 159 Ill. App. 3d 204, 206, 511 N.E.2d 226, 227 (2d Dist. 1987).

50. *Beacham*, 123 Ill. 2d at 232, 526 N.E.2d at 157.

51. 119 Ill. 2d 419, 519 N.E.2d 459 (1988).

52. *Id.* at 422-23, 519 N.E.2d at 461. Marriott was allowed to appeal pursuant to Illinois Supreme Court Rule 315. *Id.* at 422, 519 N.E.2d at 461.

53. *Id.*

54. *Id.* at 431, 519 N.E.2d at 465.

55. *Id.* at 421, 519 N.E.2d at 460.

reversed the reduction, but the reduction was reinstated on appeal.⁵⁶ On remand, the circuit court granted Marriott's motion for an entry of judgment ordering a refund of the tax overpayment.⁵⁷ The Collector asserted that this order was complied with by offsetting the amount owed to Marriott against additional taxes that Marriott owed following an increase in the assessed value of the property for 1982 and 1983.⁵⁸ Marriott sought to enforce the refund order, maintaining that the offset was not in compliance.⁵⁹

The supreme court first addressed the issue of whether the offset constituted a "refund" in compliance with the statute.⁶⁰ The court determined that, in the absence of a statutory definition, "refund" must be taken in its "ordinary and popularly understood meaning,"⁶¹ which encompassed an offset.⁶² The court stated that, despite the lack of an obligation on either party to submit their payment immediately at the time of the offset, both parties' obligations had been finally determined and, therefore, had accrued at the time of the offset.⁶³

The court next examined whether the Illinois Legislature provided sufficient standards to control the collection activities at issue and whether the Collector exceeded the bounds of those standards. The court found that the designation of county treasurers as collectors and the specification of a collector's duties constituted a lawful delegation of authority to an administrative agency.⁶⁴ This express grant included a grant of power to do what was reasonably necessary to execute those duties.⁶⁵ The court held that the offset procedure was a reasonable means for accomplishing the statutory directives for collection of property taxes.⁶⁶

Finally, the court addressed the issue of whether the offset procedure violated Marriott's right to due process of law. The court found that the offset did not deprive Marriott of a meaningful opportunity to contest the tax rate applicable to the 1982-83 reassess-

56. *Id.* at 421-22, 519 N.E.2d at 460.

57. *Id.* at 422, 519 N.E.2d at 461.

58. *Id.*

59. *Id.*

60. *Id.* at 423-25, 519 N.E.2d at 461-62.

61. *Id.* at 423, 519 N.E.2d at 461.

62. *Id.* at 425, 519 N.E.2d at 462. The court decided to give the term "refund" a broad reading even though it acknowledged that it is most commonly used to mean the issuance of cash or a cash equivalent. *Id.* at 424, 519 N.E.2d at 461.

63. *Id.* at 425, 519 N.E.2d at 462.

64. *Id.* at 427, 519 N.E.2d at 463.

65. *Id.*

66. *Id.* at 428, 519 N.E.2d at 463.

ment.⁶⁷ The court reasoned that any basis for contesting the tax rate as applied to the increased assessment was equally valid to contest the tax rate applied to the original assessments in 1982 and 1983.⁶⁸ Marriott had the opportunity to file rate objections to the original 1982 and 1983 assessments.⁶⁹ The court concluded, therefore, that Marriott did not have a right to challenge the rate a second time.⁷⁰

The court determined that a refund of a property tax overpayment may be issued by offsetting that amount against additional taxes owed by the taxpayer. However, this procedure apparently will be limited to obligations on the part of the taxpayer that have already accrued.⁷¹ The offset procedure may also be limited to situations in which the refund and the tax liability correspond to the same piece of property.

IV. TRANSFERS OF AN INTEREST IN PROPERTY

In *Warren-Boynton State Bank v. Wallbaum*,⁷² the Illinois Supreme Court construed a 1903 deed. The *Wallbaum* court addressed the primary issue of whether the grantor intended the designation of his "heirs" as alternative contingent remaindermen⁷³ to be determined at his death or at some other time.⁷⁴ Resolution of this issue hinged on the interpretation of the term "heirs" in the deed.⁷⁵ Applying the standard of the preponderance of the

67. *Id.* at 429-30, 519 N.E.2d at 464.

68. *Id.*

69. *Id.* at 429, 519 N.E.2d at 464.

70. *Id.* at 430, 519 N.E.2d at 464. The court pointed out that no evidence indicated that the increased assessment was large enough to increase markedly Marriott's incentive to contest the tax rate. The court noted the impracticability of allowing tax rate protests every time an assessment occurred after the year's tax rate had been determined. *Id.*

71. *Id.* at 425, 519 N.E.2d at 462. The court commented that an offset against an unaccrued obligation arguably could be regarded as a credit, not a refund. *Id.*

72. 123 Ill. 2d 429, 528 N.E.2d 640 (1988).

73. See *infra* notes 76-83 and accompanying text.

74. *Wallbaum*, 123 Ill. 2d at 431-32, 528 N.E.2d at 642. The court briefly addressed the questions of whether the doctrine of worthier title or the rule in *Shelly's* case applied to this deed. *Id.* at 442, 528 N.E.2d at 646.

75. The relevant language of the deed was:

The Grantor, William Wallbaum . . . , conveys and warrants to Emma May Wallbaum . . . [a] life estate in the following described real estate The said William Wallbaum hereby reserves a life estate in the above described land to-wit: He shall have the right to the use and occupancy of said land and to all the rents, issues and profits thereof during his natural life. And upon the death to said Emma May Wallbaum leaving children of her body her surviving, the above described real estate shall descend to such children share and share alike. The children of any deceased child, taking only the share which their parent would inherit if living. Upon the death of said Emma May Wallbaum leaving

evidence, the court held that the grantor used the term "heirs" in the alternative contingent remainder in a non-technical sense to mean heirs determined at some time other than at the grantor's death.⁷⁶

By the 1903 deed, the grantor, William Wallbaum, ("William") reserved a life estate for himself and conveyed a life estate to his daughter, Emma Wallbaum ("Emma"). The grantor created a contingent remainder in the children of Emma and an alternative contingent remainder in the "heirs" of William.⁷⁷ William died in 1905.⁷⁸ He was survived by Emma and his three sons. Emma died childless in 1984. William's three sons died before Emma. Two of the sons had children living at the time of Emma's death.⁷⁹

The plaintiffs, Warren-Boynton State Bank, the executor of Emma's estate, and a beneficiary under Emma's will, instituted an action for partition. The defendants were descendants of William's three sons.⁸⁰ The circuit court granted the plaintiffs' motion for summary judgment, finding that William used the term "heirs" in its technical sense, which required the class of heirs to be determined at the time of William's death.⁸¹ The court refused to imply a condition that required the grantor's heirs at the time of the grantor's death to survive the life tenant, Emma.⁸² As a result, a one-fourth interest passed to the heirs of each of William's four children.⁸³

The appellate court reversed the decision of the circuit court.⁸⁴ The appellate court held that William used "heirs" in the clause that created the alternative contingent remainder to mean "children."⁸⁵ The court found an implied condition that these children survive the life tenant to take as remaindermen.⁸⁶ As the life tenant, Emma could not pass any interest through her will. Because

no such children her surviving the above described real estate shall descend to the heirs of said William Wallbaum share and share alike. The children of any deceased child taking only the share which their parent would inherit if living.

Id. at 432-33, 528 N.E.2d at 642.

76. *Id.* at 432-33, 528 N.E.2d at 642.

77. *Id.* at 434, 528 N.E.2d at 643.

78. *Id.* at 433, 528 N.E.2d at 642.

79. *Id.* at 434, 528 N.E.2d at 643.

80. *Id.* at 432, 528 N.E.2d at 642.

81. *Id.*

82. *Id.*

83. *Id.* at 434-35, 528 N.E.2d at 643.

84. Warren Boynton State Bank v. Wallbaum, 143 Ill. App. 3d 628, 635, 493 N.E.2d 21, 27 (4th Dist. 1986).

85. *Wallbaum*, 123 Ill. 2d at 435, 528 N.E.2d at 643.

86. *Id.*

none of William's son's survived Emma, the life tenant, each son's remainder interest was extinguished at his respective death.⁸⁷ The court concluded, however, that the language of the deed created a gift over to William's grandchildren which vested at the time of their respective parent's death.⁸⁸ Under this distribution scheme, a one-third interest passed to the heirs of each of William's three sons.

The Illinois Supreme Court rejected both of the lower courts' analyses. The court indicated that it had not previously adopted as a matter of law the technical interpretation of the term "heirs."⁸⁹ The court instead sought to give effect to the transferor's intent. To determine the transferor's intent, the court looked to the deed itself and to the circumstances surrounding the creation of the deed.⁹⁰

The supreme court agreed with the appellate court that William used the term "heirs" in a non-technical sense. However, the supreme court rejected the determination that William used "heirs" to mean "children." The court pointed out that in the deed itself, William used "children" in the clause that created the contingent remainder, but "heirs" in the clause that created the alternative contingent remainder. The use of both terms suggested to the court that William used the term "children" to mean children and the term "heirs" to mean something else.⁹¹

The court found further support for this construction in the circumstances surrounding the deed. Two years after drafting this deed, William executed a new will.⁹² The court compared the language of a provision of this will to the language of the 1903 deed. This provision directed the executor to set up a life estate and designated both contingent remaindermen and alternative contingent remaindermen.⁹³ The court noted once more that William used

87. *Id.*

88. *Id.* at 436, 528 N.E.2d at 643.

89. *Id.* at 437, 528 N.E.2d at 644. The court pointed out that since the recent decision in *Harris Trust & Sav. Bank v. Beach*, 118 Ill. 2d 1, 513 N.E.2d 833 (1987), the burden of proof in such a case is by a preponderance of the evidence, not the former standard of "clear evidence." *Wallbaum*, 123 Ill. 2d at 437, 528 N.E.2d at 644.

90. *Wallbaum*, 123 Ill. 2d at 436, 528 N.E.2d at 644.

91. *Id.* at 438, 528 N.E.2d at 645.

92. *Id.* at 439, 528 N.E.2d at 645. In the interim, William's wife had given birth to his fourth child, a son. The will instructed one of his other sons to transfer a life interest in a piece of property to the youngest son. *Id.*

93. *Id.* at 439-40, 528 N.E.2d at 645. The life estate was to be conveyed to William Conway Wallbaum, the grantor's youngest son, and the remainder interest was as follows:

And upon the death of the said William Conway Wallbaum leaving children of

the term children when he meant children.⁹⁴ The court concluded that to interpret "heirs" as "children" would defeat the grantor's intent.⁹⁵

When the deed was drafted, William had three children: Emma, who was five years old, and two adult sons. William's grandchildren were approximately the same age as Emma. The court noted that William must have been aware of the likelihood that neither he nor his sons would outlive Emma.⁹⁶ The court also suggested that William must have contemplated the possibility that even his grandchildren might not be alive at the expiration of Emma's life tenancy.⁹⁷ The court concluded that a reasonable interpretation of William's intent indicated that the alternative contingent remainder, if used, would transfer the property to William's descendants who were living at the time of Emma's death.⁹⁸

Thus, the court construed the term "heirs" to mean the heirs of William Wallbaum as determined at the time of Emma's death.⁹⁹ At Emma's death, only two of William's sons had descendants living. The court therefore ordered that the descendants of each of these sons share a one-half interest in the property.¹⁰⁰

In interpreting this deed, the court engaged in a great deal of speculation. There is no indication that William himself drafted the 1903 deed or the 1905 will. The emphasis the court placed on the use of "heirs" in the clause that created the alternative contingent remainder in the deed, as opposed to the use of "children" in a similar provision of the will, therefore, seems misplaced. However, the deed itself does contain indications that the distribution scheme that the court arrived at is what William intended. By conveying only a life estate to Emma and providing that if she died childless the remainder would vest in his heirs, William demonstrated an intent that this property remain in the family.

his body surviving him, the above described real estate shall descend to such children, share and share alike. The children of any deceased child taking only the share which their parent would inherit if living. Upon the death of William Conway Wallbaum leaving no such children surviving, the above described real estate shall descend to *my surviving children* share and share alike. The children of any deceased child taking only the part that their parent would inherit if living.

Id. (emphasis in original).

94. *Id.* at 440, 528 N.E.2d at 645.

95. *Id.* at 441, 528 N.E.2d at 646.

96. *Id.* at 439, 528 N.E.2d at 646.

97. *Id.*

98. *Id.* at 440, 528 N.E.2d at 646.

99. *Id.* at 441, 528 N.E.2d at 646.

100. *Id.* at 442, 528 N.E.2d at 647.

V. LEGISLATION

A. *The Residential Mortgage License Act*

The Residential Mortgage License Act of 1987 ("License Act")¹⁰¹ gives the Commissioner of Savings and Loan Associations (the "Commissioner") the power to investigate and regulate the brokering, funding, originating, servicing, and purchasing of residential mortgage loans. The legislature's primary concern was protection of consumers from unscrupulous lenders, particularly in the area of mortgage refinancing.¹⁰²

1. Purpose and Scope of the License Act

The legislature pointed to several significant recent changes in the mortgage lending industry that gave rise to the need for the License Act. Interest rate volatility, the sophistication of the national secondary market for mortgage loans, and the market for mortgage-backed securities have altered the nature of the industry.¹⁰³ In addition, the trend toward deregulation of financial services industries has dramatically increased the types of mortgages offered, the manner in which mortgages are offered to the public, and the entities involved in mortgage lending.¹⁰⁴ As a result of the changes, many of these mortgage lending entities were not operating under appropriate regulatory supervision. The License Act applies to all persons or business entities that broker, originate, or service residential mortgage loans, with the exception of those entities specifically exempted.¹⁰⁵

Because the License Act was designed to fill a regulatory void, the legislature exempted many mortgage lenders. Most importantly, the License Act exempts lenders in the banking and insurance industries.¹⁰⁶ Presumably, the legislature believed that these

101. ILL. REV. STAT. ch. 17, paras. 2321-1 to 2325-1 (1987). The License Act succeeds "An Act to provide for the regulation of mortgage bankers," ILL. REV. STAT. ch. 17, paras. 2301-2314 (1985). The License Act became effective on January 1, 1988. ILL. REV. STAT. ch. 17, para. 2321-3(h) (1987).

102. SENATE DEBATES, 85th Ill. Gen. Assem., at 183 (June 29, 1987).

103. ILL. REV. STAT. ch. 17, para. 2321-2(a) (1987).

104. *Id.*

105. ILL. REV. STAT. ch. 17, para. 2321-3 (1987).

106. The following entities are exempt:

- (i) Any banking organization or foreign banking corporation licensed by the Illinois Commissioner of Banks and Trust Companies or the United States Comptroller of the Currency to transact business in [Illinois];
- (ii) any national bank, federally chartered savings and loan association, federal credit union;
- (iii) any pension trust, bank trust or bank trust company;
- (iv) any savings and loan association or credit union organized under the laws of [Illinois] or any other

lenders already operated under appropriate regulatory supervision. The License Act also exempts persons who merely forward applications and credit and appraisal information to mortgage lenders.¹⁰⁷ An employee of a mortgage lender need not be licensed himself as long as he works for only one mortgage lender.¹⁰⁸ Again, the activities of such employees will be regulated either by the License Act or by the regulations governing exempt lenders. The legislature also exempted persons who make and acquire mortgage loans with their own funds without the intent to resell more than ten loans in one year.¹⁰⁹ Finally, an exemption was created for entities that originate, broker, or service loans but receive no compensation for these activities.¹¹⁰

2. Licensing Procedure

To obtain a license, the mortgage lender must file a written application.¹¹¹ The truth of the statements contained in the application must be verified under oath.¹¹² The applicant must also file a list of judgments entered against him and bankruptcy proceedings by him in the ten years preceding the application.¹¹³ The application must attest to the financial solvency of the applicant.¹¹⁴ The application must disclose the names and addresses of all partners, directors, and principal officers, along with information about their

state; (v) any Illinois "Consumer Installment Loan Act" licensee; (vi) any insurance company authorized to transact business in [Illinois]; (vii) any entity engaged solely in commercial mortgage lending; (viii) any service corporation of a savings and loan association organized under the laws of [Illinois] or the service corporation of a federally chartered savings and loan association having its principal place of business in [Illinois], other than a service corporation licensed or entitled to reciprocity under the Real Estate License Act of 1983, as amended; or (ix) any subsidiary or affiliate of a bank, the charter of which is issued pursuant to the Illinois Banking Act by the Illinois Commissioner of Banks and Trust Companies, or the subsidiary or affiliate of a bank chartered by the United States Comptroller of the Currency and which has its principal place of business in [Illinois], or any subsidiary or affiliate of a foreign banking corporation, the certificate of authority of which is issued pursuant to the Foreign Banking Office Act by the Illinois Commissioner of Banks and Trust Companies

ILL. REV. STAT. ch. 17, para. 2321-4(d)(1) (1987).

107. ILL. REV. STAT. ch. 17, para. 2321-4(d)(4) (1987). These persons must be licensed under the Real Estate License Act of 1983. *Id.*

108. ILL. REV. STAT. ch. 17, para. 2321-4(d)(3) (1987).

109. ILL. REV. STAT. ch. 17, para. 2321-4(d)(2) (1987).

110. ILL. REV. STAT. ch. 17, para. 2322-4(d)(5) (1987).

111. ILL. REV. STAT. ch. 17, para. 2322-3 (1987).

112. *Id.*

113. ILL. REV. STAT. ch. 17, para. 2322-2(a)(2) (1987).

114. ILL. REV. STAT. ch. 17, para. 2322-3(a)(1) (1987).

character, integrity, and financial responsibility.¹¹⁵

The applicant is required to attach a list of twenty-two averments to the application. Seven of these consist of promises to comply with specific provisions or general principles of the License Act.¹¹⁶ Six averments involve promises not to engage in fraudulent or dishonest mortgage lending practices.¹¹⁷ Five averments affirm that the applicant has not done anything to lead the Commissioner to deny him a license.¹¹⁸ The last three averments promise to keep adequate records, notify the Commissioner of changes in information on the application, and notify the commissioner of any judgments against the licensee or bankruptcy proceedings.¹¹⁹

A license granted under this act must be renewed every year.¹²⁰ The renewal application must be submitted at least sixty days before the expiration of the license.¹²¹ The Commissioner may refuse to renew the license of any licensee who is not in compliance with the provisions of the License Act.¹²² An application that is not renewed is considered inactive and will expire automatically

115. ILL. REV. STAT. ch. 17, para. 2322-3(a)(3) (1987). This includes disclosure of the identity and integrity of owners of more than 10% of the stock of the license applicant corporation. *Id.*

116. ILL. REV. STAT. ch. 17, para. 2322-4 (a) (1987) (maintain a full service office in Illinois); ILL. REV. STAT. ch. 17, para. 2322-4(b) (1987) (maintain adequate staff); ILL. REV. STAT. ch. 17, para. 2322-4(d) (1987) (file required reports); ILL. REV. STAT. ch. 17, para. 2322-4(e) (1987) (refrain from rejecting applications or varying the terms of a mortgage without reasonable cause for mortgages secured by residences within specific geographical areas); ILL. REV. STAT. ch. 17, para. 2322-4(i) (1987) (refrain from redlining); ILL. REV. STAT. ch. 17, para. 2322-4(t) (1987) (comply with provisions of act and rules issued pursuant to it); ILL. REV. STAT. ch. 17, para. 2322-4(u) (1987) (submit to periodic examination of books and records).

117. ILL. REV. STAT. ch. 17, para. 2322-4(f) (1987) (fraudulent underwriting practices); ILL. REV. STAT. ch. 17, para. 2322-4(g) (1987) (monetarily influencing real estate appraisers); ILL. REV. STAT. ch. 17, para. 2322-4(j) (1987) (false promises and advertisements); ILL. REV. STAT. ch. 17, para. 2322-4(k) (1987) (material misrepresentations); ILL. REV. STAT. ch. 17, para. 2322-4(l) (1987) (refusal to disburse funds as agreed); ILL. REV. STAT. ch. 17, para. 2322-4(n) (1987) (unlawful withholding of funds).

118. ILL. REV. STAT. ch. 17, para. 2322-4(h) (1987) (has filed tax returns for past three years); ILL. REV. STAT. ch. 17, para. 2322-4(o) (1987) (no past conduct which would be grounds for denial of license); ILL. REV. STAT. ch. 17, para. 2322-4(p) (1987) (has not become insolvent); ILL. REV. STAT. ch. 17, para. 2322-4(q) (1987) (no material misstatements in application); ILL. REV. STAT. ch. 17, para. 2322-4(r) (1987) (no past incompetency or negligence in mortgage lending).

119. ILL. REV. STAT. ch. 17, paras. 2322-4(c), 2322-4(s), 2322-4(v) (1987).

120. ILL. REV. STAT. ch. 17, para. 2322-3 (1987).

121. ILL. REV. STAT. ch. 17, para. 2322-6(a) (1987). The License Act gives the Commissioner the ability to levy a fine of \$100 per month for a late application provided that the Commissioner has evidence that the licensee continues to engage in activities governed by the act. ILL. REV. STAT. ch. 17, para. 2322-6(b)(1)(2) (1987).

122. ILL. REV. STAT. ch. 17, para. 2322-5 (1987).

after it has been inactive for one year.¹²³

3. Operations

The License Act contains several provisions designed to ensure that licensees operate their businesses honestly and fairly. At least once each year, the licensee must have a certified public accountant audit his books and records.¹²⁴ This audit requirement seeks to ensure that the financial statements the licensee submits to the Commissioner accurately reflect the licensee's financial status.¹²⁵ In addition, the License Act explicitly prohibits licensees from distributing deceptive or misleading advertisements.¹²⁶ Specifically, licensees may not use advertisements that state or imply that their rates are recommended or approved by the state.¹²⁷ All advertisements must contain the words "Illinois Residential Mortgage Licensee."¹²⁸ If a licensee operates solely as a broker, his advertisements must disclose the limited scope of the licensee's operation.¹²⁹ Finally, the License Act contains an anti-discrimination provision. Licensees are prohibited from refusing to grant a loan or altering the terms of a loan on the basis of discrimination against the loan applicant¹³⁰ or against the neighborhood of the proposed security.¹³¹

The License Act also contains provisions designed to ensure the continued solvency of the licensees. By January 1, 1989, all licensees under the act are required to maintain a net worth of not less than \$100,000.¹³² In addition, the licensee must retain a reliable mortgage funding program of \$250,000.¹³³ Any person to whom a licensee delegates responsibility for control over or access to funds must be bonded to protect the licensee from losses due to that per-

123. ILL. REV. STAT. ch. 17, paras. 2322-6(c), 2322-6(d) (1987).

124. ILL. REV. STAT. ch. 17, para. 2323-2(a) (1987).

125. *Id.*

126. ILL. REV. STAT. ch. 17, para. 2323-3(a) (1987). The Commissioner may issue a cease and desist order to licensees who violate this provision. *Id.*

127. *Id.*

128. ILL. REV. STAT. ch. 17, para. 2323-3(c) (1987).

129. ILL. REV. STAT. ch. 17, para. 2323-3(d) (1987).

130. ILL. REV. STAT. ch. 17, para. 2323-8(a)(i) (1987). A loan applicant may not be turned down on the basis of race, religion, national origin, age, gender, or marital status. *Id.*

131. ILL. REV. STAT. ch. 17, para. 2323-8(a)(ii) (1987). The procedure of refusing to grant mortgages that are to be secured by residential housing in certain geographical areas is a form of discrimination known as "redlining." *Id.*

132. ILL. REV. STAT. ch. 17, para. 2323-5 (1987).

133. ILL. REV. STAT. ch. 17, para. 2323-6 (1987). The Commissioner may reduce this amount if the licensee restricts his activities to brokering. *Id.*

son's dishonest or criminal acts.¹³⁴

Other provisions of the License Act ensure that the mortgagor always has access to information about his loan. The licensee must notify the mortgagor of the transfer of servicing on his loan.¹³⁵ This notice must be given at the time of the transfer. The notice must tell the mortgagor where his next three payments should be sent, the amount of those payments, and where the mortgagor can address his questions.¹³⁶ In addition, every licensee is required to maintain and to staff adequately a full service office in Illinois.¹³⁷

4. Supervision

In addition to the yearly audits to which a licensee must submit, every twenty-four months the licensee must undergo a complete examination of its records by the Commissioner's appointee.¹³⁸ The examiner may require testimony under oath of the licensee's officers and employees.¹³⁹ If the examination uncovers evidence of unlawful activity by an affiliate of the licensee, the affiliate also may be subject to an examination.¹⁴⁰ The licensee is responsible for the costs of the examination.¹⁴¹ Finally, only the Commissioner and the licensee will have access to the report of the examination issued by the examiner.¹⁴²

The License Act gives the Commissioner the power to issue subpoenas to compel the attendance of witnesses at any hearing or to compel the production of documents.¹⁴³ The Commissioner may petition the court for an order to comply with the subpoena.¹⁴⁴ The court then may issue an injunction to prevent the licensee from continuing to engage in activities governed by the License Act.¹⁴⁵ Where compliance with the subpoena is essential, the Commissioner may petition the court to have a bond conditioned upon compliance.¹⁴⁶ In addition, either the Commissioner or his

134. ILL. REV. STAT. ch. 17, para. 2323-1 (1987). This is an indemnity bond that is payable to the licensee in the event of a loss due to the conduct described above. *Id.*

135. ILL. REV. STAT. ch. 17, para. 2323-7 (1987).

136. *Id.*

137. ILL. REV. STAT. ch. 17, para. 2323-4 (1987).

138. ILL. REV. STAT. ch. 17, para. 2324-2 (1987).

139. ILL. REV. STAT. ch. 17, para. 2324-2(a) (1987).

140. ILL. REV. STAT. ch. 17, para. 2324-2(c) (1987).

141. ILL. REV. STAT. ch. 17, para. 2324-2(d) (1987).

142. ILL. REV. STAT. ch. 17, para. 2324-2(e) (1987).

143. ILL. REV. STAT. ch. 17, para. 2324-3(a) (1987).

144. ILL. REV. STAT. ch. 17, para. 2324-3(b) (1987).

145. *Id.*

146. ILL. REV. STAT. ch. 17, para. 2324-3(c) (1987).

representative may administer oaths.¹⁴⁷

The License Act specifies the grounds for which the Commissioner may suspend or revoke any license. If the Commissioner determines that a licensee has violated a provision of this act or the rules of the Commissioner, or has violated a law, rule, or regulation of Illinois or the United States, that license may be suspended or revoked.¹⁴⁸ The Commissioner also may suspend or revoke a license if a fact or condition exists that would have led the Commissioner to refuse to issue a license if that fact or condition had existed at the time of the application.¹⁴⁹ A license may be suspended or revoked, however, only after the licensee has been given notice and provided with a hearing.¹⁵⁰ Following a hearing, a copy of the Commissioner's order of suspension will be published in a newspaper in the county in which the licensee is located.¹⁵¹

The License Act gives the Commissioner very broad discretion over enforcement of the act's provisions. This discretion is necessary to achieve the broad policy of ensuring fairness and honesty in mortgage lending. The Commissioner has several alternatives to revoking or suspending a license. The Commissioner may put the licensee on probation or reprimand the licensee.¹⁵² On the other hand, the Commissioner has the power to levy fines of up to \$10,000 for each separate offense.¹⁵³ In the end, the effectiveness of the License Act will depend on the manner in which the Commissioner enforces the act.

147. ILL. REV. STAT. ch. 17, para. 2324-3(a) (1987).

148. ILL. REV. STAT. ch. 17, para. 2324-5(a)(1) (1987).

149. ILL. REV. STAT. ch. 17, para. 2324-5(a)(2) (1987).

150. ILL. REV. STAT. ch. 17, para. 2324-5(c) (1987). However, the Commissioner may initiate a suspension or revocation without notice upon a showing of good cause that an emergency exists. ILL. REV. STAT. ch. 17, para. 2324-5(b) (1987).

151. ILL. REV. STAT. ch. 17, para. 2324-5(2) (1987).

152. ILL. REV. STAT. ch. 17, paras. 2324-5(h)(3), 2324-5(h)(4) (1987).

153. ILL. REV. STAT. ch. 17, para. 2324-5(h)(5) (1987). The grounds for imposing fines are: the conviction of any crime involving moral turpitude; fraud or misrepresentation in mortgage lending; a material or intentional misstatement of fact on an application; failure to follow the Commissioner's rules regarding the placement of funds in escrow; insolvency or bankruptcy proceedings; failure to deliver money that the licensee has no right to retain; failure to disburse funds in accordance with agreements; misuse of trust or escrow funds; revocation of a professional license due to fraud or dishonest dealings; failure to issue a satisfaction of mortgage loan when required; failure to comply with any order of the Commissioner; engaging in any activity regulated by the License Act without a license; failure to pay fees and fines on time; improper bookkeeping; refusal to permit an investigation provided for by the License Act; operating with a pattern of substantially underestimating closing costs; and non-compliance or violation of the License Act. ILL. REV. STAT. ch. 17, para. 2324-5(i) (1987).

B. *The Abandoned Housing Rehabilitation Act*

The Abandoned Housing Rehabilitation Act ("Housing Act")¹⁵⁴ is designed to encourage the restoration of abandoned, tax delinquent residential buildings for use as middle- and low-income rental housing. The Housing Act has two very important benefits. First, the act provides non-profit organizations with the means to obtain temporary possession of and, eventually, legal title to these properties.¹⁵⁵ Second, once an organization has petitioned the court for temporary possession, the owner must rehabilitate the property to avoid losing the property.¹⁵⁶ Each aspect results in the property being returned to the housing market.

1. Conditions Precedent

The Housing Act applies to property that is a nuisance,¹⁵⁷ has been tax delinquent for the preceding two years,¹⁵⁸ and has been unoccupied for the preceding year.¹⁵⁹ The Housing Act defines a nuisance as a building that is a public nuisance because of its physical condition or use, that constitutes a blight upon the surrounding area, or that is unfit for human habitation under applicable fire, building, and housing codes.¹⁶⁰

An organization may petition for temporary possession of a qualifying property if the organization intends to rehabilitate the property for low- and middle-income housing.¹⁶¹ To receive approval, the organization must operate on a not-for-profit basis.¹⁶² The Housing Act requires the petitioning organization to notify all parties in interest regarding the property of the organization's intent to take possession under the Housing Act.¹⁶³

154. ILL. REV. STAT. ch. 67 1/2, paras. 851-859 (1987). The Housing Act became effective on January 1, 1988. ILL. REV. STAT. ch. 67 1/2, para. 851 (1987).

155. ILL. REV. STAT. ch. 67 1/2, paras. 853, 859 (1987).

156. ILL. REV. STAT. ch. 67 1/2, para. 854 (1987).

157. ILL. REV. STAT. ch. 67 1/2, para. 853(b) (1987).

158. ILL. REV. STAT. ch. 67 1/2, para. 853(a) (1987).

159. *Id.* Occupation by persons not legally in possession of the property will not defeat this condition. *Id.*

160. ILL. REV. STAT. ch. 67 1/2, para. 852(b) (1987).

161. ILL. REV. STAT. ch. 67 1/2, para. 853(c) (1987).

162. ILL. REV. STAT. ch. 67 1/2, para. 852(c) (1987).

163. ILL. REV. STAT. ch. 67 1/2, para. 853(d) (1987). The Housing Act defines parties in interest as owners of record, judgment creditors, tax purchasers, and other parties who have any legal or equitable title or interest in the property. ILL. REV. STAT. ch. 67 1/2, para. 852(a) (1987).

2. Petition Proceedings

The owner may file a plan for rehabilitation of the property as an answer or an affirmative defense to a petition for temporary possession.¹⁶⁴ The owner then will be given ninety days to bring the property into compliance with building, fire, and housing codes.¹⁶⁵ This period may be extended upon a showing of good cause.¹⁶⁶ Moreover, if the owner brings the property within compliance, the petition will be dismissed.¹⁶⁷ However, if the owner fails to bring the property within compliance, then his affirmative defense will be stricken and a hearing will be held to evaluate the merits of the petitioner's rehabilitation plan.¹⁶⁸ At this hearing, the organization must submit its plan and present evidence of adequate resources to complete and manage the project.¹⁶⁹

3. Temporary Possession

Upon approval of the petition, the court will enter an order granting temporary possession to the organization.¹⁷⁰ This order will allow the organization to enter into leases and other agreements in relation to the property, subject to court approval.¹⁷¹ If the property is sold for unpaid taxes, the organization with temporary possession may redeem the property in the same manner as the owner.¹⁷² The organization must file a status report at least once a year disclosing all expenditures made in relation to the property.¹⁷³

4. Restoration of Possession by the Owner

At any time until five years after the entry of the order granting temporary possession, the owner may petition the court for restoration of possession. The owner must pay the organization proper compensation, as determined by the court, based upon the annual status reports.¹⁷⁴ This compensation will include management fees and will take into consideration income or receipts received by the

164. ILL. REV. STAT. ch. 67 1/2, para. 854 (1987).

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. ILL. REV. STAT. ch. 67 1/2, para. 855 (1987).

171. *Id.*

172. ILL. REV. STAT. ch. 67 1/2, para. 858 (1987).

173. ILL. REV. STAT. ch. 67 1/2, para. 856 (1987).

174. ILL. REV. STAT. ch. 67 1/2, para. 857 (1987).

organization.¹⁷⁵ Possession of the property will be restored to the owner subject to all existing leases.¹⁷⁶

5. Judicial Deed

After five years, if the owner has not taken any action to regain possession, the organization may file a petition for a judicial deed.¹⁷⁷ Upon due notice to the owner, the court may enter an order granting a quitclaim deed to the organization.¹⁷⁸ This deed is subject to the condition that the property be used for low- and middle-income housing for at least ten years after the deed is granted.¹⁷⁹

VI. CONCLUSION

During the *Survey* period, the Illinois Supreme Court addressed several significant issues. The court demonstrated its willingness to uphold very restrictive adult use zoning regulations. The court narrowed the traditional property law right to exclude others when the property in question is a portion of the bed of a private, non-navigable lake. In this particular situation, the right to exclude arises only when a neighboring lake bed owner's use of the lake unduly interferes with the owner's use of the lake. The court clarified that a tax collector may offset a property tax refund against an accrued tax liability on the same piece of property. Finally, in construing a 1903 deed, the court showed that it will look to a variety of circumstances surrounding the drafting of a deed to determine the grantor's intent.

In addition, the Illinois General Assembly passed two significant acts during the *Survey* period. The first is, in effect, a consumer protection measure. As a result of a series of scandals involving residential mortgage brokers, the legislature has stepped in to bridge a perceived regulatory gap. The second act provides non-profit organizations with a method of returning abandoned buildings to the rental market for much needed low- and middle-income housing.

175. *Id.*

176. *Id.*

177. ILL. REV. STAT. ch. 67 1/2, para. 859 (1987).

178. *Id.*

179. *Id.*

