

TITLE ISSUES

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2005 LEGISLATION: NEW LAWS AFFECTING REAL PROPERTY LAW

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In the Spring 2005 session of the 94th General Assembly, legislators considered the merits of 6,234 bills. The Governor signed 677 of these bills into law. This article will discuss new laws that affect real estate transactions and real property law. Readers may view the text of all new public acts on the General Assembly's website at www.ilga.gov.

BUSINESS ENTITIES—“SERIES LLC’S”

Public Act 94-607, effective July 1, 2005, authorizes the creation of new business entities in Illinois to be known as “series of limited liability company interests” (hereinafter referred to as “series” or “a series”). The Act adds new Section 37-40 to the Limited Liability Company Act, 805 ILCS 180/37-40, to govern the creation, operation, and liability of a series.

Under 37-40(a), a limited liability company's operating agreement may establish, or provide for the establishment of, a series having separate rights and obligations with respect to specified property. For example, assume that a group of four investors wishes to take title to ten separate apartment buildings. To keep liability separate prior to the Act, the investors had to form, register (with payment of appropriate fees), and operate ten separate limited liability companies. Under the Act, however, the investors may form one limited liability company and create a series of entities (ten in all), each of which will hold title to one specified property.

Unless restricted by the limited liability company, a series shall be treated as a separate entity. Unless so restricted, each series may, in its own name, contract, hold title to assets, grant security interests, sue and be sued, and otherwise conduct its business and exercise any powers of any limited liability company under the Limited Liability Company Act. 37-40(b).

The limited liability company's operating agreement may associate different members with each series. For example, Members A and B may be associated with series 1, 3, 5, and 7, operating those specified buildings. Meanwhile, Members C and D may be associated with series 2, 4, 6, and 8, operating those specified buildings. Members B and C may be associated with series 9, and Members A and D may be associated with series 10. In any event, the limited liability company's operating agreement may state whether a series is to be member managed or manager managed. If the operating

agreement is silent on the matter, however, a series shall be managed by the members associated with that series. 37-40(h).

Under 37-40(c), the name of a series “must contain the entire name of the limited liability company and be distinguishable from the names of the other series...” created by the same limited liability company.

The Act contains several miscellaneous matters of interest.

- A series will be deemed to be in good standing if the limited liability company is in good standing. 37-40(e).
- The registered agent and registered office in Illinois of the limited liability company will serve as the appropriate person and place for service of process in Illinois on a series. 37-40(f).
- A series may dissolve and wind up its business without any impact on the limited liability company. On the other hand, dissolution of the limited liability company shall cause the dissolution of a series and shall require it to wind up its business. 37-40(m).
- The general provisions of law applicable to a limited liability company shall also apply to a series. 37-40(j).

Finally, the heart of the Act lies in 37-40(b). This subsection provides that the debts of a particular series are enforceable against the assets of that series only and not against the assets of another series or of the limited liability company. Similarly, unless stated otherwise in the operating agreement, the debts of the limited liability company shall not be enforceable against the assets of a series. This limited liability feature is achieved if the following requirements are met:

1. The limited liability company’s operating agreement creates one or more series;
2. the series holds assets and keeps the records relating to its assets separate and distinct from the assets and records of the limited liability company or of any other series;
3. the limited liability company’s organizing documents—both the operating agreement and the articles of organization—must give notice of the limited liability of a series; and
4. the limited liability company must file a certificate of designation in the office of the Illinois Secretary of State for each series.

The certificate of designation must name the series and list the names of members in a member managed series or the names of managers in a manager managed series. Unless stated otherwise in the limited liability company’s governing documents, the life of a series begins when the Secretary of State stamps a duplicate copy of the certificate of designation as “Filed.” New certificates of designation should be filed in the event of a change in the series name, changes in members or managers, or dissolution of the series.

The Act also amends Section 50-10 of the Limited Liability Company Act, 805 ILCS 180/50-10, relating to filing fees. The cost of filing a limited liability company’s articles of organization containing notice of series formation is \$750. The fee for filing articles of

organization without notice of series formation remains at \$500. The fee for filing any certificate of designation is \$50. The fee for filing an annual report by a limited liability company with filed series is \$250 plus \$50 for each filed series. For limited liability companies without filed series, the fee remains at \$250.

COMMENT

For any real estate transaction involving a series (e.g., acquisition, mortgage, lease, or conveyance), a title insurer must consider a double layer of clearance—one layer for the limited liability company and another layer for the series. To insure title free and clear of exceptions relating to the existence and authority of a limited liability company and its series, the title insurer will review state filings for both the limited liability company and the series (especially the certificate of designation), the limited liability company's organizing documents, resolutions from both the limited liability company and the series, and evidence showing that neither the limited liability company nor the series has been dissolved.

Public Act 94-607 is similar to a Delaware statute. See Delaware Limited Liability Company Act, Sec. 18-215. For real estate transactions involving Illinois property and a series associated with a Delaware limited liability company, the title insurer will require evidence of filings with the Delaware Secretary of State. Public Act 94-607 also permits a foreign series (e.g., from Delaware) to register with the Illinois Secretary of State. Other states may permit series entities as well.

Technically, the new business entity authorized by P.A. 94-607 is a *series of limited liability company interests*. The series is not, itself, a limited liability company, although it possesses many of the characteristics of a limited liability company. Yet, commentators call these new entities "Series LLC's." See, for example, L. Hanson, What Series LLC's Can Do For You, 92 Ill. B.J. 648 (December 2004) and J. Covington, 2005 Illinois General Assembly Spring Session Roundup, 93 Ill. B.J. 394 (August 2005). This is an inaccurate but catchy phrase, and it is likely to become the norm. Similarly, talk of "parent" and "subsidiary" in referring to a limited liability company and its series is also technically inaccurate but likely to be heard.

CIVIL PROCEDURE: HOMESTEAD EXEMPTIONS

Public Act 94-293, effective January 1, 2006, amends various sections of the Code of Civil Procedure to double all homestead exemptions. Real estate practitioners and title insurance counsel should note the amendments to Section 12-901 of the Code of Civil Procedure, 735 ILCS 5/12-901. Under this section, an individual owner, lessee, or occupant has an estate of homestead in property used as his or her residence. The estate of homestead is exempted from judgment enforcement and from the conveyance laws. The Act increases the value of the homestead estate from a maximum of \$7,500 per individual to a maximum of \$15,000 per individual. For properties owned by two or more individuals, each individual owner is entitled to a homestead estate in his or her proportional share of \$30,000, increased from \$15,000.

CONDOMINIUMS

Public Act 94-386, effective July 29, 2005, adds new Section 30.5 to the Condominium Property Act, 765 ILCS 605/30.5, relating to the conversion of existing apartment buildings to condominium ownership. New Section 30.5 states that a municipality shall have the right to inspect the apartment building prior to conversion and may require that each proposed unit conform to the life safety, building, and zoning codes of the municipality.

Public Act 94-384, effective January 1, 2006, amends Section 9.2 of the Condominium Property Act, 765 ILCS 605/9.2. The Act adds new paragraph (c) to Section 9.2, limiting the types of collection fees that may be added to a delinquent unit owner's share of common expenses. Attorneys fees may be added, and management fees may also be added if the management contract specifies the fees and the fees are authorized by the declaration or by-laws. The Act amends Section 18.5 of the Condominium Property Act, 765 ILCS 605/18.5, relating to master associations, to match amended section 9.2.

Public Act 94-384 also adds new paragraph (r) to Section 18.4 of the Condominium Property Act, 765 ILCS 605/18.4(r), relating to the powers and duties of the Board of Managers. New paragraph (r) provides that for condominiums consisting of more than 8 units, the Board may accept notice of a claim under the Mechanics Lien Act, 770 ILCS 60/0.01 et seq, on behalf of all unit owners. The claims must relate to contracts let by the Board or to contracts let by the developer prior to the recordation of the declaration of condominium ownership. The Board is required to distribute any notice received from a lien claimant to all unit owners within 7 days of acceptance of the notice. If properly served on the Board, the notice shall be effective against all unit owners as if each unit owner had been served individually.

MECHANICS LIEN ACT REVISIONS

Public Act 94-627, effective January 1, 2006, has been dubbed an effort to make the Mechanics Lien Act, 770 ILCS 60/0.01 et seq., more user friendly. See J. Covington, 2005 Illinois General Assembly Spring Session Roundup, 93 Ill. B.J. 394, 396 (August 2005). The Act clarifies some provisions of the Mechanics Lien Act by breaking long, dense single-sentence sections into comprehensible paragraphs. The drafters of the Act did not intend to make substantive changes to the law. See 2005 Spring Session Ends Successfully, 19 CBA Record 32 (June/July 2005) (The Act "is a technical amendment designed to clarify and reconcile various provisions of the [Mechanics Lien] Act without making substantive change in its effect.") But see below.

The Act contains the following noteworthy general changes to the Mechanics Lien Act:

- Sections of the Mechanics Lien Act that contain a description of lienable matters have been amended to create a consistent definition. The phrase "labor, services, material, fixtures, apparatus or machinery, forms or form work" has been inserted repeatedly throughout the Mechanics Lien Act to assure consistency.
- Section headings have been added to describe the contents of each amended section.

- The phrases “or she” and “or her” are inserted wherever appropriate, and the material man is now known as the material supplier.
- References to Torrens have been eliminated.

Public Act 94-627 amends sections 1, 2, 3, 5, 7, 11, 13, 21, 21.01, 21.02, 22, 24, 25, 26, 28, 30, 32, and 35 of the Mechanics Lien Act. Practitioners who specialize in mechanics lien practice should read all of Public Act 94-627. The following analysis, however, only reviews amendments to the sections most relevant to general real estate practitioners and title insurance counsel.

Section 1: Prior to this amendment, Section 1 was a single sentence running on for more than 400 words. See R. Price, *Is the Illinois Mechanics Lien Act Unconstitutional?* 93 Ill. B.J. 298 (May 2005). Public Act 94-627 breaks this section down into three paragraphs. Paragraph (a) defines a contractor and the contractor’s lien. Paragraph (b) defines the term “to improve.” Paragraph (c) contains a technical matter relating to lien waivers.

In addition, P.A. 94-627 repeals Section 1.1 of the Mechanics Lien Act (“no-lien” agreements as a pre-condition to obtaining a contract are contrary to public policy), and moves it, verbatim, to Paragraph (d) of amended Section 1.

Section 5: Public Act 94-627 breaks this long section down into two paragraphs. Paragraph (a) contains the requirements for the contractor’s sworn statement to owner (Section 5 or GC Statement) and contains no substantive changes. Paragraph (b) relates to contract provisions and notices and makes these requirements applicable to construction projects on owner-occupied single family residences only (formerly applicable to commercial construction projects as well but thoroughly ignored). The contract must provide (or, in the alternative, the contractor must serve a notice on the owner prior to the first payment under the contract) that the contractor must furnish a Section 5 Statement prior to any payment. Further, subcontractors must furnish the owner with notice within 60 days of first furnishing labor, services, material, etc. The form, content, and mode of service remain unchanged. Other than restricting these notice requirements to owner-occupied single family residence projects, there are no substantive changes to this portion of Section 5.

Section 7: This section relates to the form and filing requirements for recorded mechanics lien claims. Public Act 94-627 amends Section 7 to clarify that the recorded lien claim need only refer to the claimant’s contract and not to the contract of any other party, especially a party in a higher tier. Also, the Section now states that if a lien claimant claims the status of a subcontractor when it is, in fact, a contractor, its lien rights will not be prejudiced. This provision is referred to below as “misdescription language.”

Section 11: Public Act 94-627 makes extensive changes to Section 11 relating to pleadings and parties in a mechanics lien claim foreclosure action. Paragraph (a) describes the contents of the complaint, clarifying that the plaintiff need only refer to its own contract (as in amended Section 7). Paragraph (b) lists “necessary parties” to a mechanics lien foreclosure action. The list includes the owner of the premises, the contractor, all possible lien claimants in higher tiers between the claimant and the

owner, all actual and possible lien claimants in any tier, and any other person with an interest in the land and against whom the claimant seeks to enforce its lien rights. Paragraph (c) invents the concept of “unknown necessary parties,” that is, necessary parties from Paragraph (b) whose lien rights are not of record as of the recording date of the lis pendens notice in the foreclosure action. This paragraph also allows for the joinder of other interested (and necessary) parties whose identities are not known as “unknown owners.” Paragraph (d) identifies permissible parties as any other person having a legal, equitable, or possessory interest in the land. Paragraph (e) requires the plaintiff to serve notice and summons on all necessary parties in the same manner as in all other civil suits. Unknown necessary parties and unknown owners may be served by publication.

Section 21: Public Act 94-627 breaks this long section (definition of subcontractor and subcontractor’s lien) down into five paragraphs. There is no substantive change.

Section 21.01: Prior to amendment, this section declared that a contractor commits fraud if it uses a lower tier waiver to obtain a final payment and then does not pay the subcontractor within 30 days. Public Act 94-627 deletes the word “final” so that the section applies to any progress payment—interim or final.

Section 24: This section relates to subcontractor’s 90-day notice to owner and lender (if the subcontractor does not appear on the contractor’s Section 5 Statement or on any other statement submitted to the owner). As amended, Paragraph (a) contains no substantive changes. Public Act 94-627 adds Paragraph (b) to incorporate the same “misdescription” language noted in Section 7.

Section 25: This section permits the recording of a Section 24 90-day notice if parties entitled to the notice cannot be found in the county in which the property is located. Paragraph (a) is amended to refer to the “owner of record” rather than the “owner.” This change is consistent with Section 24. Under Paragraph (b), recording of the 90-day notice is permissible only if the person or persons entitled to notice “cannot, upon reasonable diligence, be found or shall not reside in the county” in which the property is located. The recorded notice is effective only against those persons. In addition, if the notice otherwise complies with the requirements of Section 7, it shall also be deemed to constitute a recorded mechanics lien claim. Thus, the form of notice may not match Section 24, but it may match Section 7, thereby precluding the need for a second recording. Paragraph (c) contains the same “misdescription” provision noted in Sections 7 and 24.

Section 35: This section imposes a civil penalty on a claimant under a recorded mechanics lien claim who refuses to release the lien claim within 10 days of payment or within the time frame established by a Section 34 demand. Public Act 94-627 increases the penalty from \$25 to \$2,500 plus attorneys fees and costs of litigation.

COMMENT

The drafters of Public Act 94-627 made several changes to the language of the Mechanics Lien Act to match it with recent appellate court rulings. Perhaps inadvertently, they may have created one substantive change in Section 1 relating to

the lien rights of property managers. Paragraph (a) (definition of contractor) now reads in relevant part:

Any person who shall by any contract . . . with the owner of a lot or tract of land . . . manage a structure *under construction thereon*, is known under this Act as a contractor and has a lien . . .

The italicized words were added by P.A. 94-627. Prior to this amendment, practitioners generally agreed that any person or firm operating under a property management contract had lien rights under Section 1 without regard to whether construction was in progress. For example, a professional real estate management company operating a long-ago completed apartment building derived mechanics lien rights from its management contract. Amended Section 1, however, appears to withdraw lien rights from the person or firm managing a completed structure and grant lien rights to a person or firm acting as a construction manager during construction. Was this apparent change intentional or inadvertent? Does the phrase “under construction thereon” really modify the phrase “manage a structure,” or does it modify some other phrase? The answers to these questions are not clear. See Paragraph (b), for example. In defining the term “to improve,” the amended section includes performing “any services or incur[ring] any expense as . . . property manager . . .” In this paragraph, there is no mention of “under construction.” The amendment has thus apparently created an ambiguity that should be clarified by further amendment.

PRIVACY AND IDENTITY ISSUES

The legislature enacted several measures intended to protect individual privacy and identity. These measures include:

- **Public Act 94-36**, effective January 1, 2006, entitled Personal Information Protection Act (data collector must notify consumers in the event of a breach in the security of its data system; violations constitute an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.; see amended 815 ILCS 505/2Z)
- **Public Act 94-389**, effective January 1, 2006, entitled Consular Identification Document Act (establishes standards for state agencies accepting for identity purposes an ID card issued by a consular office of a foreign government; even though this law does not apply to private business transactions, it may offer guidance for accepting evidence of identity)

RECORDING FEES

Public Act 94- 118, effective July 5, 2005, creates a \$10 surcharge to be added to the cost of recording real estate-related documents in all Illinois counties.

The Act, known as the Rental Housing Support Program Act, is intended to create a state program “to help localities address the need for decent, affordable, permanent rental housing,” (See Section 5 of the Act entitled “Legislative findings and purpose.”) Help comes in the form of (1) subsidies to landlords to enable them to charge rent affordable for low-income tenants and (2) grants to developers for the development of

new affordable rental housing stock. Landlord subsidies will be provided through a complex system of grants administered and distributed by the combined efforts of the Illinois Housing Development Authority (IHDA), municipalities of 2 million or more inhabitants, and entities referred to as local administering agencies, which may be units of local government, local housing authorities, or qualifying non-profit organizations. Developer grants, in contrast, will be provided directly from IHDA to any developer who qualifies through IHDA's application process.

To fund this new program, the Act creates the Rental Housing Support Program Fund. And, how does money get into the Fund? From a surcharge on recordings!

The Act amends the Counties Code to provide:

The recorder shall collect a \$10 Rental Housing Support Program State surcharge for the recordation of any real estate-related document (See amended 55 ILCS 5/3-5018 and 55 ILCS 5/4-2002)

The Act defines a real estate-related document as:

any recorded document that affects an interest in real property excluding documents which solely affect or relate to an easement for water, sewer, electricity, gas, telephone or other public service. (See Section 7 of the Act.)

The Illinois Department of Revenue (IDOR) has advised all county recorders in Illinois that:

. . . [A]ll Illinois County Recorders must collect the Rental Housing Support Program [\$10.00] state surcharge for the recording of all real estate-related documents executed or signed on or after August 1, 2005. (See IDOR informational Bulletin FY2006-01.)

Thus, for documents executed or signed on or after August 1, 2005, a \$10 state surcharge will be added to the cost of recording nearly every document associated with real estate closings—documents including, but not limited to, deeds, mortgages, assignments of rents, certificates of release, releases, memoranda of leases and contracts, easement grants (other than for public utilities), subdivision plats, condominium declarations, town home declarations, and shopping center declarations. The \$10 state surcharge will also apply to documents generally recorded outside of closings—documents including, but not limited to, mechanics lien claims, commercial real estate broker liens, other adverse liens, and lis pendens notices.

As noted above, the \$10 state surcharge does not apply to documents solely relating to public utility easements. The Act also provides that the recorder shall not collect the \$10 state surcharge from any state agency, unit of local government, or school district.

From each \$10 state surcharge collected, the recorder must transfer \$9 to IDOR for deposit in the Rental Housing Support Program Fund. The recorder must transfer the remaining \$1 to the county's general fund. Half of that dollar may be used by the

recorder to defray the cost of collecting the state surcharge or any other lawful expense of the recorder.

COMMENT

Practitioners, title insurers, lenders, and anyone else involved in real estate closings must adjust procedures to include the \$10 state surcharge in the cost of recording each and every document (subject to the limited exceptions noted above) executed or signed on or after August 1, 2005.

I include plats of subdivision as documents incurring the \$10 state surcharge. Yet, plats frequently depict easements for public utilities. Nonetheless, the easement is created, technically, only when the subdivider first conveys a portion of the subdivided land. Because neither the plat nor the deed “solely” affect public utilities, each should incur the \$10 state surcharge.

Is a memorandum of judgment a “real estate-related document?” When a judgment creditor records a memorandum of judgment, the recorder may not know whether an interest in real property has been affected. After all, the judgment debtor may not own any real property in the county. Will recorders collect the \$10 state surcharge for recorded memoranda of judgments? The answer to this question may vary from county to county.

Will real estate-related documents without a legal description incur the \$10 state surcharge? The answer to this question may vary from county to county.

One wonders how eagerly landlords and developers will seek subsidies and grants from the Rental Housing Support Program Fund. The size of the subsidies and grants (the difference between fair market rent and an agreed amount of rent to be paid by the low-income tenant) may not be sufficient to outweigh the inconveniences, red tape, and “strings” attached to the Program. See Section 25 of the Act.

TAXATION

Public Act 94-380, effective July 29, 2005, amends the “Take Notice” forms for tax deed proceedings. Under Section 22-5 of the Property Tax Code, 35 ILCS 200/22-5, within the first four months and fifteen days from the date of tax sale, the tax purchaser must deliver to the county clerk a notice to be sent to the person who appears on the warrant books as the tax assessee. The county clerk must send the notice by registered or certified mail to the last assessee. The form of notice is set out in the section, and it advises the recipient of the tax sale and of the last day on which redemption may be made. Under Section 22-10 of the Property Tax Code, 35 ILCS 200/22-10, within three to five months before the end of the tax sale redemption period, the tax purchaser must deliver to the circuit court clerk and the sheriff another “take notice” form. The circuit court clerk must send the notice by registered or certified mail to owners and occupants of the subject property. The sheriff must serve the notice in the various modes described in the section on owners, occupants, and interested parties. The form of notice is set out in the section, and it advises the recipient of the

tax sale, of a pending petition for tax deed, and of the last day on which redemption may be made.

Public Act 94-380 amends the form of each “take notice.” Each “take notice” contains the phrase, “For further information contact the County Clerk.” The Act now requires the tax purchaser to add an address and telephone number for the county clerk.

Public Act 94-50, effective January 1, 2006, amends the Mortgage Escrow Account Act, 765 ILCS 910/1 et seq., to require notice to borrowers of tax payments from a tax escrow. The Act adds new section 15 to the Mortgage Escrow Account Act, 765 ILCS 910/15, to require that when any mortgage lender pays real estate taxes from an escrow account, it must give the borrower written notice within 45 business days of the following: (1) the date of tax payment, (2) the amount of tax payment, (3) the permanent index number on which the taxes were paid, (4) the mortgage account number, and (5) the property address or other description used for tax purposes. This notice may be sent by itself or included with other documents, notices, or statements provided to the borrower. The lender may deliver, mail, or e-mail the notice to the borrower. As an alternative, the lender may establish a means by which the borrower may access tax payment information by telephone or via the internet.

The Act also expands the definition of a “mortgage lender.” In addition to the usual lending institutions, such as banks and savings and loan associations, the term “mortgage lender” now includes savings banks, credit unions, mortgage bankers, mortgage servicers, and the successors in interest of the foregoing. See amended 765 ILCS 910/2 (adding the institutions noted above and deleting building and loan associations).

Public Act 94-489, effective August 8, 2005, amends Section 31-25 of the Property Tax Code, 35 ILCS 200/31-25, relating to the contents of the State of Illinois transfer tax declaration form. The Act requires that the state transfer tax declaration form must include a disclosure as to whether the property has received the benefit of any homestead exemption from real estate taxes, as reflected on the most recent annual tax bill.

The parties to a residential real estate transaction must now disclose whether the most recent annual tax bill contained any of the following exemptions: (1) senior citizens homestead exemption, 35 ILCS 200/15-170; (2) senior citizens assessment freeze homestead exemption, 35 ILCS 200/15-172; (3) general homestead exemption, 35 ILCS 200/15-175; or (4) alternative general homestead exemption (commonly referred to as “the 7 per cent solution”), 35 ILCS 200/15-176.

The Illinois Department of Revenue must amend the State of Illinois transfer tax declaration form (PTAX 203) to add this new disclosure requirement. At this writing, the Department has not yet published a revised form. The Department has advised, however, that in the absence of a revised form, parties to a residential real estate closing may use line 10p (“Other”) to make any required disclosure of homestead exemptions.

VACATED HIGHWAYS

Section 9-127 of the Illinois Highway Code, 605 ILCS 5/9-127, establishes the general rule for the devolution of title to property on the vacation of a highway. The section states that, unless the dedication document provides otherwise, title to land located within a vacated highway vests in the owners, at the time of vacation, of the land abutting the vacated highway. Like many rules, Section 9-127 contains several exceptions. These exceptions, however, relate to highways created by so-called “statutory plats” as opposed to “common law plats.” A plat of subdivision is a statutory plat if the plat was prepared, executed, and recorded in full compliance with the Plat Act, 765 ILCS 205/0.01 et seq., as the provisions of the Plat Act read at the time of recordation. Title companies generally treat all plats of subdivision as common law plats, unless a court has declared the plat to be a statutory plat.

If the highway was established by a statutory plat, then title, upon vacation, vests in the highway authority that exercised jurisdiction over that highway. Section 9-127 permits the highway authority to then dispose of the land by any of the following means:

- Convey the highway authority’s interest in the land to a property owners association in the subdivision that petitioned for the vacation and undertakes to develop the land for the use and benefit of the public
- Convey the highway authority’s interest in the land to a township road district that petitioned for the vacation and undertakes to develop the land as a bike path or alley for the use and benefit of the public

Public Act 94-476, effective August 4, 2005, adds a third exception to Section 9-127. Under the new exception, if the highway was established by a statutory plat (or if the highway authority otherwise obtains fee title after vacation), then the highway authority may convey its interest in the land to a any third party at fair market value, provided the highway authority has also granted a right of first refusal, at fair market value, to the landowners adjoining the vacated highway. To insure any third party purchaser, title companies will require a release or waiver of the right of first refusal.

COMMENT

The rule and exceptions contained in amended Section 9-127 relate to highways under the jurisdiction of the State of Illinois or any other highway authority other than a municipality. Municipal authority to vacate streets and alleys is governed by the provisions of the Municipal Code. See 65 ILCS 5/11-91-1 et seq. See also, M. Roth and D. Karlen, *Vacating Streets and Alleys Under 65 ILCS 5/11-91-1*, Title Issues, Vol. 10, No. 1 (June 2001).