



KEOUGH
MOODY

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Newsletter

As we commence the last quarter of the year, we reflect upon the accomplishments achieved earlier in the year and look forward to the challenges ahead. Before new legislation takes effect in January, 2018 with which many of us will have to adjust, we offer two articles with ideas about how boards may act within their own power to improve their communities.



Thank you again for your suggestions and ideas, and for the opportunity to provide you with our perspective on community association governance.

Chuck Keough

START PLANNING NOW TO MAKE 2018 A BETTER YEAR FOR YOUR COMMUNITY ASSOCIATION

This is the time of year when community association managers and board members are busy working on next year's budget. Decisions need to be made as to whether assessments should increase and whether the roof will finally be replaced. In addition, now is the time when all are considering whether they are getting the most for the association's money from the current association vendors. Yet, now is also the time to think about how to make 2018 BETTER for the association. Members of the Board should be working together and with their community association managers, and even legal counsel, on what should be done in 2018 to make this volunteer job more productive for members of the board. After all, the beginning of a new calendar year is a time when people's attitudes are positive and tend to be more open to change.

The most important decision to be made by the members of the board is to recommit to working together and in the best interest of the Association. The Board needs to reaffirm the decision to act like a board, by majority approval, not a dictatorship governed by a select few. No member of the board has any more or greater authority than another member of the board. The vote of an officer carries the same weight as a board member at large. Bottom line is majority rules. The members of the board will not agree on all issues. However, they can agree that when they disagree, they will not undermine the opinion of each board member or the action approved by the members of the board. This sounds very simple, but it can be tempting to say "I voted against this decision" or "I did not vote in favor so I will not do anything to help accomplish this goal." It is also just as tempting to ignore the opinions of those who voted against a decision approved by the majority. Members of the board cannot cave into these temptations as this will only lead to division within the board, which adversely affects the association. How does the board recommit to work together?

First, the board adopts a policy related to communication. This policy should address how the board will communicate with the Owners. The members of the board should resolve not to have one on one

conversations with Owners. The board should address the use of electronic mail and limit the use of it to transmit information only. It should also address communication on behalf of the association with third parties. That is, certain members of the Board should be appointed to work with certain vendors, i.e., management, landscapers, accountant, etc. Finally, the members of the Board should adopt a policy which reiterates that each member of the Board agrees to refrain from using offensive language, to be respectful to one another and to act in a professional manner when communicating. Remember, being disrespectful and belittling one another in a board meeting is only discouraging Owners from being members of the board. The Golden Rule needs to be followed: treat others as you would like to be treated. If disrespect is not tolerated from the beginning, it will have no home within your association.

Second, the board needs to delegate authority. This delegation of authority needs to be spread out among the members of the board and should not be in the hands of a select few. After all, if authority is only delegated to a few, those few will appear and perhaps even start to act as if they are in charge. We want to foster a community that is managed by a group of persons, not a select few. So every member of the board has to carry his or her weight. Delegating authority does not mean that the board is giving up authority. To the contrary, when authority is delegated a person is placed in a box with limited authority and responsibilities. However, by being in this box, the member of the board takes ownership of a project and typically allows decisions and progress to be made in between board meetings.

Along these same lines, the board needs to let the association's hired experts do their job. If you are paying a professional management company to manage your association, let it manage. Micro-managing the management company leads to more frustration for the board and typically prevents the management company from being truly effective. The association and the members of the board should benefit from the experience and knowledge of the management company. In addition, the association should get the most bang for its buck. A balance of authority within the association sends the message to the Owners that being on the board is not a full time job and it encourages others to run for the board.

Fourth, the members of the board should adopt a policy to ensure meetings of the board are productive. How can this be done?

1. Designate who will work with management or take the lead on the board to create the agenda for the meeting.
2. Adopt a procedure that allows all of the board members to voice their comments related to the proposed agenda.
3. Adopt a procedure as to how the meeting will move ahead, i.e., time limits, who shall decide if a matter is not ready to be presented to vote, how to prevent arguments or unproductive discussions during the meeting.

Finally, now is the time of year for the Board as a whole to discuss each board member's goal for 2018. Hear each other out and listen as to what each of you hope to accomplish during 2018 and formulate a plan that tries to accomplish these goals, if the majority agrees. Take the personal side out of it and focus on the goal. Every person on the board is on the board for a specific reason. Whether you each agree with the reason for the other person's involvement is irrelevant. Yet, what is relevant is making your community one which strives to be better. A board that works together gets things done. A board that gets things done is running a corporation that is a community association where people want to live. Just like at home, the board sets the tone for the community. Make 2018 the year that all everyone in your community can talk about is how well it is managed!

To hear and learn more tips on making 2018 a better year for what can be a thankless job, please attend Keough & Moody's in-house seminar on November 2, 2017 entitled "2018: The Year of Less Frustration and More Accomplishments for your Board." Stay tuned for more details.

SHOULD BOARD MEMBERS SIGN AN OATH OF OFFICE?

Some boards require every member of the board to sign an oath of office. The oath of office may contain the following terms:

1. Affirmation that the member will come to board meetings prepared
2. Affirmation that the member will cooperate and work with his/her fellow board members
3. Affirmation that the member will not speak to Owners about association business outside of the presence of the Board
4. Affirmation that all decisions will be based on the best interest of the association only and that

- the member will not put his personal interest ahead of that of the association
5. Affirmation that the member will support and not undermine the decisions of the majority of the board
 6. Affirmation that the member will protect confidential and sensitive information of the association
 7. Affirmation that the member will abide by the terms of the association's community instruments

Should the execution of such an oath be required? The advantage to requiring such a document to be signed is that it causes a member of the board to think about the commitment he/she is about to make to be certain he/she is committed. Many board members also take the oath very seriously and do not want to be in breach. Hence, they fully comply with the commitment. Requiring an oath can also make it easier to obtain Owner approval in removing a board member who is not in compliance with the oath and is not committed to being a board member.

But what happens if a board member refuses to sign this oath? Can he/she be prevented from sitting on the board if the declaration or bylaws do not require such an oath to be executed? Does the execution of such an oath create a requirement that violates the terms of the Illinois Condominium Property Act? If a member who signed the oath breaches, will the association sue the board member? Finally, and most importantly, will the execution of an oath really promote honesty and compliance with the oath? Unfortunately, it likely will not. Many professionals who are licensed by a state agency still violate the law or break the rules. Similarly, many persons who take an oath of office still violate the oath. Requiring an oath to be signed may intimidate a volunteer board member. After all, boards often make innocent mistakes where an oath may create such fear for a board member that in that situation, they will be sued. It may also become a tool that is abused by the heavy-handed board member who threatens litigation against the board member who disagrees with him/her.

There is no one answer to whether board members should be required to execute an oath. The disadvantage of requiring such a document to be executed is what is the board really going to do if a member fails to comply with the oath? In other words, is the board really going to sue a board member for breach of contract? Even without the requirement to execute such an oath, under Illinois law the board members' fiduciary duty requires them to do all that is stated within the oath. Perhaps the better solution is to ensure that each board member understands what his/her true obligations are to the Association. The beginning of each calendar year is the time to ensure all members have this understanding.

If you have any questions about the articles in this newsletter please contact Gabriella Comstock at grc@kmlegal.com or Dawn Moody at d1m@kmlegal.com.

Please also be sure to stop and see us at the upcoming ACTHA Fall Conference on October 14, 2017.

For more information, please visit <https://www.actha.org/Expos-Conferences>.



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