



KEOUGH MOODY

June
2018
Newsletter

SUMMER IS HERE!

Finally! Like most people in the Chicagoland area, we at Keough & Moody are very excited for the arrival of warm weather and for the recent changes at our firm. As recently announced, Dawn and I welcomed David Hartwell and his team to our firm.

David and his team bring an abundance of experience to our practice. Over the years, Dawn, Gabby and I have enjoyed getting to know David better. We all believe that his philosophy and style of practicing law will complement that of our firm. We look forward to introducing David to our clients and partners and giving them the opportunity to become acquainted with him. We are confident that your expectations of Keough & Moody will not change. Dawn will continue to oversee our collections while Gabby and I will continue to oversee the non-collection work.



We look forward to an exciting second half of 2018! We are very grateful to have the continued support of all of the attorneys and paralegals in our office. Most of all, we thank all of you for your continued support. Enjoy the start of summer!

Chuck Keough

THE NEED FOR AN OPPORTUNITY TO BE HEARD: A REQUIREMENT TO PROPERLY ASSESS FINES

It is common that when a Unit Owner in a common interest community association violates the association's governing documents a fine is assessed to the owner's account. Unfortunately, what is also common, is that the procedure followed by the association is not correct. Before sending a violation notice and/or assessing a fine, the Board of Directors and its managing agent must review the association's governing documents to see what procedure has been adopted by the Board of Directors. This procedure is typically in the rules and regulations for the association.

In order to properly collect the fines, the Board of Directors must be sure that the following steps were followed:

1. A complaint was submitted alleging a violation of the association's documents, or during a walk through, the community association manager or board member noted a violation. The complaint should contain specific facts as to what happened, when and by whom.
2. Notice should be sent to the Owner identifying the alleged violation. It is important that the notice is sent to the Owner and not just the occupant or tenant.

The notice should also state what provision within the association's governing documents was violated.

3. If this is the Owner's first violation, the notice should advise the Owner that if he/she disputes the alleged violation, the Owner has the opportunity to attend a hearing with the Board. The Owner should be advised that the purpose of the hearing is for the Owner to explain why he/she should not be held in violation of the governing documents.
4. The Owner should be advised what will happen if the violation continues. If a fine will be imposed, the Board of Directors must be certain that the fine imposed is in an amount consistent with the Association's governing documents.

A fine should not be imposed against an Owner's account until the Owner has been given the opportunity to attend a hearing with the Board and the Board has determined a violation has occurred. While the opportunity to be heard only has to be given the first time a violation has occurred, if an Owner does not request the hearing until receipt of a second notice of a violation, the Board of Directors should still proceed with granting the request for a hearing. An association never wants to be in a position where an Owner stands before a judge and says "I asked for a hearing and the Board said no." This should not be surprising to hear based on recent case law related to community associations that judges want to hear an Owner was afforded every opportunity to explain himself/herself.

Further, recent legislation was proposed that would require an association to give an Owner an opportunity to be heard before proceedings to collect unpaid assessments are commenced. It has been suggested that this legislation should be revised to address only unpaid fines.

Board of Directors are encouraged to review the association's violation procedures. The procedure is one that should be within the association's rules and regulations. Amendments to the rules and regulations can be adopted by a board vote, after the Owners have been given the opportunity to review the proposed rules and regulations and voice their opinions. The fine schedule adopted by the Board of Directors, like all rules, must be reasonable, to be enforceable. Finally, it is recommended that legal counsel review the association's violation procedures before the procedure is adopted or amended. This again ensures enforceability.

If you have any questions about your association's procedure or would like Keough & Moody to review the current procedure for your association, please contact Gabriella Comstock at grc@kmllegal.com or (630)369-2700.



We are proud to announce that Keough & Moody, P.C. has been honored with receiving the Business Partner of Excellence Award from the Illinois Community Associations Institute (CAI-IL). The credentials associated with this award carry the highest standards for business partners in the community association industry and our law firm stands alone as only one of five CAI business partners to receive this recognition. This award of distinction confirms Keough & Moody's dedication to the industry and those it serves. We will continue to offer this same level of excellence to our community association clients in the areas of community association law, real estate law, corporate/transactional law, and litigation.

Chicago
312-899-9989
info@kmlegal.com

Naperville
630-369-2700
www.kmlegal.com

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