



KEOUGH
MOODY

January
2018
Newsletter

Happy 2018!

I hope that everyone had a great holiday season and that 2018 finds you well! The firm is looking forward to an exciting year as we continue helping our clients govern their communities. In that regard, we expect to assist our clients in navigating the recent changes to the Illinois Condominium Property Act, such as those related to Section 19 governing what records an association is required to maintain and make available. Further, we continue to work to help our clients with recovering unpaid amounts from current and former owners, as noted in the article below related to collection of personal judgments.



The attorneys at Keough and Moody will continue to provide educational opportunities for our clients and community association managers. In the upcoming weeks, we will be announcing additional seminars for February and March, 2018 related to handling insurable losses as well as collection of personal judgments. In addition, Gabriella Comstock will be speaking at the CAI-Illinois Conference and Expo on February 23, 2018, with Asa Sherwood of FirstService Residential and Jessica Towles of Lieberman Management Services, Inc. on effective communication. In addition to our in-house seminars, we are also available to provide private training or seminars to your managers or Board members. Please contact me at cmk@kmlegal.com or 630-369-2700 x 211 if you are interested in such a seminar or private training.

Thank you to all of our clients, managers, and friends who helped make 2017 a great year. We look forward to continuing to work with you in 2018 and the years to come!

Chuck Keough

IS YOUR ASSOCIATION LEAVING MONEY ON THE TABLE?

Assessments are the lifeblood of an association. Without assessment income, associations would be unable to perform their contractual obligations to maintain, repair, and replace the common elements. It is generally common knowledge that associations collect unpaid assessments through a forcible entry and detainer action, or what is now known as an eviction action. By and through this eviction action, an association, after appropriate notices and continued non-payment, obtains an order of possession for the unit. If the owner does not pay as required by the court order, the association may evict the owner and lease out the unit to recover past due amounts. More times than not, the owner pays his or her account in full in response to the threat of eviction.

With that said, there are times when the threat of eviction or eviction itself does not make the Association whole. This is generally due to a foreclosure action. In the event that the association is not made whole through the pursuit of eviction, or from a third party purchaser following a foreclosure sale, the association often has another option. As part and parcel of the eviction action, a personal judgment for unpaid assessments, attorney's fees and costs may also be entered. That personal judgment survives any foreclosure action and remains valid, without further action, for a period of seven (7) years. Thereinafter, the judgment may be revived by further action.

The personal judgment is a snapshot of the amount due and owing to the association as of a certain date. Assuming the debt has not been discharged in a bankruptcy proceeding, the association may initiate a supplemental proceeding (post-judgment) to collect the amount of the judgment, plus statutory interest (currently 9% per annum), and costs. Supplemental proceedings include garnishment actions, which the association may pursue if it knows where the judgment debtor works or banks or a citation to discover assets, which the association may pursue to ascertain employment and financial information.

In the course of conducting annual bad debt write-offs, associations should be reviewing the accounts of prior owners with their attorneys to determine whether additional action can be taken to collect any additional amounts or whether those amounts should be written off. Based upon information obtained from the attorney's file and public records, the attorney can make a recommendation to the association as to whether it makes financial sense to pursue further collection of these accounts. Based upon our experience, these actions are generally successful if certain conditions are met. For example, if the former owner can be located within the State of Illinois so that service can be made upon him or her, and if the former owner is of employable age, we will generally recommend pursuit of the personal judgment. This pursuit can be done with our office on either a fixed fee or contingency fee basis, depending on the association's needs. If successful, this would result in additional funds in the association's coffers and if done on a contingency fee basis, with minimal cost to the Association.

If you are interested in further discussing whether supplemental (or post-judgment) proceedings are a viable remedy for your association and available fee structures, please contact Dawn Moody at d1m@kmlegal.com or Chuck Keough at cmk@kmlegal.com. In addition, stay tuned for our March, 2018 seminar on this topic!

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