



**KEOUGH**  
MOODY

October  
2018  
Newsletter

We know most of you are busy planning for next year. It is a time when Boards are thinking about the projects to be completed next year and determining how to pay for them. Yet, this is also a good time to review the Association's policies and procedures and decide what should be changed. It is a good time to reflect on what worked well for the Association. If your association is professionally managed, I recommend you discuss this with your community association manager. Please feel free to call our office to hear if we have any recommendations specific to your association. We also want to remind all associations to be sure that they adopt an "Association Complaint Procedure" pursuant to the Illinois Condominium & Common Interest Community Ombudsperson Act, by December 31, 2018. Please see below about what is required.



As always, we appreciate your support and if we can be of assistance please do not hesitate to call me.

Chuck Keough

## **DOES YOUR ASSOCIATION HAVE A WRITTEN DISPUTE RESOLUTION PROCEDURE?**

The Condominium and Common Interest Community Ombudsperson Act ("Act") went into effect on July 1, 2016. The Act applies to all Illinois condominium associations that are governed by the Illinois Condominium Property Act and common interest community associations bound by the Common Interest Community Association Act. The Act requires those associations bound by the terms of the Act to adopt a written policy to resolve complaints by unit owners no later than January 1, 2019.

Please be sure your association complies with this deadline. Our office can assist in drafting the policy for a flat fee. Please contact Chuck Keough at (630)369-2700 x 211 or at [cmk@kmlegal.com](mailto:cmk@kmlegal.com) for a proposal or any questions.

## **WHAT TO DO IF AN OWNER IS OPERATING A BUSINESS WITHIN A RESIDENTIAL UNIT**

Most, if not all, declarations for associations contain a restrictive covenant which prohibits an owner from conducting industry, trade, business or professional services from his/her unit. The reasons for this prohibition are numerous. First, a condominium association is deemed to be private property, as opposed to public or business property, which means in part that the property is not subject to the laws of the Americans With Disabilities Act and other federal, state or local

laws governing property open and accessible to the general public. Second, security of the property and residents is a significant concern insofar as properties (especially ones without onsite door personnel, security or management) cannot control nor are aware of persons accessing the property. Third, units within associations are intended for residential use only, and the operation of a business from a unit is inconsistent with such use.

The issues regarding business operation are becoming ever more complicated to ascertain and Boards struggle with the application of this restriction. Units operating as businesses which involve non-residents accessing the property and unit(s) on a frequent basis are typically easily identified, as they have a regular stream of clientele and the type of business which require consistent pickup and delivery services. Such businesses may include vacation rental and hotel services, off street stores, therapy and legal services. However, what happens when the unit is used merely as an office where business is being conducted through technology such as computers, telephones and facsimile machines? Should the Board seek to prevent such a business from being operated within a unit? As much as 40% of today's workforce works from home at least one day per week. Would this conduct violate the restriction? Likely not.

When a board of directors reasonably believes an owner is conducting business from a unit, it needs to address it, so as to avoid waiving enforcement of the restriction. Typically, boards start by issuing rule violations. Usually owners are well aware that they are violating the declaration and after being caught cease further operation. But what happens when an owner denies such activity or claims that the alleged conduct is merely incidental to their business located off the property? In order for boards to determine whether or not business is being conducted from a unit, they should seek to answer a number of different questions including: Does the owner reside in the unit? Are non-residents accessing the unit on a frequent basis? Are commercial delivery services incidental to a business operation accessing the property? Does it appear that employees are accessing the unit on a daily basis?

A board of directors should make a thorough inquiry and investigate beyond a single allegation. Methods for a comprehensive investigation include use of the internet (i.e. Airbnb rentals or listing of a unit as a business address), interviewing surrounding owners and use of a private investigative service. If the owner continues to deny such activity is occurring and/or will not cease conducting such business, the Board may have to resort to legal action and obtain a court order so as to further prevent this conduct, i.e. an injunction.

Boards of directors should address allegations of business activity seriously and address such conduct consistent with all remedies provided in the declaration, rules & regulations and at law. Boards should review their procedures and protocols for investigating business activity; and boards should review their rules to determine if additional rules should be adopted to strengthen a board's right of recourse to address business activity. With the proliferation of vacation rentals, many boards have revised and added to their rules and amended their declarations to address the activity; and boards should also keep in mind that numerous other types of businesses can also be conducted from a unit.

If you have any questions as to whether your association's governing documents are sufficient to prevent such conduct, please contact our office.

**Chicago**  
**312-899-9989**  
**[info@kmlegal.com](mailto:info@kmlegal.com)**

**Naperville**  
**630-369-2700**  
**[www.kmlegal.com](http://www.kmlegal.com)**

STAY CONNECTED

