



KEOUGH MOODY

February
2019
Newsletter

Good news! Punxsutawney Phil did not see his shadow last weekend! This means we are in for an early spring. This is hard to believe since we just endured, snowfall, fifty below temperatures, and an ice storm. While kids loved the time off from school, the aftermath from the warmer temperatures have caused havoc on most associations. We hope you all are now past the lovely effects of winter in Chicago. Let's hope that Punxsutawney Phil was right!



A few weeks ago, several attorneys from our office attended CAI's 2019 Law Seminar in New Orleans. Gabby Comstock is a member of the planning committee for this event. We always look forward to learning more about the national trends related to community associations. The following is a brief summary of what we learned.

As always, if you have any questions about the contents of this newsletter or if there is anything we can do for your association or management company, please do not hesitate to contact me at cmk@kmlegal.com or (630)369-2700 x 211.

Chuck Keough

ARE ILLINOIS COMMUNITY ASSOCIATIONS EXPERIENCING SIMILAR ISSUES AS OTHER COMMUNITY ASSOCIATIONS ACROSS THE NATION?

Quite simply, the answer is yes. At the CAI Law Seminar, the presenters hail from all across the country. The topics ranged from what additional service we can provide our clients to what additional advice we can provide our client associations in order to help them avoid common mistakes. A common theme in most presentations was that Board of Directors must continue to refrain from acting in a heavy-handed manner and work with Owners as much as possible before pursuing litigation.

To counter such conduct by Boards, some states have adopted laws that set limits or caps on fines that can be assessed by an association. Illinois has not, and instead has adopted the treatment of fines as stated within the Uniform Common Interest Ownership Act ("UCIOA"). Under UCIOA, a Board of Directors shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from members for violations of an association's governing documents. What is "reasonable" is determined on a case-by-case basis, which shall take into consideration the nature and severity of the violation, the amount of the fine relative to the harm caused, and other relevant factors determined by a fact finder. Unfortunately, the presenters highlighted an Illinois case, *The Midwest Club, Inc. v. Ahmed, et al.*, to demonstrate that the Board of Directors' failure to provide the Owner with an opportunity to be heard before he was fined, prevented the association from collecting any of the fines imposed. It should be noted that this failure to give the Owner an opportunity to be heard also prevented the association from collecting any of the attorney's fees incurred to collect the fines.

Since disputes within community associations are on the rise all around the country, we were reminded that the best practice for community associations is to try and settle disputes early on. We were provided with helpful tips on how to achieve a favorable resolution for associations. These include: setting realistic goals; listen/speak to the Owner with respect; focus on the present; and (my personal favorite) remember you all have to live in the same community when this matter is done. These tips are obvious but easily forgotten when one is in the midst of a dispute related to his/her home. We also want to remember not to do the following: fail to compromise; lose perspective; or lose your temper. When trying to resolve a matter, we need to always remember this may be our last chance to control the outcome of this dispute. Trying to resolve such disputes is likely in the best interest of the association and ensures that members of an Illinois Board of Directors meets his/her fiduciary obligations to the owners within the association.

Fair Housing issues remain a hot topic. However, in 2019, it is expected that we will see more issues arising related to religious practices within community associations. We were reminded that a Board's decision to limit one's religious practices may give rise to a claim for religious discrimination. It may also raise questions related to free speech. It was interesting to learn more about the requirements of the Fair Housing Act related to an owner's use of community facilities to have a religious gathering and whether religious worship within a Unit is a violation of an association's community instruments. We can also expect to see more requests for accommodation for religious practices. It was a reminder that all requests for accommodations should be taken seriously and considered by the Board of Directors, with the guidance of legal counsel.

Lastly, while covenant enforcement is nothing new to community associations, there are new challenges to Boards who are seeking enforcement in our technologically advanced society. Most association community instruments are not drafted to address this technological advancement. Hence, we are relying on very old documents that can be very arduous to amend. This does not mean that Boards should throw in the towel and not enforce such violations. Instead, we may need to look outside of the box and rely on terms such as "nuisance", "right to quiet enjoyment", and "no trespassing", to counter these new issues. Again, Boards must be sure not to overreach and deny owners with the opportunity to be heard.

The need to act in a fair and reasonable manner by a Board of Directors is best put in motion through the adoption of Rules and Regulations. The beginning of the year is a good time for Boards to have their rules and regulations, specially the enforcement provisions, reviewed. If you would like our office to review your association's rules and regulations or if you have enforcement questions, please contact Gabby Comstock at grc@kmlegal.com or (630)369-2700 x209.

ARE YOU A MEMBER OF A BOARD OF DIRECTORS WHO WANTS TO LEARN MORE ABOUT YOUR ROLE AS A DIRECTOR?

If so, we encourage you to contact our office and schedule a one (1) hour board member training session at your property. During this session, your Board of Directors, and if you are professionally managed we recommend your community association manager attend, will meet with one of our seasoned attorneys to go over basic procedures, protocols, and mistakes to avoid. We will also address specific questions related to your association and make recommendations as to policies the Board of Directors can adopt to help the community as a whole. Our fee to participate in this session is \$350.00. If you believe more than one (1) hour is needed, please let us know.

To schedule this session at a mutually convenient time, please contact Maggie Quaranto at mcq@kmlegal.com or (630)369-2700 x 220.

REMINDER - Don't forget to stop by and see us at the Illinois Community Association Institute Conference & Expo at the Donald E. Stephens Convention Center on Friday, February 22nd and Saturday, February 23, 2019.

In addition, Attorney Gabriella R. Comstock will be presenting at 1:00 p.m. on February 22nd, at the education seminar entitled, "*It's Not What You Say but How You Say It*", *Effective Communication and Emotional Intelligence* . Please note

that this presentation is for managers only.



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