



KEOUGH
MOODY

March
2019
Newsletter

As we prepare to come out of hibernation, now is a good time for community associations to be thinking about how to complete their "to do" list. Make sure all contracts are in order and vendors are lined up to complete Spring/Summer projects. Good planning at the front end can help a project move along smoothly. Use the month of March to outline your timeline and get all in order. We are also approaching the time of year when people think about moving or making alterations to their homes.



For this reason, we thought it was timely to include an article about disclosure requirements to prospective purchasers. We also recommend that the Rules and Regulations for Associations be reviewed to confirm the process for move ins/move outs is addressed. Likewise, any rules related to the additions or alterations to a Unit, including the architectural review process, should be reviewed. If you would like our office to review your association's rules for a flat fee, please contact our office.

Finally, we are always interested in hearing from you and what you want to learn more about either in our newsletter or at our seminars. Please share your ideas by contacting me at cmk@kmlegal.com or (630)369-2700 x 211.

Chuck Keough

UNDERSTANDING THE REQUIREMENTS OF SECTION 22.1 OF THE ILLINOIS CONDOMINIUM PROPERTY ACT

(Please note that the following article only applies to condominium associations)

Obligations under Section 22.1 of the Illinois Condominium Property Act arise when an owner, other than the developer, is selling the condominium unit and a prospective purchaser demands information and documents pursuant to the sale. While Section 22.1 imposes the duty on the seller, the Owner of the Unit must obtain the information from the Association, through its Board of Directors. The information and documents to which a prospective purchaser is entitled are detailed in Section 22.1 and include items such as governing documents and financial documents for the association and insurance information. No doubt many Boards and community association managers are familiar with these general requirements and most, properly respond to Section 22.1 requests. However, the following serves as a reminder of the technical requirements and also summarizes common pitfalls to avoid in the 22.1 process.

The board member or manager designated to respond to Section 22.1 requests shall - within 30 (thirty) days - furnish the requested information in writing. While the statute allows 30 (thirty) days to respond, it is not uncommon for parties to the sale (and agents, attorneys and lenders) to request a shorter timeline. While nothing in Section 22.1 requires an expedited response, there is no harm in accommodating such requests to the extent practical, provided the response will be accurate and complete, in order to facilitate sales within the association. A reasonable fee covering the direct out of pocket costs of providing the information and copying may be charged by the Association to the selling owner. It should be noted that most management agreements

contain specific terms related to the cost to have the managing agent involved in this process. Associations should review the procedures they have in place to respond to Section 22.1 requests to ensure that they are streamlined and efficient. This will ensure that responses are issued on a timely basis, and that costs charged are "reasonable."

The purpose of Section 22.1 is to inform prospective purchasers of the covenants, operations and financial status of the association they are considering buying into, as well as any delinquency status of the unit they are considering purchasing. Purchasers, therefore, will at least partially base their decision whether to buy on the information provided. Hence, it is extremely important that the information provided be complete and accurate. If incomplete, false, or misleading information is provided, it may lead to "detrimental reliance" by the prospective purchaser. Further, this could result in a claim against the association and /or managing agent, if the purchaser's expectations about the state of the association or unit are not met after purchase. In the face of a Section 22.1 request, the association shall provide objective, truthful information, and not put a twist on things to assist a unit seller or help facilitate the sale.

It is also important for the association to be sure that the 22.1 is regularly reviewed and revised as needed. A common mistake is the failure to fully disclose anticipated capital expenditures within the current or succeeding two fiscal years. This includes expenditures being contemplated. Please note that the statute does not say approved expenditures. Instead, it states **anticipated**. Hence, if a Board of Directors is still considering a project but it has not decided whether to proceed, the 22.1 will need to reflect this possible expenditure. It is best to err on the side of caution. After all, failure to properly disclose an anticipated expenditure may affect the association's ability to collect a special assessment for the expenditure once approved by the Board of Directors.

Another common mistake is the failure to fully disclose any pending suits or judgments in which the association is a party. This includes all matters filed in the Circuit Court or District Court, even if the association's insurance carrier is tendering the defense. It may also include Workers' Compensation claims and claims before the Illinois Department of Human Rights. Again, it is best to err on the side of disclosure so as to minimize any potential liability to the association and/or its managing agent. It is best practice for an association to have its legal counsel assist in reviewing the disclosures made regarding any pending suit or judgment on a regular basis.

It is not uncommon for requests for information pursuant to a sale to exceed that which is contemplated by Section 22.1. Associations are reminded that just because a prospective purchaser asks for it, they are not necessarily entitled to it. Conversely, refusal to provide requested information may prevent a sale from closing. That said, the more expansive information an association provides, especially if that information exceeds the statutory requirement, the more exposure the association may have as it relates to liability. Due to the balancing interests of sticking with statutory requirements versus facilitating sales within the association, if your association receives a request that goes beyond the scope of Section 22.1, you should contact association counsel to determine how best to respond.

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.

UPCOMING EVENTS:

ACTHA Spring Expo and Conference - Drury Lane, Oakbrook Terrace - March 30, 2019.

Dawn L. Moody will be a panelist for the legal question and answer session, "Ask an Attorney", from 3:30 p.m. - 4:30 p.m.

For more information about this event and to register, please visit <https://www.actha.org/2019-Spring-Conference>.

CAI Legal Forum - Abbington Distinctive Banquets in Glen Ellyn - April 12, 2019.

Attorneys Dawn L. Moody and Jonathan D. Wassell will be speaking from 1:10 p.m. to 2:30 p.m. at the session entitled "That Was Then, This is Now".

For more information about the event and to register, please visit <https://www.cai-illinois.org/event/legal-forum-2019/>.



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