



KEOUGH MOODY

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Newsletter

Now that Spring is here, K&M has turned its focus toward education! Dawn Moody recently spoke at ACTHA's 2019 Spring Conference. Jonathan Wassell has been busy presenting to groups of board members and most recently presented at the CAI Legal Forum with Dawn. Gabby Comstock is gearing up to speak at a Village of Oak Park Presentation. Dawn and Gabby also recently presented on "Common Myths" in associations in Chicago and I continue to visit management companies to conduct lunch and learns. We hope you have had or will have the opportunity to come see one of our attorneys present. As always, we welcome any seminar ideas you may have.



Chuck Keough

RULES THAT FALL SHORT AND PREVENT LAW & ORDER

For those of you who regularly hear our attorneys present, it should not be a surprise to hear that we believe Rules and Regulations are a necessary tool for every Board of Directors. The contents of rules and regulations may differ from one community to the next. However, the need to have good and enforceable rules, is true for all communities. We appreciate when we get the opportunity to review an association's proposed rules before they are adopted as that allows us to ensure that the rules drafted are enforceable. It is very frustrating for all involved to learn of the problems with the enforcement of a specific rule, after the Board of Directors has issued notices of violations. For this reason, it is beneficial to have rules reviewed by an attorney before they are adopted. In addition, it is also a good idea for a Board of Directors to review and consider revisions to the rules, every two or three years, or even sooner! When you are reviewing the rules within your community association consider the following common mistakes with rules and the enforcement of the same, so as to avoid common mistakes.

Smoking Rules: One of the most common questions we are regularly asked is "what can we do about Owner X who is smoking in his Unit and the smoke is travelling throughout the Building?" Addressing complaints about smoking are always a challenge. However, they are made even more challenging when an association does not have any rules on smoking and solely relies on the provision within its community instruments that prevents nuisances, and noxious and offensive conduct. Every association should have rules that requires an owner or occupants who smoke within a unit to use smoke free ashtrays and air purifiers. The rules should allow the Board to require additional measures to be taken to prevent the transmission of smoke. The rules should also allow the Board or its agents with access to a Unit when there has been more than one complaint about smoke, so the Board can determine if other steps can be taken. Rules should not be specific to a certain type of smoke, i.e. cigarette or marijuana smoke. Instead, they should apply to all smoke or vapor. Lastly, it is always good to remind Owners that if the Board does not know where the smoke is coming from, there is only so much the Board can do.

Pet Weight Restrictions: It is not uncommon to see a rule that allows pets, within a certain

weight class. Unfortunately, it is also common to not see a rule that requires the Owner of the pet to provide the Association with verification of the pet's weight from a veterinarian. We tried a case which sought the collection of fines against an owner who had a dog that exceeded the allowed weight of 25 pounds. After all the witnesses testified, the one and only question from the Judge was "who weighed the dog?" The judge denied the association's request for fines as they never required the owner to provide proof of the dog's weight. The Judge said it certainly looked like the dog weighed more than 25 pounds, but he needed certainty, not speculation.

Noise Complaints: Like complaints regarding smoke, noise complaints can be difficult to address. After all, whether someone is too noisy can be rather subjective. For that reason, the complaint process for noise complaints should differ from how other alleged violations are documented. The rules should provide that the Owner who complains about noise more than three (3) times about the same neighbor, must have the complaint corroborated by another witness. The rule should require the complaining witness to submit a recording of the noise. Finally, the rules should require the complaining witness to provide the Board and its agent with access to enter the Unit. This will allow the Board to conduct a "noise test" so that the Board can hear what the complaining witness hears. The rules should allow the Board to require an Owner to take certain steps to minimize the transmission of noise, when more than one complaint has been made about the same owner.

Fine Schedules: Rules need to identify the consequence for the Owner that violates. Illinois Judges want to know that the Board of Directors is acting in an objective manner. Having a fine schedule ensures objectivity. However, having a fine schedule that does not distinguish between a "minor" and a "major" offense, can be problematic. After all, the monetary fine against an Owner who fails to pick up after his/her pet should likely not be the same as the fine imposed against an Owner who throws a chair off his/her balcony. Therefore, rules should either have two fine schedules, a stated one for "minor" and one for "major" offenses, or the fine schedule should include language that allows the Board to assess a higher fine when the violation jeopardizes the health, safety or welfare of the occupants.

Finally, a Board of Directors must remember the best drafted rule is meaningless if it is not enforced. Only rules that will be enforced should be adopted. Rules don't make a person act with decency. Rules don't make a person understand that living in a community means one must think about how his/her actions will affect another. Instead, enforcement of these rules promotes respect and a sense of community.

If you would like our office to review your association's rules and regulations or if you have questions about this article, please contact Gabby Comstock at grc@kmlegal.com or (630)369-2700 x 209.

Chicago
312-899-9989
info@kmlegal.com

Naperville
630-369-2700
www.kmlegal.com

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