



# KEOUGH MOODY

June  
2019  
Newsletter

June 5th marks the end of the school year in many districts across Northern Illinois. With it starts the beginning of summer fun! We hope that everyone enjoys a fun and safe summer break.

In addition to it being the end of the school year, it is also the end of the legislative session. During the recent legislative session, the Illinois Legislature passed the Cannabis Regulation and Tax Act ("Cannabis Act"). It is expected that the Governor will promptly sign

the Cannabis Act into law. For condominium associations, the Cannabis Act adds a new Section 33 of the Illinois Condominium Property Act. This Section permits a condominium association, through a change to the condominium instruments, to prohibit an owner from smoking cannabis in his/her unit. However, it restricts an association from adopting any such restriction relative to the consumption of cannabis products within the individual units or the limited common elements (although it can prohibit consumption of cannabis products in the common elements). No such similar restrictions have been imposed for non-condominium associations. If your association is interested in reviewing and updating either its governing documents or rules and regulations to address this, and other recent changes in the law, please contact either Dawn Moody at [d1m@kmlegal.com](mailto:d1m@kmlegal.com) or Gabriella Comstock at [grc@kmlegal.com](mailto:grc@kmlegal.com).



Chuck Keough

## **WHEN CAN OUR ASSOCIATION ASSESS ATTORNEY'S FEES TO AN OWNER?**

Legal counsel is engaged from time to time to assist an association in addressing violations of an association's governing documents through collection and other rule enforcement proceedings. In addition, legal counsel often becomes involved in association matters when an owner questions the conduct of the Board and/or threatens legal action. Once attorney's fees are incurred, a common question becomes whether those attorney's fees can be billed back to the owner whose default, question or threat caused the association to seek legal guidance. Whether the association can charge the attorney's fees back to the owner depends upon the extent of the authority provided either by contract or statute to do so and whether the owner is in default of his/her obligations under the governing documents.

For condominium associations, the Board has the authority under Section 9.2(b) of the Illinois Condominium Property to assess attorney's fees back to an owner when those fees stem from a default under the governing documents or applicable statute. This means that if an owner, their tenant or guest violates the declaration, bylaws or rules and regulations, then the unit owner can be held responsible for all attorney's fees related to this default, which were incurred by the association. In sum, this means that a condominium association can assess any attorney's fees incurred in addressing a delinquent balance or rule violation to the offending owner. Therefore, for

any attorney's fees assessed to an account, there must be a default by the Unit Owner. For non-condominium associations, however, the ability to assess attorney's fees back to an owner is generally based upon the language of that association's particular declaration. While most non-condominium associations provide the Board with the authority to assess attorney's fees and costs associated with an owner's default to that owner, some do not provide this authority. In those circumstances, any attorney's fees incurred by the association could not be assessed back to the defaulting owner and as a result, would be a common expense of the Association. Please keep in mind that even with this explicit language in the Illinois Condominium Property Act and most declarations, if a Unit Owner contests the assessment of legal fees, it is still within a judge's discretion as to whether such attorney's fees are awarded.

Missing from applicable statutes and essentially all declarations is the ability to assess attorney's fees to an owner who questions the board. If legal advice is necessary to address a question or concern raised by an owner, those legal fees are unable to be assessed to that owner. Often board members and/or managers will advise members that they are responsible for any legal fees incurred to address their questions or concerns. Unfortunately, there is no statutory authority that permits a board to assess attorney's fees back to an inquiring owner. Similarly, unless the owner has been found in default of the governing documents, there is generally no authority to assess attorney's fees back to an owner, when legal counsel becomes involved to address a threat of litigation.

In sum, board and management should always ensure that the governing documents or an applicable statute explicitly provides for the association to have the ability to charge an owner back for attorney's fees. Without the support of language in the governing documents or statute, the Association cannot charge these fees back to the owner. Fees associated with general legal advice cannot generally be assessed to an owner, even if an owner question or threat is the reason for which legal advice is being sought.

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

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

STAY CONNECTED

