



**KEOUGH**  
MOODY

December  
2019  
Newsletter

It is hard to believe that 2019 is coming to a close. On behalf of Keough & Moody, I would like to thank you for your support this past year. We are grateful for our continued growth and for the relationships we have with all of you. Our team continues to grow not only in number but especially in talent. We look forward to 2020 and continuing to provide the best legal services we can for our clients. We wish you and your family a very blessed and safe holiday season.



Please enjoy our article this month regarding **2019 legislative changes and upcoming 2020 legislative changes**.

If you have any questions about the article that follows, please contact Chuck Keough at [cmk@kmlegal.com](mailto:cmk@kmlegal.com). All of us at Keough & Moody appreciate your continued support. Please write us a review by clicking on one of the links at the bottom of the newsletter!

Chuck Keough

**What Happened in 2019?**  
**What Can We Expect in the Community Association World for 2020?**  
**How Can We be Ready for 2020?**

Unlike in years past, 2019 did not bring about any case law that shook the world of community association living. Surprisingly, we did not see any cases helping to interpret the language of Section 9(g) of the Illinois Condominium Property Act. Instead, 2019 is ending with changes to the statutes and ordinances related to community association living (but unfortunately none of these changes bring clarity to Section 9(g) of the Illinois Condominium Property Act).

**The Illinois Assistance Animal Integrity Act** was adopted and will take effect on January 1, 2020. As requests for accommodations for emotional support animals continue to rise, this Act strives to eliminate the generic letters from 'experts' who conclude from 1,000 miles away from the requesting person that he or she is disabled and requires an emotional support animal. The Act places a burden upon the requesting person to produce documentation from an individual who has a therapeutic relationship with the requesting person stating why the accommodation is necessary. The Act also provides guidance on why a request can be denied by the housing provider. It also provides that a housing provider will not be liable for injuries caused by an assistance animal.

While the Act requires the requesting person to provide specific documentation, an association still must still take care in addressing such requests. Most community associations are seeing

more and more requests of accommodations (and if you have not seen it in your association, odds are you will in 2020). For this reason, now is a good time for the Board of Directors for your community to enact a procedure for addressing these requests. The failure to properly address such requests can lead to a claim of discrimination (which is often not covered by D&O insurance) or other litigation. It is best to consult with your association's attorney *before* denying a request for such an emotional support animal. Remember, attorneys are not magicians and we cannot undo the facts once people act. It is more cost effective to have an attorney involved at the front end then after the fact. Your association is in a much better position if the process is established *before* the request is made.

**Section 33 of the Illinois Condominium Property Act** will take effect January 1, 2020. This Section allows a condominium association to amend its *declaration* to ban the smoking of cannabis in an Owner's Unit. It prevents a condominium association from restricting the consumption of cannabis by other methods within a unit or on the limited common elements simply by a rule. Condominium associations can still ban any form of consumption on the common elements. **This new law only applies to condominium associations.**

It is not likely that this new Section to the Condominium Property Act will have a great impact on condominium associations. Some associations may be quick to amend their association's declaration to ban such smoking in the units. However, as we have said in the past, it is not the type of "smoke" that a condominium association should focus its attention, but instead it should focus on preventing and addressing the nuisance that can be caused from smoke. That is, even if a condominium association adopts such an amendment to its declaration, an Owner may still smoke it for medical reasons or may smoke something else that is not banned. Therefore, the condominium association should not stop at adopting the amendment and should take a step further and ensure that the association's rules and regulations provide for a mechanism that allows the board to address a nuisance situation caused by smoke. As we have addressed previously, smoking violations are very difficult to enforce so it is important for a condominium association to have strong enforcement tools in place before there is a problem. Your board of directors should not only consider if such an amendment to your association's declaration is warranted, but also should review the enforcement mechanism in your rules with your legal counsel. Lastly, while this Act may not apply to non-condominium associations, this is advice common interest associations may also follow.

As expected, the Illinois legislature extended the **Community Association Manager Licensing and Disciplinary Act**. This means that this Act will not be repealed as of January 1, 2020 and instead is extended through January 1, 2022. All community association managers must be licensed. The question now is will we know in 2020 the continuing education requirements for community managers?

As of January 1, 2020, the statutory interest that a community association can collect on a judgment of \$25,000 or less (including those against owners) will decrease from 9% to 5%, per annum. This limitation only applies to judgments obtained after January 1, 2020. This law does not require community associations to do anything at this time.

Once again, the Department of Housing and Urban Development revised its regulations related to loans insured through the Federal Housing Administration ("FHA"). Most notably, the changes allow for "spot approval" again, which allows for a single unit within a community association to be approved for FHA loans, rather than requiring the entire condominium to be FHA approved. In addition, the changes indicate that FHA will be looking at the totality of the facts related to the association, instead of focusing on one fact, i.e. the number of rentals or amount in reserves. If your association is currently FHA approved, before you seek reapproval, the Board of Directors should consult with legal to determine if incurring such an expense is warranted.

Deconversions in the City of Chicago continue to be the "talk" of the City. The City Council voted to require 85% or more of the condominium owners to approve the sale of the entire property. This is a higher requirement than what is provided for in the Illinois Condominium Property Act. However, as we have seen in the past, the City of Chicago has the right to exercise its home rule power and create a more stringent requirement. This change took effect on October 16, 2019. If your condominium building is approached by a developer and is considering or is interested in selling the building as a whole, consult with your legal counsel to ensure that all steps are followed so as to ensure that each member of the board of directors fulfills its fiduciary obligations.

Finally, now that the budget for next year is adopted, the cold weather is approaching and there are fewer exterior projects to be completed, the end of the calendar year is a good time for the board of directors to review the past year and evaluate what worked and what did not. Evaluate what areas this past year concerned your association that perhaps did not in years past.

Evaluate the culture within your community. Further, evaluate the working relationship between the members of the board and the association's team. After these evaluations are completed, as a group, have your board of directors adopt goals for 2020. Discuss these goals with your community association manager and if needed, legal counsel. Then, take the necessary steps to achieve these goals. Remember, be proactive and not reactive.

After you review this past year with the other members of your community association team, if you would like to discuss your goals or what policies and procedures can be adopted to reach success in 2020, please feel free to reach out to Gabby Comstock ([grc@kmlegal.com](mailto:grc@kmlegal.com)), Dawn Moody ([dlm@kmlegal.com](mailto:dlm@kmlegal.com)) or Chuck Keough ([cmk@kmlegal.com](mailto:cmk@kmlegal.com)) so you can benefit from our 60+ years of experience.

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