

As we approach budget season, we are reminded that fall has arrived! We are also seeing that many of our clients are now conducting their annual meetings. For these reasons, we thought it would be a good idea to address (again) a popular topic "Myths." Over the years, many of you may have seen Gabby and Dawn present on this topic at industry functions. We hope this serves as a reminder as to what is true and what should be done as you begin to prepare for 2021. We continue to hope that you all are safe and well!

Chuck Keough

### **Don't be Fooled by These Common Association Myths**

Unfortunately, there is a lot of bad advice to be found regarding how to run a condominium or homeowners association. This bad advice comes from questionable sources on the internet, from repeating the same mistake over and over (often by continuing to use forms that were incorrect to begin with), and from consulting with "experts" who are not as knowledgeable as they claim when it comes to association governance. We would like to correct the most common misconceptions about association governance that we encounter – do not fall victim to these myths!

1. Myth: If the Board appoints a director to fill a vacant seat, the appointed director serves the full unexpired term of director (s)he is replacing.

Fact: Section 18(a)(13) of the Illinois Condominium Property Act ("ICPA") and Section 1-25(e) of the Common Interest Community Association Act ("CICAA") provide that a Board appointment is valid until the next annual election or until a petition is served on the Board compelling a special election, whichever is earlier. The Bylaws of associations that are not governed by either the ICPA or CICAA usually contain similar provisions.

2. Myth: The Board may remove one of its own members.

Fact: Under Section 108.35(c) of the Illinois General Not-for-Profit Corporation Act ("NFP Act"), a vote of at least two-thirds (2/3) of the members of the association is required to remove a director. A Board does, however, retain the authority to remove an officer.

3. Myth: Condominium owners are required by the ICPA to pay for costs to maintain, repair or replace limited common elements appurtenant to their units.

Fact: Section 9(e) of the Act states that the governing documents **may** provide for the assessment of costs associated with limited common element repairs. The governing documents of each association will determine whether the owner is responsible.

4. Myth: The Board of Directors for a condominium association must send the proposed rules and regulations to the Owners 30 days in advance of the meeting where the Board will adopt the rules.

Fact: This is not a requirement of the Illinois Condominium Property Act. The Condominium Property Act requires the Board to call a meeting of the unit owners for the purpose of discussing the proposed rules. Notice of the meeting must be sent at least 10 days and no more than 30 days prior to the scheduled meeting and it must contain the full text of the proposed rules and regulations. 765 ILCS 605/18.4(h). For non-condominium associations, the association's declaration should be reviewed to determine the notice requirements.

5. Myth: A complaining witness has the right to know what action a Board of Directors took against the violating condominium unit owner.

Fact: The complaining witness has no right to know what action was taken by the Board of Directors. In fact, the Condominium Property Act prevents the Board of Directors from discussing violations related to a unit owner with another unit owner. When asked, the Board of Directors should simply state it is taking all action it deems appropriate.

6. Myth: The President has more power than other officers.

Fact: The President's vote counts the same as the votes of other directors. The President presides over Board meetings, but otherwise does not enjoy additional powers or privileges.

7. Myth: Owners have the right to vote on special assessments.

Fact: Special assessments for additions or alterations to common elements are subject to the approval of 2/3rds of the membership. Otherwise, while special assessments may trigger petition rights of owners if they cause all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments payable during the preceding fiscal year, owners do not get to vote to approve. Note that if the special assessment is necessary for an emergency expenditure or mandated by law, unit owner approval is not required, and the expenditure is not subject to recall.

8. Myth: The Association is responsible for repairs to the inside of a Unit when the damage is caused by a condition within the common elements (such as a roof, or common pipe).

Fact: The owner is responsible for the cost of repairs, maintenance, and replacements for all parts of their unit as well as the Limited Common Areas regardless of cause (roof leak, sewer back up, pipe burst, etc.). The Association is responsible for maintaining the Common Areas, i.e. the shared portions of the property. What causes the damage does not alter that division of responsibility except when the damage is caused by a willful act or negligence on either the part of the Board, another owner or their guest/tenant, etc.

If you and your fellow Board members or colleagues are living by the mistaken belief that any of these myths are true, now is the time to correct any errors. If you have any questions on how to do that, please let us know ([d1m@kmlegal.com](mailto:d1m@kmlegal.com) or [grc@kmlegal.com](mailto:grc@kmlegal.com)).