

Happy New Year! 2020 sent many of us home for work and school, and communication technology flourished with our family members and colleagues. This month's article (and more to follow) address communication using technology in its various forms as it relates to community associations, their members and third parties. Please enjoy the article as it highlights the importance of maintaining corporate formalities while taking advantage of technology in conducting board business.

KEOUGH & MOODY WEBINAR: ASSESSMENT COLLECTION UPDATE

January 21, 2021 at 12:00 p.m.

Join Gabriella Comstock and Dawn Moody for a webinar on Thursday, January 21, 2021 from 12:00 p.m. – 1:00 p.m. where the current state of affairs regarding assessment collection will be discussed. At that time, they will address the current Executive Orders in place regarding eviction and other collection actions and what that means for assessment collection in early 2021. In addition, they will address any new Court mandated policies and procedures. Attendees can register here: <http://events.constantcontact.com/register/event?llr=gyn4vdab&oeidk=a07ehia3pz628f17d60>

COMMUNICATION WITHIN COMMUNITY ASSOCIATIONS: Effective Communication Between Fellow Board Members and Between Board Members and the Owners

Merriam-Webster's defines "communication" as the process by which information is exchanged between individuals through a common system or symbols, signs or behavior. We communicate through the use of words, both oral and written. We communicate when we speak face to face or through the use of virtual platforms. Communication within a community association is how owners learn about the happenings within their communities. It is through communication that members of the Board of Directors conduct business, convey information to others, and fulfill their duties and responsibilities to the association. How well do you communicate with your fellow board members and owners? Let's take a quiz and find out!

QUESTION NUMBER 1:

True or False: *It is perfectly proper for Jill, the Association's Board President, to send the following e-mail to Tom, because she is sending it only in her capacity as Tom's neighbor, not as a member of the Board.*

Tom, it was great speaking to you last night. You did a great job remodeling your kitchen! I am sorry to hear about the issues you have had with the board in the past. As President, I can tell you the board is committed to making a difference. We will look into the issues you and I discussed. For what it is worth, it seems to me the Association should pay to replace your sliding glass doors. I will keep you posted as to what we learn and decide. Thanks, Jill.

ANSWER: FALSE! It is very difficult for owners to remember that a board member is just another member or owner within the association. Board members are always seen as board members. The above email was based on an actual email between a board president and her new neighbor. At the time the email was written, the board president did not know that there was a legal opinion within the association's books and records stating that the owner was responsible for replacing her sliding glass door at her expense. "Jill" found herself named in a lawsuit where "Tom" alleged she represented to him that the association should pay his expense. While "Jill" prevailed, it was after incurring legal fees and dealing with the stress of being personally named in a lawsuit for a couple of years.

As members of the community, board members often get to know their neighbors. They develop relationships and begin to have discussions about many topics, including community association living. However, inherently, even a friend will come to a member of the board with questions about the community or requesting help with a notice received from management. As tempting as it may be to help your friend, board members must know how to avoid these communication traps. The immediate response should be "come to a board meeting and ask the board as whole" or "call the management company." It should not be "let me talk to the rest of the Board" or "let me look into it."

QUESTION NUMBER 2:

True or False: *It was proper for the Board President to say the following in an open meeting as the violating Owner was the first one to bring up her violation in an open meeting.*

"You received a notice of a violation because we have a witness who saw you walking your dog on the common elements and once he relieved himself, you did not pick up after him. You were the one who chose not to follow the rules, not to attend a hearing with the Board, and then you were fined."

ANSWER: FALSE! While all meetings of the board must be open to all members of the association, there are certain topics which a board can and should discuss outside of an open meeting. These topics include: (1) litigation that is pending, probable or imminent; (2) appointment, employment, engagement or dismissal of an employee, independent contractor, agent, or other provider of goods and services; (3) an interview for a potential employee, independent contractor, agent or other provider of goods and services; (4) violations of rules and regulations of the association; (5) a unit owner's unpaid share of common expenses; or (6) consulting with the association's legal counsel. When discussing any one of these six (6) topics, the Board should discuss the same in a closed portion of a noticed meeting or it can meet separately from a noticed meeting.

Furthermore, members of the board must remember that even if an owner raises a topic that should not be discussed in an open meeting, the board does not get a free pass. In the above scenario, the board president should have told the owner that was not a topic to be discussed in the open meeting, but perhaps the owner can stick around after the meeting to either discuss it with the board or schedule a mutually convenient time to meet.

QUESTION NUMBER 3:

True or False: *The following e-mail may create a problem for the Association as to whether the attorney client privilege was waived.*

TO: sullivangang@comcast.net; comstockclan@gmail.com; moodyfamily@yahoo.com
FROM: smith@xyzmgmt.com
SUBJECT: FWD: Smith v. ABC Condo./Trial Strategy

All:

Please see the attached from the Association's attorney. Please review this and be ready with questions tomorrow. Thanks, Chris.

ANSWER: TRUE! The information sent in the email is one of the six (6) topics that should not be discussed in an open meeting. Hence, the information should not be shared with non-board members. Board members have a duty to maintain the confidentiality of information they receive in their capacity as members of the board. This includes keeping such information from their spouses and other family members. To allow a non-board member to have access to such information can be a breach of fiduciary duty. It can also lead to a waiver of attorney-client privilege—a decision that no one board member should make on his/her own. To avoid any issues, each member of the board should have a separate email address where all association-related mail is sent. Each member of the board should also be sure that no one other than the members of the board can access the email. Lastly, the email address used by a board member should not be his/her work email. After all, other non-board members have access to the employer's server.

QUESTION NUMBER 4:

True or False: *The Board conducted a workshop to discuss the 3 proposals they obtained for their upcoming roof project. At the open board meeting, all they have to do is vote on the proposal that was selected.*

ANSWER: This is a trick question as the answer is - it depends. Under Illinois law, all decisions of the board must be done in an open meeting. If the workshop was conducted at a date and time where notice was given to the owners, even though the owners were not privy to the discussion, the owners knew the board was meeting to consider the roof proposals. Hence, a simple vote at the open meeting, legally, may be enough. However, if the owners were not given notice of the meeting of the board to discuss this "closed session" topic, it may not be enough. So, what should the board do? Regardless if notice of the workshop, closed session, or executive session was given, at the open board meeting, before a vote is taken the board should let the owners know they previously met to consider all proposals. The board should generally describe when they met, who was present and what they did, i.e. compared the proposals and interviewed candidates. Then, the board should vote on the matter and select a vendor.

We all remember the case of *Palm v. 2800 Lake Shore Drive Condominium Association*, which even during a pandemic, remains, for the most part, good law. For this reason, even if the applicable Illinois statutes allow certain topics to be discussed in a closed session, members of the board must remember not to fall into the trap of having all discussions outside of the presence of the members. Such conduct affects the Board's credibility and tends to lead to division within the community. It also can be a slippery slope and lead to a board conducting too much business outside of an open meeting. For many associations, 2020 was a time when we all communicated differently and more than ever through the use of electronics. However, as explained above, the law still requires the

board to conduct open meetings, to make decisions in open meetings, and to only address certain topics in a closed session. Frankly, the use of technology made this easier than ever. As we move into 2021, let's be sure that our communication does not violate the law and remains effective.

If you have any questions about this article or anything else related to your association please contact us.

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