

During this unprecedented year, we have all suffered some kind of hardship or loss and it is natural to contemplate how each of us grapples with the challenges of the pandemic. Even as the news changes daily and we struggle interpret it, we nevertheless must persevere and make good decisions for our families and the organizations with which we are associated. Making the best decisions is a stressful endeavor. And now, Thanksgiving is around the corner. Hopefully we all get a chance to stop, or slow down, and spend some quality time with family or friends. Doing so will allow us to focus on gratitude and not the things that are going sideways or just plain wrong during this time. I've been encouraging my own kids to focus on the positive. So, at this time of year, let us be grateful for those that make our lives better: first responders, postal workers, grocery store personnel, delivery drivers, teachers and property managers. Each is doing good and valuable work which we cannot live without! If you get a chance, thank one or more of these folks; it will brighten both of your days.

We wish everyone continued health and safety.

RESIDENTIAL EVICTION MORATORIUM REMAINS IN EFFECT

As you have likely heard by now, Governor Pritzker issued Executive Order 2020-30 on April 23, 2020, which prohibits the commencement of a residential eviction action, except in a very limited situations. Many law firms within our industry, including Keough & Moody, have interpreted the Governor's order to not only prohibit the filing of an eviction action, but also to prohibit sending a demand for possession of a unit within a community association. Circuit courts throughout the state are reopening. Each county is handling eviction cases filed before April 23, 2020, differently. However, during recent appearances, we have witnessed Judges dismissing any eviction case filed after April 23, 2020, as it is violation of the Governor's Executive Orders.

K&M certainly appreciates the predicament crated by the Governor's order. However, we want community associations to be careful not to throw good money after bad and attempt to file an eviction case, in the hopes it can get one passed a judge. Taking such action can result in the Association incurring expenses and fees it cannot recover against the defaulting unit owner and can actual affect the Board of Directors' credibility with the Owners.

We will continue to monitor the residential eviction moratorium for developments. While the moratorium is set to expire November 14, 2020, we expect it will be further extended. In the meantime, for those residential eviction actions that are pending with the courts, we continue to do everything we can to move the cases ahead and more importantly to work with the Owners to encourage payment. Should you have any questions about the residential eviction moratorium, or the collection of assessments during the times of COVID-19, please let us know.

Refresher on Annual Elections

What's seemingly felt like a never ending cycle of election news, campaigning and pontificating, we believe now is a good time to review how to properly conduct an annual election within a community association. Every association, whether a condominium, townhome or single family homeowner association needs to conduct an annual election. Ultimately, how an association's election is conducted will come down to whether or not the association is governed by the Illinois Condominium Property Act or the Common Interest Community Association Act, as well as the process identified in the community association's governing documents. It is also important to consider how such an election can be conducted in a virtual format and/or to minimize in-person contact.

While there is no one way to conduct an annual election, there are many principles that can be followed to effectively and properly conduct an annual election, so as to minimize errors. In advance of the annual meeting, every community association should review its process for the following and determine how to ensure compliance:

1. Owner Confirmation. Prior to the annual meeting, the Board of Directors must know who is eligible to vote on behalf of each Unit within the Association. That is, the community association's records must indicate who is the record owner or the designated voting member for each unit. After all, even if all of the steps below are followed, a vote by someone other than a unit owner or designated voting member is not a valid vote. Confirmation as to the owner for each Unit should not be based on assumptions but on actual documentation.

2. Vote Submission. In advance of the meeting, the Board of Directors must know if proxy voting is allowed. If it is allowed, the Board must be sure that the proxy given to the Owners is properly drafted. It must also know what will deem a proxy invalid.

If proxy votes are not allowed, or even if they are allowed, the Board must similarly know what must be included within an association ballot and what will result in the ballot being deemed invalid.

If voting is to be done by secret ballot, the Board of Directors must be sure that a process is in place to ensure the secrecy of the vote.

The Board of Directors must also know in advance of the meeting when the votes must be tendered by the Owners, i.e. by a certain date and time. In addition, it must be clear to Owners how they can tender their vote, i.e. in person, via e-mail, via regular mail.

Now is a good time to review the association's community instruments, including its rules and regulations, to ensure that an efficient process is in place.

3. Quorum. Like any meeting of the members, a quorum of the members must be present at the annual meeting. A quorum is defined as the minimum number of members must be present for a deliberative assembly to legally transact business. The community instruments for the association should be reviewed to confirm what percentage of members is needed to establish a quorum. For condominium and common interest community associations bound by their applicable state statutes, 20% is the percentage needed. However, some associations may require even less than that. Again, know this percentage in advance and if needed discuss with legal counsel how to reduce the percentage if it is greater than 20%.

4. Cumulative Voting. It is also important to know before the election documents are sent to the Owners, whether cumulative voting is allowed. Cumulative voting is the ability of a member to cast multiple votes for one candidate. For example, if there are three (3) spots on the Board, each owner will have three (3) votes and under cumulative voting, the owner can cast all three votes for one person or among multiple people. The ballot and proxy should clearly notify an owner if cumulative voting is allowed.

Remember, cumulative voting is only allowed if the community association's community instruments allow for it. If the documents are silent, cumulative voting is not allowed. Such authority must be found within the community association's declaration or bylaws, and not in the rules and regulations.

5. Vote Tabulation. The Board of Directors must know how to tally the vote for each owner.

That is, it must know the weight to be given to each unit. For condominium associations, each vote by an owner is equivalent to the percentage of ownership assigned to the owner's unit. It is imperative that the percentage of ownership assigned to each condominium unit is correct. It has to match the percentage assigned to the unit within the association's community instruments. The percentage should not be rounded up, but again it must be exact. Condominium associations who rely on a third party to tally the votes must be sure to provide the person tallying the votes with the correct percentage of ownership assigned to each unit.

6. Voting Questions/Errors. In advance of the meeting, it should be known how any errors within a ballot or proxy will be addressed. That is, will the association make an effort to contact an owner who can correct a voting error? If so, by when must the error be corrected? Who will contact the owner to advise the owner of what needs to be done? Likewise, the Board of Directors should decide in advance of the meeting who will make a final determination if a vote by an owner should be counted. Will this be done by legal counsel or the person tallying the vote? As stated above, there is no one size fits all for conducting an annual meeting. Hence, there is no one way to address these issues. Yet, it should be known before the election how it will be addressed and then the process must be consistently followed.

Take some time to talk with your fellow board members, management and legal counsel and discuss what worked well at this past annual election and what could we do differently. Then, begin the process to implement those changes. After all, we want to encourage all owners to vote and we want the process to be efficient. If you would like to review your association's current process, please contact us to discuss it further.

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