



As we enter Spring, it's time to do some spring cleaning! This is a good time for members of the Board to conduct their own spring cleaning. Make sure your association's books and records are in order. Do you have all minutes from last year in place? Are all meeting minutes from 2021 approved or ready to be approved? Has your end of the year accounting statement been completed? Are you addressing delinquencies? Has the Board completed a review of its contracts and aware of when they terminate or automatically renew? Lastly, are the resolutions of the Board of Directors known and organized? While daunting at first, ensuring the books and records are organized will not only help the Board of Directors in ensuring they each met their fiduciary duties to the members, it also is a great way to establish credibility with your members. So, take some time to get organized.



This month, we conclude our series of articles on Effective Communication with Associations. Dawn and Gabby also will conclude their webinar series on Rules and Enforcement. We will continue with our monthly webinars and are always open to hearing your ideas on suggested topics. Please let us know what is of interest to you!

We thank you for your continued trust in our firm.

Chuck Keough

### **KEOUGH & MOODY WEBINAR: Part 3 OF 3 ON RULES & ENFORCEMENT**

#### **Enforcing Rules and Regulations**

**April 14, 2021 at 12:00 p.m.**

Join Dawn Moody and Gabriella Comstock on **Wednesday April 14, 2021, from 12:00 p.m. to 1:30 p.m.**, in the last part of their Webinar series on Rules and Enforcement. Learn more about how to properly enforce the Rules and Regulations for your community. Gabby and Dawn will walk you through what to do from the time a complaint is made, to the hearing process with the Owner, to the Board making a determination, and concluding with the action the Board of Directors can take once an Owner is found in violation. Like in previous webinars, they will provide tips in order to avoid common (even costly) mistakes and teach by way of example.

Attendees can register here: [http://events.constantcontact.com/register/event?](http://events.constantcontact.com/register/event?llr=gyjn4vdab&oeidk=a07ehs69t9r9f1dc936)

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#### **COMMUNICATION WITHIN ASSOCIATIONS**

## **Effective Communication with Association Members**

Over the last several months, we have been focusing our newsletters on various aspects of communication in community association governance. In this last Article on communication, we will be focusing on communicating with association members. Too often, community associations are given a bad rap; association boards (and managers) are seen as overbearing and creating an “us versus them” environment. In our experience, the right amount and the right type of communication with association members can help combat that rap and establish a more productive, community environment. What is the right amount of communication? Like the Fairy Tale, Goldilocks and the Three Bears, we may first have to review what is too little and too much to determine what amount is just right.

### **Example #1: If you want to know what is going on, come to a meeting!**

The By the Book Condominium Association (“the BBCA”) is just that - by the book. If the book, in this case, the Illinois Condominium Property Act (as well as the BBCA Declaration), does not require that the Board do something, it does not do so. The Board sends out (and posts, as required) all legally required notices, including notices of meeting and the annual budget, in the time frame prescribed by statute. It hosts open meetings (one every month!), but like many associations (especially in the time prior to virtual meetings), only three of its three hundred residents attend.

The BBCA has a number of deferred maintenance issues (to the tune of approximately \$2 million). The Board has been diligently working with its property management company, engineer, financial institution and contractors to develop a schedule for repairs and a plan for payment. Because the reserves are not adequate, a loan is secured to allow for the repairs to commence now, but for the cost to be paid over the next ten (10) years through a special assessment. The Board has been openly talking about the project and the special assessment in detail at each and every Board meeting for the past twelve months!

The time comes for the Board to finalize the project, adopt the special assessment, and approve the loan. Notices are sent all in accordance with the book. At the meeting, two hundred (200), very angry residents appear with a petition to remove the current Board members. The Board members are very perplexed at how this could happen given that it followed the book and was doing everything right; the residents had the opportunity to learn about this - if they just attended a meeting! The current Board is subsequently overthrown with a new slate elected for the sole agenda of stopping the special assessment (despite that the deferred maintenance remains).

### ***Why did it all go wrong?***

Legally, the Board of Directors did everything right as it consulted the appropriate professionals, devised a plan, and provided the required notice to the membership. However, the BBCA limited the discussion of the project and intended special assessment to the meetings only. In scenarios like the above (and to avoid that end result), Boards should lay the

groundwork with members as early as possible that a big project, special assessment, or other major change is in the near future. Doing so requires additional communication outside of that which is legally required. This can be done through newsletters or additional subject-specific townhall style meetings, by way of example. By alerting members that a special assessment is coming down the pipeline and sharing information as to why the project and special assessment is necessary (i.e., question and answer session with the engineer/contractors), owners do not end up being blindsided. While there still may be upset owners at the end of the day, those owners are not unreasonably angry and generally accept the action of the Board, understanding that it is necessary.

**Example #2: We are going to be the most transparent Board ever!**

After a kerfuffle in the association following the approval of a controversial landscaping project, there is a new Board majority in the Transparent Condominium Association (“TCA”). These Board members believe that making sure that members are aware of all TCA matters is priority number one. In order to keep owners informed, the Board establishes an Association website, where all Association documents, including, but not limited to full financials, meeting minutes, contracts and bids, are posted. This information can readily be accessed by owners and any other third party, who wants to know what is happening at TCA. The Board prepares newsletters and other memoranda for the owners for review and consideration before making any decisions for the TCA, including bids and other materials. Email alerts are issued at least once a week. Much to the chagrin of TCA’s community association manager, the TCA Board believes that issues, such as violations and delinquencies, are best addressed with a personal phone call or visit, rather than with formal letters. Therefore, formalities are dispensed with and these matters are addressed by the Board President and Treasurer.

Initially, owners within TCA enjoyed the Board’s efforts at being transparent. However, after a couple of months, the members stopped reading the communications prepared by the Board—I mean, do we really need to be updated on landscaping every week? This was unfortunate, because the Board was preparing an Amendment to the Declaration to finally clarify issues related to maintenance responsibility. Even though this was an issue that was important to the majority of residents, only five (5) of the two hundred (200) residents returned their proxies. The owners initially enjoyed having access to all Association records without having to submit a written request. However, after the initial review, the novelty of having this access wore off for most owners. Those owners returned to directing their questions to the community association manager, even though the information was readily available. Vendors, though, hearing that their bids for work at this community were publicly available for review by their competitors, ceased submitting bids to the Association. As a result, it became difficult to find contractors for the community.

Finally, while the idea seemed good in theory, residents did not enjoy the personal touch with respect to addressing violations or delinquencies. A number of unpleasant exchanges occurred, and in one incident, a delinquent owner physically threatened the Board President, which resulted in the police being called. In addition to the unpleasant exchanges, the community

association manager was unable to effectively carry out the Board's collection or violation policies. Owners continued to advise the community association manager that the Board members advised that the violations were "no big deal," "not to worry about it" and "we just think your neighbor has an axe to grind, we do not take her seriously." Once delinquent accounts were forwarded to the attorney, the community association manager and the attorney learned that Board members apparently represented that no such actions would occur and that the Board was "ok with waiting until the owner sold" to pay the account in full. Unfortunately, no one had written confirmation as to what was discussed with the Board President (who had since resigned, moved to Arizona, and changed his phone number). Since the Board deviated from written policies, it became difficult to address those past violations and delinquencies. This resulted in the Association incurring legal fees, which Courts then declined to award based upon the "confusion" caused by the Association in not following its policy.

### ***Why did it all go wrong?***

In this scenario, two things should be apparent — there is such a thing as too much communication and the wrong form of communication. By bombarding owners with communication, there is a significant likelihood that they are going to disregard it. Like the companies who issue emails every day or the politicians who send mailers, there comes a point where the emails are summarily deleted, or the letters immediately placed in recycling. With an association, that means that owners may delete, recycle or otherwise disregard important association communication, such as annual meeting notices, violation letters and budget information. Therefore, associations should be judicious with their mass communications. In addition to the legally required mailings, the Board should communicate with residents when it has important and informative information to share.

Next, Association websites are a great idea and it is nice to share information there, so it can be readily accessed (because who knows where the paper copy of their Declaration is). With that said, it is important that if you are sharing information above and beyond the governing documents, such as the financials, meeting minutes and notices, that said information is not publicly available; it should only be made accessible to members of the Association. In addition, it is important that confidential Board information, such as bids, delinquency reports, violation listings, etc., is not made readily available. If the record is one that is not meant to be available upon request under applicable statute, it should not be posted to the Association's website.

Finally, policies and procedures are adopted for a reason. While it is important to be neighborly, once a grievance or issue escalates to the Board as a formal complaint, action should be taken consistent with Board adopted procedures. This ensures that there is a clear record and message to the owner, which can be utilized as evidence in a legal proceeding if necessary. It also helps ensure the safety of the parties, as you never know whether a fellow owner will respond with appreciation or aggression in response to a personal contact regarding a rule violation.

### **Example #3: The Perfect Recipe**

Tranquility Falls Condominium Association (“TFCA”) has worked over the years with its community association manager and legal counsel in governing the association in a fair and legal manner (who have both learned experience). Like BBKA, it conducts its due diligence on projects and provides the membership with all legally required notices. Like TCA, however, it ensured that it provides additional communication when it knows that it will be taking action, which will have a major impact on the community. After the Board became aware that it would need to undertake significant repairs to exterior of the building, which would result in a special assessment, it began laying the groundwork with its residents, by hosting Town Hall meetings with the engineer, who was charged with helping develop the scope and the timeline for the project. Summations of the information discussed (and FAQs) were sent to the owners following the meeting. Similar meetings were held with the contractors and the financial institution, which was extending the Association, a loan to fund the repairs (and help ease the burden on the owner) with summations (and FAQs sent out after). By the time the Board moved to adopt the special assessment six (6) months later, while the owners were not thrilled with it, they understood the necessity of the project and appreciated the Board’s transparency. TCFA established an association website through its managing agent. As a result, owners, and only owners, are able to access information regarding the Association, such as the governing documents, meeting minutes and the year-end financial report. The Board adopted and follows a procedure, consistent with statute, relative to the request of all other documents. Confidential information remains confidential.

TCFA also established a great deal of policies and procedures, including Rules and Regulations. The Rules and Regulations clearly define what conduct is and is not permissible within the Association and the consequences for doing so. The TCFA Board updated its violation letters to help owners understand why they are receiving such a letter. The updated letters include pictures and clearly indicate how the violation can be resolved. The TCFA Board also mails and emails the letters to help ensure that they are received (and read) by the owner. Most violations are addressed within a reasonable period of time. The TCFA Board is not perfect and occasionally, there is a disgruntled owner within the community. However, for the most part, the community is tranquil, as the Board not only follows the law, but also treats its owners consistent with the manner in which the Board members would like to be treated (if the roles were reversed).

### ***How did the Board get it right?***

The Board found a good balance of providing information, communicating and taking charge of its community. There is no objective standard for what is the right amount (or the right manner) of communication within a community association. The right amount of communication for one association may be too much or too little for another community association. The right amount of communication can even vary within one association depending on the topic. It is important for Boards to determine what works best for their communities and to help ensure that appropriate groundwork is laid for any controversial

decisions within the association.

If you have any questions about this article or anything else related to your association, please do not hesitate to contact our office.

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