

### REOPENING COMMUNITY ASSOCIATIONS WHILE STILL IN A PANDEMIC

As Illinois reopens, community associations are navigating a return to normalcy, while also being mindful that we are not completely out of this pandemic. Like last year, we continue to find ourselves in uncharted territory. Yet, last year at this time, our focus was solely on how to prevent the spread of the virus. Today, we continue to focus our efforts on preventing the spread of the virus, but we also are focused on living our lives.



For this reason, we are providing this “special edition” of our newsletter. We want to provide an update on what can be done to collect assessments and to continue to present frequently asked questions related to the reopening. We hope this helps you and your community association and please do not hesitate to contact us with any further questions.

**Chuck, Dawn, and Gabby**

### AN UPDATE ON THE EVICTION MORATORIUM IN ILLINOIS

On June 11, 2021, Governor Pritzker initiated efforts to phase out the eviction and post-judgment collection moratoriums. Under Executive Order 2021-13, associations (and landlords) are able to **now** proceed with enforcement of any pre-pandemic (**prior to March 20, 2020**) orders of possession. With that said, however, based upon the wording of the Executive Order, it appears that prior to moving forward with enforcement, the Association must confirm that the owner/occupant does not meet the definition of a “covered person”. As of June 25, 2021, associations (and landlords) will be able to enforce post-pandemic orders of possession against “non-covered persons.” As previously discussed in prior K&M Newsletters, in order to determine whether an individual is a “covered person,” associations (or its legal counsel) must serve a COVID Declaration form on the owner/occupant, providing the person with the opportunity to attest, under the penalty of perjury, that they meet **all** qualifications set forth in the Executive Order. If a signed COVID Declaration form is not returned, an association will be able to proceed with its enforcement efforts in all actions against “non-covered persons” as of **June 25, 2021.**

In addition to the foregoing, the pursuit of eviction actions for matters other than non-payment and safety risks has been on hold throughout the pandemic. This has meant that associations could not pursue notices to quit and eviction actions for failure to comply with association rules and regulations, such as failure to comply with leasing rules and regulations. **As of June 25, 2021**, associations may again proceed with such actions, so long as the owner/occupant is not considered to be a “covered person.”

What is a “covered person?” As previously discussed in prior K&M Newsletters, in order to determine whether an individual is a “covered person,” associations (or its legal counsel) must serve a COVID Declaration form on the owner/occupant, providing the person with the opportunity to attest, under the penalty of perjury, that they meet **all** qualifications set forth in the Executive Order. These qualifications include generally: (1) income less than \$99,000/year for calendar year 2020 (\$198,000/year for joint filers); (2) unable to make full payment due to a COVID-19 related hardship; (3) using best efforts to make timely, partial payments, and (4) eviction would likely render the individual homeless or force the individual to move into shared living facilities. If a signed COVID Declaration form is not returned, an association will be able to proceed with its enforcement efforts in all actions against “non-covered persons” as of **June 25, 2021**.

While the return of this strong remedy to collect is welcomed, it is important to remember that the lifting of the moratorium will not equate to the prompt eviction of a delinquent unit owner. Enforcement of orders of possession have been essentially stayed since March 20, 2020. Therefore, associations should keep in mind that it will take time for the various Sheriffs’ Departments to work through the backlog of eviction orders. Boards should continue to be patient as this portion of our legal system looks to return to business as usual. In light of the expected delays, Boards should continue to work with their owners to establish *reasonable* payment plans to address past due arrears.

In addition to lifting portions of the eviction moratorium, as of **June 25, 2021**, associations may again pursue collection of personal judgments through the service of citations to discover assets and garnishments.

The attorneys at K&M are currently reviewing all files, which have been on hold due to the various moratoriums. Information regarding individual accounts will be sent to our clients with our recommendations as how to now move forward. In the meantime, if your Board has questions as to what it can or should do regarding its delinquent accounts, our attorneys are available to assist. Please contact Dawn ([d1m@kmlegal.com](mailto:d1m@kmlegal.com)) or Gabby ([grc@kmlegal.com](mailto:grc@kmlegal.com)) with any questions regarding these matters.

### **COMMON QUESTIONS RELATED TO THE REOPENING**

**Question:** With the eviction moratorium being lifted, can we expect to see “business as

usual” in the eviction courtrooms after June 25, 2021?

**Answer:** We need to keep in mind that Judges in these courtrooms can still take into consideration (and likely will) the effect the pandemic has had on unit owners. For this reason, we expect that owners will bring these effects to the Judges’ attention and seek continuances and more time. For this reason, it is best to remain open- minded and reasonable with requests for payment plans. The goal must remain to collect as much money as possible, as soon as possible.

**Question:** What if an owner or employee self-certifies that they are fully vaccinated and they really are not?

**Answer:** Unfortunately, that may be a situation which does occur. Yet, like other businesses, it is reasonable for the community association to rely on self-certification. As we are seeing, all businesses and operators are relying on self-certification.

**Question:** Do Unit Owners still need to execute waivers as we are in Phase 5 and fully reopened?

**Answer:** Yes. We are still in a pandemic and we still need all users of the common facilities to understand that they are using the facilities at their own risk. We always want to minimize an association’s liability and waivers are one of the best ways to do this.

**Question:** Can we require our union employees to be vaccinated?

**Answer:** This cannot be required without the applicable union’s agreement. This requirement will also be seen as an additional term of employment that must be negotiated within the parties’ agreement.

**Question:** Can we remove all signs requiring people to wear masks in the common areas?

**Answer:** The signs should be replaced with ones that state all persons who are not fully vaccinated are encouraged to wear a mask at all times while on the common areas.

**KEOUGH & MOODY WEBINAR:**

**Top Ten Mistakes to**

**Avoid with Agents, Vendors, and Contractors**

**August 17, 2021 at 12:00 p.m.**

**1 hour of continuing education credit will be provided**

Join Gabriella Comstock and Dawn Moody on Tuesday, August 17, 2021, from 12:00 p.m. to 1:15 p.m., and learn how to avoid the Top 10 mistakes commonly made when dealing with Agents, Vendors and Contractors. Too often we see the same mistakes made and we want to help you identify these mistakes and learn how to avoid them. Come learn how to avoid these mistakes that can be very costly for an association! At the end of the Webinar, Dawn and Gabby will also take your questions.

Attendees can click on the link to register for this webinar

[http://events.constantcontact.com/register/event?  
llr=gyjn4vdab&oeidk=a07ei6bkczf780a599](http://events.constantcontact.com/register/event?llr=gyjn4vdab&oeidk=a07ei6bkczf780a599)

**“Top Ten Mistakes to Avoid with Agents, Vendors, and Contractors” is approved by Community Association Managers International Certification Board (CAMICB) to fulfill continuing education requirements for the CMCA® certification.**

If you have any questions about any of the information within this newsletter, please do not hesitate to contact us.

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