



**KEOUGH & MOODY WEBINAR:
LESSONS FROM THE PAST YEAR
AND A HALF: HOW TO BETTER
PREPARE YOUR ASSOCIATION
FOR THE UNEXPECTED**

**Dawn Moody & Gabriella Comstock
November 3, 2021 at 12:00 p.m. to
1:30 p.m.
1.5 hours of Continuing Education
will be Provided**



From COVID-19 to the Surfside tragedy, a number of things have occurred over the past year and a half, which have taught us new lessons to be applied to community living. In this seminar, Dawn and Gabby will discuss those lessons and how to apply them to your communities (either as a community association manager or Board member). As we gear up for 2022, now is the perfect time to ensure that Boards are implementing these lessons. Join us on November 3, 2021, from 12:00 p.m. to 1:30 p.m.

Attendees can register for this webinar below

“Lessons from the Past Year and a Half: How to Prepare Your Association for the Unexpected” is approved by Community Association Managers International Certification Board (CAMICB) to fulfill continuing education requirements for the CMCA® certification.

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ILLINOIS EVICTION MORATORIUM UPDATE

Effective October 3, 2021, the eviction moratorium in the State of Illinois has been lifted. At this time, not only are associations able to pursue the filing of an eviction action regardless of whether an individual is defined as a “covered person”, but also actual evictions are permitted to resume. In light of the lifting of the moratorium, the “covered person” designation, which we have talked about frequently since November, 2020, has now been rendered irrelevant. This means that we no longer must serve a “Tenant Declaration” form on delinquent residents and may resume the normal statutory (or thirty day) demand process.

While the process prior to filing an eviction action has returned to normal, so to speak, the process after the filing of an eviction action in a number of counties, specifically, Cook County, does remain somewhat protracted. In an ongoing effort to ensure that those who are eligible to seek assistance with the payment of their rent/assessments are able to do so, an Early Resolution Program (“ERP”) has been developed in Cook County. This ERP program helps provide owners with access to available resources to resolve their outstanding debt and also works with owners and associations to resolve eviction cases through payment plans and other arrangements. It is our expectation that we will continue to see similar mediation programs be established in the other counties. Therefore, in order to expedite resolution of eviction cases, it remains our recommendation that Boards have collection policies in place relative to the acceptance of payment plans.

Finally, while the eviction moratorium has been lifted, it is important to remember that orders of possession **must** be enforced by the county sheriff and that the county sheriff is in control of its own process. As a result, Boards should be prepared for a time delay associated with the conduction of evictions. After all, evictions have essentially been on hold for the last eighteen months and there is a backlog to clear. Further, we may see the local sheriffs impose their own requirements for conducting evictions. By way of example, at this time, in Cook County, associations and landlords must attest that they have not received or are awaiting any rental assistance funds in order for the eviction to proceed.

Although it appears that the assessment collection process is returning to somewhat normal, we must remain prepared that the process and requirements may change. Boards must continue to be prepared to adapt to changes and to make decisions, which are in the best interests of its community.

THE OWNERS ARE COMPLAINING: NOW WHAT?

Every community association relies on its members to be its eyes and ears and to help identify violations of the association’s community instruments. How the Board of Directors responds to the complaints has a great impact on the association. After all, handling the complaint properly will prevent the current violator from violating again (hopefully!) and will likely deter other owners from violating. After all, enforcement of rules and regulations sends a message to all Owners, not just the violating ones. While we want the message to be that the Board of Directors enforces the rules and regulations, we also want it to be that the Board is fair and properly enforces its rules and regulations.

As we want to be sure that it is done right, the following is a step-by-step process for community associations to follow when enforcing rules and regulations.

FIRST STEP: Confirm the Board has a written complaint that identifies:

1. The name, address, e-mail address, and phone number of the complaining person.
2. The alleged violating Owner’s name and address.
3. The specific details or description of the violation, including the date, time and location of where the violation occurred.
4. Identifies any other persons who may have witnessed the violation.

5. Provides any picture or video that may exist.
6. Any other pertinent information for the Board of Directors.

The complaining witness can be a Unit Owner, a member of the Board of Directors, or the association's managing agent.

SECOND STEP: Confirm the complaint is for a violation of the association's community instruments. That is, confirm the conduct complained of is an *actual* violation of the governing documents. If it is not an actual violation, there is nothing more to do. If it is, proceed to the Third Step.

THIRD STEP: Notify the alleged violator of the complaint. The alleged violator should be told what is alleged to have happened and when. The alleged violator should be told what section of the community instruments are alleged to have been violated. If this is the first occurrence of this violation, the alleged violator should be told that he/she has the right to a hearing with the Board of Directors to explain why he/she is not in violation of the association's documents. The association's rules and regulations should be reviewed and complied with to determine if the notice must provide the date and time for the hearing or if it needs to explain to the Owner how to request a hearing, i.e. submit a written request within 14 days to management. The notice should make it clear if a fine is being assessed (which can only be done if the owner has first been provided an opportunity for a hearing). Generally, for the first offense, it should be clear that if the Owner does not request a hearing, the Board of Directors will decide if a violation has occurred and what action may be taken by the Association, which may include the imposition of a monetary fine. **NO FINE CAN BE ASSESSED UNTIL AFTER THE OPPORTUNITY FOR HEARING HAS EXPIRED.**

FOURTH STEP: If the Owner requests a hearing, the hearing should be scheduled and conducted. At the hearing, the Owner will have the opportunity to explain to the Board of Directors why he/she should not be found in violation of the governing documents. The Owner has the right to present any persons or documents that he/she believes is necessary to explain his/her position to the Board. The Board of Directors has the right to limit the length of the hearing. The hearing is not an opportunity for the Board to cross examine the Owner or to explain to the Owner what he/she is saying is not true. **It is a time for the Board to listen.** At least a majority of the Board of Directors should attend this hearing, which should be held in a closed session with the Board of Directors and management only.

FIFTH STEP: After the hearing, the Board shall make a determination as to whether a violation has occurred. This is the proper next step, even if the Owner did not attend the scheduled hearing. A majority of the Board must agree as to whether a violation has occurred. If the Board of Directors decides a violation has occurred, it should also decide what action must be taken by the Owner and/or what amount of a fine should be imposed. Depending on the nature of the violation, the Board of Directors should also decide what corrective action and/or monetary fine will be imposed if the violation continues, i.e. upon receipt of another complaint

alleging the same violation, management is directed to send notice and impose a \$50 fine. Any corrective action that is sought and any fine imposed must comply with the association's community instruments.

SIXTH STEP: The Board of Directors or its managing agent should send written notice to the Owner as to the Board's determination. The Owner should be told what the Board decided; what corrective action, if any, is required; what fine, if any, is being imposed; and what fines may be imposed in the future if violations continue. If the violation continues, written notices of the violations must continue to be sent to the Owner and such notice should specify the corrective action required and the monetary fine to be assessed, if any.

What if the Owner wants his/her attorney to attend the hearing?

The Owner should be allowed to have his/her attorney attend the hearing. However, if the Owner did not submit this request in advance of the hearing, the hearing should be rescheduled so the Board of Directors can have the association's counsel in attendance. The hearing should not be allowed to proceed with only the Owner's attorney present. The association's rules and regulations should include language about the procedure to follow if an Owner wants his/her attorney to attend a hearing. In addition, it should provide that if the Board determines a violation has occurred and the association's counsel had to attend the hearing as the Owner requested his/her attorney to be present, the association may assess the legal fees incurred to have the association's counsel present at the hearing. Even with attorneys present, the purpose of the hearing is to LISTEN and not to conduct a trial.

What if the Owner asks for a hearing after the Board has made a determination or after the deadline specified in the notice of the violation?

Even if the Owner fails to comply with the requirements specified in the association's community instruments and/or the notice of violation, once a hearing is requested, it should be given. This is true even if the request is submitted after the Board has determined a violation has occurred and after a fine has been imposed.

What if, after the Owner participated in a hearing, the Owner requests another hearing with the Board of Directors?

It is up to the Board of Directors if it wants to conduct another hearing. However, this should not be granted, unless the Owner has explained in advance that he/she has additional information that may affect the Board of Directors' decision.

What if the Owner wants to record the hearing with the Board?

Owners only have the right to record open meetings of the Board of Directors. A hearing is not part of an open meeting. Therefore, the Board of Directors can and should deny the request. In addition, the Board too should not record any hearings. If it does, it must keep the recording and if requested by the Owner, make the recording available. However, it is highly recommended that hearings not be recorded.

What if the Owner requests a copy of the written complaint made against him/her?

The complaint should be provided to the Owner, but with the name of the complaining witness redacted. It is important that the Owner be told exactly what he/she is being accused of doing. The name of the witness is not necessarily needed to provide these details. Legal counsel should be contacted if the Owner insists on having an unredacted copy of the complaint.

Does the complaining witness have to attend the hearing?

No. In fact, only the members of the Board, management, the alleged violator, attorneys, and any witnesses invited by the alleged violator should be in attendance.

How does an Owner appeal the Board of Director's determination?

As most community instruments state that the Board of Directors' decision is final and binding, rules and regulations should not include language that includes an appeal process. Once a hearing has been conducted, the Board's decision is final. As stated above, the only reason to conduct another hearing is if the Owner has additional information that may affect the Board of Directors' determination.

After sending a notice of violation, can the managing agent or a Board Member talk to the alleged violator one on one to explain to them why what he/she did was wrong and how to avoid a fine in the future?

No. It is important that every owner be given an opportunity for a fair hearing before at least a majority of the Board of Directors. All that is said and done during that "one on one meeting" can be seen as an admission by the association's representative that can be used against the association. Further, that individual person has no authority to bind the association, as a majority of the Board must approve the actions of the Board. Finally, the best way to provide an Owner with a fair and impartial hearing is to ensure that at least a majority of the Board is present at the hearing.

What if the Owner does not pay the fines assessed to his/her account?

If the fine was adopted properly, the association can collect the unpaid fines in the same manner as unpaid assessments.

How much should the Board assess as a fine?

The amount for which the board is authorized to assess should be stated within the Association's rules and regulations. If there is not a specific fine schedule, the Board of Directors must be sure it is consistent in how it calculates the fines to be assessed to Owners. Fines need to be in an amount that are reasonable and deter the Owner from violating again. However, they are not an opportunity to generate revenue. The severity of the violation will dictate the appropriate fine to be assessed.

Rules and Regulations for every association should identify a clear enforcement procedure. This ensures that Owners understand the consequences of their actions, their rights, and that the Board of Directors acts in a fair and consistent manner. Enforcement procedures should be reviewed every couple of years. It is advantageous to involve legal counsel in this review so that mistakes can be avoided.

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

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