

## **KEOUGH & MOODY WEBINAR**

### **ELECTING THE BOARD OF DIRECTORS:**

#### **Part 1: Steps to be taken BEFORE the Election**

**April 5, 2022 at 12:00 p.m.**

*\*Pending approval for continuing education*



Join Dawn and Gabby on Tuesday, April 5, 2022, from 12:00 p.m. to 1:30 p.m., for Part 1 of 2 in our series related to “Electing the Board of Directors.” Whether you are new to the industry or have been involved in community associations for decades, you will benefit from this presentation. After all, through the pandemic, we all had to learn how to navigate an annual meeting while not meeting in person. Quite frankly, what we learned, is that annual elections of the Board can be done more efficiently. We have also learned of better ways to conduct the election, which actually makes it easier for members to participate.

In this first part of our webinar series on Electing the Board of Directors, we will address the steps that must be taken *before* the annual meeting. Often associations wait until the month before the annual meeting to think about the election. At that point, it is too late to ensure that all is in order to ensure a drama-free and smooth sailing election can be conducted. We will begin our presentation several months before the annual meeting, when the association’s rules and regulations and election procedures should be reviewed and amended, as necessary. From there, we will go through a step-by-step process of what should be done up until the day of the annual meeting. (Part 2 of this series, which will take place on May 3, 2022, will then focus on conducting the actual election). As always, come learn and get YOUR questions answered!

(Please note that while this is a two-part webinar series, attendees will have to register for each webinar separately.)

Attendees can register for this webinar [here!](#)

## **WHAT IS HAPPENING IN COMMUNITY ASSOCIATIONS OUTSIDE OF ILLINOIS?**

### **Back to the Basics**

In February, Community Association Institute (“CAI”) held its annual Law Seminar in LaQuinta, California. It

was great to be able to attend in person and, of course, get away from the cold Chicago winter. However, as always, it is a great opportunity to learn what is happening within community associations across the United States. It is an opportunity for the attorneys at Keough & Moody to learn more about the trends and to share our knowledge with you.



At the seminar, we were reminded that the challenges our clients are facing related to hostility, discord, and harassment are not unique to Illinois. Conflict is on the rise within community associations across the country. What is the best way to reduce this conflict? Consistency and uniformity in enforcement of the association’s restrictions.

We learned (or were reminded) of nine ways to reduce conflict in associations:

- 1.** Enforce the restrictions and rules and regulations;
- 2.** Don’t play favorites;
- 3.** Avoid foolish decisions;
- 4.** Provide due process before imposing a fine;
- 5.** Stop unofficial enforcement;
- 6.** Exercise good governance;
- 7.** Ensure Owners feel heard;
- 8.** Take neighbor disputes seriously; and
- 9.** Govern with empathy.

Sounds so simple right? Now take a moment and ask yourself, how many times has your board made one of those mistakes? As we always say, you will make a mistake. The key is to correct that mistake. Going back to the basics will help a board to correct those mistakes. We, as lawyers, are always analyzing the facts, circumstances, and the law. We think about how to solve problems, and we create solutions. However, we, too, sometimes overthink the matter. It is good for us too, to “go back to the basics” as we formulate our opinions and recommendations.

Yet, following the basics can be so hard with social media and the many platforms people now have to personally attack one another. There was a presentation about “keyboard bullies.” The presenters defined keyboard bullies as members of the community association “...who use their pen as a sword against their associations.” (We know you are all thinking of one or two of these bullies right now!) The presentation focused on how to distinguish between a writing that is harassing and harmful and one that is a legitimate exercise of free speech.

Here were some great takeaways from this presentation:

- 1.** Analyze the writing in question to determine if it pertains to one’s role as a board member, manager, employee, committee member or other association representative. (If it is not, the

association should not get involved and allow the individual to pursue their own remedies against the bully.)

2. Determine if this is an isolated or recurring incident. (If it is recurring, the association should likely take action.)
3. Determine whether the statements in question raise First Amendment implications. (This analysis should be completed by the association's legal counsel.)
4. Consider the effect of the statement, i.e., threaten one's safety; deters people from volunteering, etc.
5. Consider if there is truth as to what was said, i.e., did the association or board member do something wrong that is now being called out?

When we review the statements of bullies, we need to go back to the basics, which include determining whether it would be best for the association to simply "let it go." Board members and managers will not please everyone, and members will get upset and want to tell anyone who will listen (or read). As the Illinois court stated in *Boucher v. 111 E. Chestnut Condominium Association*, members of an association can express their opinions about the Board or management (even if they are unkind opinions), and they should not be penalized for doing so. Therefore, when dealing with a keyboard bully, it is so important to determine if the statement is actionable or simply one's opinion (even if critical of another).

Illinois courts are not the only ones to say that members of a community association can criticize members of the board and management. A case was filed in Orange County, California, by a member of a board of directors against her neighbor. The member of the board alleged civil harassment against her neighbor, and she sought a restraining order. In addition to doing other things, the neighbor, who did not like the board member, had a t-shirt made which he (and even his grandson) wore around the community. The t-shirt stated, "Recall [Board Member's Name]."

The trial judge assigned to the case denied the board member's request for a restraining order. The trial judge stated on the record, "If you're going to serve as a director, volunteer or otherwise, doing wonderful duty or otherwise, being subject to criticism, being subject to recall efforts, being subject to any number of public complaints about your service, I'm afraid that goes with the territory." Sounds harsh, right? Yes, but true. **Most often with these bullies, the best thing to do is to let it go and ignore them.** After all, often the bully wants to see the person they are antagonizing get upset. More importantly, it is not nice to say mean things about one another, but often it is not illegal. However, these mean comments can ultimately rise to the level of harassment.

Finally, like in Illinois, the unrest of the Owners is on the rise. This unrest is often triggered by the adoption of a special assessment or large increase in regular assessments; failure to maintain common property; unfair enforcement procedures; restriction of speech; the same people on the board year after year; and lack of transparency. We are always cautious when we

use the word transparency. After all, often board members are accused of not being transparent as Illinois law prevents it from discussing specific topics in an open meeting or with the owners. Even so, it is important for a board and management to be cognizant of the signs of unrest by the community and to try and resolve the problem before it escalates out of control.

The answer will not be to dig one's heels in. Instead, consideration should be given to take action to help calm the community. Such action includes:

1. Send a letter to the membership-explain why the Board is acting properly;
2. Conduct a special meeting-hit the issue head-on and explain why the Board is acting properly;
3. Hear the Owners and be empathetic;
4. If the Board erred, own it and correct it; and
5. Stand firm but respectful.

When taking the above steps, the board and management should also consider who is the best person to speak on behalf of the board. Is it the President? Is it legal counsel? Is it the manager? It may be a combination of those persons. However, we want the person(s) who will help diffuse the situation, not add fuel to the fire. When signs of unrest are apparent, this is a great opportunity for a board to share the wealth and not leave all in the hands of one. The differences of the board members must be put aside, and the focus must be on the best interest of the community. Be open to ideas.

Sometimes the steps above do not resolve the problem, and the owners seek to remove the entire board or certain members of the board. Owners have this right. We reviewed cases across the country where Owners did attempt to do this—some unsuccessfully and some successfully. This analysis reminded us that owners have this right to try and while they are trying to remove the board, the board has a duty to continue on conducting business as normal. In fact, a court in Pennsylvania noted that it was proper and needed for an improperly ousted board to continue to conduct normal business. A court in Delaware reminded all that it is always best for internal condominium disputes to be resolved among the unit owners, without court involvement. In Nevada, a court noted that courts may have to excuse strict compliance with procedural requirements, if the sitting board fails to carry out ministerial duties, such as giving notice of a meeting. On the other hand, where the board did all it should, the court in Colorado would not show any inclination to excuse technical failures.

As we end the first quarter of 2022, let us all remember -- back to the basics! If your association is sensing or feeling the tension within the community or by one/group of persons, let's address it sooner rather than later. The association team can corral and work towards a solution because, as the judge stated in Delaware, it is best for internal condominium disputes to be resolved among the community—as most likely no one is going anywhere.

**If you have any questions, please feel free to contact us.**

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