



KEOUGH & MOODY WEBINAR

ELECTING THE BOARD OF DIRECTORS:

Part II: The Election (and thereafter)

May 3, 2022 at 12:00 p.m. - 1:30 p.m.

**Pending approval for continuing education*



Join Dawn and Gabby on Tuesday, May 3, 2022, from 12:00 p.m. to 1:30 p.m., for Part II 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. Last month, we addressed what steps should be taken before the annual meeting. During this webinar, we will address the actual election. The goal for every election should be to ensure that the process is done properly and in compliance with the law.

We will take you through a step by step process of an annual election. Issues to be discussed include those related to a virtual annual meeting; when to invalidate a vote/proxy; how to use inspectors or observers; and tallying the votes. We will also address problems that may arise after an election and provide recommendations on how to avoid and respond to these situations. We will provide real examples to best educate all on this very important topic.

Join us for what we believe will be very beneficial to all board members and managers, (even if you missed Part I of this webinar). As always, come learn and get YOUR questions answered!

Attendees can register for this webinar below.

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WHO ARE YOU GOING TO CALL?

Every day, community associations are faced with various issues and problems. When something occurs, it is not uncommon for a unit owner to immediately call management. It is not uncommon for a member of the board of directors to call the association’s community association manager. It is also not uncommon for the



community association manager to call the association's legal counsel. Often, this may be the correct protocol, but many times it is not and this is the protocol followed only because the caller (be it an owner, Board member or manager) does not know who else to call.

So, when problems strike and issues arise, who are you going to call?

Situation Number 1: The Association wants to terminate a contract (or sign a contract). Who should be called?

Contracts and contractual issues should be directed to the association's attorney for resolution. All too often, in an effort to save money, boards want to rely upon their community association manager for essentially legal advice related to entering into or terminating a contract. Community association managers in Illinois are prohibited from providing legal advice. While managers often work with the same vendors and are often familiar with the terms of a community association's contract, their knowledge is not the same as legal advice. Calling management to obtain this advice may not only expose the manager to liability, but also it may increase the association's liability. After all, if a contract is not terminated properly or the contract is executed with a term that is not favorable to the association, the association will likely spend more money than if they had just sought the advice of legal counsel, at the outset. Further, under Illinois law, a board of directors is provided additional security and protection, when they rely on the advice of legal counsel. When you have a contract (legal) issue, it is the attorney who should be called to best protect your association (not merely someone who stayed at a Holiday Inn Express last night).

Situation Number 2: The self-managed association just learned that it has never filed tax returns that it was required to file. Who should be called?

The association's accountant should be the first one called. The accountant will be able to navigate the board of directors through this process to ensure that not only are the tax returns filed, but also to ensure that all issues with the IRS are addressed. It is best to consult with an accountant familiar with community associations. CAI-Illinois has a directory of professionals, who routinely work with community associations.

Situation Number 3: The association is undertaking a major construction project and wants to ensure that the work is done per the drawings and contract. Who should be called?

A licensed engineer, architect or other design professional should be called. As laypeople, most board members do not have the qualifications to oversee the work of contractors engaged by the association. Even if members of the board are qualified to oversee the work, most do not have the time necessary to commit to this important responsibility. Further, even if the board member is qualified and has the time, it is likely not in the best interest of the association (or

the individual board member) to wear this hat. Reliance on the opinion of third-party experts is typically the best way to limit any liability to the association or members of the board. For those associations who want oversight of the work being performed, a licensed engineer, architect, or other design professional (which may include a management company's construction oversight division) should be consulted and utilized.

Situation Number 4: The association (through either its managing agent or member of the board of directors) receives a letter from an attorney threatening legal action on behalf of an owner. Who should be called?

The letter should be forwarded to the association's legal counsel. *In addition*, the association's insurance carrier should be notified of the threat of litigation. While a claim may not need to be filed at the time, notice should be given to the carrier. The association's insurance policy likely contains a term that requires the association to provide timely notice of any claim. Failure to provide the carrier with notice when the association first learns of a possible claim, may give the insurance carrier a basis to deny the claim if the threat turns into a reality.

Situation Number 5: The association's insurance policy is up for renewal and the board of directors has questions about whether the association's policy adequately covered the association and complies with Illinois law. Who should be called?

The association's insurance agent should be called. The value of insurance cannot be overstated. The association does not want to wait for a casualty or catastrophe to find out whether it has sufficient insurance coverage. It is imperative for the board of directors to ensure that the association, and the board of directors, is adequately protected. While both your attorney and community association manager can review insurance policies, it is your insurance agent who should be called if you have questions. If the association is professionally managed, the management company may provide a service that has someone on staff with extensive insurance knowledge and experience review the policy. This is a good service to utilize, but the association is best protected by asking its insurance agent *and* receiving the confirmation also from the insurance carrier.

Situation Number 6: A unit owner feels unsafe and believes his personal safety is being threatened by another owner. Who should be called?

The police should be called. Any person, whether he is a unit owner, a board member, a manager, or member of the association's staff, who feels unsafe and believes his personal safety is being threatened should ***always*** first call the police. It is also a good idea for the second call to be to the association's board of directors or managing agent. The association can assist the owner in enforcing the restrictions of the association's community instruments. However, the police are in the best position to provide immediate safety to one who believes his personal well-being is in jeopardy. This must be stressed to all owners.

Situation Number 7: The self-managed board of directors has regular questions

about the day-to-day business of the association. Who should be called?

A management company should be called. We often receive phone calls from board members who have general questions about managing the association. They ask us if they can be on retainer so we can assist with these questions. They also often say they cannot afford a professional management company. Our typical response is that the association cannot afford to have legal counsel manage your association. Many management companies will offer different levels of service. Not only is it likely less expensive to hire a management company, in some capacity, rather than utilize a law firm, but also management companies have a different type of experience and knowledge to bring to a community association. We often remind our clients that they should utilize the experience and knowledge of their management company.

Situation Number 8: Several owners are delinquent on assessments and the association wants to collect assessments. Who should be called?

The management company, board members and legal should be called. Assessments are the lifeline of every association. Every effort must be made by the association to collect assessments. If the association is professionally managed, the management company should take the first step to remind the owner of the past due amount. Sometimes owners just need a gentle reminder. If the association is not professionally managed, these reminders can come from the board of directors. All such communication should be in writing. If, after two reminders (or perhaps more if the association only collects annual assessments), the owner has not responded or made an effort to pay, the association's legal counsel should be contacted. It is hard to send one's neighbor for collection. However, sometimes the first legal notice from an attorney is all that is needed to encourage a response from the owner. Also, keep in mind that just because the owner's account has been referred to legal, does not mean that the association cannot work with the owner (i.e. extend payment plans). Waiting to take action against an owner can sometimes make the situation harder for the owner as at that point, the balance is so large, the owner feels overwhelmed and hopeless. Collecting assessments requires the help of management, the board, and legal.

Situation Number 9: A board member does not believe that the manager is doing what is required under the contract or a member of the board does not believe another member of the board is pulling his weight. Who should be called?

For the professionally managed association, the board should begin by bringing the matter to the attention of the community association manager assigned to the property. If what is being asked is covered by the contract, and that discussion is not fruitful, the next step is to talk to the manager's supervisor or an executive within the management company. If the management company does not know there is a problem, the company cannot fix the issue. Likewise, a board member may not know that more needs to be done to help manage the association. It is imperative for the managing team of the association to communicate freely and openly with one another and with respect. Remember, the managing team includes *all* members of the board and *all* members of the management company. Legal counsel should be contacted after this initial communication has occurred and did not correct the problem.

As you can see it is important for every community association, regardless of the size, to have a team of professionals. Each member of the team brings something different to the association's table. Members of the board do not have to have all of the answers and know how to tackle every situation. However, they do need to know when to ask questions and when to seek help. They also need to know *who* to ask. Then the Board of Directors has to rely on the right person on their team for guidance. The right person is the one who is the "expert" on the particular issue at hand (and not the person who will tell the board what it wants to hear).

If you have any questions about the contents of this newsletter or anything related to your community association, please feel free to reach out to us.

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