



Keough & Moody Webinar

CAPITAL PROJECTS IN ASSOCIATIONS:

A Step-by-Step guide

June 7, 2022 at 12:00 p.m. - 1:30 p.m.

1.5 hours of continuing education credit will be provided

Join Karen Beverly and Jonathan Wassell on Tuesday, June 7, 2022, from 12:00 p.m. to 1:30 p.m., to discuss planning for, paying for, and administering capital projects within an association.

Karen and Jon will take you through a step-by-step process of handling a capital project, from identifying the need to undertake the project, identifying funding sources, selecting a contractor, administering the project, and handling owner concerns. Issues to be discussed include practical considerations for your projects and legal requirements and limitations per the Illinois Condominium Property Act and Common Interest Community Association Act. We will also address problems that may arise while planning for and executing capital projects, and we will 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. As always, come learn and have your questions answered.

Register in advance for this webinar below.

[Register Now](#)

Stay tuned for more information on K&M's next Webinar on Wednesday, August 3, 2022, when Gabby and Dawn return from "webinar" vacation!

Collecting Unpaid Assessments: Turning Accounts Over to the Association's Attorney for Collection

It is best for all community associations to review their delinquencies on a regular basis. Staying ahead of delinquencies not only helps the association but also can help the delinquent owner. After all, it is always easier for one to "catch up" on what is owed when the

balance due is not overwhelming. While it appears we are phasing out of the pandemic, it also appears that we are again entering a difficult economic climate. The following are common questions that we hear related to attorney involvement in collecting unpaid assessments.

When should a board turn an account over to its attorney for collection?

The “when” differs from one association to the next. There are many factors to be considered by the association in determining when is the best time. These factors include the amount collected in assessments; the number of units within the association; the number of delinquencies within the association; and whether assessments are collected on an annual, quarterly or monthly basis. Every association should adopt a collection policy that addresses the “when” to ensure that **all** owners are treated in a consistent manner. A board should also follow the procedures outlined in the association’s governing documents for collection of assessments. Since the association relies on collecting money from owners to operate the association, the board should not wait too long once an owner’s account becomes delinquent. Most associations refer accounts to collection when they are between 60 and 120 days past due. As long as the amount of time outlined in the governing documents has passed, the account should be turned over.

What steps must be taken by the board prior to turning the file over?

If the association’s governing documents (including the rules and regulations or collection policy) require notice to the delinquent owner prior to sending an account to collection, the board should be sure the notice is sent. Even if notice is not required prior to turning an account over for collection, sending such a notice is a good idea as it shows the board acted reasonably before engaging an attorney and incurring attorney’s fees. Additionally, the board should keep a copy of all notices sent to the owner in case proof of the notice is required in the future. The notice should be sent in the manner outlined in the governing documents as well. Further, if the notice contains a time period to make payment, the board should take note of the time period and not turn the file over to the attorney prior to the expiration of the time period.

What should be provided to the attorney when turning a file over for collection?

The most important item to provide is an updated account statement for the owner. The account statement should begin with a zero balance or credit balance. If there is a beginning balance on the account for some reason, such as a change in accounting software or change in management company, a statement from the prior software or prior management company should be provided as well. It is the association’s responsibility to provide a complete account history to the owner. In addition to the account statement, the board should provide any offsite address information it may have for an owner. The board is required to send notice to the last known address of the owner contained in the association’s books and records. Therefore, if the board knows of an offsite address and fails to provide it, the demand notice may be found invalid, and the collection process would need to start over. Therefore, the offsite address information is very important. Further, if the account contains violations or fines, the board

should provide copies of any violation notices that were sent to the owner. This will ensure that the file contains all necessary backup documentation if the amount demanded is challenged. Finally, if the board knows that an owner is deceased, it is helpful to provide that information to the attorney so the attorney can investigate any possible probate matter. Any documentation the board may have, such as death certificates or obituaries, along with any contact information for next of kin, will be very helpful to the attorney's office.

What should the board do if an owner contacts them once the file is turned over for collection?

Once the account is with the attorney's office, it is recommended that all communication goes through the attorney's office. This ensures that there is one point of communication for the file and different information is not being spread by different parties. Therefore, if an owner contacts the board or the management company, the owner should be directed to the attorney's office. The attorney will then review the owner's request and address the same with the board and management. While this process may result in a delay, it is necessary to again ensure consistent communication. If the board or management company acts outside of legal counsel, those parties may not have the full picture (such as full account balance) and may agree to something that is not in the best interests of the association.

What should the board do if an owner makes a payment directly to the association after the file has been turned over to the attorney?

It is preferable that payments are made to the attorney's office since the file is in the attorney's office for collection; occasionally an owner will make a payment directly to the association or management company. Unless the association has a written policy not to accept partial payments, the association should accept and apply the payment as long as it is not restrictively endorsed (i.e., marked payment in full). Then, the board or management company should notify the attorney's office of the payment to determine if the payment pays the account in full. If the payment does not pay the account in full, the attorney's office will provide the owner with the remaining balance needed to remove the account from collection. If the association has a written policy not to accept partial payments, the payment should be sent to the attorney so it can be returned to the owner with an explanation from the attorney's office.

Should late fees continue to accrue to the account?

The association should follow its governing documents as they relate to late fees. Additionally, late fees must be reasonable. Simply because the fees are outlined in the governing documents does not make them reasonable. If an owner challenges the late fees in court, the judge will decide if the fees are reasonable.

Has the collection process within the judicial system returned to pre-pandemic procedures?

For the most part, the collection process is back to its pre-pandemic procedures. However, there are slight exceptions in a few counties once an eviction lawsuit is filed. In Cook County,

for example, the owner may be referred to the county's Early Resolution Program to obtain free legal advice. Further, some counties may require the association to engage in mediation before the court will enter judgment. Additionally, there is a new fund in Illinois called the Illinois Emergency Homeowner Assistance Fund, for which owners can apply to receive assistance with their mortgage, property taxes and condominium/homeowners' association assessments. Therefore, associations must have a little extra patience with the process. However, once an eviction order has been entered and the stay period has expired on the eviction order, the board should be able to proceed with enforcing the order for possession as it has in the past.

How should the board handle an owner that is continuously behind on assessments and has been sent to the attorney on numerous occasions?

Each time an account is brought current, the owner starts the process over again. This means that if the owner becomes delinquent again, the collection cycle must start over again. All of the same procedures must be followed as if it is the first time the owner is in collection. The board cannot treat the owner any differently with the steps in the collection process because the owner has been in collections before. It is very important that all owners are treated equally in the collections process.

Does referring the matter to the attorney's office mean that the owner will not be able to work out a payment arrangement with the association?

No. Now more than ever, it is important for the association to work with an owner who wants to pay but has fallen on hard times. Clients often wait to refer a matter to collection as they believe it will be unfair to the owner. Often, referring it to the attorney encourages a resolution and/or communication with the owner. Unfortunately, or fortunately, people tend to respond more expeditiously to an attorney letter than one sent from the creditor. Further, it is not uncommon that the lawyer can be more objective about a situation and can facilitate a resolution. As judges want to know that the association has tried to work with an owner, we always make an effort to see if a payment plan can be arranged with the owner.

As we are almost halfway through 2022, it is a good idea for each association to not only review its delinquencies, but also its efforts to collect the amounts due to it. After all, we want to collect as much as possible before the end of the year.

If you have any questions about the collection process or anything else related to your association, please let us know.

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