



Keough & Moody Webinar

**BACK TO SCHOOL SEASON MEANS BACK TO
BASICS AS WE PLAN FOR 2023
(Yes, already!)**

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

**Pending approval for continuing education*



Join Gabby Comstock and Dawn Moody on Wednesday, August 3, 2022, from 12:00 p.m. to 1:30 p.m. for a discussion of planning for 2023. As hard as it is to believe, budget season is just around the corner. During this time, many managers and boards are thinking about the community association's finances and expenses for next year. Yet, there is more to think about than dollars and cents as we begin our planning for next year. We are regularly reminded we need to learn from past experiences and apply those lessons moving forward. During this presentation, we will address how the changes in community association living and our world today should impact community association budgeting and planning for 2023.

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

Legislative Update

Recent Changes to the Illinois Condominium Property Act and Common Interest Community Association Act and Condominium and Common Interest Community Ombudsperson Act

For those community associations bound by the Illinois Condominium Property Act and the Common Interest Community Association Act, both Acts have recently been amended. Effective May 27, 2022, owners are entitled to inspect, examine, and copy the reserve study. In addition, the Condominium and Common Interest Community Ombudsperson Act was extended and now is scheduled to be repealed on January 1, 2024. The complete text of these changes can be found at <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0921&GA=102>.

City of Chicago Adopts a New Cooling Ordinance

The City of Chicago, for some time, has had an ordinance for minimum temperatures that must be maintained in multi-unit residential buildings during the winter. Due to the tragic heat-related deaths of three residents of an assisted living facility, that ordinance has been amended to now include cooling standards for summer months.

Under the updated ordinance, all residential buildings taller than 80 feet, or with over 100 dwelling units, will be required to have an indoor common area with cooling and dehumidification systems capable of being operated independently from the heating system. The equipment must be able to cool to 75 degrees and reduce humidity to 50% and must be operated when the outdoor heat index reaches 92 degrees. Until May 1, 2024, this requirement can be met with temporary systems (i.e., window A/C units). After May 1, 2024, a permanent solution must be offered.

For buildings that already have updated central heating and air conditioning capable of switching back and forth, this new ordinance will likely not require a change. However, for buildings that have systems that must be switched over seasonally (such as older buildings that have radiator heat that runs from November through May, no matter the temperature outside), plans must be made to update the equipment. At the very least, the association may want to consider installing new equipment to turn a community room into a “cooling center” with its own air conditioner system.

The complete text of the ordinance can be found at https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2665642.

Owner Disputes – What is the Association’s Role?

**What's your
ROLE?**

From time to time, managers and Boards of Directors for community associations receive complaints from an owner against another owner. Often, these complaints do not affect the association as a whole but affect the comfort of the complaining owner only. Unfortunately, now that more people seem to be working from home, the frequency of these complaints has increased. When and how should the Board respond?

What types of owner-to-owner complaints are being made?

Owner-to-owner complaints can take various forms. Noise complaints are common. These can be one-off situations (a loud party or music too loud late at night), or ongoing issues (unreasonable sound transmission between floors, allowing all noises to transit). Smoking, smoke odors, and other odors are another common complaint. Of course, there are always barking dogs.

When does an association need to become involved?

1. What do the governing documents say?

It is very common for declarations to contain language prohibiting any resident from engaging in any conduct or activity which is or may become an unreasonable nuisance or an annoyance to others. Some associations have adopted rules that add specificity to this prohibition by implementing quiet hours, setting forth minimum soundproofing requirements for hard flooring, or adopting procedures for limiting the transmission of smoke. Step number one when management or the Board receives a complaint is to look at the declaration and the rules. Is the conduct explicitly prohibited? If so, send a warning or violation notice. If not, consider whether the conduct or activity constitutes an “unreasonable” nuisance. If the answer is an unequivocal “yes,” (such as a wild party at 2:00 a.m. on a weeknight), a warning or violation notice should be sent. If it is not clear whether the activity really does constitute a nuisance and, if so, if it is “unreasonable,” further investigation might be warranted.

2. What does further investigation reveal?

If the Board finds itself in a position where it needs to determine whether a complaint, if taken as true, would constitute an unreasonable nuisance, it should first look at the objective facts.

What time of day did the incident occur? How frequent is the conduct? Have other residents complained, too? Hopefully, these circumstances will point to whether action needs to be taken. If not, more specific investigation might be necessary.

If it is not clear from the complaint alone whether the incident or conduct is a nuisance, the complaining resident might be asked to supply a video or audio. In other cases, such as alleged smoking nuisances, a visit to the unit by a manager or members of the Board might be warranted. If a visit to the unit is conducted, a clear and concise report of the objective observations should be produced – who was present? How long were they in the unit? What day and time was it? What was seen/smelled/heard? If the complaint is substantiated after a unit visit, a notice should be sent. If not, the matter should be closed.

3. Is there a history between the complainer and alleged nuisance creator?

Sometimes, history might assist the Board in determining if action must be taken. If a long-term resident who has previously made no or few complaints now alleges a nuisance, there might be something to it. On the other hand, if neighbors share a wall, are constantly at each other's throats, and are often complaining about each other, the Board might consider that there is a motive other than an actual disturbance. While the Board should not presume the answer or ignore a complaint simply because there is history, it also need not leave its logic and memory at the door when evaluating these issues. This applies not just when there is a history between the complainer and the complainees but also when listening to each side of the story at a hearing. The Board can and should evaluate the credibility of what is presented. At the end of the day, the Board will be called upon to use its reason, good judgment, and discretion.

The Board completed the steps outlined above – it reviewed the complaint, reviewed the governing documents, and considered the history of the situation. It was determined that there is a nuisance. Now what?

The Board should send either a warning or a notice of violation to the alleged violator. The Board's own procedures as stated in policies and rules and regulations for violations and

complaints must be followed. At the very least, the notice must be in writing; must recite the date, time, and circumstances of the complaint; must state the proposed sanction; and must give the alleged violator the opportunity for a hearing. All documents supporting the complaint – written narrative of the complaining witness, videos, et cetera must be made available for review by the alleged violator. No fines or other sanctions should be made final until the complaint is confirmed after hearing, or until the deadline to request a hearing has passed, but no request for a hearing has been made.

The Board completed the steps outlined above, and it determined that there has been no unreasonable nuisance. What does the Board do? What if the complaints continue?

The Board's obligation is to follow and enforce its governing documents. The Board's job is not to mediate interpersonal disputes between residents. If there is no violation of the governing documents, the Board need not take action, no matter how much a resident may complain.

If the Board determines that no nuisance violation likely occurred, it should notify the complaining resident that its investigation has been completed, and that no further action will be taken. If the complaining resident continues to complain about the same incident, they should be reminded that the matter is closed. Depending on the circumstances of a complaint, the Board might suggest that the complaining party contact their personal attorney to ascertain their rights. Just because conduct does not amount to a violation of the governing documents does not mean that the incident does not constitute an actionable tort, such as harassment or intimidation or private nuisance. Although the Board might not be able to do anything, the complaining resident might have other remedies available to them.

In summary, the Board is the body that governs the association and enforces the association's governing documents. The Board is not the police or private arbiter of disputes. If there has been a violation of the governing documents, the Board should take action. In the absence of such a violation, the complaining resident will need to find another way to right the wrong, outside of the Board of Directors.

2022 COOK COUNTY ASSESSMENT SEASON

It is that time of the year when the Cook County Assessor's Office begins the next year's tax assessment and tax appeal season. Townships that are being reassessed will receive a notice in the mail.



If you are interested in determining if it is beneficial for your community to appeal its real estate taxes, please let us know, so we can further discuss the matter.

Enjoy the summer and let us know if we can do anything for your association!

Chuck Keough (cmk@kmlegal.com), Dawn Moody (dln@kmlegal.com), and Gabby Comstock (grc@kmlegal.com)

Write Keough & Moody a Review!

Google My Business (GMB)

<http://bit.ly/2m830Py>

[Facebook](#)

Naperville

630-369-2700

Chicago

312-899-9989

www.kmlegal.com

info@kmlegal.com

STAY CONNECTED



**Keough & Moody, P.C.,
114 East Van Buren, Naperville, IL 60540**

