



## Keough & Moody Webinar

**"Everything said can and WILL be used against you  
in a court of law."**

**October 12, 2022 at 12:00 p.m. - 1:30 p.m.**

***1.5 hours of continuing education will be provided***

Join Gabby Comstock and Dawn Moody on Wednesday, October 12, 2022, from 12:00 p.m. to 1:30 p.m., for a discussion about all that is said by a member of the board of directors and its managing agent can and will be used against the association. During this webinar, we will discuss how to avoid inadvertently saying something that can be misconstrued. As many of you know, Dawn and Gabby believe the best way to learn is through mistakes. Therefore, during this webinar, they will provide examples of statements made only to come back and haunt the association. Not only will tips be given to avoid falling into a trap, but also Dawn and Gabby will explain what should be done if you discover you have fallen into a trap.

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. Registration is required.

Register in advance for this webinar below.

**"Everything said can and WILL be used against you in a court of law" is approved by Community Association Managers International Certification Board (CAMICB) to fulfill continuing education requirements for the CMCA® certification.**

**Register Now**

## **Join us in Congratulating our own Shannon Schwarzwald!**

We are excited to announce that Shannon, K&M's current business manager, recently passed the Illinois bar exam! Shannon will participate in the



Illinois Bar Admission Ceremony on November 17, 2022, at which time she will be sworn in as an attorney, authorized to practice law in Illinois.

Shannon joined the firm in 1996. She began her tenure as an administrative assistant to the attorneys in the firm. In 1997, she received her paralegal certificate. She followed that up with completing her B.A. in Organizational Communications from North Central College in 2001. Not finished with the books, Shannon then completed her M.A. in Leadership Studies in 2006.

Clearly a lifelong learner, she then decided to tackle law school. In May, 2022 Shannon earned

her J.D. degree from the Mitchell-Hamline School of Law. All along, Shannon has been an integral part of our team and the business manager of the firm.

Since beginning with the firm 26 years ago, Shannon has remained full-time at K&M while completing her education. She remained primarily responsible for the coordination of community association collection efforts and managing the staff at K&M. She not only continued to oversee the business operations of K&M, but also remained actively engaged in the community association industry, including the Illinois Chapter of the Community Association Institute (“CAI”).

Chuck, Dawn, Gabby and the rest of our staff could not be more proud to have Shannon as a licensed attorney with the firm. We are excited for her to begin her new journey in applying her intelligence, experience and work ethic in order to serve our clients in a different way. Congratulations Shannon!

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## **NOTICE OF VIOLATIONS 101**

Complaints are on the rise as people spend more time at home. This means more notices of violations are being sent out to alleged violators. Too often, we see a community association not able to collect a fine, or we see the board of directors has to deal with unnecessary “hassles” because the notice of violation contained errors. The following is a summary of what every notice of violation should contain.

### **Date:**

Be sure the notice has a date. The date should be the day the notice is being sent/given to the Unit Owner.

### **Method of Delivery:**

The notice should state how it is being given to the Unit Owner, i.e., electronic mail, personal delivery, certified mail, regular mail, or a combination of methods. The association’s community instruments should be reviewed to confirm how notice must be given. If the association has an e-mail address for the Unit Owner, even if the notice must be sent certified mail, it should be sent via e-mail too. After all, we want compliance. So, the sooner we get the notice to the Unit Owner, hopefully, the sooner the violation is corrected.

### Addressee:

The notice should be addressed to the legal Unit Owner. That is, the person who is identified in the county records as owning the Unit is the one entitled to receive this notice. It can also be sent to the person who is identified in the association's books and records as the Unit Owner.

It should NOT be sent only to the tenant. In fact, we recommend it not be sent to the tenant and only be sent to the Unit Owner.

The mailing address on the notice should be the same as the address for this Unit Owner per the association's books and records. It is a good practice to send it to the Unit Owner at both the unit address and the address within the association's records. Again, the goal is to get the notice in the hands of the Unit Owner as soon as possible so that he can correct the violation as soon as possible.

### Identify the Notice:

The notice should state it is a "NOTICE OF VIOLATION" or a "WARNING LETTER." While this is not a legal requirement, it is a good practice because it will get the attention of the Unit Owner. It also makes it clear to the Owner what is the purpose of the letter.

### Identify the Alleged Violation:

The notice should state that the association has received a complaint, and it should summarize what the complaint is about, i.e., that you engaged in noxious and offensive conduct on March 1, 2021, by running around the common elements yelling. If a video exists which identifies the alleged conduct, the notice should state that so the Owner knows that the board considers this evidence, and he can decide if he wants to request a copy of the video.

The notice should also identify the provisions of the association's declaration and/or rules and regulations, which were violated by engaging in this conduct. Remember, even if a rule of the association was violated, we want to cite the provision of the declaration that was also violated if one exists. If the association cannot find a specific provision in the declaration or the rules and regulations which were violated by this alleged conduct, reconsider sending this notice of violation. Sometimes problematic conduct is simply not within the jurisdiction of the association to address.

### State What you Want:

The notice should state what the Unit Owner needs to do, i.e., "remove the broken pots from the balcony within five (5) days" or "immediately cease from engaging in such offensive conduct." It should be clear to the Unit Owner what action needs to be taken in order to correct the violation. All too often, we see notices which are unclear as to what the violation is and what needs to be done by the Unit Owner to correct it.

### State What the Owner Can Additionally Do:

The notice should state that if the Unit Owner disputes that he has engaged in this conduct or violated the documents, he has the right to attend a hearing with the board of directors. Review the association's community instruments and confirm the notice complies with the procedure as stated within the association's community instruments. If the community instruments state that the board of directors will provide the Unit Owner with a date and time to attend a hearing, be sure the notice states the date and time. If the community instruments state the Unit Owner is to request the hearing, then the notice can state that the Unit Owner can request a hearing as

provided for in the association's community instruments. That is, in this case, the notice does not have to identify how and when the Unit Owner can request the hearing. Again, the notice must comply with the terms of the community instruments or it can be invalidated. **Therefore, if the procedure set forth in your community instruments (the Rules and Regulations, most commonly) no longer complies with how the board wants to address violations or the association's management's general process, update the community instruments.** REMINDER: Under Illinois law, a fine cannot be assessed to a Unit Owner's account until the Owner has been given the opportunity for a hearing.

Signature on the Notice:

The notice can be signed by the managing agent or the board of directors.

Miscellaneous Information:

If a video of the alleged violation exists, be sure to preserve the video until the matter is completely resolved, i.e., all outstanding fines are paid. If the Unit Owner requests a copy of the video, they are entitled to a copy. The Unit Owner has the right, under Illinois law, to see all evidence the board of directors reviews in order to determine if a violation occurred. If the complaint given is anonymous, the board of directors should think twice before sending more than a "Warning," especially if the violation cannot be independently verified. Last, it is the Unit Owner, NOT the tenant, with whom the board of directors should address violations.

It is also best to present questions about the contents of a notice of violation BEFORE it is sent. If you have any questions, please let us know.

**Chuck Keough ([cmk@kmlegal.com](mailto:cmk@kmlegal.com)), Dawn Moody ([dlm@kmlegal.com](mailto:dlm@kmlegal.com)), and Gabby Comstock ([grc@kmlegal.com](mailto:grc@kmlegal.com))**

## Write Keough & Moody a Review!

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### STAY CONNECTED



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