February, 2023
Newsletter

KEOUGH & MOODY WEBINAR

"CAN I DO THAT?"
March 8, 2023, at 12:00 p.m.
**Pending approval for continuing education*

Join Gabby and Dawn on Tuesday, March 8, 2023, 12:00 p.m.-1:30 p.m., for our next webinar, "Can I do that?" In this webinar, Gabby and Dawn will tackle common general questions that we receive from associations as to whether the association can do (or prohibit) something, such as, can we prohibit solar panels from being installed, can we prevent someone from running for the Board, can we charge legal fees back to an account, or can we evict someone? In this webinar, Gabby and Dawn will provide the "why" behind some basic questions so you, as managers and members of the Board of Directors, can explain the same to your members when asked.

Registration is required. Please register in advance for this webinar below.

Register Now

WHAT IS GOING ON IN COMMUNITY ASSOCIATION LAW AROUND THE COUNTRY?

Dawn and Gabby recently attended CAI's 44th Annual Community Association Law Seminar in New Orleans. We always enjoy attending these seminars as it is a great opportunity to connect with and learn from other attorneys in our industry. Gabby presented this year with another attorney from California on "Neighbor to Neighbor Harassment and Bullying." It is unfortunate that so many community associations across the country are seeing such an increase in this type of conduct. We were reminded that basic civility and respect are the way to defeat these battles. There was a great discussion about how to deal with neighbors, avoid legal action, and when there is no alternative, how to pursue legal action.

It was interesting to learn about how Boards are conducting association business through electronic means. While we are all familiar with conducting virtual meetings and using emails to communicate, we learned more about the use of and pitfalls related to Boards using "Slack" as a means of communication and even the use of "WhatsApp." While these are means that promote faster and easier ways to communicate, they can create many problems for associations. This presentation left us questioning how we will balance changes in technology with the ruling in *Palm v. 2800 Lakes Shore Drive Condominium Association*, which confirmed the obligations of Boards to conduct business in meetings open to members. It is clear that the more an association uses technology to conduct business, the greater the need to adopt written policies and resolutions on these types of communication and recordkeeping. (For any association seeking to use these tools, we recommend seeking the advice of legal counsel to ensure compliance with Illinois law.)

We also attended a presentation related to the importance of an association to be disaster-proofed. While the natural and unnatural disasters that can affect a community association differ from state to state, we were reminded of how important it is to think and plan. Insurance remains the best way to be prepared for such disasters. We were also reminded of how critical it is to have accurate replacement values for the association's property. Too often, we hear about a disaster occurring and the association cannot rebuild as there was not enough insurance coverage. Accurate replacement values will help to reduce this from occurring and is the best way to transfer the risk. Along these same lines, we need to make sure the community association's governing documents clearly identify the insurance requirements for the association and the unit owner---especially for non-condominium associations (as Section 12 of the Illinois Condominium Property Act expressly addresses insurance requirements for condominium associations). Further, association should look to purchase appropriate endorsements, i.e., replacement cost coverage; water sewer back-up; ordinance or law coverage; wind-driven rain, etc., which are likely less expensive to have in place rather than not having the coverage.

Along with insurance, a community association should have an effective disaster plan. This is

where a committee or commission could be of help to the Board of Directors. The primary function of this group is to create, coordinate and effectuate a Disaster Preparedness Plan. We believe this could be of great benefit to our clients who are located in the City of Chicago. (If you are professionally managed, begin these discussions with your managing agent.)

As with every year, there was a session on "Hot Topics." "The New Mafia" was discussed. This is the corporate investor who moves into your community association with the intent to take control. We often hear about this in condominium associations when the investor is interested in deconverting the building to apartments, but this is also happening in single-family home communities. The slowdown in home buying has helped this to become a trend. These corporate investors are not only looking to control the Board of Directors, but also they are often the source of community problems. These owners may be hard to contact. They often also have tenants in the property who are not maintaining the property and/or violating the association's restrictions. Unfortunately, they are also not fazed by fines or liens, which can then lead to an increase in litigation. It's a new trend to keep in mind as governing documents are amended.

Another trend yet to hit Illinois is the construction of Accessory Dwelling Units, i.e., in-law units, cottages, a separate dwelling unit on a lot. In California, the Legislature is encouraging the construction of these affordable dwelling units that are owner-occupied and used for rentals that are longer than 30 days. They are favored by lawmakers as it has a better impact on the quality of life and environment. This is a reminder for our single-family homeowners associations to make sure your community instruments address the construction of these units (that for so many years we all thought would never come to our community!).

We also attended a seminar about "How to Address Protests in the Community." Interestingly, we learned about homeowners protesting the policies and rules of the association. These owners refuse to pay assessments, attend Board meetings ready to use force (and anger), and petitions to remove the Board members. We heard about a community in Alabama that held a rally to oppose a $4,100 increase in annual assessments. Another group in Colorado rallied at the homeowner's association's office as they were so concerned with the number of judicial foreclosures within the community. We also heard about social protests (when people use signs, flags and exterior modifications). In Colorado, a group protested a drag comedy show at the association by postings signs. An owner in Idaho protested a developer by using Nazi symbols. This conduct raises constitutional concerns as people have the right to free speech and the right to assemble. It is important to review rules to ensure that they do not impair one's constitutional rights, but ensure that if such conduct occurs it does not create a safety concern and/or harm others. This seminar taught us the importance of looking at rules and regulations in a different way and one in line with the issues that can come before our communities.

This year's seminar had many typical topics like those related to collecting assessments, but we certainly saw that changes in community association management and issues are not just occurring in Illinois but throughout the country.

But we've always done it this way...

From time to time, Boards must hold hearings (or executive sessions) with owners who have been charged

with violating the association's rules and regulations. This is necessary because applicable state law for both condominium and non-condominium associations requires that Boards must provide notice and an opportunity for a hearing *before* levying a fine. These hearings are often scheduled at the **end** of regularly scheduled Board meetings because (a) a quorum of the Board is normally present, (b) the primary purpose of the Board meeting is to conduct general association business, and (c) the Board can only take action at a meeting. Plus, this is just the way it has always been done.

Regular Board meetings are often scheduled to start at or around 7:00 p.m. By the time the Board completes the regular business portion of its meeting, it may be 9:00 p.m. or thereafter (note, we've had Boards who have met until the wee hours of the morning before - please do not do this). After working a full day and participating in (or observing) a Board meeting, people are tired and less patient. The Board members are tired, the manager is tired, the owner who is the subject of the hearing is tired, and if your attorney is present, he/she too is tired, and at that point, everyone just wants to go home. This situation – a bunch of tired and impatient participants – can adversely impact the hearing. The owner may be short with the Board as he/she is angry that he/she had to wait three (3) hours to address a simple violation (and in some cases, the hearing may not even occur if the meeting exceeds the time allocated by the venue). This, in turn, may anger the Board, who doesn't understand why the owner doesn't just follow the rules. Often, these hearings, which occur after everyone is mentally drained, do not serve to resolve the underlying issue in any form or fashion, but simply ramp up the disagreement between the parties. But what can we do? We've always held hearings at the end of the meetings.

First, while it is convenient to schedule hearings on the same night as the Board meeting, perhaps the Board should consider scheduling hearings **before** the business portion of the meeting. Scheduling hearings to start at 5:30 p.m. or 6:00 p.m. the night of the meeting helps ensure that the parties are fresh to LISTEN to the owner who is the subject of the hearing and provide him/her with a meaningful opportunity to be heard. If there is concern about which owner(s) will attend and whether there will be sufficient time, the Board can require that owners confirm their attendance at the proposed hearing (as opposed to having a situation where anywhere from 1-100 owners may appear to contest their violations). While rule updates may need to be made, actions can be taken to require owners to confirm their intended presence.

Next, while it may be most convenient to address hearings at the regular Board meeting, so that the Board can record actions taken in response in meeting minutes, separate dates/times can be set for hearings. Many associations are taking to holding hearings via Zoom or other videoconferencing. This provides the Board with more flexibility with respect to scheduling and allows for violations to be addressed sooner rather than later (as violations are often on hold until such time as the owner has the chance to meet with the Board). Further, the safety component of conducting a hearing, especially with a contentious owner, through videoconference cannot be overlooked. If the Board addresses hearings in such fashion, it will merely need to ensure that it conducts a recorded vote as to its determination at the next open meeting (which can be the next regularly scheduled business meeting or some other Board

meeting).

As Boards and community managers, we ask that you look at your procedures and processes. Is having hearings at the end of the meetings productive? Does it unreasonably delay resolution of violations because the next hearing date is three months away? Are you feeling unsafe at violation hearings? If your current procedure isn't working for you and your Board, consider changing it (which may require a rule update) to a process that works for you. Just because you've always done it that way doesn't mean that you should continue to do so.

Come see Jonathan Wassell speak on March 23 rd!

Find out more!

Please feel free to contact us with any questions!

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