



**KEOUGH & MOODY WEBINAR: SHOW ME THE MONEY!**  
**Financing & Budgeting Considerations for Associations**



**July 18, 2023, 12:00 p.m.**

*2 hours of continuing education credit will be provided*

Join Karen Beverly and Jonathan Wassell on Tuesday, July 18, 2023, 12:00 p.m.-1:30 p.m., for our next webinar, “Show Me the Money.” In this webinar, Karen and Jon will provide a roadmap for managers and members of the board of directors for financial planning, and best practices for implementing that plan. Come hear about the processes to follow and mistakes to avoid when adopting a budget, determining the amount of assessments, adopting a special assessment, and obtaining third-party financing. More than ever, we are seeing owners challenge these basic decisions and actions by the board of directors. This webinar will ensure that as you prepare for budgeting season (which is not too far away), you are ready to address the legal requirements and practical (and now too common) issues. In this webinar, Karen and Jon will empower you with the knowledge to help your community’s financial planning for the rest of 2023 and for 2024. Come with questions, as, of course, Karen and Jon will allow time to provide answers.

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

**When registering, please be sure to include your first and last name to ensure receipt of your continuing education certificate.**

[\*\*Register Now\*\*](#)

**“Show Me the Money!” is approved by Community Association Managers International Certification Board (CAMICB) to fulfill continuing education requirements for the CMCA® certification.**



## **New Licensing Rules for Property Management Firms**

While Community Association Managers or CAMs (individuals who serve as property managers) have long been required to maintain a license with the Illinois Department of Financial and Professional Regulation (“IDFPR”), management firms themselves did not need to register...until now.

Effective last month, in June of 2023, CAM Firms (management companies) must also be licensed. These new licensure requirements are designed to ensure better quality control within CAM Firms by requiring designated supervision of all CAM and administrative employees, by requiring certain training and oversight, by implementing insurance and deposit standards, and by making the firms themselves – rather than just their employees – accountable. These new CAM Firm rules also provide default standards for certain things like transition of accounts to the Board upon termination of the relationship, and for compliance with relevant statutes and governing documents, even if not explicitly addressed on the management contract.

Overall, the new rules and standards should provide better oversight and protections for Associations, and they should provide more predictability and consistency for CAM Firms. As always, and especially while the new rules are being digested and implemented, it is important to review your CAM contracts, and to have any new management agreements vetted by legal counsel.

## **Collection of Assessments Post-COVID**

In May 2023, the COVID-19 public health emergency ended. During the three (3) plus year COVID emergency, we saw numerous changes at the State and local level, which impacted routine collection of assessments. These changes resulted in additional procedures and processes, both pre-and post-filing of a collection action, delays, and increased costs. With the end of the public health emergency, has anything changed in the collection courtrooms across the State? Are things 100% back to normal? In short, as further explained below, a number of the procedures and processes implemented during the pandemic remain in place. While we are returning to normal, it is a new, different normal than existed prior to the pandemic.

Since COVID-19 emerged, all counties have provided access to some form of housing assistance organizations that provide unit owners programs offering funds to help pay for housing costs,

including assessments. All of the counties **encourage** the utilization of the housing assistance programs (and mediation programs, where available). Typically, to receive housing assistance, an association need only provide either an account statement outlining the total balance due or a balance due letter with the same information on behalf of the owner. While there is a delay (and often, a significant one) in obtaining housing assistance funds, these programs often provide successful results for the owners (and the associations).

Again, utilization of these programs is strongly encouraged by the various Judges and in some counties, is somewhat mandatory. In response to the COVID-19 pandemic, the Cook County Circuit Court created a new program, named the Early Resolution Program (“ERP”), which is designed to provide legal aid to both tenants/owners and landlords without legal counsel. Every Summons and Alias Summons issued in a residential eviction lawsuit in Cook County must contain notice of the Early Resolution Program. The notice allows parties to reach out to ERP representatives prior to the first court date. Alternatively, if the tenant/owner appears at the first court date, known as the return date, the Judge will refer the tenant/owner to ERP. There is a representative from ERP present at each court call to collect the contact information from each party and set up the tenant/owner with an ERP appointment to receive free legal advice. If referred to ERP, the case will be continued for approximately 28 days to allow the tenant/owner to connect with an ERP representative. On that next court, if the tenant/owner appears and no resolution has been reached, the case is transferred from the ERP courtroom to a trial courtroom for trial setting. The trial setting date is typically 2 weeks later. In courtrooms where the ERP Judge handles the trial call, the case will be set for trial in that courtroom. From there, the parties can continue to negotiate a settlement or proceed with trial. Trials take place approximately 1 month after the trial setting date.

Once referred to ERP, the tenant/owner can speak with an attorney to receive free legal advice. Further, the tenant/owner can receive information on organizations providing financial assistance as discussed above. Finally, the tenant/owner can request to participate in mediation. The mediation program is voluntary and the results are non-binding. However, in some cases, participating in mediation will allow the parties to open a discussion that may lead to settlement. Additionally, if the case proceeds to trial, the landlord/association will have a better understanding of the issues that will be raised at trial. Unfortunately, due to the mediation schedule, it may be necessary to continue the underlying case while mediation takes place. At that next court hearing, if the parties were unable to reach a resolution in mediation, the case will either be set for trial or transferred to a trial courtroom for trial setting.

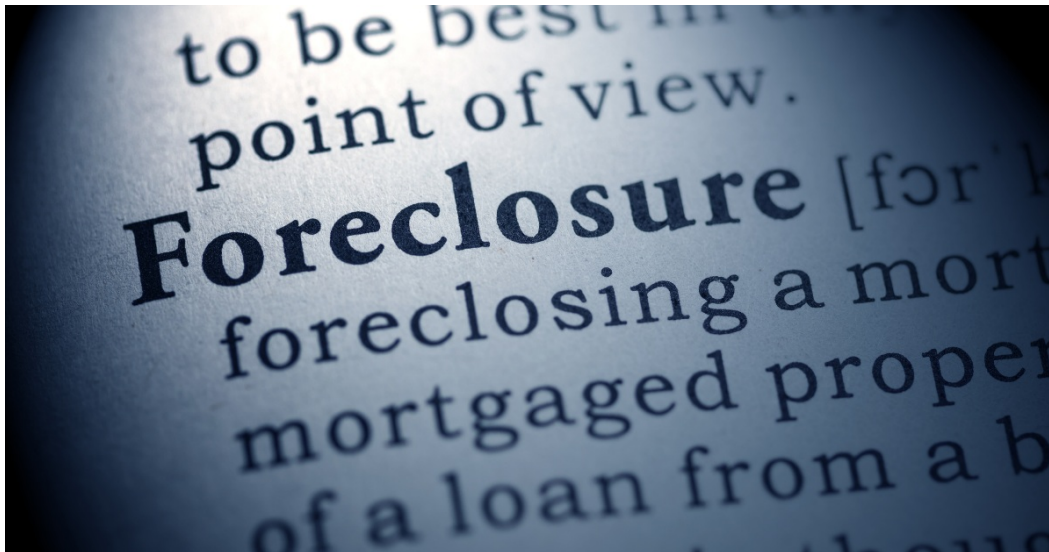
If the tenant/owner does not appear on the first court date, the Judge will continue the case for 2 to 4 weeks for prove-up and entry of a default judgment. This continuance is entered to allow the tenant/owner one more opportunity to appear before a default judgment is entered against them. The extra court appearance is a departure from the pre-COVID eviction process and this process is now common in most courtrooms. Prior to COVID-19, associations could seek the entry of an Eviction Order on the initial return date if no one appeared. Now, there is at least one extra court appearance (if not more) required prior to entry of an Eviction Order.

As noted above, post-COVID, it very much remains public policy that the parties attempt to mediate or resolve the collection dispute. In that regard, in some counties, Kane most notably, stricter scrutiny is paid to the amounts sought by the association. In many cases, Judges are more willing to give owners the benefit of the doubt, regardless of how egregious their delinquency has been. Even when the association has done everything properly, the Judges are

more willing than ever to waive any award of late fees or fines (soft costs), and also decide not to award all attorney's fees sought.

As you can see, even though the public health emergency is over (at least from the standpoint of the State of Illinois), some processes, such as ERP, mediation, and housing assistance programs, continue to remain and continue to impact day-to-day collection activities. Therefore, Boards and management should be mindful that we have not returned to a pre-COVID era with respect to collection of assessments. Courts are continuing to encourage resolution of delinquent accounts, short of awarding an order of possession, and providing every delinquent owner with time and opportunity to resolve their accounts. In addition, in at least some courtrooms, Judges are paying a closer eye to amounts demanded and providing a "break" where they can with a waiver of soft costs, such as late fees. In light of all this, Boards should remain patient and be willing to work with its delinquent owners – through payment plans, extensions, or late fee waivers - to resolve accounts, as this spirit of resolution is strongly encouraged in the courts.

## **BUT WE HAVE ALWAYS DONE IT THIS WAY....**



### **Foreclosures**

With COVID moratoriums lifted and business essentially back to usual (although a new usual), we are seeing an uptick in the number of foreclosure actions being filed by lenders due to non-payment of mortgages. Because of the potential lien for unpaid assessments, community associations are named as a defendant in the foreclosure action in order to terminate that lien (at least to the extent provided by Sections 9(g)(4) and 18.5(g-1) of the Illinois Condominium Property Act, which allow recovery of up to six (6) months of common expenses from a third-party purchaser). Historically, most associations have not taken much, if any, action in response to a foreclosure action being filed. Some associations monitor the foreclosure, as its status impacts the association's own collection action, while others take no action whatsoever. Very few associations file responsive pleadings in foreclosure actions. Why? Because the association has always done it that way and there has been no reason to consider doing things differently...until now.

The primary reason that associations file responsive pleadings in a foreclosure action is to

protect their lien in the judgment of foreclosure. This helps protect the association's right to claim any surplus funds (i.e. funds left over after the foreclosing lender has been paid in full). Historically, associations have not filed responsive pleadings in foreclosure actions because the likelihood of a surplus was low, at best. Most foreclosure defendants were under-secured, meaning the debt owed was more than the value of the property. Now, we are seeing homes being foreclosed, which are over-secured, meaning that there is more of a likelihood of a surplus.

We are again seeing surpluses (and significant surpluses at that) following foreclosure sales. In addition, we are seeing such a great number of surpluses, that we are recommending that our clients reconsider how they have always handled its response to a foreclosure proceeding. Rather than take a one-size fits all approach, we encourage our clients to review the foreclosure complaint (or our letter summarizing the complaint) to determine whether it appears that there is equity in the property. If there is, the association should consider filing an answer and appearance in the foreclosure action to protect its lien. By filing such an answer and appearance, it makes it easier for the association to claim any surplus (all or a portion thereof) to offset against any delinquent amounts. For associations in Cook County (by way of example), filing an answer and appearance is essentially mandatory if the association wants to be in a position to claim a surplus (currently, if the lien is not preserved in the judgment, Cook County will not award the surplus to the association). Therefore, now is the time to reconsider how the Board has always handled foreclosures and make decisions, based upon objective facts, about what course of action is best to protect the association and its right to claim any surplus funds following a foreclosure.

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If you have any questions or if our office can be of assistance, please do not hesitate to contact us. Continue to enjoy your summer!

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