



**KEOUGH & MOODY WEBINAR: LESSONS LEARNED IN 2023 & HOW  
TO MAKE 2024 BETTER!**



**September 6, 2023**

**12:00 p.m. - 1:30 p.m.**

*\*Pending approval for continuing education*

Join Gabby Comstock and Dawn Moody on Wednesday, September 6, 2023, from 12:00 p.m. to 1:30 p.m., for a discussion on planning for 2024. It is that time of the year when we start planning for next year. Over the last couple of years, Gabby and Dawn have been stressing the importance of planning for next year means more than just adopting a budget. It is just as important for community associations to have a strong financial plan as it is to have a plan to deal with the changes that affect the day-to-day management of associations. During this presentation, Gabby and Dawn will discuss some new and old challenges that community associations can expect in 2024, and they will address how to be ready for these challenges. Some of these challenges include dealing with violations and difficult owners; updating community instruments to address the association's needs; security considerations; and being ready for another political season in 2024.

Join us for what we believe will be a very beneficial webinar for all board members and managers. As always, come learn and have your questions answered.

**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**



### **A REFRESHER ON ENFORCING AN ASSOCIATION'S RESTRICTIONS**

Every community association has owners that violate the association's community instruments. To ensure harmony and cohesiveness and to help avoid problems, the board of directors must enforce the restrictions contained within the association's community instruments. However, too often, avoidable mistakes occur during the enforcement process—even by the most seasoned board members and/or managers. These mistakes can affect the board and management's credibility within the community. The mistakes can also unnecessarily create tension and hostility. The following is a checklist for you to follow to enforce your community association's restrictions.

**1) *Be sure there is a complaining witness.*** The only violations that can be enforced are those for which we know with certainty occurred. That is, we cannot enforce violations based on assumptions. Before a notice of violation is sent out, be sure that there is a witness who has firsthand knowledge as to who is the violator.

**2) *Be sure there is an actual violation.*** The only violations that can be enforced are those that are actually a violation. That is, we must be certain that a specific provision of the association's community instruments was violated. Before a notice is sent out, be sure that it is clear and known as to what provision of the community instruments was violated.

**3) *Be sure that the notice of violation is correct.*** The notice of violation should be sent to the record owner—not the tenant. The notice of violation should state what occurred and when. It should identify the provision of the association's community instrument that was violated. If the association's community instruments contain any requirements as to what must be within the notice, those requirements **MUST**

be within the notice. For example, some declarations provide a minimum amount of time that an owner must be given to correct a violation. Review the association's declaration and rules and regulations to ensure compliance. Also, if this is the owner's first violation for this occurrence, be sure that the notice tells him he has the right to a hearing with the board. Again, the association's community instruments may specify if the owner must request the hearing within a certain number of days or if the notice is to include a date and time for the hearing. If the community instruments specify a procedure, it must be followed.

**4) Be sure that the notice of violation is properly sent to the owner.** Many declarations state how notice is to be given to an owner. The notice of violation must be sent in that manner, even if it will also be emailed to the owner.

**5) Be sure to give the owner a fair hearing.** When the owner appears before the board, be sure that the owner is given the opportunity to explain his story. The purpose of the hearing is for the board members to listen. Of course, follow-up questions can be asked, but the owner should not feel that he is on trial. The association's community instruments should be reviewed to determine if the hearing is to be conducted in a certain manner.

**6) Be sure the board makes a determination as to whether a violation has occurred.** After the notice of violation is sent out and after the time to request a hearing has expired, the board of directors needs to make a determination as to how to handle the violation. Even if an owner elects not to take the opportunity to be heard, the board must decide whether further action is warranted after a notice of violation is sent. Again, the association's community instruments should be reviewed to confirm the options available to the board of directors. Remember, all decisions of the board must be made in an open meeting.

**7) Be sure the board's determination is conveyed to the owner.** After the board decides what action to take, the owner should be notified of the determination. Some community instruments require the notice of determination to be sent to the owner within a specific time frame.

**8) Be sure to treat all owners in the same manner.** The purpose of enforcement is to correct conduct. It is not to target or punish a specific owner. It is not to generate fines. Again, quite simply, it is to correct specific conduct. This is true whether the violator is the board president or the most difficult owner within the association. The board must be sure to treat all owners in the same manner.

A great way to avoid these common mistakes is for the association to have template documents and specific rules on enforcement. The template documents include a notice of violation and a notice of the board's determination. The rules can specify how one can submit a complaint; how a hearing can be requested; how a hearing will be conducted; and what options are available to a board of directors when it determines a violation has occurred. While a board of directors should rely on the experience and knowledge of its managing agent, the template documents for one association may not comply with the terms of another association's community instruments. Hence, it should not be assumed that recycling another association's template documents will ensure compliance with your association's community instruments.

Now is a great time to have these documents reviewed and revised. The board of directors should make sure all related to its enforcement process is in place before 2024!

## **K&M's NEW NEWSLETTER FEATURE: THE Q&A CORNER**



We have always taken the position that the more we educate our clients, the better they will serve their communities. We want board members and managers to learn more, so they can answer the questions of the owners within their communities. Yet, we recognize sometimes people do not feel comfortable asking questions in front of others. For this reason, we will begin a feature in our Newsletter called “THE Q&A CORNER”. This corner, like all aspects of our Newsletter, is not intended to be used as legal advice. Instead, it is an opportunity for our readers to have their questions answered.

So, if you have a general question, please email it to either Dawn or Gabby ([d1m@kmlegal.com](mailto:d1m@kmlegal.com) or [grc@kmlegal.com](mailto:grc@kmlegal.com)). The subject line of your email must state “NEWSLETTER QUESTION”. Questions must be general “how to” questions and not specific to your declaration or community only. We look forward to reading your questions!

Thank you for your continued support. Please do not hesitate to contact us if you have any questions.

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