

**KEOUGH & MOODY WEBINAR  
LEGAL OPINIONS ARE NOT ALWAYS BLACK AND WHITE:  
WHOSE SIDE ARE YOU ON?**



**November 1, 2023**

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

*\*Pending approval for continuing education*

There are times when a client or an attendee from one of our presentations says we are saying something different than what they heard from another attorney. In fact, some people even say, “That is not what Dawn says!” or “That is not what Gabby says!” So, does that mean someone is wrong? Not necessarily. Attorneys can have a differing opinion, without one being technically wrong. If you frequent our webinars on a regular basis, you know that while Gabby Comstock and Dawn Moody agree on a lot, there are a number of topics where they have a difference of opinion.

Join Gabby and Dawn on **Wednesday, November 1, 2023, from 12:00 p.m. to 1:30 p.m.**, where they will discuss a variety of situations where their legal and practical takes on a matter differ. In this engaging webinar, board members and managers will see that a situation is not always black or white and that attorneys often have different perspectives on certain issues.

Join us for what we believe will be a very beneficial webinar to all board members and managers and you can be the Judge on who you think is right! 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.**

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### **SEPTEMBER ALREADY??!**

2023 is flying by! It is now September! School is back in session (at least in most areas) and community association managers and board members are fully entrenched in budget season. As we quickly approach the last quarter of 2023, we must take stock of what needs to be completed (or at least started) as we conclude this year and look to 2024.

**Prepare and adopt the budget the association *needs* for 2024.** We are in a different world post-pandemic. Gone are the days when the board could simply adopt a standard percentage increase for the upcoming fiscal year. With inflation, material and labor shortages, and deferred maintenance coming due, boards need to take a closer look at their 2024 budget. What increases can the board expect from its service providers? What contingencies are at play in approved contracts (i.e., fuel, increase in material costs, etc.) and need to be planned for? What work *needs* to be done in 2024? How will that work be paid for? Is reserve funding adequate in light of upcoming deferred maintenance? The board should go into 2024 with a clear plan for maintaining the community and a realistic budget to accomplish that plan.

**Address your financials, as needed.** As we head into 2024, now is the time to review your financials to determine whether any action needs to be taken by the board. Specifically, the board should confirm that anyone who should be in collection for delinquent assessments is in collection. The board should review its settled accounts (assessment accounts for individuals who are no longer an owner within the community) to determine whether action should be taken, such as writing off any uncollectible

debt. The board should also be reviewing its settled accounts to determine whether credit balances should be refunded to any former owners (after confirming that all charges have been posted and a true credit balance remains). It is important to remember that true credit balances are not property of the association, but the owner. Therefore, all efforts should be taken to refund credit balances to prior owners (including turning over funds to the Illinois State Treasurer as unclaimed). Taking these actions helps ensure that the board has an accurate picture of its financial state.

**Review your Rules and Regulations and other policies to confirm that they continue to meet the needs of your association.** Rules and regulations and other policies are not a set-it-and-forget-it document. These are documents, which need to evolve with the community and the passage of time. As we end the year, boards and community association managers should be taking stock of their documents and confirming whether their terms still meet the needs of the community. This may mean rescinding rules, adding new ones, or modifying fine schedules. This may also include adopting rules related to the election process to take advantage of changes to applicable law, which allows owners to vote through electronic voting.

**Ensure your contracts for 2024 are in order .** With budget season, now is the perfect time for boards to review their current contracts and work on lining up new ones, as needed, for 2024. boards should be aware of when their contracts are scheduled to expire and whether their contracts contain auto-renew or rights of first refusal clauses. It should work on soliciting bids for 2024 work and approving contracts. After all, the sooner the work is approved, the higher up your association will be on the schedule.

**Consider changes.** As noted above, we are in a different world. What worked for an association and a community five years ago may no longer work. Boards and community association managers should determine whether there are changes that they can make to allow for the more efficient operation of the association. This could mean changing when and how meetings are conducted in order to attract new board members and member participation. This could mean investing in community events or better communication with association membership. This could also mean changing how the board communicates with the community association manager, so that the community association manager can better focus their time on addressing action items, as opposed to managing email communication.

**Be prepared.** Gone are the days when boards made decisions and owners simply accepted them. In the last year, we have seen a significant increase in the number of owner challenges to assessment increases or special assessments. We have seen an increase in petitions to remove board members when owners are unhappy with board decisions or actions and election challenges. Finally, we have also seen a significant increase in owner litigation against an association. Board members should be prepared for their actions and decisions to be challenged by the owners. This does not mean that the board should simply stop making hard decisions. Rather, boards should ensure that they are doing their homework when making the hard decisions. This means ensuring that the terms of applicable law and the governing documents are being followed, consulting with professionals, as needed, communicating with owners, and treating owners reasonably and with fairness and respect.

By taking stock of this last year and making meaningful plans for 2024, boards and community association managers will be placing themselves in the best position for a successful year!

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



**This month's question:** Oftentimes, as the managing agent, we collect an inordinate amount of information from the association's residents, like pet vaccination information, vehicle insurance policy coverage, and blood type (just kidding 😊), but when is it too much? Does the association open itself to a liability risk in requesting this information?

**Answer:** Boards have the authority to adopt reasonable rules and regulations requiring owners to provide certain information to the association. What information can and should be provided to the board of directors and management will depend upon the legitimate interests of the association.

In most multi-family associations, it is common for associations to request a completed census form, with emergency contact information, proof of insurance, and if the unit is leased, a copy of the lease. Outside of that documentation, what additional documentation the association can and should be asking for is specific based upon the association and its legitimate needs. By way of example, an association with a pet weight restriction may require that owners provide an annual certificate from a veterinarian confirming the weight of the animal. This is a reasonable request in such a circumstance, as the information is needed to ensure compliance with the governing documents.

Other times, associations request information that does not, in our opinion, fulfill a legitimate association need, such as requiring a credit report for a potential tenant be submitted to the association. Here, it is the owner leasing the unit who has a legitimate concern as to whether the potential tenant is credit-worthy – not the association. Further, as associations do not generally have the authority to approve or deny leases, there is nothing the association can even do with the information presented. In situations like that, why request information that you have no true need for and cannot act upon?

If confidential information is requested from an owner, the board and management have

an obligation to help ensure that the information is utilized only for association purposes and does not become the subject of a data breach. If a data breach does occur, depending on the information accessed, the association and management may have obligations under applicable state law to notify impacted owners and residents and take other action steps. In addition, there may be additional legal liability to the board and management. As a result, here, we recommend that the board only request documentation that it truly needs in order to ensure efficient governance of the community.

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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.

Chuck Keough ([cmk@kmlegal.com](mailto:cmk@kmlegal.com)); Dawn Moody ([d1m@kmlegal.com](mailto:d1m@kmlegal.com)) and Gabby Comstock ([grc@kmlegal.com](mailto:grc@kmlegal.com))

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