



**KEOUGH
MOODY**

**January 2024
Newsletter**



We at Keough & Moody wish you all a very Happy New Year! We look forward to a new year and serving our clients in 2024. Thank you for your continued support and trust in our firm!

**KEOUGH & MOODY WEBINAR:
Returning March 6, 2024 at 12:00 p.m.**

Dawn and Gabby are excited to start back up with their lunchtime webinars on March 6th. Stay tuned for more details!



2024: New Year New Ways

Many of us start a new year with resolutions and changes we vow to implement to make this new year better than the last one. Individuals are not the only ones who should reflect on the past year and determine how to make things better in the new year. Boards of directors should do the same thing—especially when the members of the board are managing a community where people live and spend so much time! The members of the community association’s team can help the board of directors determine what can be done differently in 2024 to make it better for all. Members of boards for community associations that are professionally managed are urged to engage in a dialogue with their management team about what changes should be implemented in 2024.

To get you started, the attorneys at Keough & Moody put together a list of changes to be considered for your community association and us at K&M, too!

1. ***In 2024, focus on the big picture.*** In the age of technology and the expectation of immediate responses, we have fallen away from taking a step back and making strategic, proactive plans for our associations in the interest of responding to emails, text messages, and the like. While communication and responding to emails are important, the primary purpose of a board of directors and community association manager is to run the corporation and ensure that the association is maintaining the common areas. When we focus on the minutia, the important things often get left behind or become an afterthought. In 2024, we need to reestablish our focus on the big picture and concentrate on the needs of the corporation and our community as opposed to “Busy Betsy,” who sends 15 emails to the community association manager each week and expects prompt and complete responses because she is too busy to attend board meetings to be informed. This shift in focus will help not only the association as a whole, but also those individuals who serve it.

2. ***In 2024, go back to the basics.*** Similar to that stated in paragraph 1, we need to go back to the basics. Members of the board should do less via email and more in person (or virtually) and at open meetings. Back in the 90s, when a unit owner had a question, the person went to the board meeting and asked it. Likewise, when the board needed to create a strategic plan to address a capital improvement project, they sat down together in a meeting and discussed the steps that needed to be taken. In the 90s, board meetings were a time for the board of directors to conduct business, have discussions, and make decisions. When more is done in an open meeting, transparency follows, and it makes the job more manageable for members of the board, who are volunteers. It also allows our community association managers to focus on what they were hired to do—to assist in the daily operation and management of the business. While times have certainly changed since the 90s, members of the board of directors should go back to the basics and use technology to their advantage and to help them be more efficient. For example, they can use email only to transmit information to one another. They can empower their manager to *manage the property* and direct their manager to, instead of responding in detail to every one of

“Busy Betsy’s” emails, compile her emails and tell “Busy Betsy” they will be answered as deemed appropriate at the next meeting of the board of directors. Boards can adopt policies and procedures to conduct meetings more effectively. For example, at the start of every meeting, they can review questions received by owners and provide a general response to the questions. They can conduct meetings through a virtual format, which allows more members of the association to attend the meetings. The board can have a set schedule for meetings, i.e., the first Tuesday of every month so that members of the community and the board can plan ahead and attend the meetings. The board can limit the number of items on an agenda so that meetings can be concluded within an hour. The board of directors can delegate authority to allow business to continue to be conducted between meetings. Lastly, the board can have a protocol to be followed when communication between the members of the board or the community becomes disrespectful. If we tolerate disrespectful behavior, it will get worse over time.

3. ***In 2024, only make promises you can keep.*** Often, we see or hear members of the board or management tell owners they will do something that never gets done. It may not be done because the person making the promise never intended to fulfill the obligation, but most often, the promise cannot be fulfilled because the board of directors does not have the authority to fulfill the promise. The person who made the promise spoke before he confirmed his authority. For example, an owner stops a member of the board who is walking through the community and tells him he has a dead tree outside of his unit that needs to be replaced. The board member thinks he, too, would not want to look out his window and see a dead tree and responds by saying, “No problem.” But is it “no problem”? Is the association responsible for replacing the tree? Is this expense in the budget? Are there other trees that need to be replaced before this one? Another example is when an owner is late in paying assessments and is told to just pay a certain amount by a certain date and all late fees will be waived. Can these late fees be waived? Is this what the board does for all members of the association who are late? Is this promise consistent with the association’s collection policy? It must be very hard for members of the board of directors not to engage when owners stop them outside of a meeting and ask them to consider their personal matters. Yet, the best way to handle owners’ requests outside of a board meeting or before the board of directors has decided how to address such requests is to simply advise the owner to submit a written request to the board/management or attend a meeting of the board and make the request to the whole board. When an owner does attend a meeting of the board and submits such a request, the board still has to be careful not to agree to something too quickly, especially before the board has decided how to act. Making promises that cannot or will not be fulfilled can cause animosity within the community and adversely affect the board of directors’ and management’s credibility. Hence, as the board gets back to basics, it should adopt a policy and procedure on how it will handle owner requests both outside of and at a meeting of the board of directors.

4. ***In 2024, look before you “leap” and send a delinquent account to the attorney for collection.*** Before sending an owner’s account to the attorney for collection, take the time to review the account history and all charges assessed to the delinquent account. When reviewing the account, confirm the association followed its collection policy, that there are documents to support any fines assessed to the account, and that there are witnesses to prove the owner’s violation(s) of the association’s community instruments that resulted in a fine, and that the statements or notices of delinquencies from the association or management were sent to the proper address for the owner (including any known off-site address). Reviewing the account in advance of turning it over to legal and addressing any issues before the legal process begins can not only be more cost-effective for the association, but also it can also avoid adversely affecting management’s and/or the board of directors’ credibility within the association.

5. ***In 2024, be certain the association’s rules and regulations clearly identify the association’s late fee procedure.*** The association’s rules and regulations should specifically state the amount of the late fee and when it will be assessed. Owners often ask our attorneys, “Why was I charged a late fee when I made a payment?” We want to be able to identify to the owner (and the Judge) where within the rules and regulations it states a late fee will be assessed and when. Once adopted, as the amount of the late fee changes, the association must remember to amend its rules. Further, the association, either through its manager or board of directors, must have a uniform procedure to assess the late fees. A clear rule about the late fee procedure not only provides transparency to owners but also avoids headaches down the road. Further, it will likely

encourage owners to pay the amounts due and owing on time.

6. ***In 2024, be proactive rather than reactive.*** Too often, members of the board wait too long to address a situation. This often results in the situation snowballing out of control, costing more money to address, and adversely affecting management and/or the board of directors' credibility. Seek advice as soon as there is a hint of a legal problem or uncertainty among the board on how to proceed. It is better for a board of directors to come to us too soon, rather than too late. Remember, just because we are involved does not mean we are in the driver's seat. Being proactive and seeking our involvement not only applies to threats of litigation, but also to some day-to-day operations. For example, before adopting a special assessment, have our office confirm the special assessment is properly adopted, that the funds will be used for a proper purpose, and that notice of the board of directors' meeting is proper. Contact us *before* entering into a contract related to a capital improvement project, as we can then make recommendations that favor the association. Before notice for the annual meeting is sent out, have our office review the documents to be sent to the owners. We can confirm the notice for the meeting is proper and contains accurate information. We can also confirm that the proxy or ballot to be used for voting is correct. Too often we see notices after they are sent out, and we then learn that it improperly allows for cumulative voting, that the proxy form was not accurate, that owners are being told to vote by proxy when proxy voting is not allowed, and that notice was not timely sent out. Like with a contract, if we are contacted before the annual meeting documents are sent out, we can make recommendations and ensure the election is properly conducted. We understand that associations often do not want to spend money on legal fees, but as the saying goes, an ounce of prevention is worth a pound of cure.

7. ***In 2024, run the association like a corporation and always act in its best interest.*** Running the association like a corporation does not mean that the members of the board of directors should forget that the property within the association is, for most people, their homes. It also does not mean the members of the board of directors should forget that the property within the association is, for most people, their greatest investment. To the contrary, these *should* be remembered and considered as the board of directors makes decisions. Consequently, to protect the owners' investments and places they call "home," hard decisions will have to be made. It is then the job of the board of directors to make those decisions. The best way to make those decisions while also protecting each member of the board is to obtain, rely on, and follow the advice of the association's experts. The members of the board may not always like the advice it receives from its experts (even when it is from K&M), but following the experts' advice will benefit the association—and the members of the board of directors.

8. ***In 2024, remember it is OK to agree to disagree.*** Too often, members of the board of directors avoid voting on an issue because they are too focused on trying to change one another's mind. That is, they are trying to achieve unanimous approval. This often results in a battle of wills and unnecessary division among the members of the board. When a matter is before the board of directors, the board should discuss this issue and consider one another's position. During these discussions, the goal for each member of the board should be to learn more, get questions answered, consider the advice of the experts, and consider all options. The goal of these discussions should be for each member of the board to obtain all that is needed to make an informed decision. The goal is not to get your colleagues to agree with you. Remember, a board of directors only needs a majority of the board to agree to take action. It is important for a board of directors to know when to say, "It is OK that we all do not agree on this topic." It is important for a board of directors to know when to say, "We all do not have to agree." More importantly, a board of directors must respect one another's position, especially when there is a disagreement. Too often disagreements become personal and this eventually erodes the board's ability to work effectively together. This not only makes serving as a volunteer less enjoyable, but it also adversely affects (you guessed it!) the board of directors' credibility within the community.

As you can see, our suggested resolutions are all geared towards making it better to manage and serve on a board of directors for a community association. In 2024, we hope that managers are less frustrated with this industry. We hope that members of the board of directors do not regret serving on the board of directors. We also hope that we can help our clients focus on the business at hand and not allow nastiness to control a community. We encourage every board and management team to sit down and consider what can be done to make 2024 better for all within the community.

What works for one community may not work for the next. Therefore, if we can help guide you on what changes can and should be made, please reach out to us.

Chuck Keough (cmk@kmlegal.com), Dawn Moody (dlm@kmlegal.com) and Gabby Comstock (grc@kmlegal.com)

Save the Date!

February 9, 2024

Save the date for the 2024 IL Condo-HOA Conference & Expo presented by the Illinois Chapter of Community Associations Institute where Gabby and Dawn will be presenting!

[Learn more about the 2024 IL Condo-HOA Conference & Expo](#)

The materials contained in this Newsletter have been prepared by Keough & Moody, P.C. and are intended for informational purposes only and are not legal advice. This Newsletter contains information on legal issues and is not a substitute for legal advice from a qualified attorney licensed in the appropriate jurisdiction. Keough & Moody expressly disclaims all liability with respect to actions taken or not taken based on any or all of the contents of this Newsletter.

Naperville
630-369-2700

Chicago
312-899-9989

www.kmlegal.com
info@kmlegal.com

STAY CONNECTED



Share This Email



Share This Email



Share This Email

Keough & Moody, P.C.,
114 East Van Buren, Naperville, IL 60540



[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by bycmk@kmllegal.com powered by



Try email marketing for free today!