KEOUGH MOODY

March 2024 Newsletter

KEOUGH & MOODY WEBINAR

COMMUNICATIONS 101- A THREE-PART SERIES

Part 1: Proper Communication in Legally Required Notices and Documents

April 17, 2024
12:00 p.m. - 1:30 p.m.

**Pending approval for continuing education*

"The difference between mere management and leadership is communication."
-Winston Churchill

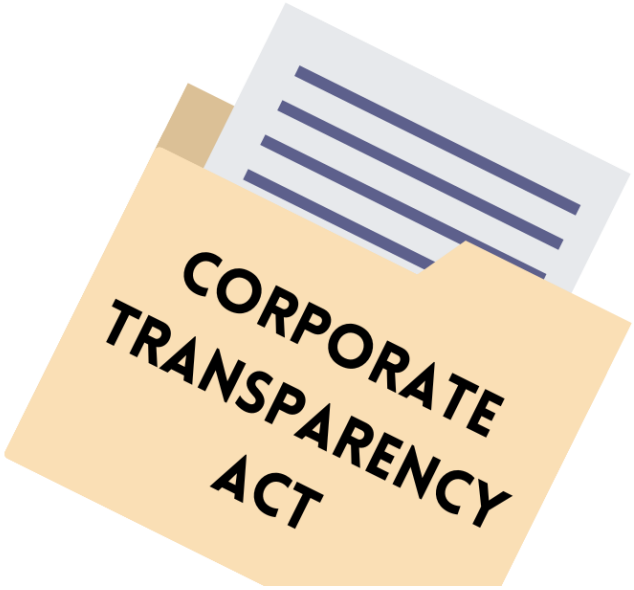
Communication is important in every relationship. As leaders of our community associations, we all can use reminders and tips on how to communicate effectively. We communicate with the members of our community associations with the documents we send—including those we are legally required to send. We communicate through emails and letters. We also communicate in meetings. We communicate through the use of words, our facial expressions, our body movements, and even when we are saying nothing, but listening. When we get it right, communication can help develop trust and credibility. Yet, when we get it wrong, communication can create problems and obstacles that seem too great to solve.

Join Dawn and Gabby as they tackle "Communication 101-A Three-Part Series." Part 1 will address how to properly communicate in legally required notices and documents. Dawn and Gabby will highlight what must be included in these legally required notices and documents, as well as pitfalls to avoid.

Register in advance for this webinar[here](#).

(Save the date for Part 2: In Person and Email Communication to be presented on May 8th and Part 3: Social Media on June 5th. Attendees do not have to attend all three parts and registration for EACH part is required.)

Register Here



RELAX ABOUT THE CORPORATE TRANSPARENCY ACT

For those of you who regularly read our newsletters, you likely read our article last month about the Corporate Transparency Act ("CTA"), which highlighted what is required and what must be done to ensure compliance. Many of you have also heard us and others say, there is no rush to file your documents just yet! **We are here to remind you that our opinion remains the same!**

In fact, a United States District Court Judge ruled on March 1, 2024, that the CTA exceeds the constitutional limits on the legislative branch. In other words, the judge ruled the CTA is unconstitutional. This ruling calls into question whether compliance with the CTA will be required at the end of 2024 (although presently, that answer is yes for any entity not part of the action at issue). The government has appealed this ruling as of March 11, 2024. Depending on how the appellate court rules, we could even find this issue being presented to the United States Supreme Court.

For this reason, again, use this time to do three things (other than file your documents). First, review your community association's rules and regulations and put provisions in place to ensure that there is a mechanism for the board of directors to collect this confidential information, if needed, and to impose penalties against any member of the board of directors who refuses to comply. Second, adopt a procedure that ensures once this information is collected from the members of the board of directors this information is kept confidential and secure. Seek the advice of legal counsel to adopt this process. Third, as recommended by CAI National, contact your local senator and urge him/her to do all that can be done to exempt community associations from being required to comply with the CTA. Here is the link to voice your concerns.

COMMUNITY ASSOCIATIONS AROUND THE COUNTRY: A Brief Overview of the 2024 CAI Law Seminar

In February, Dawn, Chuck, and Gabby attended the 2024 CAI Law Seminar in Las Vegas. Attending this seminar is always enjoyable as it not only gives us an opportunity to catch up with other lawyers in the industry, including those who practice in Illinois but also it is an opportunity for us to learn more about the trends in our industry. We always walk away with new tips and ideas on how to handle hot issues. We, of course, are reminded of some basic tools. We thought we would share some of the topics presented and what we learned/were reminded.

Like in Illinois, disputes and animosity among community association members are on the rise throughout the country. These disputes are leading to more lawsuits being filed against members of the board of directors. They are also leading to more claims of discrimination. Often, when these claims are filed, the board of directors either does not want to file an insurance claim with the D&O carrier, or the directors do not want to indemnify the member of the board of directors. We were reminded when a claim is not filed or a board refuses to provide indemnification, this discourages members of the community from running for the board of directors. Boards should be cautious as they contemplate not providing indemnification. We were reminded that it can be hard to provide indemnification to a person who may have acted improperly or who did not prevail in the underlying action. However, too often we think when one acts improperly or "loses" in the courtroom, this means he is a bad person. The presentation we attended reminded us this is not always the case. A director who acts negligently based on an honest mistake in judgment may still be acting in good faith and attempting to facilitate the best interest of the corporation. This program was a great reminder that we should not be too quick to "judge" the person who requests indemnification.

There are always presentations related to the Fair Housing Act. This year was no exception and the program focused on liability under the Fair Housing Act. The presenters reminded us that an association may be liable for a third party's conduct which violates HUD's 2016 Rule "Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act" if 1.) the association knows or should have known of the discriminatory conduct; 2.) the community association has the power to correct the conduct; and 3.) the community association fails to correct the conduct. For this reason, while associations typically want to stay out of neighbor-to-neighbor disputes, we cannot when the conflict involves one in a protected class. If the person is in a protected class, the board must determine if the complained-of-conduct violates a use restriction and if the board has authority to correct the conduct. If the answer to those questions is yes, then the board needs to get involved and do something. HUD requires one to act promptly to avoid liability. However, HUD does not define "prompt." The presenters cautioned a board who is faced with a situation where conduct may violate the Fair Housing Act, who simply waits for its next scheduled board meeting—a month or so away, to address the situation. Since it is not difficult to call a meeting of the

board in between regularly scheduled meetings, a board may not be able to argue it was acting promptly, waiting for the next board meeting 30 days later, depending on the facts and circumstances of the situation. It is best to err on the side of caution and schedule a special meeting to address the issue. At that meeting, the board can address what type of action is required to be completed. This may include levying fines, suspending certain privileges and perhaps filing a lawsuit to prevent further discriminatory conduct. What is best will be dependent on the situation. The key is to be ahead of it and involve legal sooner rather than later.

We were reminded that lack of knowledge that one is violating the Fair Housing Act is NOT a defense. Likewise, "I was just following instructions" is NOT a defense. We were reminded that the BEST defense to a fair housing claim is education. (Perhaps a topic idea for a future K&M Webinar.) It is easy for us to incorporate education into the life of not only members or directors, but also committee members, the association's staff, and the management team. It is a good idea for a board of directors to at least conduct a workshop with its legal counsel and, if professionally managed, its managing agent, to go over mistakes to avoid and policies and procedures to follow to avoid liability.

We attended a presentation about how to effectively communicate with our clients. (This inspired us to develop our upcoming webinar series.) As many of you know, we believe communication is very important. This presentation provided us with reminders and tips we believe would benefit managers and members of the board of directors for community associations as well. The presentation started with a reminder that the biggest problem in communication is the illusion that it has taken place. How often have you been a part of a conference and concluded that one person was clearly not listening? That is an example of this illusion. A great takeaway was a quote by Jim Rohn, "Effective communication is 20% what you know and 80% how you feel about what you know." Perhaps if we all communicated less with emotion, we all could be better communicators.

Dawn and Gabby recently spoke with some colleagues in the industry at the CAI-Illinois Expo about safety issues within community associations. Not surprisingly, this was a topic also addressed at the Law Seminar. The presentation we attended focused, in part, on when an association voluntarily undertakes a duty. Under this doctrine, one may voluntarily undertake duties to prevent a member from being the victim of a crime. This presentation reminded us of the importance of understanding what an association is required to do and what it is not required to do to promote safety. Before any decisions related to security are made, a board of directors must have a clear understanding of its duties. The presenters discussed a case that went very wrong for a community association that undertook more than it had to in order to protect its members. A condominium association in Florida praised its security efforts (even used it as a marketing tool), and it hired a security service to help protect its residents and their guests. One evening, an estranged husband of a woman visiting a resident within the association entered the complex in contravention to the resident's request and the association's security protocols. The association was sued and found liable. The court held that the association assumed and contracted to fulfill a duty to protect the safety of its residents and guests and thus assumed a contractual obligation. The court found the association understood the obligation to prevent crime, and it failed this when it acted negligently. It was an example of a community association voluntarily undertaking more than it had to and it went badly. Isn't that how it always is?

Finally, Gabby presented at the Law Seminar with an attorney from Arizona and one from Washington. The presentation addressed how attorneys for community associations cannot become paralyzed by the threats directed at them when representing community associations. Just as members of the board and management are being attacked by the community, so are we attorneys. More than ever, we are the subject of bar and other complaints filed by homeowners. We are also accused of conspiring and aiding and abetting with the members of the board of directors, who act in a manner contrary to the minority within the community. The presentation reminded attorneys of the need to act with due diligence and confidence so that the best interest of the community always remains at the forefront. This is advice we often give our members of the board of directors —we need to practice what we preach.

If you have any questions or we can be of assistance, please do not hesitate to contact us.

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