



On behalf of all of us at Keough & Moody, we thank you for your continued support.  
We wish you all a very Happy Thanksgiving!



Do You  
Know?

Have you ever heard a phrase or word used within the community association industry and wondered “what does that mean?” Or are there some basic questions that you wanted to know the answer to but did not feel comfortable asking. Do not worry - you are not alone!

In the hopes of answering these nagging questions, and in our best John Quiñones voice  
we ask

### **Do You Know...**

***What is the difference between a property manager and a community association manager?***

While managers for community associations were commonly referred to as “property

managers,” in June 2023, this changed. The rules related to Community Association Managers, which were adopted by the Illinois Department of Financial and Professional Regulation, included language that states no licensed Community Association Manager shall use the title ‘property manager’ in connection with the performance of their duties as a Community Association Manager. For this reason, all licensed community association managers should only be referred to as a community association manager.

### ***What is the difference between The Americans with Disabilities Act and the Fair Housing Act?***

The Americans with Disabilities Act (“ADA”) is a federal law that protects people with disabilities from discrimination in many areas of public life. The ADA guarantees that people with disabilities will have the same opportunities as everyone else so as to enjoy employment opportunities, purchase goods and services, and participate in state and local government programs. The ADA applies to public accommodations. That is, it typically applies to areas which are open to the public. Since most community associations are not open to the public, the ADA rarely applies to a community association. Whereas, the Fair Housing Act (“FHA”) does apply to community associations. Like the ADA, the FHA is a federal law that prohibits discrimination in housing based on race, color, religion, sex, national origin, disability, or familial status. It applies to public and private housing, and housing that receives federal funding. The FHA does apply to community associations as they fall under the definition of a “housing provider” under the FHA.

### ***What is the difference between a service animal, an emotional support animal, and an assistance animal?***

Under the ADA, a service animal is any dog that is individually trained to do work or perform tasks for the benefit of one who has a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. An emotional support animal or support animal is not a service animal and may or may not be a trained animal, but it does provide therapeutic emotional support to one who has a disability. Illinois recently adopted the Assistance Animal Integrity Act, which went into effect on January 1, 2020. Pursuant to the Assistance Animal Integrity Act, an “assistance animal” is an emotional support or service animal that qualifies as a reasonable accommodation under the federal Fair Housing Act or the Illinois Human Rights Act. Hence, we most often now refer to service or emotional support animals as assistance animals.

### ***What is the difference between a pet and an assistance animal?***

An assistance animal is the extension of the disabled person the animal serves. An assistance animal is **not** a pet. Hence, the association’s restrictions and rules related to people only apply to assistance animals, and the restrictions and rules related to pets apply to the pets within the association.

### ***What is the difference between board of managers and board of directors?***

Both are the group of persons who exercise the powers, duties, and authority vested in the corporation. For community associations, the board of managers is the group governing the association when it is unincorporated. Once the community association is incorporated as a corporation within the State of Illinois, the group is then referred to as the board of directors. The phrase is used interchangeably within the Illinois Condominium Property Act (“Condominium Act”). However, the Condominium Act does state that the board of directors shall constitute the board of managers, and all of the rights, titles, powers, privileges, and obligations vested in or imposed upon the board of managers may be held or performed by the board of directors.

### ***What is the difference between a member of the board of directors and an officer?***

A community association is typically a not-for-profit corporation. Each corporation must have a board of directors who is responsible for managing the affairs of the corporation. The corporation can only act through its board of directors. The bylaws will identify how the members of the board of directors are elected and the number of members to serve on the board. Each board of directors also has officers. The officers that each association is

required to have are identified in the bylaws. For community associations, the officers are elected by the board of directors and the officers must be members of the board of directors. Also, for community associations, the officers consist of the president, secretary, and treasurer. The bylaws for the association may identify more officers, i.e., vice-president, assistant treasurer, etc. In the community association industry, an officer is a member of the board of directors, but one can be a member of the board of directors and not an officer. (Yet, this does not mean an officer has any more authority than any other member of the board of directors.)

### ***What is the difference between governing documents, condominium instruments, and community instruments?***

A “governing document” is a document that defines or organizes the organization or grants the organization its authority and governance. The Condominium Act defines “condominium instruments” as all documents and authorized amendments recorded pursuant to the provisions of the Condominium Act, including the declaration, bylaws, and plat. The Common Interest Community Association Act (“CICAA”) defines “community instruments” as all documents and authorized amendments recorded by a developer or common interest community association, including but not limited to the declaration, bylaws, operating agreement, plat of survey, and rules and regulations. We typically referred to the association’s declaration, bylaws, and rules and regulations as the association’s governing documents before the Condominium Act and CICAA adopted the definitions of “condominium instruments” and “community instruments.” Now, we refer to these documents for a condominium association as condominium instruments and for a CICAA community as community instruments.

### ***What is the difference between the declaration, the bylaws, and the rules and regulations for an association?***

The declaration is the initial document recorded by a community association’s developer that submitted the property to the provisions of the declaration and, for condominiums, to the Condominium Act. For a community association interest community, the declaration created the common interest community and may have submitted to the terms of CICAA. The declaration contains the basic restrictions recorded against the property. The only way to change the restrictions is by a vote of the members. The bylaws, which typically are an exhibit to the declaration and also are recorded, tell the board of directors how to run the business. Once recorded, they, too, require member approval to be changed (unless changes are needed for the document to comply with either the Condominium Act or CICAA). The rules and regulations are not recorded and generally can be adopted or modified by a vote of the board of directors only. The rules and regulations take the restrictions within the declaration further—they expand on the “do’s and don’ts.” For example, a declaration may state an owner may have a pet subject to the rules and regulations. So, the rules and regulations will state what a pet owner must do, i.e., have the dog on a leash in the common areas, pick up after the pet, not be a nuisance, etc.

### ***What is the difference between an accounting and an audit?***

The Condominium Act requires the board of directors to supply an accounting to its members annually and provides that an audit may be supplied “if applicable,” meaning, if the association’s bylaws require it or the board of directors elects to have one performed. CICAA requires a board of directors to supply either an accounting or an audit annually. A board of directors should consult with the association’s accountant for specific details of each type of review, but generally, an accounting is a summary of income and expenditures and gives a snapshot of the general financial status and health of the association. An audit is an independent examination of the financial records of the association, often to determine if there are inaccuracies or even fraud shown in the financial records. Hence, an accounting is a summary while an audit is an investigation.

### ***What is the difference between common elements and common areas?***

These terms are very similar to one another. The main difference is they are typically located in different types of communities. “Common elements” is a term of art related to condominium associations, and it means all of the property within the condominium association except the units. Common elements are owned by all of the unit owners within

the condominium association as each unit is assigned a percentage of ownership in the common elements that is allocated specifically to a unit. "Common areas" typically apply to non-condominium associations, but it has the same meaning as "common elements." The owners of the community association all own a share of the common areas, and, typically, the owners all own an equal share of the common areas.

***What is the difference between common elements and limited common elements?***

Common elements are the areas of the condominium property that all members of the association can use and enjoy. Limited common elements are common elements that are exclusively for the use of less than all members of the association, i.e., balconies, patios, etc. Limited common elements apply only to condominium associations. However, a non-condominium association's declaration can have language that designates certain areas for only certain units.

***What is the difference between an assessment and a chargeback?***

Every community association has common expenses. The common expenses are paid by all unit owners through the collection of assessments. Every unit owner pays an assessment which represents that owner's proportionate share of the association's common expenses. For condominium unit owners, the unit owner's proportionate share is the same ratio as his percentage of ownership in the common elements. For non-condominium unit owners, the declaration will determine how the owners share in the common expense, which is typically in equal portions. A chargeback is then the expense incurred by the association that is assessed to less than all of the owners. For example, some condominium declarations provide that the expenditures incurred by a condominium association related to limited common elements can be assessed back only to those units for which the limited common elements are assigned.

***What is the difference between a unit owner and a member of the association?***

A unit owner is the person, persons, or entity that individually or collectively owns a unit within the association. This is the person identified on the deed for the unit as the record owner. A member is the person who is designated by the owner as the one entitled to vote or act on behalf of the unit. For example, the ABC Trust owns Unit 404. ABC Trust is the owner of Unit 404. However, ABC Trust, since it is not an individual person, has to designate someone to be the designated member of Unit 404 so that this person can, for example, serve on the board of directors and vote on behalf of Unit 404. So, when ABC Trust designates Sally to be the designated member for Unit 404, even though ABC Trust is the unit owner, Sally is the designated member for Unit 404. Similarly, John and Jane Doe own Unit 505. They are both unit owners and they are both members of the association.

***What is the difference between a meeting of the members and a board of directors meeting?***

A meeting of the members is called for the purpose of the *members* to take action. For example, the annual meeting where members vote and elect the members of the board of directors is a meeting of the members or a membership meeting. A meeting called for the purpose to vote on an amendment to the declaration is also a membership meeting. A meeting of the board of directors is a meeting called for the purpose of the *board* to take action. That is, there is no vote or action by the membership.

***What is the difference between an executive session, workshop of the board of directors, or closed board meeting?***

In the community association world, the law only recognizes two types of meetings for the board of directors - open and closed. This is true whether the community is governed by the Condominium Act or CICA. Under either act, all meetings of the board of directors are to be open to any unit owner, except the portion of the board meeting called to: 1.) discuss litigation that is pending, probable, or imminent; 2.) discuss the appointment, employment, engagement or dismissal of an employee, independent contractor, agent, or

other provider of goods and services; 3.) interview a potential employee, independent contractor, agent or other provider of goods and services; 4.) discuss violations of rules and regulations; 5.) discuss a unit owner's unpaid share of the common expenses; or 6.) consult with the association's legal counsel. Executive session and closed meetings are often used interchangeably. However, to determine if an executive session or workshop is an open or closed board meeting, one must look at what is the purpose of the gathering of the board of directors.



### **TIME IS TICKING!!!!**

If you have not initiated the process to ensure your community association complies with the requirements of the Corporate Transparency Act, and to ensure that Keough & Moody can help your community meet the January 1, 2025 deadline, please contact us as soon as possible!

Learn what Keough & Moody can do to help ensure your community association is in compliance with the requirements of the Corporate Transparency Act.

#### **Keough & Moody CTA Filing Services**

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