



Keough & Moody wishes all of you a very happy and healthy holiday season! We look forward to 2025 and continuing and strengthening our relationship with each of you!

Chuck Keough, Dawn Moody & Gabby Comstock

RANDOLPH THE RED-HAIRED MAN

Randolph, the red-haired man in Unit 404,
had a very bad temper.
And if you ever saw him,
you would even say “no more”!

All of the other Owners
used to hide and stay away.
They never let mean Randolph
come in and stay.

Then one foggy Christmas Eve,
The President came to say,
“Randolph, here’s your notice of violation,
Won’t you get your temper in check?
So we can have a celebration,
And a drink on my deck?”

Then all the Owners loved him
As they shouted out with glee,
“Randolph, the red-haired man in Unit 404,
You’ll be invited to more!”



The story of Randolph reminds us that sending out a notice of violation can actually lead to a violation being corrected. It can also lead to harmony within the community. We often are involved in violation or enforcement matters when the issue or problematic conduct has been going on for some time. Too often, our review shows that steps in the enforcement process were missed, which requires us to start back at the beginning. As we end 2024 and start a new year, we hope all associations will review their enforcement process and confirm it includes the following steps.

1) Receipt of a written complaint. A complaint should be in writing from the person who witnessed the violation. It should state what happened, when, where, who was present, and what provision(s) of the governing documents were violated. It should contain as much information as possible. If there are photos or a video, the complaining witness should provide these to the board. The complaint can be in the form of an email or a completed form. It does not have to be signed. However, for the association to move on to the next steps, the complainant must know that he may not be able to remain anonymous.

2) Review the community instruments. Either the managing agent or a member of the board of directors should review the association's community instruments and confirm that a violation occurred under the governing documents. If the conduct complained about is **NOT** prohibited by the association's documents, **there is nothing more to do.**

If the conduct complained about **IS** prohibited by the association's documents, review the community instruments also to confirm a.) if the documents require the notice of violation to include any specific language; b.) if the documents require the notice of violation to be sent in a specific manner, i.e., certified mail; and c.) what remedies the association may seek, i.e., warning, fine, etc. **REMINDER:** Be sure to check both the declaration and the rules and regulations.

3) Prepare a Notice of Violation. A notice must be sent to the **unit owner**. This notice is sent to the unit owner even if the alleged conduct was committed by a tenant or a non-owner. The notice generally does not have to be sent to the tenant, and, in fact, the association should generally only address the violation with the unit owner. The notice should be addressed to the unit owner and sent to the address for the owner as stated within the association's books and records. Even if the owner has agreed to accept all communication through acceptable technological means, the notice should also be sent by regular mail (and certified mail if so required by the association's documents or if the violation is of a serious nature). The notice should state what happened, when, and where, and it should identify what provisions of the association's documents were violated. If both the declaration and the rules and regulations were violated, cite to both documents. The notice should tell the owner what must be done to correct the violation. If this is the first violation notice for the alleged conduct, the notice must tell the owner he has the right to request a hearing if he disputes the notice of violation. If the association's documents require the hearing to be requested within a certain number of days, this must be stated in the notice. The notice should let the owner know that if a hearing is not requested, the board of directors will make a determination as to whether a violation occurred without the owner's input.

4) Conduct a Hearing. If a hearing is requested, it must be conducted at a mutually convenient time. The association should understand in advance from its legal counsel how the hearing should be conducted. However, the ultimate goal is for the board of directors to **LISTEN** to the alleged violator so that the board can decide if a violation did, in fact, occur. Prior to the hearing, the association's community instruments should be reviewed to determine if there are any requirements as to how the hearing should be conducted. If there are no requirements, the board of directors can limit the length of the hearing and can ask questions. Yet, the board of directors should not cross-examine the alleged violator and should only ask clarifying questions.

5) Deliberate. Whether a hearing is requested or not, the board of directors needs to discuss the alleged violation. The purpose of the discussion is for the board to decide if a violation has occurred and, if so, what remedies the association is seeking. **REMINDER:** The board of directors needs to deliberate even if a hearing is not requested. As with any board action, at least a majority of the board of directors must determine a violation has

occurred. The board's decision on how to proceed should be made in the open board meeting. **REMINDER:** The motion should not identify who is the subject of the violation.

6) Notice of Determination. After the hearing and/or after the board of directors has deliberated, the alleged violator needs to be notified as to what was the board's determination. Once again, the association's community instruments should be reviewed to determine if the notice of determination must contain any specific language or must be sent within a certain period of time. If it does not, the notice should state what the board decided, i.e., whether a violation has occurred and what remedy(ies) the association is seeking, i.e., correct the conduct and/or imposition of a monetary fine. **REMINDER:** A fine cannot be imposed until an owner has been given the opportunity for a hearing. This does not mean that the owner has to request or participate in a hearing. It only means that the owner has to be told they can have a hearing with the board if he disputes the violation. Also, even if the board determines a violation has not occurred, or that a fine will not be imposed, a notice of determination should be sent.

There are other issues that can arise when addressing a violation matter, which will require further action and/or attorney involvement. Yet, for any violation, the above six steps are critical for successful enforcement. Following these steps also ensures fairness for all and consistency within the community.



2025 Reminders

On January 1, 2025, a change to the Illinois Condominium Property Act ("Act") will take effect. This change is included in the new Section 18.12 of the Act and is entitled "Accessible Parking." As explained in our June Newsletter, Section 18.12 requires a board of directors to adopt a policy to reasonably accommodate a unit owner who is disabled and requires an accessible parking space to ensure access to the building. The policy must include the procedure for submitting the request and the time for the board to review it, which shall not be more than 45 days from the date it was requested. This Section also requires a board to make reasonable efforts to facilitate a resolution between unit owners to provide for accessible parking when the association does not own or control parking that would meet the accessible needs of a disabled unit owner. Per Section 18.12, all condominium associations must adopt this policy by **March 31, 2025**. If your board of directors has not adopted this policy, please contact us so we can assist you and ensure your association is in compliance.

A reminder for all licensed Community Association Managers! According to the Illinois Department of Financial and Professional Regulation's ("IDFPR") rules, beginning with the renewal period ending **August 31, 2025**, each community association manager shall complete 12 credit hours of continuing education for each renewal period. All of Keough & Moody's Webinars since July 2023 have been approved by the IDFPR, and they do count towards these credit hours. Dawn and Gabby are keeping this deadline in mind as they plan their 2025 Webinar schedule!

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