KEOUGH MOODY

February 2025 Newsletter

KEOUGH & MOODY WEBINAR

Identifying and Handling Nuisances (Especially When Offender or Complainer Number 1 is Involved)

March 12, 2025, 12:00 p.m.

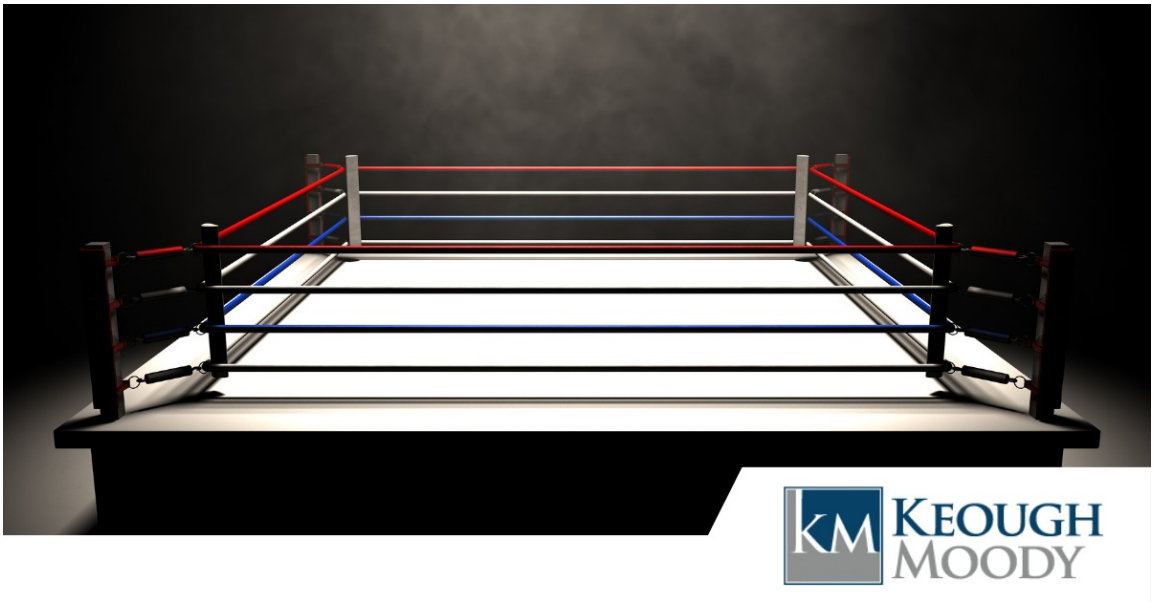
Pending approval for continuing education

Nuisances are popping up in every community association. They are violations that are tricky to handle because some people find everything annoying and everything to be a nuisance. They are also tricky to handle because if a nuisance situation is not properly handled, it can easily spin out of control. It can also subject the association (and its manager or board members) to accusations of discrimination or breach of fiduciary duty. Last year, an Illinois appellate court issued a ruling in a case that centered around a chronic complaining unit owner who repeatedly alleged that her neighbor was engaged in nuisance activities. This court ruled in favor of the condominium association and highlighted all that the association and its management team did that was RIGHT.

Join Dawn and Gabby in this 2-hour webinar as we go through this case and discuss how to handle nuisances properly and how to avoid traps (that are tempting when you are dealing with offender or complainer number one). There will be time for questions, too!

Register in advance for this webinar.

Register Here



FIGHTING THE FIGHT WITHOUT LOSING YOUR MIND AND BREAKING THE BANK

Several attorneys from our office recently attended the CAI's Annual Law Seminar in San Antonio, Texas. We always find it beneficial to learn how our colleagues around the country address issues we commonly see in Illinois. One topic of discussion at the seminar was addressing legal fees incurred by associations as a result of the actions (or inactions) of unit owners. The presentation focused on the financial challenges this presents for community associations when the claims asserted against the association (or its agents) are without merit. We heard stories of unit owners who unnecessarily filed motion after motion (one even filed as many as over 100) and who take every measure to drag out a lawsuit, only to cause the attorney's fees to skyrocket. We know many of you have experienced this, too.

Last year, cases decided by Illinois appellate courts highlight that the judges in Illinois recognize this unproductive gamesmanship by vexatious unit owners. In response, the courts have upheld awards of attorney's fees in favor of associations that exceed $100,000. One court even awarded an association hundreds of thousands of dollars in attorney's fees as a sanction against a unit owner *and his attorney.* This is a win for community associations, but it still leaves all of us with the question of how do we stop it—how do we stop frivolous claims from being filed against our associations, our board members, and our managing agent? While we all know anyone can file anything against another, we also know that there are steps that any corporation can take to minimize attorney's fees and to successfully seek reimbursement for these fees when they are incurred.

First, as the saying goes, "pick your battles"! By definition, to pick your battles means to carefully show which conflicts or issues are important enough to you to take on and fight. Only fight the important ones and let go of the less significant ones. Be selective of what you will fight for on behalf of your association. Yes, boards should enforce the restrictions within the community documents, but that does not mean every enforcement effort has to turn into an all-out war.

Second, as you pick your battles, do not fall for traps! The vexatious owner is the one who will not stop—he will keep going until he gets his way. This is the person who will keep sending emails on the topic and "demand" a response. This is the person who will keep "demanding" a meeting with the board (even though a hearing has already occurred). This is the person who will contact every member of the board and every person on the management team. This is the person who will be eager to come to the management office

unannounced or stop the board member in the elevator and "demand" to be heard. After this person has been given an explanation and an opportunity to be heard, it is important to know when to simply say "this matter is closed" and then the board and management must keep it closed! A common mistake we see is that the board and/or management continue to engage with this person on the same topic. Not only does this add to the aggravation everyone is feeling, but it also leads to more in writing–writing that will more than likely be used against you!

Third, remain reasonable. Some people just know how to push our buttons. Just as it is easy to let them and to fall for the traps they put out, it is easy to lose our ability to be reasonable. Quite simply, we cannot. Remaining reasonable is one of the best defenses to a persistent person. Even for us attorneys, it is often easier to say be reasonable than to act reasonably. Yet, it is important to act reasonably, as that is typically the difference between winning and losing. It is also one of the best tools used to minimize attorney's fees. (It is also one of the best tools for a board to maintain credibility within the association.) Case law from last year demonstrates that a judge is more inclined to award an association the attorney's fees incurred when it is apparent the association was reasonable. Just because the owner sent a two-page letter does not mean the association has to respond to every point in the letter. Just because the owner continues to repeat himself does not mean the association has to continue to repeat itself. Just because the owner tries to have the last word does not mean that the association has to have the last word.

Finally, have a plan. As noted above, the vexatious owner wants to get the association off track and focus on everything but the real issue. Again, just because the owner is off track does not mean that the association has to be derailed. When the red flag is up that this is a situation that is spinning out of control, it is important for the association's teams to formulate a plan. Who will speak to this person? When will there be communication, and in what form? What is the association's goal, and how do we get there?

As a corporate entity, attorney's fees will inherently be incurred. Sometimes these fees are simply the cost of doing business. For example, when fees are incurred to address how to handle a situation created by an owner, how to respond to a document request, or how to respond to a difficult owner, these may not initially be fees that can be assessed to the owner's account. However, the fees may be assessed at a later date as part of the association's plan.

Attorney's fees can be assessed to an owner when the fees are related to a default by the owner, i.e., a violation or unpaid assessments. Even so, when a lawsuit is pending, most judges do not want the association assessing the attorney's fees incurred during the lawsuit against the owner's account. That is, judges want to see that these fees are not assessed until they are awarded by the court. Remember, the law firm is keeping track of all that is billed to a matter, so when the time is right, it can provide the association with the amount to be assessed to the account. It is best to check with the association's legal counsel before fees are assessed to confirm not only that the fees can be assessed, but also to confirm that the association has taken all necessary steps to be in a position to assess fees, i.e., the board has made a determination that a default or violation of the association's documents has occurred.

It is important for the association's attorney, board of directors, and management to talk about how to fight these fights at the beginning of the fight and before it is out of control. Waiting can only add to the frustration that makes it hard then to avoid the mistakes discussed above. It also can add unnecessary delays and increased costs. So, remember, when the red flag first goes up, it is likely a good time to begin these discussions and develop a plan. Early intervention can often lead to less headaches and more controlled expenses!

REMINDER TO CONDOMINIUM ASSOCIATIONS:
Have you adopted an accessible parking policy?

Section 18.12 was added to the Illinois Condominium Property Act and went into effect on January 1, 2025. This new section, which applies only to condominium associations, requires **all** condominium associations to adopt a policy that addresses how to reasonably accommodate a unit owner who is disabled and requires an accessible parking space to ensure access to the building. Per the statute, the policy must be adopted by March 31, 2025. If your association has not yet adopted this policy, please contact us to discuss what needs to be done to ensure your condominium association is in compliance with the Act.

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