



2019 BOARD MEMBER BOOT CAMP

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Featuring Katerina Tsoukalas-Heitkemper and Kathryn A. Formeller of Tressler LLP

TRESSLER LLP

Kathryn A. Formeller, Partner

Katerina Tsoukalas-Heitkemper, Partner

TYPES OF ASSOCIATIONS

- ▶ **CONDOMINIUM ASSOCIATIONS**
- ▶ **COMMON INTEREST COMMUNITY ASSOCIATIONS**
- ▶ **COOPERATIVES**

CONDOMINIUM ASSOCIATIONS

- ▶ **An association is a condominium association when its recorded declaration and by-laws state that it is being submitted to the Condominium Property Act.**
- ▶ **It should also have the word "condominium" in its name. Condominium associations are subject to the Illinois Condominium Property Act ("ICPA") and the Illinois General Not for Profit Corporation Act ("NFPA"), if incorporated thereunder.**

COMMON INTEREST COMMUNITY ASSOCIATION

- ▶ **Common interest community associations are defined by CICA as:**
 - ▶ **“Real estate, other than a condominium or cooperative, with respect to which any person by virtue of his or her ownership of partial interest or a unit therein is obligated to pay for the maintenance, improvement, insurance premiums or real estate taxes of common areas described in a declaration which is administered by an association.”**

COOPERATIVES

- ▶ **The corporation holds the title to the entire property and the building's occupants own shares of stock in the corporation, which are equal to the value of the apartment/unit they occupy.**
- ▶ **Governed by the Illinois Not For Profit Act as well as stock share, proprietary lease & by-laws**
- ▶ **Relationship between co-op and shareholder is akin to shareholders of a corporation.**

THE BOARD

- ▶ **Members of association boards must be prepared and informed to “govern” their respective communities.**
- ▶ **Know and understand the association’s governing documents.**
- ▶ **Know and understand the applicable law.**
- ▶ **Know and understand the community needs.**

GOVERNING DOCUMENTS

- ▶ **Primary** = **Applicable state law (ICPA, CICAA, NFPA)**
- ▶ **Secondary** = **Declarations, by-laws, articles of incorporation**
- ▶ **Last** = **Rules and regulations and proprietary lease**

***Always consult association's legal counsel when interpreting or amending the governing documents**

DECLARATION/BY-LAWS VS. RULES & REGULATIONS

- ▶ The general differences between the declaration and bylaws and the rules and regulations of an association are the following:

Declaration	Rules and Regulations
Recorded with the County Recorder of Deeds in which the property is located.	Not recorded.
Prepared by the developer.	Prepared by the board.
Changed by an amendment, which must be approved by a supermajority of the members of the association.	Changed by a majority vote of the Board.
Effective as of the date recorded with the County Recorder of Deeds unless it specifically provides a different date.	Effective after adopted by the board and distributed to its members.
Presumed valid and will not be stricken by a court unless (1) wholly arbitrary in its application; (2) unconstitutional; (3) against public policy.	Scrutinized and must be affirmatively shown to be reasonable in its purpose and application.

THE BOARD: ICPA

Board Member Qualifications	<ul style="list-style-type: none">• Must be a unit owner. ICPA 18(a)(1)• If there are multiple owners of a unit, only one of the owners can serve at a time. ICPA 18(a)(1)• Elected by membership. ICPA 18(a)(1)
Number of board members	At least 3 under ICPA 18(a)(1) (or as provided in the declaration or by-laws)
Board terms	<ul style="list-style-type: none">• Up to 2 years• 1/3 of the terms must expire annually. ICPA 18(a)(1).

THE BOARD: COOPERATIVES

Board Member Qualifications	• Refer to Corporation By-Laws
Number of board members	• Minimum of 3
Board terms	• Maximum of 4 years

WHAT IS A FIDUCIARY?

- ▶ **Duty to act for and on behalf of the best interest of the community as a whole.**
- ▶ **Demonstrates loyalty and care to the association. He/she must not put their personal interests before the duty, and must not profit from their position.**
- ▶ **Disclose and address any conflict of interest.**
- ▶ **Respond in a timely manner.**

BOARD OFFICERS - PRESIDENT

ICPA SEC. 18 (B) (13) (III) (C-E)

- ▶ **Presides over meetings of the board and members.**
- ▶ **Appoints commission membership (if authorized).**
- ▶ **Serves as primary liaison between the board and management, the association's attorney and other third parties.**
- ▶ **With board approval, signs contracts or legal documents on behalf of the association.**
- ▶ **Carries out decisions voted on by board.**

BOARD OFFICERS - TREASURER

- ▶ **Serves as the liaison for auditors and accountants.**
- ▶ **Reviews monthly financial statements and performance.**
- ▶ **Participates in the annual budget and audit review process.**
- ▶ **Oversees reserve funding and investments.**
- ▶ **Monitors the assessment collection procedures.**
- ▶ **May be a primary or secondary signatory on reserve bank accounts.**

BOARD OFFICERS - SECRETARY

- ▶ **Records the association's meeting minutes and maintains association records.**
- ▶ **Attests to the other officers' signatures on legal documents and/or certifies legal documents.**
- ▶ **May be a primary or secondary signatory on reserve bank accounts.**

MEETINGS

- ▶ **Two types of meetings:**
 - ▶ **Ownership meetings**
 - ▶ **Board meetings**

WHEN SHOULD MEETINGS BE HELD?

- ▶ **ICPA does not set forth specific requirements for when board or membership meetings can and should be held.**
- ▶ **Per the ICPA, boards are only required to hold a minimum of four meetings per year.**
- ▶ **Association by-laws may provide specific dates and times.**
- ▶ **Technology allows for greater flexibility to hold meetings, including conference calls and video conferences.**

MEMBERSHIP/ANNUAL MEETINGS

- ▶ **Associations are required to hold one owner meeting per year for the annual meeting to elect board members.**
- ▶ **Membership meetings have other purpose:**
 - ▶ **ICPA – merger, sale, consolidation, etc.**
 - ▶ **ICPA – discuss proposed rules and regulations.**

MEMBERSHIP MEETINGS

- ▶ **Notice**: Membership meetings, including annual meetings, meetings to discuss proposed rules and regulations and special meetings, must be mailed or delivered to the members no less than 10 days and no more than 30 days prior to the meeting. Notice must include the time, place and purpose of the meeting.
- ▶ **Special Meetings**: Membership meeting called for the purpose other than to adopt an annual budget and/or hold an election.
 - ▶ May be called by the president, the board, or by 20% of the owners.
- ▶ **Quorum**
 - ▶ **Condominium associations with more than 20 units**: owners representing 20% of ownership interest in common elements (unless greater requirement is established by a vote of the members)
 - ▶ **Condominium associations with fewer than 20 units**: Governed by the by-laws. If silent, then 10% if incorporated as a not-for-profit corporation.

MEMBERSHIP MEETINGS - ELECTIONS

- ▶ **Basis for voting**
 - ▶ **Condo – vote based on percentage of ownership.**
 - ▶ **Co-Op – vote based on shares of stock owned.**
- ▶ **Eligibility**
 - ▶ **Unless declaration/by-laws say otherwise and/or proscribe additional requirements, typically must be a owner to be on the board.**
- ▶ **Generally staggered terms.**

MEMBERSHIP MEETINGS - ELECTIONS

- ▶ **Candidate endorsements**
- ▶ **Nomination forms**
- ▶ **Proxies**
 - ▶ **Owners may vote by proxy unless board has adopted mail-in or electronic voting procedures.**
 - ▶ **Must be in writing, signed & valid for 11 months from date signed.**
 - ▶ **Must be retained by association for 12 months.**
 - ▶ **Requests for review by owners under ICPA.**

MEMBERSHIP MEETINGS - ELECTIONS

▶ Cumulative voting

- ▶ Method of voting in which each member has the same number of votes as there are seats up for election.
- ▶ Owners can cast as many of their votes for the candidates as they desire.
- ▶ For example, if there are three seats up for election, each Owner has three votes that can be cast as follows:
 - ▶ All three votes for one candidate;
 - ▶ Two votes for one candidate and one vote for another candidate; or
 - ▶ One vote for three different candidates.

MEMBERSHIP MEETINGS - ELECTIONS

▶ Electronic or mail-in voting

Before electronic voting can take place, the board must first adopt rules regarding electronic voting at least 120 days in advance of the election. The rules must include the following:

- ▶ Unit owners may not vote by proxy in board elections but may only vote (a) by submitting an association-issued ballot in person at the election meeting; or (b) by submitting an association-issued ballot to the association or its designated agent by mail or other means of delivery specified in the governing documents.
- ▶ Ballots must be mailed or otherwise distributed to owners not less than 10 days and not more than 30 days before the election meeting.
- ▶ Owners must be given at least 21 days prior written notice of the deadline for inclusion of a candidate's name on the ballots and that deadline must be no more than 7 days prior to the date the ballots are mailed or otherwise distributed.
- ▶ Every ballot must include the names of the candidates who have given the board or its authorized agent timely written notice of their candidacy.
- ▶ Every ballot must include an area to write in a name not included on the ballot.
- ▶ A ballot received by the association or its authorized agent after the close of voting shall not be counted.
- ▶ An owner who submits a ballot by mail or other means of authorized delivery may request and cast a ballot in person at the election meeting, and thereby void any ballot previously submitted by that unit owner.

MEMBERSHIP MEETINGS - ELECTIONS

▶ Election Results – Challenges

- ▶ Election materials must be retained by association for at least 12 months per ICPA section 19(a)(8) and can be examined and copied by unit owner upon written request stating a proper purpose per ICPA section 19 (e).
- ▶ One year period to challenge an election.
- ▶ A duly elected board is essential to maintain the legitimacy of that board's actions and the protection of board members from potential personal liability.

BOARD MEETINGS

- ▶ **Proper notice must be given to owners**
- ▶ **Reflect democracy**
- ▶ **Civility**
- ▶ **Directors represent ALL the owners**
- ▶ **Allow for transparency in decision making**
- ▶ **Open forum not required**
- ▶ **Require minutes**
- ▶ **Remote board member participation - ICPA 18(a)(9)(B)**
- ▶ **Recording - ICPA 18(a)(9)(C)**

MEETINGS – ICPA

Notice	<ul style="list-style-type: none">• <u>Regular Meetings:</u> Mailed or delivered at least 48 hours prior to meeting. Copies can be posted in entranceways, elevators, or other conspicuous places. ICPA 18(a)(9).• <u>To Adopt Annual Budget or Special Assessment:</u> Mailed or delivered no less than 10 and no more than 30 days prior to meeting. CPA 18(a)(8).
Number of Meetings	<u>Board:</u> at least four times annually. ICPA 18(a)(10).

BOARD MEETINGS

- ▶ **Parliamentary procedure – robert’s rules of order**
- ▶ **Agenda: generally, the “order of business” of an association board meeting is as follows:**
 - ▶ **Call to order**
 - ▶ **Certification of quorum**
 - ▶ **Approval of the agenda**
 - ▶ **Approval of the minutes of the last board meeting**
 - ▶ **Open forum**
 - ▶ **Reports**
 - ▶ **Old business**
 - ▶ **New business**
 - ▶ **Adjourn open session**
 - ▶ **Closed executive session**
 - ▶ **Adjourn closed session**
 - ▶ **Re-open open session to vote on issues from closed session**

OPEN MEETING REQUIREMENT

- ▶ **All board meetings must be open to the members of the association except for portions of meetings held for one of the following purposes:**
 - 1. To discuss litigation whether currently pending or anticipated;**
 - 2. To discuss employment related matters and third-party contracts;**
 - 3. To interview potential employees, contractors, agents or provider of goods/services;**
 - 4. To discuss violations of the declaration, bylaws, rules and regulations;**
 - 5. To discuss delinquent common expenses; or**
 - 6. Consult with legal counsel.**

MEETING MINUTES FOR OPEN MEETINGS

- ▶ **Purpose**
- ▶ **Secretary takes minutes**
- ▶ **Discoverable in litigation**
- ▶ **Vote for items that need action from executive session during open session**
- ▶ **Retention and copies**
- ▶ **Approval of meeting minutes**
- ▶ **Motions**

MEETING MINUTES FOR CLOSED MEETINGS

- ▶ Minutes must be kept for closed sessions.
- ▶ Generally, minutes of closed meetings should include the following:
 - ▶ Date of the meeting;
 - ▶ Time the meeting was called to order;
 - ▶ Attendees;
 - ▶ Quorum established;
 - ▶ Purpose of the executive session under Section 18(a)(9)(A) of the ICPA; and
 - ▶ Time meeting adjourned.
- ▶ Motions, decisions and votes should not take place in executive session. Under Section 18(a)(9)(A) of the ICPA, any vote on matters discussed in executive session must take place at an open board meeting.

BOARD EMAILS – ALLOWED?

- ▶ Merely *discussing* association business, without making decisions, constitutes “conducting board business,” so that a closed or informal gathering of a quorum of the board is an unlawful “meeting of the board.”
- ▶ “Workshops” are not permitted to be closed.
- ▶ Polling and/or canvassing board members via email or other means in advance of open board meetings not permitted.

DELEGATION OF AUTHORITY—CAN YOUR BOARD DO IT?

- ▶ Board can lawfully delegate authority to a manager (or a “commission” of board members) if such delegation is expressly authorized by the association’s declaration
 - ▶ If the declaration authorizes a delegation of authority, such delegation must still require approval of a majority of the board.
 - ▶ Make sure your declaration authorizes delegation (many do!) and the meeting minutes accurately reflect this delegation of authority.

HOME RULE LEGISLATION AND CITY OF CHICAGO ORDINANCES

- ▶ **The ICPA was amended on January 1, 2018. The purpose of the amendment was to avoid alterations to these amendments by Home Rule Communities.**
 - ▶ **Specifically, Section 19(a)(7) of the ICPA was amended to require board members to keep and maintain a current listing of the names, addresses, email addresses, telephone numbers, and weighted vote of all members entitled to vote at the association’s principal office. Furthermore, Section 19(e) of the ICPA requires board members to release this information to any member of an association, which is requested for a purpose that relates to the association.**
- ▶ **Home Rule Communities may enact ordinances that are more restrictive than state law. Illinois courts have held that “when the exercise of a power by the State and home rule units is concurrent, the courts must enforce ordinances promulgated by the latter, even where the ordinances are more stringent than State law.**
 - ▶ **City of Chicago is a home rule community.**

HOME RULE LEGISLATION AND CITY OF CHICAGO ORDINANCES CONTINUED

- ▶ The City of Chicago adopted an ordinance in response to public uproar over the changes made to Section 19 of the CPA, which was viewed as lacking privacy protections. The Chicago ordinance had the effect of nullifying Section 19(e) of the ICPA.
- ▶ On May 25, 2018, a compromise was reached between the overly broad Chicago Ordinance and the ICPA. The Chicago Ordinance was again amended to provide that Associations could opt out of the Ordinance requirements if 2/3 of the owners voted in favor of owners e-mail addresses and telephone numbers being available for inspection, examination and copies.
- ▶ The Ordinance now provides that owners may inspect, examine, and copy the names, addresses, and weighted vote of all members entitled to vote and, importantly, the Ordinance confirms that condominium owners do not have a right to inspect, examine and copy other unit owner e-mail addresses and telephone numbers.

HOME RULE LEGISLATION AND CITY OF CHICAGO ORDINANCES CONTINUED

- ▶ **Be aware of nuances in the City of Chicago Municipal Ordinance as such may affect your association.**
- ▶ **House Bill 29- proposed November 30, 2018. If passed would have the effect of overturning the Chicago ordinance. This is because the bill would block the City of Chicago's authority from enacting ordinances with requirements that differ from the state statute, for ordinances relating to an association's collection and sharing of records.**

EMERGENCY ACTION BY THE BOARD

- ▶ “Emergency” is defined within Section 18(9)(a)(iv) of the ICPA as “an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners.”
- ▶ The following are areas that associations should consider when making emergency decisions:
 - ▶ **Subsequent Ratification**: The board must ratify and confirm emergency actions of the board.
 - ▶ **Procedure**: In order for a board decision to fall under Section 18(a)(21) of the ICPA, the board must ensure the following:
 1. The action is in response to an immediate danger to:
 - a) The structural integrity of the common elements, or
 - b) The life, health, safety or property of unit owners
 2. The board provides notice of the emergency decision, within seven business days after that emergency event.
 3. The decision is ratified at a future open board meeting.
 4. The ratification is reflected in the meeting minutes.

BOARD ACTION BETWEEN MEETINGS

- ▶ **ICPA is clear in stating that the decisions of the board be open to all owners called with at least 48 hours prior notice. (See 765 ILCS 605/18(a)(9)(D)-(E).**
- ▶ **The *Palm II* decision considerably restricted the activities that boards traditionally performed, outside of noticed meeting.**
- ▶ **The holding required boards to hold properly noticed board meetings for all votes and discussions relating to association business.**
 - ▶ **However, the ICPA provides flexibility for discussing enumerated categories outside of a noticed meeting.**
 - ▶ **Additionally, in cases of emergencies, the board is granted the ability to act without the need of a noticed meeting. Such decisions are then ratified in a subsequent meeting.**

BOARD ACTION BETWEEN MEETINGS CONTINUED

- ▶ The most important takeaways regarding board decisions and discussions are the following:
 - ▶ **Discussions**: The ICPA sets forth the topics that a board may discuss, without requiring a noticed meeting.
 - ▶ **Decisions**: It is important to note that while the ICPA may provide enumerated categories for which a board may discuss association business in closed sessions, decisions of the board still require noticed meetings.
 - ▶ **Emergency Exception**: The cases where a board can act without a noticed meetings and can later ratify those acts, are limited to emergencies, as defined by statute. (See 765 ILCS 605/18(9)(a)(iv))
 - ▶ **Delegation**: The *Lake Point* holding confirmed that the *Palm II* holding did not preclude a board from delegating certain tasks. Properly adopted resolutions that allow for delegating decision-making for non-emergency situations.

BUDGETING – BOARD DECISIONS

- ▶ **Budgets are circulated and approved annually at open board meetings.**
- ▶ **Even if the board already approved a specific expense in the annual budget, it is still necessary to have a board meeting to approve contracts associated with those budgeted items.**

COMMITTEES

- ▶ **Must have at least one board member.**
- ▶ **Members are appointed by the board.**
- ▶ **Majority of the members constitute a quorum.**
- ▶ **May exercise the authority of the board and bind the association.**
 - ▶ **Restricted to the extent specified in the governing documents.**
- ▶ **Must have proper notice, minutes are taken and unit owners may attend committee meetings.**
- ▶ **The declaration outlines what authority, if any, can be delegated to the committee.**

COMMISSIONS

- ▶ **Allow for non-board member participation.**
- ▶ **Research on specific issues, as directed by the board.**
- ▶ **Offer further context for board decisions.**
- ▶ **Add to culture of the community.**
- ▶ **Requires ownership status.**

UNION LABOR

- ▶ Typically, larger associations with adequate resources will hire unionized labor. These associations have the added responsibility of complying with labor/employment considerations that come with unionized labor.
- ▶ Terms of union employment negotiated through Collective Bargaining Agreement (CBA) may include:
 - ▶ Termination/separation- grievance procedure.
 - ▶ Work restrictions- no work beyond that which the association has contracted with employee for.
 - ▶ CBA renewal- issues arise regarding negotiation (raises, benefits, etc.).
 - ▶ Subcontracting- CBA will limit employer's ability to subcontract for outside work (vendors).
 - ▶ Pay/OT considerations- strict compliance is required for unions.
 - ▶ Union Dues- CBA will contain provisions requiring deductions by employer.

UNION LABOR CONTINUED

- ▶ **Non-union employees as subject to employment conditions set by association- typically separation and discipline are dictated by employer within the bounds of federal and state laws.**
- ▶ **Enforcement of CBA: federal labor law governs enforcement of CBAs, but traditional contract law is frequently applied. Important to note that state law does not exist as an independent source of private rights to enforce CBAs between unions and employers.**

UNDERSTANDING THE ROLE OF MANAGEMENT

- ▶ **Charged with implementing the actions of the board**
- ▶ **Partner with the board to run the business of the association/corporation**
- ▶ **Contract bidding and negotiations**
- ▶ **One hour board meetings can happen!**
- ▶ **Confirm board's expectations of property manager/management company**
- ▶ **Confirm property manager's expectations of board**

WHEN TO CONTACT LEGAL COUNSEL

- ▶ **The attorney advising or representing a homeowners association, condominium association or cooperative works with a unique type of client.**
- ▶ **The client is a corporation with the responsibility to operate a business that can be large and valuable, but that frequently has minimal assets since the property is owned by its members (co-ops excepted).**
- ▶ **The association can run a large and complicated real estate business, but the issues most important to it can be personal issues relating to the homes and lives of its members.**
- ▶ **The combination of individual ownership and collective control can vitalize the community, but can be a source of tension and conflict.**
- ▶ **Its about about knowing when to get the attorney involved and when to remove yourself from what could develop into a toxic situation.**

OMBUDSPERSON ACT

- ▶ **All associations subject to ICPA required to adopt written policy by January 1, 2019.**
- ▶ **The written policy must include the following:**
 - (1) A sample form on which an owner may submit a complaint to the association;**
 - (2) A description of the process by which complaints are to be delivered to the association;**
 - (3) A timeline and manner of making a final determination in response to a complaint; and**
 - (4) A requirement that the association issue a written final determination within 180 days after the association received the owner's complaint.**

COLLECTING ASSESSMENTS

- ▶ **Essential for the operation and maintenance of an association and its common elements.**
- ▶ **Foreclosures and bankruptcies can be a threat that can impair the collection of assessments.**

COLLECTING ASSESSMENTS: FORECLOSURES

- ▶ **Collecting from third-party purchasers:**
 - ▶ **Prior balance: 6 months of assessments plus ALL costs and attorneys' fees. ICPA Sections 9(g)(1), 9(g)(4) and 9(g)(5)**
 - ▶ **Recent case law has questioned board's authority to collect attorneys' fees and costs.**
 - ▶ **Must "initiate" an action to collect from prior owner.**
 - ▶ **Current Obligation: must begin paying assessments beginning in the month following the foreclosure sale. ICPA 9(g)(3)**

COLLECTING ASSESSMENTS: BANKRUPTCIES

▶ Chapter 7

- ▶ Liquidation of debt owed – aka “Fresh Start”
- ▶ Owner’s personal liability is discharged for amounts owed prior to date bankruptcy was filed (called the pre-petition balance) but said amounts remains collectable against the property (through *in rem* collection proceedings). Owner remains personally liable for amounts owed on account day after bankruptcy filed (called post-petition balance).

COLLECTING ASSESSMENTS: BANKRUPTCIES CONTINUED

▶ Chapter 13

- ▶ Reorganization through court-ordered payment plan – typically 36 to 60 months.
- ▶ Association is a secured creditor and so long as owner not surrendering property to lender (meaning lender proceeding with foreclosure), association will receive payment in full of pre-petition balance so long as association included in Chapter 13 Plan and proof of claim filed by association attorney.
- ▶ Owner must stay current on post-petition assessments owed. If delinquency occurs, association can seek to lift bankruptcy stay – this will typically trigger owner to remit payment of post-petition arrears (sometimes through post-petition court-ordered plan) or stay lifted and association can pursue collection as if bankruptcy never filed.



THANK YOU!

If you have any questions – please reach out to us!

- ▶ Kathryn Formeller, Partner
kformeller@tresslerllp.com
- ▶ Katerina Tsoukalas-Heitkemper, Partner
kheitkemper@tresslerllp.com

QUESTION AND ANSWER

- ▶ **To ask a question:**
 - ▶ **Tweet LMS at #LMSBootCamp**
- ▶ **Via the Chat Function:**
 - ▶ **Windows: click on the chat icon at the bottom of the screen and the chat panel will pop up, select the speaker from the drop down menu and type your question into the text box**
 - ▶ **Apple: select the participant icon on your device and type your message to the presenters**



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