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**\*\*\*UPDATE\*\*\***

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## **COVID-19 VIRUS / EMERGENCY POWERS FOR COMMUNITY ASSOCIATIONS**

### **Community Associations and COVID-19**

Over the past several days we have spoken to many clients with questions on how their Condominium, Homeowners, or Cooperative Association may or must respond to COVID-19 and the myriad of Federal, State, and local orders. Below we will briefly address some of the most common questions.

### **What does the Statewide Stay at Home Emergency Order Mean for Associations?**

Governor DeSantis issued a statewide stay at home order effective at midnight on April 2, 2020. The Order requires all persons to stay at home unless their job provides essential services or unless they engage in essential activities. The list of essential services is lengthy but relative to Associations includes contractors/trades that provide services necessary for maintaining safety, sanitation, and essential operation of residences and structures, legal and accounting services necessary to respond to virus-related orders, landscaping, and pool care. Property management, although not expressly listed, would likely be deemed to be an essential service as it is necessary to maintain and operate Associations. Our law firm will remain open and available to assist our clients with their Association's legal needs.

### **How does a Florida State of Emergency effect how my Association operates?**

Initially there was some debate as to whether the emergency powers statutes applied in the current environment. However, the Division of Business and Professional Regulation ("DBPR") has issued Emergency Order 2020-04 for all Condominiums, Cooperatives, and Homeowners Associations governed by Florida Statute Chapter 718, 719, and 720. It provides that while the Florida Statutes on emergency powers were drafted in response to physical damage to property (such as with a hurricane), the statutory emergency powers have the same application under this State of Emergency. Therefore, the Association may operate with emergency powers under Florida Statutes and your governing documents.

### **What are the emergency powers?**

Florida Statutes provide that an Association may schedule Board meetings with less than the required notice. The Association may also close portions of the Association property and prohibit or limit access to the community by guests, tenants, vendors and others. In general, the Association may take such action as is "reasonably necessary to protect the health, safety, and welfare" of the Association owners residents, and guests. Your Declaration may provide greater or fewer emergency powers.

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This is for informational purposes only and is not intended to be specific legal advice for a particular situation. Consult your governing documents and your own legal counsel.

### **How does my Association conduct a Board meeting?**

The Federal government has issued guidelines which require social distancing of at least 6 feet between individuals and bans gatherings of more than 10 people. This makes in-person Board meetings virtually impossible. Until such time as the social distancing and gathering restrictions are lifted, we recommend that all Associations conduct their regular Board meetings via phone conference or video conference. For owner participation you must allow the owners to call in to the conference call or join the video conference.

### **How does my Association conduct an Annual or Membership meeting?**

Currently, we recommend that you postpone any membership meetings so that you can acquire and test the necessary technology to conduct a meeting that will involve substantial meaningful participation from owners, including voting. Keep in mind that any proxies you have received are valid for up to 90 days from the date of the originally scheduled meeting. The Board, management, and attorney should work together to ensure compliance with the Association's Declaration in rescheduling and conducting the meeting. If you conduct a meeting, you would want to limit or prohibit physical attendance and permit owners to participate remotely via proxy or another authorized method.

### **Can the Association close a portion of the Association property? And should you?**

Yes, under the Florida Statutes emergency powers you can close a portion of the common areas. If any portion of the common areas is used in a manner which violates social distancing or gathering guidelines, then you should close it. This includes pools, spas, gyms and other indoor or outdoor areas. The Association may also close party rooms or gathering spaces to the extent they may be used for gatherings of more than 10 people. If your Association has an onsite management office and your manager is going to continue to report to work in person, we recommend that you limit the office to only necessary occupants and visitors. Keep in mind that you cannot prevent access to the units or homes, so common hallways, foyers, elevators, stairways, and the like must remain open. Miami-Dade County has ordered ALL common amenities be closed until further notice. This has not yet occurred in any Southwest Florida County, but it is quite possible this will occur in the near future.

### **What happens if someone in the community tests positive for COVID-19?**

This is a difficult question that raises several legal issues. The Association should not be actively inquiring about the medical status of residents or guests. However, if the Association acquires actual knowledge that someone has tested positive for COVID-19, it is our opinion that you should notify all owners and residents. However, you must keep the address and identity of the individual confidential. The Association should also ensure it is taking all appropriate precautions to comply with social distancing, limited gatherings, and if possible, increase cleaning of common areas.

### **How does the Federal Stimulus affect Associations?**

The Coronavirus Aid, Relief, and Economic Security Act ("CARES") has been signed into law. The 800 pages of text allocate over \$2 trillion in federal money to bolster the economy during this difficult time. Under CARES, Associations may be eligible to apply for a loan to cover certain operating costs. If the funds from the loan are used in compliance with the Act then the loan, including interest, may be forgiven if the Association qualifies under certain aspects of the law. Feel free to contact our law firm for an application and FAQ to see if you qualify.

**Can the Association continue to collect assessments? And should you?**

Yes, on both accounts. Without assessment income Associations are unable to provide basic services to the owners and residents. We recommend that Associations continue to aggressively pursue collection of assessments. A strong collection strategy that begins when an account first becomes delinquent will reduce the amount of bad debt in the long term. It will also help owners who become delinquent to structure their income and debt so that they can make payments or other arrangements to resolve it quickly. Ensuring assessments are collected now will help insulate the Association from any future pause in collection. However, if a person requests relief from paying assessments, the Association can negotiate a payment plan with them, however, the Board should document the actual hardship and need before agreeing to a payment plan. Further, we do not recommend that you proactively offer payment plans to all owners but rather deal with each request on a case by case basis.

**Are short-term rentals (less than 30 days) permitted? What about long term rentals (more than 30 days)?**

As of March 28, 2020, and continuing for at least 14 days, Governor DeSantis issued Executive Order 20-87 banning short-term rentals of less than 30 days. (There are certain exclusions so you should check with your legal counsel.) The ban applies to new bookings as well as any occupant whose rental period began after March 28, 2020. We expect this order to be extended until at least April 30, 2020. Enforcement of this ban is being handled by the DBPR. In certain areas, such as Sanibel Island and Fort Myers Beach, local Emergency Orders have been issued prohibiting ALL new rentals, including short term (less than 30 days) and long term (more than 30 days). You should consult your legal counsel regarding local emergency orders.

**How does the Association timely complete its year-end financial report?**

The DBPR Emergency Order has suspended the deadline to comply with financial reporting. A new deadline has not yet been established.