

## **MARCH 21, 2020 CLIENT BULLETIN**

### **A PRACTICAL GUIDE FOR COMMUNITY ASSOCIATIONS MANAGING COVID-19 ISSUES**

As this week has reminded us all, many things can happen in a short period of time. While we have been in contact with many clients this week concerning COVID-19 issues including how to manage the immediate impact of the virus on community association operations, members and personnel, we understand that many questions remain about the short-term and long-term impact of this situation. In an effort to provide our clients with a general guide about how to operate in the weeks ahead, we are distributing this bulletin with recommendations about what you should do. While each community association is different, the following guide should help you navigate many of the issues that may arise during this unprecedented public health crisis. If you have questions or need assistance after reviewing this bulletin, please let us know. We are fully operational and available to assist you via telephone, video conference, and email.

#### **A BRIEF LOOK BACK – HOW DID WE GET HERE?**

COVID-19 was first reported to the World Health Organization on December 31, 2019—just 82 days ago. Since then, we have all watched the virus spread across the world from Japan to Iran to Italy, and now to Florida. As a result of COVID-19’s threat to our state and its people, on March 9, 2020, Governor Ron DeSantis issued Executive Order Number 20-52, declaring a state of emergency (“Order”). The Order is significant for many reasons, including the fact that Florida laws governing homeowners’ associations and condominium associations expressly grant boards additional powers when such orders are entered declaring an emergency. *See* Section 718.1265, *Florida Statutes*, which governs Condominium Associations, and Section 720.316, *Florida Statutes*, which governs Homeowners’ Associations.

While these extraordinary emergency powers were originally established to address issues related to hurricanes and other casualties, many of them apply and may be helpful during the current crisis. By way of example, a community association board has the following additional powers during such a state of emergency, which are relevant to the COVID-19 crisis:

- Conduct board meetings and membership meetings with notice. Such notice may be given in any practicable manner, including publication, radio, United States mail, the internet, public service announcements, and conspicuous posting on the property or any other means the board deems reasonable under the circumstances.
- Cancel and reschedule any association meeting.
- Relocate the association’s principal office or designate alternative principal offices.

- Implement a disaster plan before or immediately following the event for which a state of emergency is declared.
- Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the common property unavailable for entry or occupancy by owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.
- Require the evacuation of association property in the event of a mandatory evacuation order in the locale in which the community is located.
- Levy special assessments without a vote of the owners.
- Without owner approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient.

The special powers authorized in applicable statutes are limited to that time reasonably necessary to protect the health, safety, and welfare of the association, the owners, and their family members, tenants, guests, agents, and invitees.

### **WHAT SHOULD WE DO AS OF MARCH 21, 2020?**

While citing statutes and orders that are available to anyone online is helpful to some extent, most clients really want to know what they should do based upon current conditions and applicable law. Helping you apply the law and government orders to your community association's operation is a critical part of our work. To support you, and to provide you with a basic plan for your organization, we have the following general recommendations:

- **Amenities.** Based upon recent government orders about COVID-19 and the public management of that critical issue, we recommend closing all amenities until further notice. That includes the closure of clubhouses, pools, fitness centers, restaurants, bars, community meeting rooms, and any facilities where groups of ten or more people may assemble. While some communities are reluctant to implement facility closures, delaying such closures may jeopardize others. We strongly encourage our clients to take bold leadership positions about these issues for the general health, safety and welfare of their owners, residents, guests, vendors and staff.
- **On-Site Staff.** We recommend that all on-site office staff be permitted to work remotely, if possible. To the extent that on-site office staff must work on property, we strongly recommend that their offices be closed to members, residents, guests and other invitees, including board members. All communications and operations with management and office staff should be completed by email, telephone and electronic conferencing (such as

Zoom Video Conferencing). To the extent that staff members are not based in an office setting, they should take great care to follow all government protocol and guidelines to protect their health and safety, including engaging in social distancing and extraordinary hygiene practices.

- **Association Meetings.** All board, membership and committee meetings should be postponed until government officials advise that groups can safely gather in such a forum. To the extent that you must meet, you should do so on an emergency basis only, and you should do so electronically, as noted above. You should not meet in person for any reason, as such a meeting only puts you and others (including their families) at risk.
- **Closed Meetings of the Board.** The board may meet privately as needed to discuss personnel issues (without counsel present) and legal issues (with counsel present), and those meetings should also be conducted by telephone or video conference.
- **Scope of Business Conducted.** In addition to the closed meetings permitted above, community association boards may meet based upon the emergency powers referenced above. Efforts should be made to maximize owner participation in such meetings via electronic media, only. Realistically, for the next few weeks or months such meetings should have a limited scope and may include approval of contracts for emergency services needed to manage the property due to COVID-19 issues and other time sensitive issues, which if not addressed now could lead to the disruption or termination of services or other harm to the community association and/or its members. Consideration of issues and contracts that are not of an emergency nature or that can reasonably be deferred should be delayed until a public and noticed board meeting can occur in person. We recommend that your overall goal be to do what is necessary to protect the association and its members, residents, guests and staff during this unprecedented health crisis while deferring less critical business for the time being.
- **Communications with Members and Residents.** To the extent that you meet in private or in an open session via telephone or video conference (if possible), each board should endeavor to advise association members and residents that you are doing so, and you should immediately issue draft minutes or a summary of the meeting to inform the members of the limited and critical actions that you took at the meeting. Regular community updates about association actions and issues, as well as distribution of information from official authorities, such as the Center for Disease Control and Prevention (“CDC”), World Health Organization (“WHO”), and county, state and federal government offices, is recommended. Everyone can benefit from such communications coming from your community association.
- **Complaints from Owners about Board Action or Inaction.** While most owners are reasonable and understand the exceptional circumstances confronting us, a few may not be so thoughtful. We recommend taking an assertive position if challenged about your decisions to act or not act. You, as a board, have broad emergency powers as outlined

above, and we trust that all board members are acting in good faith with diligence and care, especially during these critical times. Be confident in your decisions to protect the community, even when faced with naysayers who question your intentions and careful choices that are designed to protect the association, members, residents, guests, staff and vendors.

- **Emergency Action Committee.** For associations with larger boards (more than three directors) or substantial amenities or operations (golf courses, restaurants, bars, clubhouses, tennis courts, pools, fitness centers, etc.), we strongly recommend that you appoint three board members to a small committee and vest them with power to act with regard to emergency issues. Vesting them with limited spending authority and the power to act to address time sensitive emergency issues is recommended, as that will provide you with critical flexibility, especially as circumstances change.
- **Access Control.** Access control personnel are at potential risk given their positions and interactions with large numbers of people (albeit often one at a time). If applicable, please ensure that your access control service provider has properly counseled those personnel about how to protect themselves and people entering your community. Also, we have been asked if closing access to communities is viable. Such action could have unintended consequences; therefore, we do not recommend such action absent a government order to do so. Careful and thorough consultation with counsel and other experts should occur before taking such action.
- **Assessments.** Questions have been raised about the billing, collection and recovery of assessments, both now and in the near future. We recommend that you proceed with business as usual regarding such issues—which means that you should pursue the billing, collection and recovery of assessments promptly and consistently. As we learned from the financial crisis of 2007-2008, letting your guard down when it comes to such issues can have dire consequences. Deferring payments and waiting to act to collect assessments, even during a crisis, can cause financial hardship to an organization and the members who are paying on time—thus requiring them to pay even more over time to compensate for lost revenue from delinquent owners. Please continue pursuing the collection of assessments to ensure the continuous operation of your community association and to protect owners, including those who are diligently paying their assessments. In doing so, your board can ensure that most owners make such payments a high priority, which will support the effective operation of your association.
- **Governing Document Enforcement.** Like the collection of assessments, inaction relative to the enforcement of governing documents can have an adverse impact on a community. Being inconsistent or less than diligent now may compromise your community association's efforts to enforce governing documents later. We recommend taking a consistent and diligent approach to deed restriction and rule enforcement, even during this challenging time. While efforts should be made to work with owners concerning such

issues, abandonment of enforcement efforts is something that a community association's leaders and members will likely regret.

### **HOW SHOULD WE PLAN FOR THE WEEKS AND MONTHS AHEAD?**

As lawyers who have assisted many clients with the financial crisis that began in 2007, many of the lessons we learned through those difficult times will help us advise and support you today. Although we will constantly review, analyze and adjust recommendations as circumstances change, please consider the following ideas about how you may best plan for the future:

- **Stay Informed.** Above all else, please stay informed about COVID-19 issues and remain vigilant. You can best serve your community by acting diligently and proactively, especially during this crisis.
- **Comply with Governmental Restrictions.** Take care to strictly follow all government guidelines, recommendations and orders concerning public health issues, both personally and as an organization. These guidelines, recommendations and orders are likely to change over time; therefore, ongoing vigilance by each person and board is critical. The following is a link where you can read Executive Orders from Governor DeSantis: <https://www.flgov.com/2020-executive-orders>.
- **Evaluate Existing Contracts.** Each board should be aware of the expiration date of each association contract. Uncertain economic times may be cause for vendors to be unavailable or to increase prices. Make sure that vendors are performing their contracts, and renegotiate them as needed in your business judgment. Allow for substantial extra time to negotiate and adopt new contracts, as the availability, business goals and pricing of vendors may change.
- **Adopt a Plan to Inspect, Maintain, and Document the Condition of Closed Facilities.** Many facilities have been closed with the hope that they will reopen soon. When that may occur is unknown; therefore, take great care to secure facilities to protect against theft and vandalism. Thoroughly inspect and photograph the condition of amenities on a regular basis, particular where they have been closed. Quickly develop a maintenance plan for such facilities if they must be closed for an extended period to prevent them from deteriorating. Consider the use of security cameras and alarm systems if they are not already present.
- **Plan for a Potential Financial Downturn.** Associations should remain vigilant about the collection of assessments and financial planning. Disruptions in cash flow are to be expected, as are increased delinquency rates. Managing cash flow and finances is paramount given the potential for owners to not pay assessments, as well as the potential for increased operating costs that could arise due to the COVID-19 crisis. Be aware that your vendors may also encounter such problems, which could cause prices to rise or

services to be less available. Staying far ahead of such issues by communicating with vendors will serve you and your association in the long run.

- **Communicate with Members and Each Other.** Be proactive about communicating with your members, residents, staff and vendors. While public meetings are to be avoided, use of mail, email, automated telephone notices, closed circuit television, and electronic conferencing to share information with your members is critical. Consider preparing “Frequently Asked Questions Memos” to reduce inquiries, and direct owners to your website for details.
- **Call or Email Your Lawyers.** Do not hesitate to call or email us for help. Assisting management professionals and boards with serious problems is what we do. While our physical offices are closed for the protection of our lawyers, staff and their families, our law firm has a cloud-based system and is totally operational. We have complete access to your files and governing documents, and we are available by telephone and email seven (7) days a week. We are available to help you, so please rely on us.

Please stay healthy and safe, and let us know how we can be of additional assistance to you and your community.

Sincerely,

*Eric N. Appleton*

Eric N. Appleton

cc: Michelle T. Reiss, Esq.  
Keith D. Skorewicz, Esq.  
Karen S. Cox, Esq.  
Maria Chapman, Esq.  
Nicki Fernandez Asmer, Esq.  
Nadine M. Appleton, Esq.  
Jennifer Lewis, Paralegal  
Nicole Jaromin, Paralegal  
Rhonda Harnig, Paralegal  
Nheth Funk, Paralegal  
Candi Klotzbach, Accountant