

SOME BOARD ACTIONS CANNOT WAIT UNTIL THE CORONAVIRUS IS SQUELCHED



Community-Association Boards around Florida have understandably curtailed activities. No live board meetings should be being held. Annual meetings have been postponed. Common area use has been curtailed. This will help us get through this national crisis alive and well.

The challenge is, some Board actions cannot await the “all clear.” This list is not intended to be exhaustive. My friends on the general counsel side will invariably have more to add to this list.

Insurance Renewals

You have to keep the property insured. If policies are up for renewal, they need to be acted upon. This is not a time to allow coverages to lapse.

Maintenance and Repair

In hi-rises and mid-rises, fire-protection and air-conditioning systems need to be serviced. Pools, even though hopefully not in use, and pool equipment need to be serviced. Landscaping maintenance, with hurricane season approaching, needs to be kept up.

If there is active water intrusion into a building or residence, repairs can't wait. The Coronavirus Stay in Place Order will not be a viable defense to a negligent maintenance claim if repairs are neglected.

Hurricane Preparations

The prediction is that this hurricane season will be more active than in recent years. Contracts to repair vulnerable areas of buildings need to be let now. June could be too late to start this process.

Completing Engineering Studies and Placing Responsible Parties on Notice

Groups recently turned over from developer control need to complete their engineering studies and authorize the responsible parties to be placed on notice. Again, with hurricane season approaching, if, for example, a developer has left an association with defective roofs or drainage problems, it is crucial for associations to act quickly in transferring the risk of damage from these defects to the responsible parties.

If the developer and other responsible parties are informed now, they have time to investigate the issues and propose solutions. If they don't have time to do this, and a hurricane hits in June, they will defend any claim on the basis that the association did not notify them of defects in a timely fashion.

The State Legislature has not extended applicable statutes of limitation. If you have a construction defect issue that was discovered almost four years ago which the association desires to pursue, the statute can run while the Board awaits this Coronavirus crisis to end. For associations with buildings approaching ten years of age that went through a late turnover or have recently-discovered defects where the Board has designs on pursuing responsible parties for defects, the Board can't let the ten-year outside period be reached without authorizing the filing of suit.

How Do We Meet?

Hold your meetings by conference call, with or without live video. Hold exempt meetings with your lawyer in the same fashion. Follow required notice procedures in the process. They aren't waived absent dire circumstances.

Conclusion

Directors must direct, even in the face of national crisis. So association activities cannot await this national crisis to be over. It is understandable that the focus of board members right now is to protect themselves and their families. At the same time, however, boards are obliged by statute and the governing documents to protect the interests of the community and its members.

Get into action on matters that cannot wait!

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