

An aerial, wide-angle photograph of a city street, likely in New York City, showing a wide road with multiple lanes, sidewalks, trees, and multi-story buildings. A large, semi-transparent circular graphic is overlaid in the center of the image, containing the main title and author information. The background shows a clear blue sky and a distant city skyline.

Considerations for Community Associations When Reopening Their Communities and Common Elements Due to COVID-19

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Considerations for Community Associations When Reopening Their Communities and Common Elements Due to COVID-19

WRITTEN BY HANS C. WAHL, ESQ.

The State of Florida is slowly but surely opening back up after closures from the COVID-19 pandemic. Governor DeSantis's Stay at Home Order expired on April 30th, and Executive Order 20-112, effective May 4th, was enacted as Phase I in the reopening process. Both State and local governments have been working together to coordinate phased re-openings of the State. Restaurants, hair salons, and various retail stores have reopened in a limited capacity (up to 25% occupancy), and are still required to maintain social distancing guidelines.

Executive Order 20-52, which declared a state of emergency for all of Florida due to the pandemic, was extended sixty days by Governor DeSantis, which now has an expiration date of July 7, 2020 (but that could be further extended). The Department of Business and Professional Regulation's ("DBPR") Emergency Management Order 2020-04 states that it remains in effect so long as Executive Order 20-52 is in effect. Therefore, community associations are still granted their statutory emergency powers, and can use the mechanisms provided in those powers to enact resolutions to safely and efficiently transition their operations back to normal. As community

associations prepare to reopen, they must carefully consider its next steps.

RE-OPENING THE COMMON ELEMENTS

During COVID-19, most associations took the cautionary step of closing their common areas. In order to balance the reopening of common areas with maintaining a continued focus on the health and safety of the members and property, while also reducing potential liability concerns, associations should not hastily reopen the common areas but, rather, thoughtfully implement precautionary measure concurrently with limited reopening. For example, if a community association is planning to reopen a pool or clubhouse, it should pass a board resolution and/or emergency rules and procedures that mimic the requirements of Governor DeSantis's Executive Orders. This includes potential rules on a limited maximum occupancy, limited hours, social distancing guidelines, and wearing masks and gloves. Community associations should also consider installing hand sanitizing stations within large common areas such as a clubhouse and at various locations throughout the community.

As of the date of this blog post, public gyms are not yet able to reopen so community associations should take that into account if considering a reopening of a community gym or basketball/tennis courts. Once these facilities are reopened, community associations should follow the lead of future executive orders and institute similar emergency rules and regulations accordingly. Such board resolutions and/or emergency rules and regulations should be posted in prominent

places throughout the common areas so that members are on notice of the association's policies during the gradual reopening process.

RELEASE OF LIABILITY AND HOLD-HARMLESS AGREEMENTS

Health and safety concerns for the members should be paramount with any decision on reopening. However, community associations must also be mindful of limiting its potential liability should someone fall ill of COVID-19 and it can be traced back to a common element event. A balance could be reached between the members' persistent demands that the common elements be reopened with an association's need to manage the risks. One recommendation is to have members sign a release of liability and hold harmless agreement in favor of the association as a condition to reentering the common areas, such as the clubhouse and pool. A community association can engage a competent attorney to draft such an agreement for the association to use going forward. An association can then, pursuant to the emergency powers of the community association statutes, institute a policy that no member or tenant may enter the common elements unless he/she first signs the release of liability and hold harmless agreement. The transmission of communicable diseases is often an exclusion contained within a community association insurance policy; therefore, having members sign a release of liability and hold harmless agreement prior to reentering the common areas may provide an association with an extra layer of protection from potential claims.

RESCHEDULING BOARD MEETINGS, MEMBER MEETINGS, AND ANNUAL MEETINGS

During the stay-at-home orders, many board meetings, member meetings, and annual meetings were cancelled or postponed. If a community association has not already, it should work to reschedule these meetings and re-notice these meetings within the applicable time frames provided in its governing documents and/or Florida law. The law still requires all associations to have at least one annual meeting. Some governing documents may require more. The emergency powers contained within the community association statutes allow meetings to be held through alternative means, such as online applications like Zoom or MS Teams and also through conference calls. The meeting notices just need to include the information needed for members to access the meetings (web address, conference call line number, passwords, etc.).

WORKING WITH MEMBERS TO COLLECT ASSESSMENTS

As a result of the pandemic, millions were laid off or out of work. Consequently, many community association members may have lost significant income, putting them in a position where they cannot pay their bills, such as the assessments. The boards of community associations should be mindful of this. So long as all members are treated equally then the board can enact temporary measures through board resolutions to address these unfortunate circumstances for which some members have no control over. For example, a board resolution can be passed that temporarily suspends the levying of late fees, interest and the commencement of collection action for a certain period of

time for any member who can provide the association with written proof that he/she was laid off or furloughed during this time. Community associations should also be more willing to approve accommodating payment plans for members to catch up on past-due assessments. So long as the board resolution, temporary reprieve and/or other accommodations are made available to all members, and the same considerations apply to all members equally, then such actions will be valid.

FINANCIAL REPORTING

DBPR Emergency Order 2020-04 suspended and tolled all financial reporting requirements for community associations (*specifically* condominium associations under Fla. Stat. § 718.111(13); homeowners associations financial reporting requirements are laid out in Fla. Stat. § 720.306(7) but were not subject to the DBPR's Emergency Order). Condominium associations are required within 90 days at the end of the fiscal year, or on a date provided by its governing documents, to prepare and complete (or contract out) a financial report for the preceding fiscal year. *Id.* These deadlines are still suspended and tolled because the DBPR's Emergency Order is still in effect based on the extension of Executive Order 20-52. In the interim, with most offices opening back up, or able to work remotely with the use of technology, condominium associations should work ahead of the tolled deadlines in order to timely comply with the statute.

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