

MAY 2, 2020 CLIENT BULLETIN

LEGAL UPDATE AND GUIDE FOR COMMUNITY ASSOCIATIONS MANAGING COVID-19 ISSUES DURING FLORIDA'S RECOVERY

Following almost one month of a “Stay at Home Order,” on April 29, 2020, Governor Ron DeSantis issued Executive Order 20-112 and announced his “Safe. Smart. Step by Step” plan to reopen the State of Florida in three phases. In addition, certain counties and local municipalities have begun to phase in reopening amenities, activities, and services within their jurisdiction. The purpose of this bulletin is to provide a legal update and pragmatic guidance for Community Associations managing COVID-19 issues during the first phase of reopening. This memorandum updates our prior bulletins based upon recent changes in the law, including updates to emergency orders of federal, state and local authorities. An addendum summarizing several of the Governor’s Executive Orders is also attached for reference. If you have questions or need assistance after reviewing this memorandum and the attached addendum, please let us know how we may be of assistance to you.

PHASE 1 REOPENING: SAFE. SMART. STEP-BY-STEP

On April 29, 2020, Governor Ron DeSantis extended the Safer at Home Order, Executive Order 20-91, to May 4, 2020. Thereafter, Executive Order 20-112, implementing the first phase of reopening, will take effect. Executive Order 20-112 (“Order Planning for Florida’s Recovery”), implements Phase 1 under the motto: “Safe. Smart. Step by Step”. The Order provides that residents of Florida should:

- Continue to limit their personal interactions to the Essential Services and Essential Activities, which are currently allowed, i.e., those described in Executive Order 20-91 and its attachments, which include activities detailed in Section 3 of Executive Order 20-91, the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, as well as other services and activities approved by the State Coordinating Officer. All persons should continue to follow safety guidelines issued by the CDC and OSHA. If necessary, employee screening or use of personal protective equipment should continue. The following is a link to the above-referenced materials:

<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

- Except for Essential Services and Essential Activities, senior citizens and individuals with a significant underlying medical condition (such as chronic lung disease, moderate-to-severe asthma, serious heart conditions, immunocompromised status, cancer, diabetes, severe obesity, renal failure and liver disease) are strongly encouraged to stay at home and take all measures to limit the risk of exposure to COVID-19.

- Avoid congregating in large groups. Local jurisdictions shall ensure that groups of people greater than ten (10) are not permitted to congregate in any public space that does not readily allow for appropriate physical distancing.
- Avoid nonessential travel, including to states and cities outside of Florida with a significant presence of COVID-19.
- Adhere to guidelines from the CDC regarding isolation for 14 days following travel on a cruise or from any international destination and any area with a significant presence of COVID-19.

With respect to local businesses, the Order Planning for Florida's Recovery:

- Permits in-store retail sales establishments to open storefronts if they operate at no more than 25 percent of their building occupancy and abide by the safety guidelines issued by the CDC and OSHA. The following is a link to the CDC's current guidance documents:

<https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance-list.html?Sort=Date%3A%3Adesc>

- Continues prior limits placed on bars, pubs and nightclubs that derive more than 50 percent of gross revenue from the sale of alcoholic beverages by extending Executive Order 20-68 as modified by Executive Order 20-71.
- Permits restaurants and food establishments licensed under Chapters 500 or 509, Florida Statutes, to allow on-premises consumption of food and beverages, as long as the establishment remains at not more than 25% capacity for indoor occupancy and ensures appropriate social distancing for outdoor seating, extending certain provisions of Executive Order 20-68 and superseding conflicting provisions of Executive Order 20-71 regarding on-premises food consumption.
- Requires gyms and fitness centers to remain closed pursuant to Executive Order 20-71.
- Continues the prohibition on vacation rentals in Executive Order 20-87.
- Authorizes the Department of Business and Professional Regulation to utilize its authorities under Florida law to implement and enforce the provisions of the order as appropriate.

With respect to travel into the State of Florida, the Order Planning for Florida’s Recovery continues certain existing orders, as it:

- Extends Executive Order 20-80 (Airport Screening and Isolation) and Executive Order 20-82 (Isolation of individuals Traveling to Florida), with exceptions for persons involved in military, emergency, health or infrastructure response or involved in commercial activity.
- Extends certain provisions of Executive Order 20-86 (Additional Requirements of Certain Individuals Traveling to Florida), which authorizes the Department of Transportation, with assistance from the Florida Highway Patrol and county sheriffs, to continue to implement checkpoints on roadways as necessary.

In addition to the Governor’s Executive orders, certain counties in Florida also have implemented and revised restrictions related to COVID-19. We encourage everyone to read the websites of each county where they reside and work for specific guidance. The following, however, are some examples of Tampa Bay area local government orders:

Pinellas County: While the County remains under a Safer at Home Order, the County Commission has issued an order stating that public beaches and all pools – including condominium and homeowners’ association pools – can open at 50% capacity with social distancing in place. The order reads in pertinent part as follows:

You are not required to open your pool – that decision is up to you and your members. If you do choose to open your pool and deck, all users must follow CDC social distancing guidelines by staying six feet away from anyone they don’t live with and not congregating in groups of more than ten people. As mentioned, pool facilities must limit their occupancy to 50% of their posted capacity.

According to Pinellas County, pools may reopen on April 30, 2020. Public beaches are scheduled to reopen on May 4, 2020.

Hillsborough County: The County’s Safer at Home order, which encourages but does not require residents to avoid non-essential activities as long as social distancing requirements are followed, will remain in effect until May 4, 2020. Several local parks and recreation areas are scheduled to reopen on May 4, 2020. The City of Tampa is expected to provide additional information regarding City facilities soon.

Hernando, Pasco, and Polk Counties: These counties do not have their own stay at home orders, so the Governor’s Executive Orders apply without additional restrictions. Pasco and Polk Counties have reopened certain parks and recreation areas to allow essential recreation activities such as walking, biking, hiking, fishing or running. Social distancing practices should be maintained.

For information on county orders, closures, and reopenings, please visit your local County website for more information on closures, openings and other restrictions that may apply from time to time.

CONSIDERATIONS FOR COMMUNITY ASSOCIATIONS DURING PHASE 1 OF FLORIDA'S RECOVERY

Common Area Amenities. Should we reopen pools, recreation facilities and amenities now?

It depends. You must consider several factors in order to make the best decision you can for your community association. We suggest that you seriously assess the following issues before proceeding:

First, what type of amenity is involved?

- Gyms and fitness centers must remain closed.
- Tennis courts, volleyball courts, and pickleball courts may open, provided that social distancing and hygiene practices are strictly observed.
- Golf course activities may also continue, provided that social distancing and hygiene practices are followed at all times.
- Pools may reopen, provided that social distancing and hygiene practices are followed at all times.
- Clubhouses may reopen, provided that they are not occupied by more than ten (10 people) unless social distancing requirements can be met at all times.
- Restaurants may reopen, provided that they are only occupied up to 25% of regular capacity.
- Bars should remain closed.

Second, does your community association have sufficient staff and resources to ensure strict compliance with the law, including recent orders? If you have no staff or insufficient staff to ensure that owners, residents and permitted guests will comply with applicable restrictions governing your amenities, you should consider keeping them closed. Additionally, you must have sufficient resources and staff to ensure that excess furniture (which may prohibit or restrict social distancing) is removed, and that facilities are frequently cleaned, sanitized and disinfected.

Third, will your community's members voluntarily comply with applicable orders? If you believe that community compliance will be easily achieved, you may consider reopening amenities in accordance with the recent orders cited above. If you have reasonable doubts about such compliance by your members, you may elect to keep amenities closed for the time being.

Fourth, is your community a 55 and over community with a more vulnerable population? If so, a much more cautious approach relative to all of these issues should be adopted by

community association boards. Erring on the side of caution by keeping amenities closed in such retirement communities is generally recommended.

As many government officials and public health experts have warned, resuming more normal activities and operations too soon could result in a spike in COVID-19 cases and deaths, resulting in renewed and possibly more stringent restrictions for a protracted period of time. Hillsborough, Pinellas, and Manatee counties have all experienced, and continue to experience, a relatively high number of cases relative to other counties in the Tampa Bay area. Certain persons remain at higher risk of contracting COVID-19, as well. Recent orders of state and local authorities have not changed those risks. It will take only a few weeks to determine whether the Phase 1 reopening process leads to an increase in COVID-19 cases or not. During that time, we encourage clients to exercise as much caution and restraint as possible. As we advised before, insurance coverage likely does not apply to claims where a person alleges that they contracted COVID-19 on your property; therefore, great care should be exercised if you elect to reopen any of your community's amenities at this time.

Presence of Staff on Property. Should on-site management and staff members return to work if they have been working remotely?

While on-site office staff could technically return to work on property if sufficient social distancing and hygiene practices are strictly followed, staff should continue to work remotely, if possible. To the extent that on-site staff must work on property, their offices should continue to 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, or video conferencing for the time being.

Meetings. Can we meet in person as long as the meeting is limited to less than 10 persons and social distancing is adhered to?

Even when complying with these guidelines, risks still exist. Until more is known about these risks, interactions which can be avoided should be avoided. Any meetings that can be held by teleconference or videoconference during Phase I, should be conducted electronically. (By way of example, state courts continue to operate in this manner, and they are generally not conducting proceedings in person.) Meetings in particular create potential liability, as meeting attendance is arguably less voluntary than use of community facilities or amenities. Once scheduled, there is an expectation that Board and association members can and will attend a meeting in person, if that option is available. Board and association members may ignore their own personal reservations about attending in person meetings due to concerns about COVID-19, as they feel compelled to attend a scheduled association meeting. By scheduling the meeting alone, the association sends the message to members and directors that meeting attendance is safe when, in fact, we do not know whether that is the case. Furthermore, large group meetings are particularly risky, even with social distancing in place, as failures in social distancing and hygiene practices may occur. Additionally, transmission of COVID-19 could occur at ingress and egress points (door knobs,

elevator buttons, etc.) when such meetings convene. Where options to avoid such risks exist, they should be utilized during Phase 1.

Collection of Assessments. How should we proceed?

Stay the course with consideration. Many people have been adversely affected by the COVID-19 pandemic, but many more have not. Do not create any blanket rules permitting owners to delay payment of assessments, as most continue to pay on time without any issues. As you know, the Association's financial obligations will not be stayed or deferred for any period of time, as a result payment of assessments should not be stayed or deferred by owners. Reducing or deferring payment simply makes it more difficult for associations to meet their obligations, resulting in late fees, defaults, disruptions in service, and other adverse consequences. Our law firm will continue to evaluate governmental orders regarding pursuing legal actions and debt collection. If any change is warranted based upon such laws and orders, we will let you know. Otherwise, your standard collection policy that is in place to recover delinquencies should continue to be enforced.

Violations of Community Documents and Rules. How should we proceed?

Again, stay the course with consideration. The above mentioned factors should be considered with respect to violations of community documents and rules, particularly those arising from a failure to maintain the property. While you have some discretion about the pace of such enforcement action and the manner in which to enforce community documents and rules (fines, general notices to the community, demand letters, pre-suit mediation in homeowners' associations, arbitrations in condominium associations, and legal action in all community associations), boards should endeavor to consistently enforce all of the rules against all owners, residents and guests, all of the time. The only exception may be where a person has requested a reasonable accommodation based upon a disability, in which case they may not be required to comply with a particular restriction or rule.

As always, we are available to help our clients and their management teams during this unprecedented time. Please do not hesitate to call or email us for assistance. We remain at your service.

Sincerely,

Eric N. Appleton

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ADDENDUM

THE HISTORY OF FLORIDA'S GOVERNOR'S EXECUTIVE ORDERS RELATING TO COVID-19

- On March 9, 2020, Florida Governor Ron DeSantis issued Executive Order Number 20-52, declaring a state of emergency due to COVID-19 (“Order”). The Order is significant for many reasons, including 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.
- On March 16, 2020, President Donald J. Trump and the Center for Disease Control and Prevention (“CDC”) issued the “15 Days to Slow the Spread” guidance advising individuals to adopt far-reaching social distancing measures. Recommendations were made to restrict certain establishments conducive to mass gatherings and congregations.
- On March 17, 2020, Florida Governor issued Executive Order Number 20-68, implementing social distancing measures such as working from home, keeping a distance of 6 ft. from other individuals, and avoiding gatherings of more than 10 people. As a result, all Bars, Pubs and Nightclubs were suspended from selling alcoholic beverages. Accessing public beaches and restaurants must follow all social distancing guidelines. This Order shall remain in effect through the duration of EO 20-52 including any extensions.
- On March 20, 2020, Executive Order Number 20-71 was issued relating to the sale of alcohol, restaurants and gyms. The sale of alcohol is suspended for those restaurants and bars complying with EO 20-68 above. All Restaurants and bars are required to suspend on-premises food consumption for customers. Meal preparation will be for take-out or delivery. All gymnasiums and fitness centers are ordered to close. This Order shall remain in effect through the duration of EO 20-52 including any extensions.
- On March 23, 2020, Executive Order Number 20-80 was passed requiring all persons whose point of departure originates from outside the State of Florida in an area with substantial community spread, to include the New York Tri-State Area, and entering the State of Florida through airports to isolate or quarantine for a period of 14-days. This executive order shall expire upon the expiration of EO 20-52.
- On March 27, 2020, Executive Order Number 20-87 was issued directing the closure of all vacation rentals. Vacation rentals were prohibited from making new reservations or bookings, and shall not accept new guests for check-in for the duration of this order. This includes the rental of any house, condominium, cooperative, or dwelling unit that is also a

transient public lodging establishment, which is rented for less than 30-days, advertised or held out to the public as a place of regularly rented. This Executive Order will expire 14-days unless extended by subsequent order.

- On April 1, 2020, Executive Order Number 20-91 issued a “Safer at Home” directive. All persons in Florida shall limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities. Additionally, this Order supersedes any conflicting official action or order issued by local officials in response to COVID-19 but only to the extent that such action in order allows essential services and activities prohibited by this Executive Order. This order shall expire on April 30, 2020 unless extended by subsequent order.
- On March 18, 2020, the FHFA directed Fannie Mae and Freddie Mac to suspend foreclosures and evictions for Enterprise backed single family mortgages for at least 60-days due to COVID-19. In order to provide Florida residents with temporary relief as well, Governor DeSantis issued with Executive Order 20-94 that suspends providing for a mortgage foreclosure cause of action, and suspended all eviction cause of action solely as it relates to non-payment of rent. Both suspensions shall be effective 45-days from the date of this Order.
- On April 10, 2020, Executive Order 20-103 was issued by the Governor, extended Executive Order 20-87 until April 30, 2020.
- On April 30, 2020, Governor DeSantis entered Executive Order 20-111, which extends Executive Orders 20-87 and 20-91, which resulted in the extension of the Stay at Home Order through May 3, 2020.
- On April 30, 2020, Governor DeSantis also entered Executive Order 20-112, implementing the first phase of reopening. The order will take effect at 12:021 a.m. on May 4, 2020. Executive Order 20-112 (“Order Planning for Florida’s Recovery”), implements Phase 1 under the motto: “Safe. Smart. Step by Step”.