



WEBINAR RECAP: COVID-19 Insights from Professional Expert Panel - Legal, Insurance, & Cleaning

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Legal Insights and Tips

The general commentary provided in this webinar summary does not constitute legal advice, and should not be used as a substitute for seeking actual legal advice from a qualified attorney.

From [Adam W. Carls, Esq.](#), Partner with [AriasBosinger](#)

- **Review Association Emergency Powers Statutes:** Florida Statute 718.1265 (Condos) and 720.316 (HOAs). After our class on Friday, March 27th, the Secretary of the Florida Department of Business and Professional Regulation (DBPR) executed an emergency order which suspends any requirement that the use of the emergency powers be conditioned upon a “response to damage caused by an event,” and also clarifies that public health officials are considered “emergency management officials” in response to Covid-19. We discussed those provisions as being potential arguments against the use of emergency powers, but that is no longer a concern.

- **Board Resolution:** All Boards should adopt a formal written resolution, drafted by their legal counsel, which affirms the use of Emergency Powers with reference to applicable executive and governmental orders, and delegating certain emergency response powers to individual officers to accommodate the fast moving developments relating to Covid-19.
- **Make Reasonable Decisions:** Current circumstances require bold and often unprecedented actions by Associations, so it is more important than ever to base those decisions on expert recommendations, and with reference to official governmental guidance where appropriate. If ever there is a time to consult with legal counsel, this is it. Challenge yourselves to avoid emotionally motivated decisions, and include a written record of the reasons which led to your decisions. Doing so provides support under the business judgment rule should decisions be challenged in the future.
- **Meeting Cancellations:** All Association meetings, including annual membership meetings, may be cancelled and rescheduled using Emergency Powers. Mailings will likely need to be resent for rescheduled meetings, unless special adjournment procedures are taken.
- **Adhere to Governmental Orders and Guidance:** Follow CDC's recommendations on closures and limiting contact of individuals, as well as State and Local Departments of Health.
- **Webinar/Teleconference Board Meetings:** Boards can hold noticed meetings via webinars or teleconference, and may hold votes, but special accommodations need to be made to allow owners to attend, as well. The normal exceptions to open meeting requirements still apply; to discuss legal matters with an attorney, and to discuss personnel matters.
- **Webinar/Teleconference Membership Meetings:** However, based upon differing statutory language, membership meetings likely cannot be conducted remotely, except in certain limited circumstances which require review by legal counsel.
- **Short Term Rentals:** During the webinar, I discussed Boards having the right under Emergency Powers to prohibit short term or transient rentals. This position was further supported by an order issued by Governor Desantis later in the afternoon suspending any new vacation rentals statewide for at least two weeks.
- **Closing Amenities.** Official guidance from authorities is to close playgrounds due to the possibility of children and others touching, spreading, and contracting the virus. Many communities are closing pools, as well. due to safety, health and possible liability concerns. The general recommendation is to close amenities - including clubhouses, playgrounds, and pools - unless you receive approval in consultation with legal counsel. These measures are to reduce spread of the virus, but also to manage liability risks, particularly with less onsite management, more sporadic vendor maintenance, and the difficulty of ongoing crowd control.
- **Disclosure of Positively Tested Individuals.** Ask your legal counsel. Based upon the widespread and growing nature of the virus, there likely is not an affirmative legal obligation to announce the existence of a positively diagnosed resident to the entire community. However, communities should consider doing so, without personally identifying anyone, in consultation with their attorney. Association should also consider

compassionately encouraging owners to report their illnesses to the association, so that any accommodations to help them can be made to reduce trips outside of their unit. The reality is, statistically speaking, there will be a number of people carrying the virus in communities who aren't even aware they are infected. It is important not to create a negative stigma, and discourage people from coming forward.

- For additional legal questions and assistance, contact Adam W. Carls, Esq. 407-619-3394 (acarls@ablawfl.com)

Financial and Future Impact Outlook

- For perspective: During the 2008/2009 Great Recession, the highest number of unemployment applications filed in one week was just over 660,000. Last week, there were over 3,300,000 people that filed unemployment applications, which doesn't even include furloughed employees, those waiting to be eligible to apply, and the independent contractors and gig workers (Uber, Lyft, Fiverr, Upwork, etc.) not otherwise eligible.
- Expect future ripple effects to your associations in the months and years to come and be proactive on future-focused association items
- Be careful about being too lenient with assessment collections (waiving late fees and interest beyond a month or two). While we all need to practice compassion in these difficult times, being too lenient could put the association in a hole that could have a long-term negative financial impact. Your assessments and cash flow are necessities to operate efficiently and effectively.
- Now is the time to look into future financial planning and contingency plans – including seeking to secure a line of credit now while the association's finances may look more attractive to lenders
- Now is a great time to review your insurance policies with industry professionals and association documents with legal counsel. Both can be done remotely.

Cleaning Tips

From [Bill McCauley](#) with ServePro

- Keep your common areas clean, whipped-down, sanitized and disinfected. Think about any touched areas; handrails, dumpsters, pet trash containers, playgrounds, doors, mailboxes and clubhouses.
- Use hospital grade sanitizers and disinfectants.
 - CDC has advised communities to use hospital grade disinfectants and sanitizers to clean. These are believed to be best practice to clean and sanitize for COVID-19 virus particles.
 - Examples: ServePro's own formulated products, Aramsco cleaning products, etc.
- If you enlist professional cleaning services, the cleaning fees are based on situation, size of areas, and if there are known COVID-19 confirmed case(s).

Insurance Policy and Claims Related Insight and Recommendations

From [Phil Masi](#) with AssuredPartners and [Tara Stone](#) with Your Private Adjuster

- **Disclaimer:** From an insurance standpoint we are truly in uncharted territory so any advice provided here may absolutely change as time goes on. Before making any definitive decision we recommend getting an update from our firm or your current insurance professional.
- **Coverage:** Most property and general liability policies community associations have in place likely include exclusionary wording that will make COVID-19 related claims difficult to get covered. Examples include virus exclusion, communicable disease exclusion, etc... Even if no exclusions apply the carrier may interpret virus claims to be excluded under the pollution exclusion. It is important to review your specific policies to confirm what wording is in place as it can differ considerably between carriers.
- **Legal Challenges for Coverage:** Since this is an unprecedented event we have not seen many legal challenges to these virus exclusions. We expect to see that happen a lot more in the coming months and it will likely shape what coverage may be available if any.
- **Physical Damage Requirement:** Another stumbling block to property insurance coverage is the requirement of physical damage to the property to trigger coverage which is debatable if a virus can cause. It is important to document any known COVID on association property and any expenses related to cleaning it to help with any insurance claims filed in the future.
- **Pollution Policy:** Associations may have a separate pollution policy that may provide both property and liability coverage for COVID-19 related claims. Again these policies have not been used for this in the past and we will have to see how this plays out but it is another reason to consider purchasing these pollution policies if you haven't in the past.
- **Defense Only Policies:** There are defense only policies associations can purchase that will provide defense costs ONLY in the event of a DENIED claim on the property, general liability or D&O policy. These policies are readily available and maybe something boards can consider if they are worried about defense costs for uncovered liability claims.
- **Risk Management:** The board's job is to protect the association's assets and even though we believe it would be tough for someone to prove they contracted COVID-19 due to the association's negligence that is NOT something that has stopped lawsuits in the past, especially ones with large damages (medical bills, death). The association should take reasonable steps to protect residents and guests from the virus. Examples include closing amenities, moving management offsite or closing management offices to outside foot traffic, holding board meetings virtually or telephonically, cancelling social events, enhancing cleaning of high traffic areas, obeying CDC & County guidelines, etc...
- **Detailed File:** Keep a detailed file of anything the association does to protect residents and guests. In the event of a future liability claim against the association the ability to show proof that the association took extra steps to protect residents and guests will be very important to the claim process, especially if the association is defending this claim with no insurance coverage.

- **Closing Amenities:** Even if you cannot physically close an amenity like an unfenced playground it still helps to send notice to owners that it is closed and put signage up that it is closed. This will be a defense even if someone is then injured on that playground.
- **Pool Safety:** Very important that if the pool is locked and someone breaks the lock to gain access to the pool that the association is routinely inspecting the pool area to make sure the gate will still self close and lock. You do not want to have a situation where the gate isn't functioning and it enables a child to enter the pool area.
- **Insurance Renewals:** It is more important than ever that your insurance agent does not wait to the last minute to present renewals. Phil Masi and Negar Sharifi routinely present our association insurance renewals 3 to 4 weeks prior to the renewal date. Even with some expected inefficiencies with COVID-19 it should NOT be an excuse your insurance agent uses for late renewals. There are a lot of issues boards are facing and insurance delays shouldn't be one of them. Our team was already set up to work just as fast remotely as we do in the office and you should experience no significant change in service level from us. Only complication is having our children around at home while school is out.

For complementary review of your insurance policies, reach out to:

- Phil Masi with AssuredPartners (phil.masi@assuredpartners.com) and Tara Stone with Your Private Adjuster (tara@yourprivateadjuster.com)

Statutory deadline for any supplement or filing of Hurricane Irma claim is 9-10-2020. If you even think you have damages, act now and call Your Private Adjuster Inc 800-892-1116 for a Free property inspection and policy review.

WEBINAR REPLAY INFO AVAILABLE HERE

COVID-19 Panel of Experts: What You Need to Know

Hosted by Tara Stone, Phil Masi, Adam Carls, Bill McCauley

Friday, March 27 2020

12:00 PM Eastern Time (US and Canada) GMT -4

We have recorded the webinar event for you!

In case you missed the live webinar, or in case you would like to watch it again, here is the link to the replay video:

- **Replay video:** <https://event.webinarjam.com/t/click/oyxm9t4byb3bo4uvotk4s9>
- **Room password:** THEMOREYOUKNOW20

Enjoy the content!