

Coronavirus (COVID-19) & Your Association: Tips for a Proactive Response



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Since the introduction of COVID-19 into our state, government entities, businesses, community associations, and citizens have been monitoring news sources, government communications, and health care professional communications to learn more about the virus, its potential health and economic effects, and potential mitigation measures available. Finding the line between an over reactionary and proactive, prudent responsive course of action can be difficult given the state of information regarding COVID-19, which is developing daily. Although the rights and powers of each community association are dependent, at least to some degree, on the contents of its governing documents, there are measures that can be considered at this stage in an effort to mitigate the potential effects of COVID-19 on your homeowners' or condominium association and its members.

Here are some ideas for the board of a homeowners' or condominium association to consider in preparation for, or response to, COVID-19:

Stay Informed. Information about the virus and its potential and anticipated effects is developing daily. Continue to periodically review reliable sources of information so you can tailor your degree of preparation and response accordingly, and encourage your residents to do the same.

Obtain Contact Information for Residents. Although the circumstances are unfortunate, the current situation can be used as an opportunity to obtain contact information for your community's residents. Consider disseminating a form for association members and residents to complete and return to provide contact information, and preferably, an email address to facilitate prompt communication. The form could include a check or initial box indicating the member's agreement to receive association official notices and other communications via email to the address provided. Also, although a member's consent to receive official notices must be "written," members could be encouraged to submit a copy of the contact form electronically to the association in addition to mailing a physical, written copy to allow for the mailed copies to be opened and incorporated into the association's official records later (if exposure to the virus by the person who would otherwise open the mail is a concern).

Consider Limiting Common Area Occupancy & Use. Consider adopting rules limiting the number of simultaneous occupants or users of common areas and facilities. Recommendations of the number of occupants of facilities continue to change, and sources have not appeared to reach a consensus on occupant limitations, but the general goal is to limit large gatherings of people and limit the proximity of people to each other to curb the spread of the virus. However, do not attempt to regulate use of common areas and facilities based on age or national origin.

Consider Increasing Frequency & Scope of Common Area Cleaning. Consider increasing the frequency and scope of cleaning and sanitizing of the common areas and facilities, which could be based on the types of facilities your association operates. For example, it would be reasonable to increase the frequency and scope of cleaning of an exercise facility and equipment to a greater degree than an infrequently used clubhouse.

Consider Encouraging Residents to Limit Guest Visits. At this stage, we do not recommend attempting to limit rentals of dwellings aside from what your association's governing documents otherwise provide for the regulation of rentals. However, it may be prudent to encourage residents to limit guests, particularly for condominiums with common points of entry used to access units. Similarly, we recommend exercising caution in attempting to implement any new tenant screening procedures or asking questions to determine a prospective tenant's potential exposure to COVID-19. Even if motivated by a sincere, good faith desire to protect the association's membership, the "wrong" question could subject your association and its directors, officers, and managers, to liability for discrimination.

Encourage Residents to Contact Emergency Services, the CDC, or the Florida Dept. of Health.

Residents should be encouraged to contact emergency services (911) if they believe an emergency exists. Also, consider informing residents of the 24/7 call centers which have been established to address COVID-19 related questions. The CDC call center phone number is: (800) 232-4636. The Florida Dept. of Health call center phone number is: (866) 779-6121.

Encourage Residents & Guests to Practice "Social Distancing." Generally, the more we can limit contact with each other as a society, the better we can mitigate the exposure to, and effects of, the virus. Accordingly, consider discouraging gatherings in common areas and facilities, and consider instructing any association employees or agents to refrain from physical contact with residents and guests, including disease-spreading social conventions such as shaking hands.

Consider Postponing or Adjusting Membership Meetings & Election Procedures. Your association's options for conducting a membership meeting or election may be limited or otherwise affected by the contents of the governing documents, so you are encouraged to communicate with legal counsel to discuss the options that may be available to your particular association. However, in general, you should consider postponing or adjusting the process by which your association conducts any membership meetings or elections. For example, your association may be able to conduct an election electronically (or partially electronically) or may be able to conduct an election in a manner that does not require attendance at a physical meeting location (e.g., balloting by mail).

Consider Adjusting Board Meeting Procedures. Again, your association's options for conducting a board meeting may be limited or otherwise affected by the contents of the governing documents, so you are encouraged to communicate with legal counsel to discuss the options that may be available to your association. Generally, though, your Board may be able to conduct a meeting in a manner that does not require personal attendance at a physical location (e.g., via teleconference or videoconference). Further, strategies may be available to satisfy the legal requirements for holding a board meeting while providing additional, more practical alternative methods for members to exercise their rights to attend and participate at board meetings.

Communicate with Legal Counsel before Attempting to Exercise Emergency Powers. Although a state of emergency has been declared at the federal and state levels, that does not necessarily mean that your association may exercise emergency powers that may be provided by law. Accordingly, you are encouraged to communicate with legal counsel before attempting to exercise an emergency power, such as requiring evacuation or outright prohibiting the use of association or condominium property.

In sum, although COVID-19 will likely affect the operation of community associations, it should not completely impede them, and community associations should be prepared to adapt as more information related to the virus develops and until it runs its course. As a firm, we have taken measures to prepare and be available to help our clients adapt to the unique circumstances we are facing. If we can be a resource to you, please do not hesitate to contact us.



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