



# LAW OFFICES OF JOHN L. DI MASI, P.A.

John L. Di Masi, Esquire  
Patrick J. Burton, Esquire  
Brandon Gregory Marcus, Esquire  
Toby Snively, Esquire  
Christopher Bertels, Esquire  
Alicia Perez, Esquire

**Patrick J. Burton**  
801 N. Orange Avenue, Suite 500  
Orlando, Florida 32801-1014  
PH: 407-839-3383 • Cell: 407-690-8386  
[pburton@orlando-law.com](mailto:pburton@orlando-law.com)

## **COVID-19 Phase 3 Order's Impact on Community Associations**

As the State of Florida continues to re-open, our Firm has received a number of questions regarding Executive Order Number 20-244 (the "Phase 3 Order") and what impact it has on community associations' operations. This correspondence is intended to provide a review of what the Phase 3 Order says as well as some clarity on what it truly means for community associations.

While the prior Executive Orders provided limitations on the operations of businesses and facilities in the state, the Phase 3 Order provides limitations on the authority of the county and municipal orders that can be issued on the local level. Specifically, the Phase 3 Order rescinds the Phase 1 and Phase 2 Orders and states that no COVID-19 emergency ordinance can prevent someone from working or operating a business. It goes on to state that no ordinance can prevent a restaurant from operating at 50% capacity, and, to the extent that an ordinance limits restaurant to anything less than 100% capacity, it needs to quantify the economic impact and explain why the limitation is required for public health. Finally, it states that no emergency ordinance may impose fines or penalties for failing to wear a mask.

With this in mind, it is important to review that there are really two areas of potential liabilities for associations with respect to COVID-19: (1) Fines or other penalties for operating in violation of an emergency order / ordinance; and (2) civil liability for someone making a claim against the association that he or she contracted COVID-19 from an association property or event due to the association's negligence. What the Phase 3 Order does is significantly limit the types of orders that can be issued that would impact the association's operations. Having said this, be sure to review any applicable orders or ordinances in the area that your community is located to ensure that your community is in compliance. The Phase 3 Order does not eliminate the risk for civil liability for someone making a claim against the association that he or she contracted COVID-19 and the association's negligence is to blame.

Therefore, Boards of Directors still need to be cautious about how their communities function in order to limit any unnecessary exposure. This could include modifications to rules regarding the use of common areas, placing limitations on the number of individuals who can enjoy an amenity at one time, and placing appropriate signage warning residents of the inherent risks in using common areas during this pandemic. These modifications may

vary depending on the size, location, and make-up of your community. For example, a large 55 plus community has likely been impacted differently than a small homeowners association with few members and a younger demographic. Associations should consult with their managers, attorneys, and insurance professionals regarding what specific precautions are appropriate for their community.

Finally, the State of Emergency for the State of Florida is still in effect. Therefore, there is still some limited ability to use the emergency powers granted in Sections 718.1265 and 720.316, Florida Statutes. Communities should consult with their attorneys regarding the extent to which their association can rely on these powers to help protect their membership from risk of infection.

In all, even as there are far less governmentally mandated restrictions on operations than there were previously, the risk of liability to associations remains. Therefore, communities need to be careful to operate in a smart, risk conscious fashion to reduce their exposure to litigation and protect the welfare of its membership.

Sincerely yours,

*Patrick Burton*