BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

COVID-19: CONSIDERATIONS FOR HOMEOWNERS AND CONDOMINIUM ASSOCIATIONS

March 15, 2020

By: Jeffrey R. Margolis

With over 10 million Floridians living in a community association such as a condominium or homeowner's association, Florida has more community associations than any other state. With residents living in relatively close quarters to their neighbors and sharing common areas, there is a rising concern and heightened anxiety about contracting the COVID-19 virus which has been declared by the World Health Organization (WHO) as a global pandemic. As the outbreak continues to expand in the United States, including Florida, community associations should be prepared to monitor and address concerns of residents and consider the implementation of certain precautionary measures.

States of emergency have been declared at the federal, state and many local levels. There are questions as to whether such declarations of states of emergency activate certain condominium and homeowners association emergency powers pursuant to Sections 718.1265 and 720.316, respectively ("Emergency Powers Statutes"). The Emergency Powers Statutes grant powers to condominium and homeowners associations which are reasonably necessary to protect the health, safety, and welfare of the association, owners and owners' family members, tenants, guests, agents or invitees and that may be exercised "in response to damage caused by an event for which a state of emergency is declared."

Among the special emergency powers that are available under the Emergency Powers Statutes, the Board of Directors has the power to (i) conduct board meetings and membership meetings with notice given as practicable, (ii) cancel and reschedule association meetings, (iii) implement a disaster plan before or immediately following the event for which the state of emergency is declared, (iv) determine any portion of association property unavailable for use or occupancy based on the advice of emergency management officials or licensed professionals retained by the Board. Association emergency powers must be limited to the time reasonably necessary to protect the health, safety and welfare of the association, owners and their family members, tenants, guests, agents or invitees.

The Emergency Powers Statutes were presumably enacted with natural disasters that cause physical damage in mind, such as hurricanes and not epidemics and global pandemics. The statutes do not specifically address powers that may be exercised during a pandemic or health emergency and using the Emergency Powers Statutes for medical emergencies is a novel approach. As such, there are questions as to the applicability of the Emergency Powers Statutes to the situation at hand given the language in the statutes suggesting that they are applicable in response to damage caused by a natural disaster for which a state of emergency has been declared. It is unclear whether associations can utilize the emergency powers provided by the Emergency Powers Statutes. In addition to the Emergency Powers Statutes, the association's governing documents should be reviewed to determine the power and authority of the board and the association to take certain actions in response to an emergency.

Should circumstances warrant, associations may elect to take certain action during the state of emergency caused by COVID-19. Any action taken should be reasonably related to the current environment; there should be a nexus between the action taken and the situation at the association related to COVID-19. Associations

should maintain documentation from emergency management officials supporting any decisions made and actions taken. In addition, all decisions should be addressed at a duly noticed meeting.

There is no "one size fits all" answer for what community association can and should do. Community associations may consider the following:

•Continue to monitor developments and follow the guidance of public health officials at the Center for Disease Control (CDC) and the Florida Department of Health. The CDC guide to mitigating the transmission of COVID-10 can be found here. Guidance from the Florida Department of Health can be found here or by calling the COVI-19 call center at 1-866-779-6121 or e-mailing COVID-19@flhealth.gov.

• There are several methods by which association members and boards may be able to transact business in the absence of everyone gathering for an in-person meeting such as written consent, telephonic and video meetings. Consider holding telephonic, online, or televised meetings in lieu of in-person meetings, as well as adopting electronic voting procedures. For any upcoming Board and member meetings, attempt to hold them by telephone, video, or virtually by hosting an online broadcast. All members must have the right to attend, listen and speak at meetings. Alternatively, consider postponing any non-essential meetings.

• Consider postponing any scheduled community association social gathering.

• Plan ahead by stocking up on supplies needed for the operation of the association.

• Implement enhanced cleaning and sanitizing of all common areas and common area surfaces, including lobbies, security desk areas, elevators and elevator banks, door handles, gym, pool, clubhouse and other public areas. If necessary or directed by governmental officials, common areas such as gyms, clubhouses and pools should be closed, however restricting the use of common areas must be carefully evaluated.

• Provide hand sanitizer stations and wipes in the lobbies, gyms and other common area facilities for use by residents and guests.

• Remind residents to practice social distancing and urge residents with symptoms of illness to self-quarantine.

• Remind residents to practice good hygiene and preventative measures including (i) wash hands frequently, (ii) cover your nose and mouth if you have to sneeze or cough, (iii) avoid touching eyes, nose and mouth, (iv) avoid close contact with people, (v) use hand sanitizer with at least 60 percent alcohol content, and (vi) stay home if you are sick.

• Consider regular communications with residents to inform them of the steps that are being taken to clean and sanitize the property and steps residents should take to protect themselves. Whatever a community association decides regarding meetings, events, common areas, amenities and other measures regarding COVID-19, community associations should consistently communicate with residents via newsletters, websites, e-mail, social media, and other manners of communication.

Associations should focus on the protection of their members and residents. However, overly restrictive action, including actions that impact residents' freedoms and quality of life may be subject to legal challenges. This blog post is only intended to provide information for consideration by associations and is not legal advice. There are possible legal consequences for any actions taken or not taken. Therefore, prior to taking action or making decisions, associations should consult with an attorney.

The COVID-19 pandemic is creating rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this post is issued. We therefore encourage you to monitor our website, review our future posts and generally remain alert for additional updates or modifications to laws and regulations.

Related Practices

Real Estate

Insurance

Related Practice Teams

Business, Finance & Tax

Dispute Resolution

Related Team Member(s)

Jeffrey R. Margolis

Topics

COVID-19

Coronavirus