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**COMMUNITY ASSOCIATION
NEWSLETTER**

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SPECIAL ALERT

AN UPDATE ON COMMUNITY ASSOCIATION RESPONSES TO COVID-19

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As different municipalities throughout the State of Florida begin to re-open outdoor recreational areas to the public, many of our association clients have been reaching out to our office for advice on when and how to re-open amenities and facilities. The associations that chose to close off portions of the community property to owners, family members, guests, tenants, agents, and invitees under the emergency powers in Sections 718.1265, 720.316, and 719.128 of the Florida Statutes, are now looking for guidance on what to do next. In response to so many similar requests, we find it important to note that the Executive Orders from the office of Governor DeSantis have ***not*** required community associations to close community amenities. There has been no local mandate for community associations to close amenities, restrict access to communities, or refrain from collecting assessments, late fees, and interest.

Below is a link to the 2020 Executive Orders from Governor DeSantis:

<https://www.flgov.com/2020-executive-orders/>

Additional resources from the CDC relating to large community events and gatherings can be found using the following link:

<https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/index.html>

Additional resources to post throughout the community from the Florida Department of Health's COVID-19 Toolkit can be found using the following link:

<https://floridahealthcovid19.gov/resources/#toolkitJump>

The actions taken by our association clients to close amenities or restrict nonessential access to their communities were taken out of regard for the health, safety, and welfare of the owners, tenants, guests, etc. under the emergency powers of the Florida Statutes in response to predictions and advice from government health officials on how to flatten the curve. Additionally, many of our association clients consulted with their insurance representatives to determine whether coronavirus/COVID-19 related claims would be covered under their general liability policies. To the surprise of many of our clients, some insurance policies contained viral/bacterial outbreak exclusions and pollutant/contaminant exclusion leaving associations without coverage for coronavirus/COVID-19 related claims. This means that many associations quickly discovered that if they were sued over a coronavirus-related matter they would be defending the claim out of pocket. The most risk-averse actions taken by associations

included indefinite closure of all amenities and facilities as well as the cancellation of all meetings until further notice. On the opposite end of the spectrum, some of our association clients chose to impose social distancing and other CDC guidelines but left the decision on whether or not to use the amenities up to the residents and their guests.

Ultimately, the decision on what to close and when was a business judgment of the Board of Directors for each of these associations. Similarly, what to re-open and when will also be a business judgment with the health, safety, and welfare of the owners, tenants, guests, etc. in the balance. The standard upon which these decisions may be judged in litigation will be based on what was *reasonably necessary* to protect the health, safety, and welfare of the owners, tenants, guests, etc. in light of the circumstances. Because there was no order requiring the closure of community amenities at the state level or the local government level in Southwest Florida, local associations do not need to wait to re-open any previously closed amenities or facilities. However, social distancing guidelines should be implemented to every extent possible for the duration of the state of emergency which is set to expire on May 8, 2020. It is likely that social distancing measures will be extended beyond that target date and associations will want to follow those extensions and guidelines.

Our office has advised our association clients depending on the circumstances unique to each association. For some clients, social distancing measures were ineffective and closures were required, for others, there was a natural reduction in the use of amenities as more and more residents stayed home to prevent the spread of disease. This update is a general reflection of what we have noticed among our community association clients and does not constitute legal advice. Take note that if the state of emergency is not extended beyond May 8, 2020, your association's emergency powers under the Florida Statutes will cease, and any association action thereafter will have to be supported by the governing documents or by other sections of the Florida Statutes. If your community association has *specific* questions about what to re-open and when as more information becomes available in the coming weeks, then we encourage the Board to consult with the association's counsel.

This special alert is provided as a courtesy and is intended for the general information of the matters discussed herein above and should not be relied upon as legal advice. Christopher J. Shields (christophershields@paveselaw.com) is Florida Bar Certified in Real Estate Law as well as Condominium and Planned Development Law, a Partner in the Pavese Law Firm and heads the Community Law Section for the Firm. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in the Pavese Law Firm and also practices in the field of Labor/Employment Law. Keith Hagman (keithhagman@paveselaw.com) is a Partner in the Pavese Law Firm. Charles B. Capps (charlescapps@paveselaw.com) is Florida Bar Certified in Real Estate Law as well as Condominium and Planned Development Law and a Partner in the Pavese Law Firm. Chené Thompson (chenethompson@paveselaw.com) is a Partner in the Pavese Law Firm. Christopher Pope (christopherpope@paveselaw.com) is a Florida Bar Certified Lawyer in Condominium and Planned Development Law and a Partner in the Pavese Law Firm. Alexander J. Menendez (ajm@paveselaw.com) is an Associate in the Pavese Law Firm. Amy S. Thibaut (amythibaut@paveselaw.com) is an Associate in the Pavese Law Firm. Alton Kuhn (altonkuhn@paveselaw.com) is an Associate in the Pavese Law Firm. Vanessa Fernandez (vanessafernandez@paveselaw.com) is an Associate in the Pavese Law Firm. Susan M. McLaughlin (susanmclaughlin@paveselaw.com) is Of Counsel in the Pavese Law Firm.

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