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**COMMUNITY ASSOCIATION
NEWSLETTER**

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SPECIAL ALERT

AN UPDATE ON COMMUNITY ASSOCIATION EMERGENCY POWERS RE COVID-19

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As you are aware, Governor Ron DeSantis issued Executive Order 20-52 on March 9, 2020 declaring a state of emergency under Section 252.36 of the Florida Statutes relating to the outbreak of the novel coronavirus, SARS-CoV-2, and the disease caused by the virus, COVID-19 in the State of Florida. Based upon Executive Order 20-52, as extended and notwithstanding anything in the governing documents to the contrary, Condominium Associations, Homeowners Associations, and Cooperatives have been able to operate under the emergency powers in Sections 718.1265, 720.316, and 719.128 of the Florida Statutes respectively. There has been considerable debate as to whether these statutes are applicable during a pandemic since the statutes grant these powers “in response to damage caused by an event for which a state of emergency is declared.” The statutes were enacted in 2008 in response to the particularly damaging hurricane season of 2004 and the language is obviously aimed at weather-related emergencies (hurricanes). That notwithstanding, the statutes make specific reference to Section 252.36 and a state of emergency issued thereunder, which includes Executive Order 20-52, as extended.

In an attempt to clear the air the Secretary of the Florida Department of Business and Professional Regulation, Halsey Beschars, issued Emergency Order 2020-04 which suspended, among other things, the “response to damage caused by an event” language of the aforementioned statutes. The Department based its authority to issue such an order on the Governor’s directive in Executive Order 20-52 which called for State agencies to suspend the provisions of any regulatory statutes of that agency if strict compliance with that statute would prevent, hinder, or delay necessary action in coping with the emergency. The Department’s authority to “suspend” *any* language of a legislative enactment is suspect.

However, on May 20, 2020 the Department issued Emergency Order 2020-06 purporting to “lift” the suspension of the “response to damage caused by an event” language and arguably attempting to *revoke* any association emergency powers under the statutes. The Emergency Order indicates that certain portions of the prior order shall cease to be operational as of June 1, 2020. This order seems to indicate that Condominium Association, Homeowners Association, and Cooperative will no longer have

emergency powers under the relevant statutes. Should any matters within the jurisdiction of the Department regarding emergency powers make their way to the Department, this order reflects the Department's position: community associations will no longer be able to operate under their statutory emergency powers as of June 1, 2020.

Whether the Department actually has any authority to suspend and lift suspensions on statutory powers is left to be determined. However, many practitioners in this area of the law doubt such an idea. Whether associations continue to operate under emergency powers beyond June 1, 2020 will be a business judgment for the Board of Directors of those associations to make with their legal counsel so long as there remains a state of emergency in place under Section 252.36 of the Florida Statutes at that time. If anything, the Department's order gives associations an ideal target date for resuming the normal operations of the association.

Below for your review are the relevant Emergency Orders discussed in this update. We look forward to helping our association clients navigate this uncertain legal atmosphere. As June 1, 2020 approaches, we urge community associations to consult with their legal counsel on any plans to re-open amenities, holding previously postponed annual meetings, and operating under any statutory emergency powers.

[DBPR Emergency Order 2020-04](#)

[DBPR Emergency Order 2020-06](#)

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 (christopherpoppe@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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