



September 26, 2022

## STATE OF EMERGENCY RE HURRICANE IAN

By: **Vanessa Fernandez, Esq.**

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On Friday, September 23, 2022, by Executive Order 22-218, Governor Ron DeSantis declared a state of emergency covering 24 counties, including Lee, Collier, and Charlotte County, relating to Tropical Depression Nine, aka Hurricane Ian. That order was amended Saturday, September 24, 2022, by Executive Order 22-219, to expand the state of emergency to cover the entire State of Florida.

What was a tropical storm has intensified into a rapidly growing hurricane which is expected to make landfall in Florida later this week. As many long-time residents know, hurricanes can be unpredictable. With that in mind, the purpose of this special alert is to remind condominium, cooperative, and homeowners' associations of their statutory emergency powers which have been activated by virtue of the state of emergency which was declared pursuant to Section 252.36, Florida Statutes. Note, these statutory emergency powers may be limited by your association's governing documents. As community associations prepare for impact, special attention should be given in review of the governing documents to verify whether any of the statutory emergency powers are expressly prohibited therein.

Assuming your association's governing documents do not prohibit any statutory emergency powers, the Board of Directors may conduct Board meetings, Committee meetings, Elections, and Membership meetings by phone or video conference with notice given *as is practicable*. Community associations with limited resources may opt to cancel and reschedule association meetings which were planned for later this week given their localities. Boards which are made up of residents who are not physically located in Florida may wish to designate assistant officers to accommodate any level of unavailability, and to meet with emergency personnel management and other emergency contractors as may be necessary.

Since many Southwest Florida counties, including Lee and Collier County, have already declared local states of emergency in anticipation of hurricane and tropical storm force winds, rains, and surges, Boards should already be reviewing their association's disaster plan(s) and communicating with their association's debris removal contractors, if applicable. Boards should also be considering the closure of certain amenities in anticipation of Hurricane Ian's landfall, as may be reasonably appropriate.

Coastal residents and community associations should closely follow local the advice of local emergency management officials to prepare for the impacts of Hurricane Ian. Residents in the projected path of Hurricane Ian should be preparing their homes and installing hurricane shutters as may be necessary. Those residents located in coastal areas prone to flooding should also be preparing for flash floods and storm surges. Nonlocal residents should be coordinating hurricane preparations as the storm approaches. All residents should review evacuation zones and evacuation routes as coastal areas in the Tampa Bay area are already under evacuation orders.

Copied below are the relevant Florida Statutes that establish certain emergency powers for condominium, cooperative, and homeowners' associations, *to the extent not specifically prohibited by the association's governing documents*. As a reminder, any such emergency powers are limited to that time reasonably necessary to protect the health, safety, and welfare of the association and its members, tenants, guests, agents, or invitees. The emergency powers are also limited as shall be reasonably necessary to mitigate further damage, injury, or contagion and to make emergency repairs. If Boards are unsure about their emergency powers, they are encouraged to contact their association's legal counsel to determine what the association's rights are during a state of emergency declared pursuant to Section 252.36, Florida Statutes.

### **Condominium Association Emergency Powers Pursuant to Section 718.1265, Florida Statutes:**

718.1265 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located, may exercise the following powers:

- (a) Conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, electronic transmission, public service announcements, and conspicuous posting on the condominium property or association property or any other means the board deems reasonable under the circumstances. Notice of decisions also may be communicated as provided in this paragraph.
- (b) Cancel and reschedule any association meeting.
- (c) Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.
- (d) Relocate the association's principal office or designate alternative principal offices.
- (e) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.
- (f) Implement a disaster plan or an emergency plan before, during, or following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.
- (g) Based upon advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine any portion of the condominium property or association property

unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

(h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property or association property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.

(i) Based upon advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine whether the condominium property, association property, or any portion thereof can be safely inhabited, accessed, or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(j) Mitigate further damage, injury, or contagion, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus or contagion, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage to the condominium property or association property. In such event, the unit owner or owners on whose behalf the board has contracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property, and the sanitizing of the condominium property or association property, as applicable.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit; or

(b) The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

### **Cooperative Association Emergency Powers Pursuant to Section 719.128, Florida Statutes:**

719.128 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the cooperative, may exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, electronic transmission, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this paragraph.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster or an emergency plan before, during, or following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board of administration, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board of administration, determine whether the cooperative property or any portion thereof can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the cooperative documents.

(i) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the area where the cooperative is located or prohibit or restrict access to the cooperative property in the event of a public health threat. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.

(j) Mitigate further damage, injury, or contagion, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the cooperative documents or law to insure or replace those fixtures and to remove personal property from a unit or to sanitize the cooperative property.

(k) Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 719.108 to enforce collection of the charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property, and the sanitizing of the cooperative property.

(l) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit; or

(b) The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

### **Homeowners' Association Emergency Powers Pursuant to Section 720.316, Florida Statutes:**

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with s. 617.0830, the board of directors, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United

States mail, the Internet, electronic transmission, public service announcements, conspicuous posting on the common area, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this paragraph.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster or an emergency plan before, during, or following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine any portion of the common areas or facilities unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or public health officials or upon the advice of licensed professionals retained by or otherwise available to the board, determine whether the common areas or facilities can be safely inhabited, accessed, or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, injury, or contagion, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the common areas or facilities or sanitizing the common areas or facilities.

(j) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the declaration or other recorded governing documents, levy special assessments without a vote of the owners.

(k) Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit parcel owners, tenants, guests, agents, or invitees of a parcel owner from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a parcel; or

(b) The habitability of the parcel or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the parcel. Any such access is subject to reasonable restrictions adopted by the association.

As an update to our June 7, 2022, article on the Building Safety Act, please be reminded that the deadline for Florida condominiums and cooperatives to report building information to the Division of Florida Condominiums, Timeshares, and Mobile Homes (“Division”) is **January 1, 2023**.

The Building Safety Act applies only to condominiums and cooperatives creating specific obligations for certain condominium and cooperative associations depending on the nature of the buildings in their communities. However, **ALL** condominium and cooperative associations that exist on or before July 1, 2022, are required to provide information to the Division of Florida Condominiums, Timeshares, and Mobile Homes (“Division”) by January 1, 2023, including:

1. The number of buildings on the condominium or cooperative property that are three stories or higher in height.
2. The total number of units in all such buildings.
3. The addresses of all such buildings (and not the addresses of the management companies for the same).
4. The counties in which all such buildings are located.

The Board of Directors for every condominium and cooperative in Florida should see to it that the information is timely submitted. There are several methods by which condominium and cooperative associations may submit the information to the Division.

- Associations may use the web form in the link below which sends the Building Reporting form directly to the Division:  
<http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/building-report/>
- Associations may also send the information to the Division electronically (by email) at:  
[ctmhbuildingreporting@myfloridalicense.com](mailto:ctmhbuildingreporting@myfloridalicense.com)
- Lastly, the information may also be sent by USPS mail or hand delivery to:

Division of Florida Condominiums, Timeshares and Mobile Homes  
Attention: Building Reporting  
2601 Blair Stone Road  
Tallahassee, FL 32399-1030

Whichever method you choose, note that the deadline is **January 1, 2023**. If you are going to mail your association’s reporting information, please consider mailing early enough so that your information is received on or before the deadline. We also recommend keeping a copy of the report provided to the Division, whether that is by screenshot or submission receipt, printing a copy of the email, or retaining a copy of the mail receipts for the Association’s records. Any report sent by email, USPS mail, or hand delivery should have a date on it.

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*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

Vanessa Fernandez is an experienced attorney who specializes in community association law with Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195; Fax: (239) 332-2243. To view past articles, please click “Publications” on our firm website.

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