

3/15/2020

Subject: Coronavirus guidance from the DBPR—Clubhouses, common areas, community events

Good afternoon, everyone.

The past few days have obviously been uncharted territory for all of us. I've had numerous discussions with board members, managers, and other community association attorneys about how managers and boards should deal with events in clubhouses and common areas and the continued usage of those facilities by residents and their guests. We've all clearly been wrestling with this and one of my colleagues reached out to the Director of the Division of Condominiums, Timeshares, and Mobile Homes to request some guidance from the Division and the DBPR. He was informed that the Division agrees that community associations may adapt their procedures and association business under the Governor's Emergency Order and the relevant provisions of the "Emergency Powers" statute governing each type of community association (F.S. Section 719.128 for co-ops, F.S. Section 718.1265 for condos, and F.S. Section 720.316 for mandatory homeowners associations in subdivisions). My colleague further suggests (and I join him in that suggestion) that notice be provided to all residents as to the particular actions the board intends to take and that the notice also reference the guidance provided by the Center for Disease Control and the World Health Organization in regards to risk mitigation.

I'd like to add the following suggestion—that the board consult with the association's insurance agent to confirm whether or not coverage exists to protect the association against any claims filed by persons alleging they were infected by the virus at an event occurring on cooperative property.

Also, since many of our communities still have non-shareholder homeowners, my partner, Richard Lee, has provided some draft guidance to the DBPR in regards to the park owner's right to close or limit usage of the clubhouse and other common areas to the non-shareholder homeowners. He is still awaiting a response from the Mobile Home section but for the time being I would suggest that the provisions of the Emergency Order, F.S. Section 719.128 and the overriding health concerns outweigh any potential claims alleging violations of Chapter 723.

I am adding as many addressees to this email as I can remember at this time but please forward this to all of the members of your regional ROC groups and to any other communities in your area. You'll note I've also added Bill, Jonathan and Richard to this email and am asking them to add any input they might have here.

As always, please feel free to contact me if you have any questions. I'll look forward to seeing all of you in the (hopefully) very near future where we can discuss how we all successfully navigated through this extraordinary time.

On Mar 26, 2020, at 12:19 PM, Scott Gordon <sgordon@lutzbobobob.com> wrote:

Subject: COVID-19 update

Good morning, everyone.

The Florida Department of Health's COVID-19 Data and Surveillance Dashboard was updated about 30 minutes ago. We now have 2,355 confirmed cases—which is an increase of almost 400 new cases overnight. I'm posting the link to that map here for your reference and you'll note there are several other tabs at the bottom of the map that can provide you with a lot of additional information on testing, a county by county analysis and US and worldwide statistics: <https://fdoh.maps.arcgis.com/apps/opsdashboard/index.html#/8d0de33f260d444c852a615dc7837c86>

At this point, it appears that most of the resident-owned communities have closed their clubhouses and pools. There are one or two community associations relying on their residents to self-enforce a "ten person only" limit in the pool and pool area. It appears that the laundry rooms in many if not most communities are remaining open with notices being posted in regards to the importance of following the CDC guidelines and using common sense and proper hygiene when in the laundry room area.

Several communities are struggling with questions of whether and how to provide notice to residents if and when the manager or board become aware that someone in the community has tested positive for COVID-19. My thought is that the board should notify the residents of the positive test but not identify the person testing positive unless and until that resident consents in writing to being identified.

The other issue that's been raised by a number of communities in the past two or three days is how to respond to visitors and guests—even those who are family residents and guests. I know of at least one ungated community where signs have been ordered and will be placed at all of its entrances advising that guests and visitors are not allowed during this pandemic. While I think enforcing any rule prohibiting guests and visitors would be very difficult in most situations, a strongly worded letter/email sent to all residents and posted in conspicuous places in the community makes sense. The residents need to keep in mind that every person entering the community is a potential carrier of the COVID-19 virus and thus poses a potential threat of infecting others. We make it much more difficult to achieve the goal of "flattening the curve"-- and providing our hospitals and health care professionals with the breathing room needed to minimize the damage to our communities that this pandemic will cause—each time we bring another potential carrier of the virus into our respective communities.

Obviously, each community has its own specific issues and, like all of you, community association lawyers are dealing with unique and first-time questions on what seems to be a minute by minute basis. You'll want to consult with your community's legal counsel in regards to those specific issues.

I'll leave you until my next update with the CDC guidelines on the symptoms to look for with COVID-19 and the hope that all of you will continue to stay safe, stay healthy, and that we get through this pandemic together.

Here's that CDC site: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

On Mar 26, 2020, at 12:49 PM, Scott Gordon <sgordon@lutzbobobob.com> wrote:

Subject: COVID-19 Update

Good afternoon, everyone.

Florida now has 2900 confirmed cases as of noon today. The Department of Health has revised its Data and Surveillance Dashboard and its "Florida Case" tab now only shows confirmed cases for Florida residents. I'm posting the link to the "Florida Counties" tab of the Dashboard as that shows both the residents and non-residents who have tested positive and also shows the age distribution of the cases testing positive. We're not certain how much weight can be given to that "New Cases by Day" as it appears that the criteria for measuring that may have also changed. Here's the link to the "Florida Counties" tab:

<https://fdoh.maps.arcgis.com/apps/opsdashboard/index.html#/8d0de33f260d444c852a615dc7837c86>

The Department of Health is now going to be issuing its updates to the Dashboard at approximately noon and 7 p.m. rather than at 11 a.m. and 6 p.m. each day. In any event, you can see there has been another substantial increase in the number of confirmed cases overnight. You'll probably see increases in the county in which your community is located as well.

I'm posting the link to an article I read last night from USA TODAY warning that Florida may be one of the next epicenters of the pandemic:

<https://www.usatoday.com/story/news/nation/2020/03/26/coronavirus-tests-scarce-florida-home-millions-elderly-hospitals-scrounging/5083283002/>

We've had some questions about whether contractors should be prohibited from coming into the community. While it's clearly not an ideal time for "outsiders" to enter the community, we see all kinds of enforcement problems with this and it appears that most of the "stay at home" orders that have been issued by counties and localities in Florida do allow contractors to continue to work. Again, common sense and respect for the health and safety of the other residents should govern here.

One of my law partners just emailed me a pdf of the latest guidance from the DOH in regard to pool and spa closures. While there is no statewide mandate to close pools, the DOH recognizes that many communities have closed their pools to promote "social distancing" and what follows is the DOH's "best practices" guidance document created by the DOH's water section in regards to environmental health. We don't yet have the link to that pdf but if any of you are interested in receiving that pdf in its entirety let me know and I will try to forward it to you.

I'll be sending everyone an email with some attachments I received while putting this update together separately in just a bit from one of the directors of Sarasota and Manatee's FLAROC chapter. Hopefully, you'll find the attachments helpful and interesting.

Stay safe and healthy!

On March 28, 2020, at 11:35 AM, Scott Gordon <sgordon@lutzbob.com> wrote:

Subject: COVID-19 Update

Good morning, everyone.

Last night, I received a copy of Emergency Order 2020-04 from the Florida Department of Business and Professional Regulation that had been signed earlier in the day. That Emergency Order formalizes the DBPR's position that the "emergency powers" statutes for community associations (F.S. Section 719.128 for co-ops) can be used as long as the Governor's Emergency Order 20-52 (and any extensions of that Order 20-52) remain in effect. Community association attorneys have been advising boards and managers that the Governor's emergency order in response to the COVID-19 pandemic could be used as the event triggering the "emergency powers" statute and we'd been informally advised by the DBPR that it agreed with our position. The DBPR's issuance of its Emergency Order 2020-04 should give all of us a bit more certainty when relying on the "emergency powers" statute.

If anyone needs a copy of that Emergency Order from the DBPR, I will try to forward it to all of you from my office email address on Monday.

I haven't changed my position on whether boards should be passing rules prohibiting guests and visitors at this point--even with this new Order from the DBPR. In the end, however, this is a decision that each individual community will have to make and I would simply ask that the board and/or manager consult with the community's attorney before making that decision.

Have a safe, healthy and restful weekend

Scott Gordon

On Tuesday, March 31, 2020 1:11 PM, Scott Gordon <sgordon@lutzbob.com> wrote:

Good afternoon, everyone.

Florida's Department of Health COVID-19 Data and Surveillance Dashboard updated about an hour ago and the numbers are sobering. We added over 600 confirmed cases overnight. There are now 6,338 confirmed cases in our state with 772 persons hospitalized and 77 deaths. Here's the link to that updated Dashboard: <https://fdoh.maps.arcgis.com/apps/opsdashboard/index.html#/8d0de33f260d444c852a615dc7837c8>

Also, as promised, here's the link to the order from the DBPR confirming that relevant portions of the statutes granting emergency powers to community associations were in fact triggered by this pandemic and Governor DeSantis' declaration of a state of emergency in Florida: http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf

You've probably heard that the massive stimulus act passed by Congress last week contains a moratorium on filing eviction actions. As you can imagine, there are hundreds (if not thousands) of attorneys reviewing this act (all 800 plus pages of it) and our office is of course working furiously to determine what communities will be affected by this eviction moratorium. It appears from our initial review that the moratorium may only impact communities currently being financed through federally backed multi-family mortgage loans but we'll have to dig further into the stimulus act to confirm this. In any event, you'll want to consult with your community's attorney on all collection and eviction issues for the immediate future.

There's another Order issued over the weekend by Governor DeSantis impacting short term rentals. Here's the link to that order that you may want to discuss with your community's attorney: https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-87.pdf

We've heard from community managers dealing with residents complaining about not being able to use the pool or the clubhouse. We were also contacted by a manager earlier today about a rumor going through the community that one of its residents tested positive for COVID-19. We don't believe that the Department of Health or any other state or local agency or hospital can notify a community when and if a resident tests positive because of privacy laws. Nonetheless, I'm continually advising managers and board members to keep stressing that it shouldn't make a difference whether or not someone in the community tests positive for the virus—at this point, it should be clear to everyone in your community (as well as in our state and in our country) that our best hope of minimizing the destruction that COVID-19 can potentially cause in this country is to treat everyone as if he or she has the virus and to treat ourselves the same way—it's absolutely essential to "shelter in place" if we are 65 years of age or older (as per the Florida Surgeon General's guidelines), that we maintain that social distancing, avoid gatherings of more than 10 persons, and wash our hands frequently. We know that, unfortunately, it's almost impossible to enforce those social distancing and non-gathering guidelines when common facilities are allowed to remain open and we have the added burden of knowing that a large percentage of the residents in our communities are 65 years of age or older.

With the number of confirmed cases in Florida doubling every few days, and with the hospitalizations and death toll rising on a daily basis, it's hard to imagine that there are still people in resident owned communities who are not considering these Orders and guidelines as matters of life and death. Let's hope that all of them wake up and we get that curve flattened sooner rather than later.

As always, I'll look forward to questions and comments and will share them with our email group if requested.

Stay safe and healthy!

Scott E. Gordon, Esq.

Thursday, April 2, 2020 8:27 PM, Scott Gordon <sgordon@lutzbo.com> wrote:

Good afternoon, everyone.

Last night, with little fanfare, Governor DeSantis issued another Emergency Order—Order 2020-92, which effectively allows churches, synagogues and other houses of worship throughout the state to conduct religious services in person even if such gatherings were prohibited by a county or local Order. I'm posting that Order as well as a link to a newspaper article about the potential effect of this Order.

Here's the link to the Order itself: https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-92.pdf

Here's the article in the Sun- Sentinel: <http://www.sun-sentinel.com/coronavirus/os-ne-coronavirus-desantis-second-order-supersedes-local-20200402-ffob5ojpifhln04cdy6bd3offq-story.html>

We're all dealing with who is and who isn't providing "essential services" and whether all or part of those services can and should be handled remotely. For senior citizens like me who also happen to be community association attorneys, it's a balancing act—fortunately, we've had enough "hurricane drills" over the years and have become pretty skilled at working from home when needed.

Two thoughts to leave you with (before posting the most recent figures from the COVID-19 Dashboard):

1. Boards struggling with whether and from where its community's employees should be working should be consulting with their attorneys—these are going to be difficult decisions for any number of reasons and the input of legal counsel would be helpful in guiding the board.
2. The Paycheck Protection Program is something your community may want to explore. Contact your community's attorney and/or the bank(s) that hold your community's mortgage and/or deposits and see if your community qualifies for the PPP. If so, a loan under that program (which in many cases may be forgiven in full—in other words, it won't have to be repaid to the bank) may help your community minimize the financial impact of this pandemic.

The numbers from the COVID-19 Dashboard as of this evening:

Total confirmed cases in Florida: 9,008 (an increase of over 1,000 since yesterday evening)

Total deaths in Florida: 144 (that's more than 40 in the past 24 hours)

Current cases in the U.S.: 242,182 with 5,850 deaths

Stay safe and healthy...and don't hesitate to contact us if you have any questions.

Scott E. Gordon, Esq.

On Monday, April 13, 2020 10:33 PM, Scott Gordon <sgordon@lutzbobobob.com> wrote:

Subject: COVID-19 update

Good evening, everyone. Hopefully, all of you had a safe, healthy and peaceful holiday weekend...and may it be the last holiday weekend any of us have to spend physically separated from our family and friends.

We've been contacted by several communities who are dealing with residents requesting to use the pool as a reasonable accommodation under Fair Housing laws. The approach for evaluating these requests should be similar to the approach used to evaluate any other reasonable accommodation requests and as always I suggest that the community consult with its attorney to guide the board through that evaluation process.

I'd appreciate some input from those of you in communities with a library room. In particular, is your library room closed? If it's open, where is the library room located in relation to the Clubhouse? When is it open and under what conditions are residents now allowed to use the library room? How is the community sanitizing the library room and how often does that sanitizing occur? We have one or two communities under pressure to open the library room and I'd like to see what other communities are doing with their library rooms.

Finally, tonight's numbers from Florida's COVID-19 Dashboard:

Confirmed cases in Florida: 21,019 with 2,841 hospitalized and 499 deaths

Confirmed cases in the US: 581,918 with 23,608 deaths

Note the percentages here: Over 2 percent of the the confirmed cases in Florida have resulted in deaths and that percentage for US cases is 4 percent. Both of those percentages are far higher than the percentage of fatalities from the common flu. Dr. Fauci has said in the past that the mortality rate for seasonal flu is about 0.1 percent. The difference in these percentages, and the highly contagious nature of COVID-19, present two very potent arguments for the "stay at home" orders and social distancing guidelines currently in effect.

Stay safe, stay healthy, and stay home!

Sent from my iPad

On Wednesday, April 15, 2020 6:09 PM, Scott Gordon <sgordon@lutzbob.com> wrote:

Good afternoon, everyone.

Thanks to all of you for responding to my questions about the status of the pools, clubhouses, and libraries in your communities. It appears that most pools and clubhouses are closed and most libraries are also closed with several being open for very restricted use.

Several of you responded with a request that I remind board members and managers to closely check the insurance policies covering the community and the board.

In the words of one very astute Community Association Manager: "You haven't mentioned much about insurance...you might want to mention it again...(board members) need to review their policies or ask the insurance agent to explain the policy to them. Our Board purchased GAP insurance immediately when they found out that the D & O (Directors and Officers) and Umbrella policy had exclusions. GAP only kicks in if underlying policies deny the claim. GAP pays for attorney fees only but not the settlement...better than nothing. We all know how fast the attorney fees accumulate, sometimes higher than the settlement."

And here's what another Community Association Manager emailed earlier this morning: "We closed our pool, social hall, and all amenities in March. Everyone check your insurance!!!! Ours has a clause for exclusion of germ/virus epidemic and the liability is not in force if something like this (in 100 years) happens!!!! If one of your residents contracts the virus in your common areas that are still open they can sue every Board of Directors, Manager, and on down the line. We were advised by our insurance agent and Lawyer to immediately close everything"

As you all know, anyone can sue anyone else for anything. The real question is whether or not the person (or association) being sued has insurance coverage for the event upon which the lawsuit is based. Board members understand that if someone trips on a sidewalk in the community or falls and breaks a bone while participating in a community event in the clubhouse, the association can contact its insurance agent to notify the agent that a claim may arise from that particular incident—and the board can rest easily knowing that in almost all of these situations, its insurance carrier will process and defend the claim—but this doesn't happen if the incident that is the basis of the law suit (in this case, contracting the COVID-19 virus while at the community pool or in the Clubhouse) is an incident that is excluded from the coverage provided by the association's insurance policies. While it may be very difficult, if not impossible, for someone to be able to prove where and how the virus was contracted, the fact is that in many, if not most (or all) cases, neither the association nor the individual board members will be able to rely upon any protection from its insurance carrier. Obviously, this should be a major factor in determining whether to close—and if and when to re-open—pools, clubhouses, libraries, and other community facilities.

Residents also are beginning to understand how difficult it is for their common buildings and areas to be constantly and properly sanitized. No one is happy about having to "shelter in place" but we have to continue to do so to "flatten the curve" and have any chance of getting back to "normal" in the near future.

This morning's numbers from the COVID-19 Dashboard:

Confirmed cases in Florida: 22,511 with 3,193 hospitalizations and 596 deaths.

The Dashboard now shows 632,878 US cases and 27,850 deaths.

Collier County: 395 confirmed cases and 5 deaths

Highlands County: 64 confirmed cases and 6 deaths

Hillsborough County: 869 confirmed cases and 18 deaths

Lee County: 677 confirmed cases and 22 deaths

Manatee County: 276 confirmed cases and 19 deaths

Pinellas County: 513 confirmed cases and 14 deaths

Sarasota County: 252 confirmed cases and 16 deaths

Stay safe and stay healthy!

On Monday, April 20, 2020 7:54:42 PM, Scott Gordon <sgordon@lutzbob.com> wrote:

Subject: COVID-19 Update

Good evening, everyone.

I'm sure many of you share my uneasiness at the scenes of beach goers in Jacksonville and protesters at state capitals throughout our country—all of this occurring while the number of confirmed cases of and deaths from COVID-19 continue to rise in Florida and throughout our country. No one wants to be shuttered in their homes, working remotely (or not working at all), and have no idea of when he or she will be able to visit friends and family—or go to a movie, eat at a restaurant, or attend (let alone simply watch) a live sporting event. We are fighting a battle that requires discipline, patience and the willingness to listen to medical experts and follow their advice. I hope all of us continue to do what it takes to win this battle.

Our Governor's signal that he may be further relaxing the "stay at home" order may put greater pressure on board members and managers in resident owned communities to re-open pools, clubhouses, and other common areas. Board members should keep in mind that most residents in "55 and over" communities are "senior citizens" and thus under the CDC guidelines have a higher risk from this virus. The board should also remember that insurance policies probably do not cover claims arising from viruses. Furthermore, boards and managers must consider whether the social distancing guidelines and the guidelines prohibiting gatherings of more than ten persons can be effectively followed or enforced (if necessary) in the common areas and facilities of their respective communities. I will continue to advise managers and board members to keep these common facilities closed until we are given the "all clear" signal by local authorities. Keep in mind also that, as of this date, most beaches in Florida remain closed—including those in west central and southwest Florida.

Usually, by this time of the year, our "snowbirds" are well on their way north and our communities are entering the "offseason". The situation seems to be a bit different this year as many residents are finding it difficult to return to their out of state homes—in part because of difficulties in finding hotel rooms for their overnight stays as they drive home. I was told today that some hotels are refusing to provide rooms to people heading home from Florida. Whether or not that's a common occurrence during this pandemic, it appears that some of our "snowbirds" may be spending part of their "offseason" in their winter homes. This promises to be a very different few months for ROC's.

Tonight's numbers from the COVID-19 Dashboard:

Confirmed cases in Florida: 27,058 with 4,000 hospitalizations and 823 deaths
Confirmed cases in the US: 783,290 with 41,872 deaths

Collier County: 470 confirmed cases, 69 hospitalizations, and 9 deaths
Lee County: 785 confirmed cases, 174 hospitalizations, and 28 deaths
Sarasota County: 291 confirmed cases, 100 hospitalizations and 28 deaths
Manatee County: 433 confirmed cases, 84 hospitalizations, and 33 deaths
Hillsborough County: 973 confirmed cases, 152 hospitalizations, and 19 deaths
Pinellas County: 607 confirmed cases, 132 hospitalizations, and 16 deaths
Lake County: 211 confirmed cases, 54 hospitalizations, and 7 deaths
Highlands County: 71 confirmed cases, 26 hospitalizations, and 7 deaths

Stay safe, stay healthy and stay at home!

On Monday, April 24, 2020 12:16 PM, Scott Gordon <sgordon@lutzbobobob.com> wrote:

Subject: COVID-19 Updates

Good morning, everyone.

I've just checked the updated COVID-19 Dashboard and on the same day the US has officially exceeded 50,000 deaths from COVID-19, Florida now has over 30,000 confirmed cases and over 1,000 COVID-19 deaths with almost 4,700 hospitalizations.

As you know, Congress has just approved another several hundred billion dollars to be applied to the SBA Paycheck Protection Plan loans. Unfortunately, just as with the last bill approved by Congress, only community associations that are 501(c) are eligible for these PPP loans. Since the first round of the PPP loans couldn't be fully funded from the initial package, this new package basically is going to those applicants who have already qualified for these loans. It's clear that much more relief is required and let's hope that Congress understands this.

What is not clear is exactly when and how our Governor is going to attempt to "re-open" Florida. It appears that he will be relying on counties and municipalities to decide whether beaches and other facilities are to be open and the timing and restrictions involved in any such openings. This uncertainty certainly puts some pressure on managers and board members in resident owned communities to re-open pools, clubhouses, and other common areas.

I was discussing this with several community managers yesterday. Many of the residents in our communities have been fortunate enough to not know anyone who has been infected with this virus. It's thus somewhat easy for them to feel as if this pandemic is just a problem for health care workers, people who live in big cities, or who work in meat packing plants, or who are inmates in prisons or penitentiaries, or who live or work in nursing homes. I can understand that, until you know someone who has been hospitalized or has died from COVID-19, you can tell yourself that this is all "overblown" by the media and that shutting down the country, the state, and your community's pool, clubhouse, and other common facilities is an overreaction and that you have the right to use those facilities. Fortunately, most of the residents in communities throughout our state appear to have been very understanding of we all need to do to deal with this pandemic.

Unfortunately, we are now at the point where more than a few of us do know friends or relatives who have been hospitalized or have died from COVID-19. Not all of those friends and relatives were "senior citizens" and not all of them had "pre-existing conditions". Board members must remember that most of the residents in their communities are senior citizens and will fall within one of those "at risk" categories and, given the difficulties that boards and managers will have enforcing CDC guidelines for social distancing and avoiding gatherings of more than 10 person and the additional burdens of trying to constantly sanitize surfaces in the community areas, it's advisable for boards and managers to wait until local authorities provide some guidance on re-opening beaches, pools, other public areas, and businesses, before re-opening their common facilities.

Just a few county by county statistics:

Collier County: 519 confirmed cases, 71 hospitalizations, 14 deaths

Highlands County: 76 confirmed cases, 27 hospitalizations, 7 deaths

Hillsborough County: 1020 confirmed cases, 153 hospitalizations, 21 deaths

Lake County: 217 confirmed cases, 53 hospitalizations, 9 deaths

Lee County: 928 confirmed cases, 184 hospitalizations, 36 deaths

Manatee County: 482 confirmed cases, 118 hospitalizations, 40 deaths

Pinellas County: 673 confirmed cases, 146 hospitalizations, 23 deaths

Sarasota County: 315 confirmed cases, 102 hospitalizations, 32 deaths

Stay safe and stay healthy!