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## COMMUNITY ASSOCIATIONS AND COVID-19

First, all of us at DKS&Z hope everyone is well and healthy, and we wish everyone the best as we navigate through these times.

The coronavirus pandemic has all of us facing circumstances we had never previously considered. None of us have experienced times like these. It has forced most of us to conduct our day to day lives differently than we have. Community associations have been forced to change and adapt as well. New questions, legal, moral, and practical, are raised at each phase of the ongoing, evolving situation.

Here, we present the most frequently asked questions that seem to be presented in connection with legal obligations..

Please feel free to contact DKS&Z if we can assist and counsel your association.

### 1. What about board meetings?

The State of Illinois by the Governor's Executive Order 2020-10, has temporarily prohibited social gatherings of any type and by any number of people (except for members of a household or residence). This is even more restrictive than the Center for Disease Control (the "CDC") recommendations to limit gatherings to no more than ten people.

For these reasons, and obvious health concerns, associations should not be holding face to face board meetings where people are physically present. The board should delay and put off meetings until a later time to the extent possible. The state laws require that meetings of the board are to be open to the homeowners, so you should not hold such gatherings at board meetings. Compliance with this legal requirement of open board meetings potentially puts persons in harm's way when gathering for the meeting. And it is presently against the law.

**2. The board needs to vote on something. Can the board do that without a meeting and then approve that vote at an open meeting later when it is o.k. to have meetings?**

No. Neither the Condo Act nor CICAA create a general exception to the requirement that ALL board voting must be done at an open board meeting with prior notice to the homeowners. While the Condo Act does have a limited procedure for board members of a condominium to act to respond to an emergency as defined in the Condo Act, such emergencies are rare. Most if not all of the condo board's actions will not be in response to an emergency and those provisions cannot be used. Also note that the Court in the well known *Palm II* case held that a condo board cannot effectively vote on any matter by "polling" the board members by phone or e-mail outside of an open board meeting.

### **3. How can the board conduct its business?**

It is always best to hold a regular face to face meeting, but in these circumstances we must adapt. If the board must hold a meeting, the board can meet electronically if the association is a condominium or is incorporated as a not for profit corporation (which covers most non-condominiums). The Condo Act and the Not For Profit Corporation Act contain provisions that allow board members to participate in the board meeting by electronic means, so long as the board member can hear the other participants and the other participants can hear that board member. It has not been unusual for a board member who could not be physically present to phone in and the board would use a "speaker phone."

Instead of just one board member participating electronically, nothing prohibits all of the board members from participating electronically. All of the board members can meet electronically so long as the meeting is "open" to the homeowners so that they may observe the board's actions. Considering the same technology, the meeting may be open to homeowners if they also have the opportunity to call in or electronically connect to the board conference and listen to, or watch and listen to, the board.

This could be accomplished by a large telephone conference call, if the board has the capability. The internet also provides options now. The use of on-line services like of Zoom or Skype, which offer options for use at no-cost, allow for the connection of many people through the internet and by phone. Plus, these sites have the capability to use video (fee paying subscribers of Zoom may also be able to stream on Youtube). We have heard that some boards are already using these options with relatively good results. Remember that you still must provide timely notice of the meeting to the homeowners, and the notice should explain the procedures to connect.

#### **4. Can we restrict use of common areas and facilities?**

Generally, yes, the board has some authority to restrict the use of common areas and facilities for reasons of health, safety, and welfare. It likely depends on the particular facility and its general use. You may want to close any facility which by its nature is used for social gatherings. This includes things such as clubhouses, fitness rooms, social rooms, recreation rooms, saunas, etc.

You probably cannot close off common areas that are essential to living on the property. This may include entry ways, elevators, stairs, garages, and laundry rooms. The board should issue notices to owners and residents reminding them of the recommendations of the health agencies when using such areas, such as social distancing from other persons in those areas. See the recommendations issued by the CDC and the Illinois Department of Public Health.

#### **5. Can we restrict visitors?**

Probably, for health, safety and welfare reasons. Whether you should and to what extent may depend on the nature, type and design of your property and your population, and the general circumstances of the shelter in place and social gathering requirements at any point in time. However, you probably will not want to restrict visitors providing “essential” goods and services, such as caretakers or deliverers of “essentials” like food, medicine and necessary living supplies. Your board may want to put policies in place to attempt to control contact, such as providing notice of required social distancing, that permitted persons are to only go to and from the dwelling unit, and that gathering or congregating is not allowed.

#### **6. The board learned we have a resident who tested positive, what does the board do?**

First, since it involves health and medical issues, the board and management **must** keep the person’s name and address confidential. You cannot disclose the identity of the person or the unit (without consent). Also, the board is not a set of medical professionals and cannot provide medical or other health advice. It is not the board’s duty or function to provide medical care and attention to residents. To the extent the board gets questions from owners and residents generally, you should refer them to the local, state and federal health authorities.

If the board learns of a resident that has tested positive, the board or management should contact local health officials and seek and follow their advice and recommendations. This is the type of diligence that board needs to conduct to fulfill its fiduciary duties.. It is important that the board follow the advice and recommendations of the officials. The board or management should communicate with the owner and/or resident in question, and seek confirmation that the person is quarantined inside the unit (or is going off site). If the person is not being cooperative to avoid potential contact with others, then the board should seek the advice of the health officials and its own management and attorneys.

What obligation does the board have to the other owners and residents? There are no set answers to this unprecedented question at this point. When the board becomes aware that the condition exists on the property, and we now know the potential for spread of this condition, the board should notify the owners and residents that a resident tested positive. Again, you cannot disclose the name or address of the person or other confidential information. The board should recommend that all residents follow the recommendations of the local, state and federal health officials, including recommendations and orders regarding social distancing. Let owners know the board is working with local health officials. The board should state that management and the board will not answer any specific questions regarding the matter, and all questions should be referred to local health officials. You should not answer questions regarding the infected person or the particular matter. When you get the questions, you must do your best not to answer and refer them to the health officials.

