

June 2020

This month we are monitoring increasing progress by the courts in Chicagoland to reopen for business. Matters considered 'essential' continued throughout the shutdown, but afforded many litigants the opportunity to appear remotely via teleconference or video conference. That phenomenon continues, although non-essential matters are now being heard by the courts. Each county is still encouraging or requiring remote appearance by the parties. Finally, there has been no modification of Governor Pritzker's April 23, 2020 Executive Order prohibiting the commencement of a residential eviction action arising under 735 ILCS 5/9-101 et seq., which is the statute governing assessment collection cases. As always, we will keep you informed as changes occur.

On May 5, 2020, Governor Pritzker released the "Restore Illinois Plan." The Restore Illinois Plan is a five-phase program for the gradual reopening of business and services, and gradual loosening of restrictions put in place to slow the spread of COVID-19. Under the Restore Illinois Plan, the state is divided into four regions, each of which will graduate to the next phase in the Plan when it meets certain objective requirements such as hospital admissions numbers and positive testing percentage. On May 29, 2020, all regions - including Northeastern Region - of the State of Illinois hit all metrics to allow it to advance to "Phase 3" of the Restore Illinois Plan. Also on May 29, 2020, Governor Pritzker issued a new executive order regarding COVID-19. The new executive order and the progression to Phase 3 will mean some changes for associations.

What Will Stay the Same

Even now that Phase 3 has begun, many current guidelines will remain in place. Specifically, social distancing requirements and the wearing of masks when social distancing is not possible will continue. Likewise, Governor Pritzker's May 29, 2020 executive order "reissued" various prior executive orders thereby extending them until June 27, 2020. This includes the prior order temporarily halting eviction actions (as discussed in our email legal update dated May 6, 2020[KLB1]). In addition, even though we are now in Phase 3, associations should be mindful to operate, and to encourage its residents to conduct themselves, in the spirit of the Safer at Home Executive Order. This means that, to the greatest extent possible, non-essential activities that require close contact with others should be avoided. Even so associations should plan to make changes to reflect the new guidelines that come with Phase 3.

Re-Opening of Common Areas and Amenities

Under Phase 3, gatherings of 10 or fewer people will be allowed. This means that associations may consider re-opening previously closed common areas such as roof decks and party rooms. However, steps should be taken to encourage compliance with the 10-person limit. Associations should consider implementing reservation systems so that a limited number of users sign up in advance to utilize the space. Association-provided furniture should be limited so that there is only seating for 10, and seating should be well-spaced. The Association should make it known that use of common area is at each user's own risk (i.e., just because the space is open for use, does not mean that the Association guarantees it is safe to use). Finally, the Association should make it clear that if gathering size limitations and social distancing guidelines are ignored, the area will again be closed.

Phase 3 allows for limited re-opening of health and fitness facilities. Indoor gyms are limited to one-on-one training (no indoor classes), and outdoor classes and fitness activities are limited to 10 participants or fewer. This means that associations may consider re-opening outdoor activity areas such as basketball courts and tennis courts on a reservation, limited participant basis. Associations may consider reopening fitness rooms, depending on their size, on a reservation basis for personal training purposes only. The new executive order provides that fitness and exercise gyms may not allow other activities, including member workouts, because of the heightened risk of transmission of COVID-19 when people exercise together and share equipment in an indoor space. If fitness centers reopen for one-on-one personal training, sanitizing sprays and wipes should be utilized after each use of the equipment.

The state has yet to announce guidelines for the reopening of pools. The Director of the Illinois Department of Public Health has mentioned that pools may not be safe due to "shedding of the virus" while swimming. In addition, social distancing is very difficult in a swimming pool, and limiting occupancy to 10 or fewer might not justify the cost of operating a pool this summer. We still do, however, expect that guidelines will be released, and activities such as lap swimming may become available before social use of pools is allowed. We will continue to update as new guidelines are released. (Note that Chicago pools should remain closed, as discussed below.)

Construction Projects

Construction services have always been considered "essential" under the Safer at Home Order. However, in the spirit of the Order and to promote safety, many associations limited construction and renovation projects to those necessary to bring essential services to a common area, and had suspended approval of new cosmetic or non-essential renovation projects within units. Now that gatherings of 10 or fewer are allowed, associations may consider approving new in-unit projects, and may consider resuming common area work that had been put on hold. Before doing so, however, an association must ensure that it can do so safely.

Of course, masks, social distancing, and other now-routine safety precautions should be mandated for contractors. In addition, consideration should be given to the size of the project, because there should not be more than 10 contractors in the same area at any given time. This will apply not just to the unit itself, but also to areas of the building - the association may need to stagger projects on any given floor based on application date, for example - so that there are not an excessive number of workers in one place. Likewise, large common area projects should be phased so that there are not multiple trades working at the same time, thereby increasing the number of workers.

Consideration should be given for elevator usage, parking areas, et cetera. The Association should determine whether those areas can accommodate workers for all approved projects while maintaining capacity limits and the ability to socially distance.

Association Employees

Although Phase 3 means that new types of businesses will be allowed to resume operations (with restrictions), and that small gatherings will no longer be prohibited (provided guidelines are followed), the overriding directive of the Illinois stay-at-home order will remain in force. Specifically, if you can avoid traveling, gathering, or engaging in an activity that will expose you to others, do not do it! This means that, to the extent that association employees can effectively work from home, they should be allowed to do so. Association offices should remain on limited schedules, by appointment only and/or with capacity limits. For those employees who cannot

perform their functions remotely, such as door staff and maintenance personnel, all reasonable safety precautions - placing barriers between the employee and the public, marking off six feet from employee work stations, providing masks and sanitation materials - should be continued. And, most importantly, an employee who is sick or who is experiencing any symptoms should not return to work until cleared to do so by a health care professional.

Chicago Associations

It should be noted that Chicago will likely not graduate to Phase 3 along with the rest of the Northeast Region. Mayor Lightfoot has announced that Chicago will move to the next phase of re-openings on June 3, 2020. Chicago's reopening plan is called Be Safe Chicago, and is more restrictive than the state-wide plan. For example, pools must remain closed, and visitors are explicitly prohibited from using amenities at an association.

We will continue to live with COVID-19 and we hope to continue to learn not only about it, but also how we can change our community living for the best. Stay safe and healthy during this difficult time.

Our attorneys remain available to meet (via videoconference) or otherwise discuss the action that Boards can and should take with respect to association matters (meetings, elections, rule violations, etc.) during this unprecedented and difficult time. We will continue to keep you advised of new developments as they arise.

**Chuck Keough (cmk@kmlegal.com),
Dawn Moody (dln@kmlegal.com),
and
Gabriella Comstock (grc@kmlegal.com)**