

May 2020 Newsletter

We are closing in on six (6) weeks of disruption to our lives which none of us has endured in our lifetimes. Amidst all of the expert opinions, punditry and yes, real facts, there have been significant hardship and suffering. But there have also been opportunities and fundamental change. Many of us have learned that visiting the office 5 or more days per week is no longer necessary. Some have rediscovered old friendships, board games and conversation with loved ones. One of my mantras for my kids, in these times of social distancing and too much screen time, is 'find the fun.' So, as May's sunshine beckons us outdoors, let us focus on the positive. Smile at a neighbor, call or Zoom a friend, or escape outside and go for a walk. The gubernatorial direction will eventually allow us to resume a more normal life, but we do not have to wait for the perfect moment to craft a pretty good one right now. Carpe diem!

Dawn L. Moody and Gabriella R. Comstock wrote the attached article for the April 2020 Edition of CondoLifestyles. Click on the link for CondoLifestyles article: <https://condolifestyles.net/past-issues/condolifestyles-april-2020-issue>. We have included the full text in our newsletter.

Enjoy the article.

COVID-19andCommunityAssociationLiving:HowtoMoveForward

Our lives today are very different than they were just two (2) months ago. On March 20, 2020, when Governor Pritzker issued his Stay at Home Order, we all thought "how will we do this". Almost one (1) month later, we are adjusting to our new "normal" and hopefully all staying safe and healthy as a result. As we wait to hear what will happen next, we know that what lies ahead for us, at least temporarily, will not be an immediate return to the usual course of business. This may ultimately be for the best. For this reason, we should reconsider now how we guide and manage community associations.

As the song says, "People are People". During this pandemic, people's true colors have shone. While we would hope that those colors would have shined brightly, for some they certainly did not. For the most part, these are the same people who made life difficult before the pandemic. We must remember that when dealing with difficult people, we are not always dealing with creatures of logic, but with creatures of emotion. So, while we will not change others, we can change how we respond to them and how we let them affect us and our communities.

What can a Board of Directors do to control this negativity? A Board can be mindful of its authority and not act in heavy-handed ways. It can continue to run the association as a business. The Board can continue to conduct board and owner meetings in a controlled manner. It can work with its Owners to address covenant issues and to collect assessments. A Board can, and also should, learn from these recent experiences and consider what policies, procedures, and rules can be put in place to help the Association run more smoothly in the event that we are again directed to stay home. At the end of the day, Boards should be focused on not just what they can do, but also what they should do, so as to promote respect with the community and encourage all to work together.

Recognize the Board of Directors' Limited Authority

Over the last several weeks, we received many requests about what can a Board of Directors do to stop: in unit construction that is not essential; an Owner who is not following the CDC guidelines; an Owner who continues to receive deliveries; or an Owner who continues to have visitors in his/her unit. The simple answer to these inquiries was that there was not much the Board could do. The Board of Directors is not authorized to enforce the Governor's Executive Order. The above described conduct appears to violate the terms of, or at least the spirit of, the Governor's order, which was to ensure self-isolation to slow the spread of COVID-19. We all are used to reporting a violation to the Board of Directors and the Board taking action to stop the violating conduct. Yet, with COVID-19, a violation of the Executive Order or CDC guidelines, is not within the authority of the Board of Directors to address.

However, this does not mean that the Board must "approve" such conduct. Instead, when faced with a situation that may interfere with social distancing or otherwise encourage the spread of COVID-19 within a community, the Board of Directors should approach the Owner and discuss the situation. We want the Board of Directors to follow the motto of "it is not what you can do, but instead it is what should you do".

This should become the motto of every community association. Owners should be reminded that perhaps they can act in a particular manner under the Executive Order, but should they? Before acting, they should ask themselves, should I subject my neighbors to more people within the common areas than is necessary? They should consider if they would want someone to act in a similar manner in a building where their parent resides. Fortunately, most times, the Owner reevaluates the conduct and either completely refrains from it or takes additional steps to better protect everyone.

Remember, the Board of Directors' primary obligations and responsibilities relate to the oversight and maintenance of the common areas. While it should manage those areas in an effort to help protect the well-being of Owners and residents within the community (i.e. increased cleanings, closures of recreational facilities, etc.), the Board of Directors has neither the obligation, nor the right to police how an Owner is individually protecting his/her health. Not all aspects of an Owner's life are within the control of the Board of Directors.

Open Board Meetings

Many associations cancelled all meetings this past month. Some only met to address time sensitive business. Many worry how Boards will conduct business in the future if they cannot have face-to-face Board meetings. We need to remember that an open Board meeting does not necessarily require a face to face meeting. The Illinois Not for Profit Corporation Act allows members of a Board of Directors to attend a Board meeting by phone or other electronic means, so long as all persons can hear one another and be heard. This means a meeting can occur by conference call, Skype, Zoom, or other acceptable technological means. While neither the Illinois Condominium Property Act, nor the Common Interest Community Association Act, specifically address this situation, both Acts acknowledge the use of technology. More importantly, let's follow the motto above: Boards could decide to not meet and not conduct business, but should they? Boards could just discuss issues by e-mail, without involving Owners, but should they? The answer to both questions is no. We all need to remember Palm II, and the Court's reminder to all within the industry as to the rights of Owners. These rights can and do co-exist with COVID-19.

The Board of Directors should not allow COVID-19 to prevent it from running the business. Meetings should resume and each association should determine which technological means will work best for their community. It is likely that even once the Governor's Executive Order is revised or lifted, there will be a period of time when we will be exercising social distancing as the threat of COVID-19 will remain. So, while we could then meet face to face and sit six feet apart, should we? Should we do that when there is a viable, safer option available? Change can be hard, but it can also be for the better. While there is a learning curve associated with conducting meetings through acceptable technological means, once we start doing so, we may see meetings being more productive, shorter in length, and pursuant to a strict agenda. Time can still be and should be allowed for Owner participation. However, guidelines controlling Owner participation will need to be adopted and followed. More productive and respectful meetings may have a positive effect on community associations. Further, it may actually encourage more people to be on the Board!

The Board of Directors is still Running a Business

Even during the COVID-19 pandemic, the Board of Directors still has a business to run. In addition, the Board of Directors must fulfill their fiduciary obligations to their members, which includes adhering to the terms of its governing documents. This means that the Board of Directors must continue to make all decisions in the best interest of the Association, a corporate entity. Projects, maintenance and repairs to the common areas still generally must be completed. A Board of Directors may reconsider completing a redecorating project, but it should not defer needed maintenance. After all, failure to maintain the common areas can be detrimental to the value of the Units and potentially open the Association up to liability. Delaying necessary maintenance generally results in greater costs to the Association and its members down the road.

We expect to see more requests for financial accommodations from Owners than we did in recent years. However, these requests must be balanced with the Board's legal authority as well as with the needs of the business. The Board of Directors must find a way to balance the Owner's need with that of the Association's need. Remembering that these are different times will help the Board in achieving this goal.

Collection of Assessments

COVID-19 has not only had a physical effect on our country, but also it has affected our economy. Only time will tell us the true impact it will have on the economy. However, we know from past experiences in 2007-08, that a severe downturn in the economy has an adverse effect on community associations. Assessments are the lifeline of all associations. While a Board of Directors could change the association's collection policy now, should it? It should not. It is not likely that a "one size fits all" collection policy will work in the immediate future. Instead, Boards should delegate specific authority to management, and a board member or two, to consider requests for payment plans (or other accommodations) from Owners. The Board should have a set policy that all such plans must be in writing, how late fees will be addressed, and what steps will be taken if an Owner defaults. The policies should not be dependent on the Board determining if the effects of COVID-19 are "detrimental enough" to an Owner so as to warrant a payment plan. The Board can agree to be more open with payment plans for Owners who did not default on their payments until April of this year. The ultimate goal with any payment plan should be to work with the Owner while collecting the money owed to the Association as soon as possible.

Amendments to the Association's Community Instruments

Over the last month, community associations have been faced with issues they never dreamed would be before them. It is during unprecedented times, such as this, that we see the actions, in retrospect, that we wish our Boards would have taken to make conducting association business easier. It is likely that we will see continued effects of COVID-19 throughout at least this year. Therefore, Boards should be looking to take action now to amend community instruments, adopt rules and regulations, and adopt policies and procedures to permit easier functioning of the Association.

Prior to closing certain common facilities, we learned how challenging it was to clean these areas and how important it was to prevent the spread of the virus. Association's rules should allow the Board to limit one's access to common facilities if the person is suffering from a contagious illness. Boards should be looking to adopt necessary Rules to permit electronic notice and aggressively solicit consent for such notices from its membership. In addition, Boards should be looking to adopt Rules, as needed, to allow for electronic voting or voting via absentee or secret ballot (for condominium associations, this requires adoption of rules at least 120 days prior to the annual election). To date, it has been much easier for associations that conduct elections by ballot to proceed as scheduled. Boards and management should be looking at those areas of association governance, which have been difficult to address or otherwise accomplish during this pandemic, and ensure that rules, policies and procedures are put in place to help assist the association in addressing those issues in the future.

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 delinquencies or other 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.

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