Association Contracts and the Coronavirus

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Despite efforts to contain the spread, the COVID-19 virus is already wreaking havoc on personal life and business dealings here in Florida. But are there legal ramifications for a community association that has a pending construction or renovation contract currently underway? Will the contractor be able to delay the completion of the contract, or even cancel the contract altogether? Is the association able to do the same? Depending upon the specific provisions in the contract, the answer to these questions may be “yes.”

“Force majeure” or “acts of God” clauses are provisions that are often included in construction contracts here in Florida. Such clauses generally protect the parties in the event that the contract or a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by the exercise of due care. The relief that is requested is typically a suspension of the parties’ obligations under the contract during the “force majeure” event and, if the event continues for a longer period of time, the right to terminate the contract.

In order to obtain this relief, a party to the contract will need to prove that the event that has materially impacted or rendered impossible the performance of the contract, falls within the definition of “force majeure.” Secondly, the party will need to comply with any notice provisions and other preconditions that may be referenced in the contract. These preconditions may require that the parties to the contract take reasonable steps to mitigate the losses caused by the event.

To maximize the chance of obtaining relief under a “force majeure” clause during this current pandemic, a party to a contract should consider both the direct impact the coronavirus may have had on their contract as an epidemic, as well as the effect of government actions, including travel restrictions, quarantines, rationing of supplies, and stay-at-home orders. The party considering a claim should compile as much evidence as possible on the effects of these events before making a claim.
Should a contract not contain a “force majeure” or act of God clause, a party may still seek to rely on the doctrine of “impossibility of contract.” However, this doctrine will only be available in limited circumstances where performance of the contract has become truly impossible, or where there has been a change of circumstances so fundamental that it would be unjust to hold the parties to their original agreement. Where the doctrine is deemed to apply, the contract will terminate and the parties will be released from all future obligations.

Finally, it is important to consider that effects associated with the coronavirus may trigger other contractual provisions, for example provisions entitling a party to claim extensions of time for the final completion of the project or more money because of the extension of the contract. Bonds and insurance policies related to a project may need to be extended, and workers may remain on the project longer, which can be costly.

In sum, any association that is in the midst of a contract may want to review their options during this crisis. Associations may also be approached by a contractor seeking to pause or even end a pending contract. Either way, the association should consult with their legal counsel to go over all of their legal options.