“Governor Signs COVID-19 Immunity Bill,” News-Press

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By: Joseph E. Adams

Most readers of this column know that each year, over the summer, we typically review the year’s legislative applicable to community associations. While I will do so, and there is some significant legislation that appears poised to pass, a recently enacted law dealing with COVID-19 liability is worthy of discussion now.

On March 27, 2021, Governor Ron DeSantis signed Senate Bill 72, which amends Chapter 768 of the Florida Statutes, a statute dealing with negligence. The new law provides liability protection to certain persons, business entities, and other institutions from claims related to COVID-19 infections. The statute defines business entities broadly, and includes not-for profit corporations, as defined by Chapter 617.01401 of the Florida Statutes. Because most community associations are organized as not-for-profit corporations, it appears to be the intent that they be protected under the new statute, although they are not “businesses” in the traditional sense.

The new law provides for a legal process by which claims based on COVID-19 must be brought. The process imposes significant legal hurdles on a plaintiff bringing a claim, including the requirement that the complaint (lawsuit) be accompanied by an affidavit, signed by a physician licensed by the State of Florida, stating the physician’s belief within a reasonable degree of medical certainty that the plaintiff’s COVID-19 injury was the result of the defendant’s acts or omissions.

The statute requires that the court first hold an evidentiary hearing to determine whether the defendant made a good faith effort to comply with public health standards. If the court finds that the defendant did make such a good faith effort, the defendant is immune from liability.

If the court determines that the defendant did not make such a good faith effort, the plaintiff may proceed with the lawsuit, but the plaintiff must show

that the defendant committed gross negligence in order for the defendant to be held liable. Gross negligence is a higher standard that is required in most civil cases.

Additionally, the statute also imposes a one-year statute of limitations on claims related to COVID 19. While the statute is not an absolute bar to claims based on COVID-19, it does appear to be welcome news for community associations. Of course, protection from liability should not be the only factor a board considers when addressing COVID-19 protocols, which unfortunately remain at the fore of the landscape as infections continue to spike in certain regions, the reach of vaccine efficacy remains a question, and "vaccination passports" become a subject of debate and contention.

Q: Can a candidate be nominated from the floor of the meeting for a condominium election? (H.M., via e-mail)

A: No. "Nominations" are not permitted in condominium elections. The unit owner, or other person qualified to run for the board, must provide the association with notice of their intent to be a candidate (or be seated on the board if there are not enough candidates to require a contested election).

This must be done in writing, and the notice of intent to be a candidate must be received by the association at least 40 days in advance of the annual meeting. At least 35 days before the election, a candidate may submit to the association an information sheet, no larger than 8 1/2 inches by 11 inches.

This law differs for homeowners' associations. If the governing documents require a condominium-style election, nominations are likewise not required to be permitted. Otherwise, parcel owners have the right to nominate themselves from the floor at the annual meeting.

Joseph Adams is an attorney with Becker & Poliakoff, P.A., Fort Myers. Send questions to jadams@beckerlawyers.com. Past editions may be viewed at floridacondohoalawblog.com.

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