

“Lessons We’re Learning from COVID-19,” FLCAJ Magazine

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The COVID-19 pandemic has rewritten the operational script for many industries, including the community association industry. As with most of life’s challenges, we are acquiring take-away lessons that will help us adapt even more quickly the next time a curveball heads our way.

The following lessons our boards, residents, and managers have learned over the last few months only reinforce the constants that those of us who have served in the community association arena have known for a long time: serving on a board of directors is not for the faint of heart, and you’re only as strong as your governing documents and the professional advisors you rely upon to make informed, reasonable decisions for your community.

There are surely more to come before the COVID-19 pandemic is truly behind us, but for now here are some of the important lessons we’ve been learning; some of us the hard way.

Government Won’t Solve Your Problems and May Even Contribute to Them

Governor DeSantis first declared a State of Emergency for Florida related to the COVID-19 virus on March 9th via Executive Order 20-52. President Trump declared a national state of emergency on March 13th. Since then Florida’s governor has issued numerous Orders to address, among other items, vacation rentals, quarantining out-of-state visitors, and the phased reopening of the Sunshine State.

In addition to the statewide state of emergency, countless counties and municipalities issued orders mandating which businesses and activities could remain open and available and which attractions and amenities had to remain closed. Some counties permitted community pools to reopen more quickly than

others with Miami-Dade being the last county to reopen its community pools, given that it had the highest number of infections in the state. Most counties had slightly different monitoring and cleaning requirements associated with reopening. For example, Broward County specifically prohibited guest usage of a community pool, while Palm Beach County's Order required that shower facilities be closed. Broward County's Order also specifically mentioned the option to remove all pool furniture, while other county orders did not. Sadly, none of these orders accounted for the manner in which private residential communities with elected boards of directors operate and the limitations they face in terms of a lack of insurance coverage for damages related to communicable diseases and limited manpower to monitor behavior and perform heightened cleaning protocols. The absence of a consistent message and a uniform set of safety guidelines from the various levels of government has clearly made a bad situation worse.

The entire situation became even more confusing when the Department of Business and Professional Regulation (DBPR) weighed in and issued Emergency Order 2020-04 on March 27th advising that certain (but not all) emergency powers found in Chapters 718, 719, and 720 of the Florida Statutes were available for use by boards of directors in the midst of this pandemic and then issued a follow-up Emergency Order 2020-06 on May 20th which declared that those emergency powers would end on June 1st. It is arguable that the DBPR exceeded its scope of authority in issuing either of its orders. However, it is indisputable that the DBPR undercut a board's ability to safeguard their residents despite the extension of the State of Emergency into July. This is a bona fide life safety issue, particularly in those communities with active infections or vulnerable demographics, and the DBPR's latest order left community association boards with considerable doubt as to their continuing ability to protect their residents and staff from the virus. Many boards have turned to counsel for advice on their options and the risks to the community associated with those various options.

All of the orders issued by local governments represented the minimum, or floor, of what boards could impose in terms of COVID-19 protocols, not the ceiling; although most association residents didn't see it that way. Many residents believed that when a county permitted pools to reopen subject to certain guidelines, it meant that their association pool should reopen regardless of if the association had the resources to reopen safely. Some of the most recent local orders provide for just the opposite. Simply put, they say, "If you cannot reopen in accordance with safety guidelines, do not reopen." Thankfully, many communities wisely worked with association counsel to reopen in a manner that made the most sense for their community.

Access Control Systems Help

Some boards knew before the pandemic hit that having an access control system for their amenities helps control potential violations and enhances security and enforcement efforts.

With COVID-19 the need to shut down access relates more often to life safety concerns and to comply with local orders. In communities where the pool, clubhouse, and fitness room are all accessed through the use of a key or fob, it was much easier to shut off access in the early days of the pandemic when such access was not permitted. Even after reopening, an access control system could help a board quickly shut off access to a violator who is putting the entire community at risk by not adhering to the county and association protocols with regard to reopening.

You Need Amendments to Your Documents Before You Need Them

Some associations were fortunate enough to have amended or rewritten their documents to incorporate emergency powers before this pandemic started. Those select communities could easily answer the pushback from certain residents about COVID-19 protocols by pointing to the authority granted to the board in their documents. Most boards, however, did not have this authority under their documents and thus had to rely on government orders and sought legal opinions to confirm what powers they did have. Associations should seek to incorporate a number of COVID-19 lessons learned into their documents, including the following:

- Amend their leasing and sales screening provisions to allow a delayed move-in date in the midst of a medical crisis or other state of emergency;
- Amend their documents to allow the board to special assess an owner for heightened cleaning costs related to that owner's (or tenant's, guest's, occupant's) behavior in the midst of a medical crisis;
- Amend their short-term rental provisions if short-term rentals are permitted in the community to allow the board to suspend that activity in the midst of a medical crisis;
- Amend the unlawful use section of their documents to include examples of residents violating a quarantine or other emergency orders being an unlawful use of the unit;
- Amend their owner alteration section to allow the board to hit pause on interior unit construction in the midst of a medical emergency; and
- Amend their governing documents to allow the board to shut off access to certain portions of the property and curtail access by non-residents when the safety of residents and staff requires it.

Reserves and Lines of Credit Help You Weather the Storm

We do not yet know the full economic impact that COVID-19 will bring to our communities, but with the highest number of Americans out of work since the Great Depression, it is fairly certain that most communities will feel some sort of pinch. Reserves and lines of credit allow an association to tap into those funds to ease the financial burden on the owners. This is especially true for Florida communities that are contending with a pandemic while also bracing for a six-month hurricane season, which can result in unexpected and uninsured losses.

Being Understaffed Can Come Back to Haunt You

Many communities operate on lean budgets, but sometimes that can cost you more in the long run when a crisis hits. This is a lesson that has hit self-managed communities particularly hard in the time of COVID-19. Every board operating a community with a pool or a gym was being pressured daily to reopen those facilities whether it was wise to do so or not. When the local orders permitted such reopening were released, those orders were conditioned upon communities putting certain safeguards in place. Many communities simply did not have the staff in place or the financial resources to be able to safely open their pools and other amenities. Naturally, a cottage industry cropped up with companies offering monitoring and cleaning services; but their price tags were high, and they were unknown entities. As an alternative, some communities relied upon community volunteers or even board members to monitor the amenities to ensure that social distancing and regular cleaning were occurring, but the wisdom of that choice, particularly in terms of whether such volunteers were covered by the association's insurance, remains to be seen.

The biggest collective lesson we're learning is that the proverbial cavalry is not coming to the rescue. The input from government officials across the board has been inconsistent, confusing, and lacking full acknowledgement of how private residential communities are operated. Volunteer boards and their professional advisers will have to continue to make the best decisions regarding association operations and enforcement in order to provide the standard of due care that their residents deserve.