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DBPR CLARIFIES THAT EMERGENCY POWERS ARE AVAILABLE TO CONDOMINIUM AND HOMEOWNERS' ASSOCIATIONS

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My March 16, 2020 post explained that it was not clear whether the emergency powers available to condominium and homeowners associations were applicable to address matters related to COVID-19 given the language in the statutes limiting their applicability to matters "in response to damage caused by an event for which a state of emergency has been declared."

On March 27, 2020, the Department of Business and Professional Regulation ("DBPR") clarified that the emergency powers set forth in Sections 718.1265 and 720.316 of the Florida Statutes are available to condominium and homeowners association during the current declared state of emergency to protect the health, safety, and welfare of the association, owners and their families, tenants, guests, agents and invitees. In Emergency Order 2020-04, DBPR specifically ordered that:

The limitation within section[s] 718.1265(1) and 720.316(1), of the emergency powers of a board of directors during a declared state of emergency being conditioned upon a "response to damage caused by an event" is hereby suspended. The emergency powers available to a board of directors. As described in section[s] 718.1265(1)(a)-(j) and 720.316(1)(a)-(h), Florida Statutes, are hereby available to protect the health, safety and welfare of the association, unit owners and parcel owners, unit owners' and parcel owners' family members, tenants, guests or invitees.

The special emergency powers that are available the condominium and homeowners association boards of directors include the power to (i) conduct board meetings and membership meetings with notice given as practicable, (ii) cancel and reschedule association meetings, (iii) implement a disaster plan before or immediately following the event for which the state of emergency is declared, (iv) determine any portion of association property unavailable for use or occupancy based on the advice of emergency management officials or licensed professionals retained by the Board.

Action taken pursuant to the emergency powers must be reasonably necessary to protect the health, safety and welfare of the association, owners and their family members, tenants, guests, agents or invitees.

In addition, Emergency Order 2020-04 suspends and tolls the timing requirements for condominiums associations' financial reporting. Specifically, the requirements that condominium associations (i) complete a financial report for the preceding fiscal within 90 days after the end of the fiscal year and (ii) provide a copy of the financial report, or a notice that a copy of the financial report is available, to each unit owner within 120 days after the end of the fiscal year are suspended during the duration of the order.

Emergency Order 2020-04 is in effect until the expiration of the Governor's declared state of emergency. A copy of Emergency Order 2020-04 is set forth is attached as a PDF.

The COVID-19 pandemic is creating rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this post is issued. We therefore encourage you to monitor our website, review our future posts and generally remain alert for additional updates or modifications to laws and regulations.

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