



# COMMUNITY MATTERS

LUEDER, LARKIN & HUNTER

News and Trends in Community Association Law

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## In Light of the Recent “Stay at Home” Order Mandated by Governor Kemp, Should Common Areas and Amenities Remain Open? And What About Having Guests?

by | Cynthia C. Hodge, Esq.

As we now know, a state-wide “stay-at-home” executive order (“Order”) goes into effect on April 3, 2020. It is intended to continue through April 30, 2020, although it is possible

that it could be extended. The primary purpose of this Order is to implement greater restrictions to limit the spread of COVID-19 throughout our communities. The Centers for Disease Control and Prevention (“CDC”) and Georgia Department of Public Health, in conjunction with other state and federal health officials, recommend stricter shelter actions to protect the safety and well-being of our residents.

In light of this Order, our firm recommends that non-essential common areas and amenities, including, but not limited to, the pool, gym, and clubhouse be closed until further notice. This Order would alleviate the need for the Board to take formal action in accordance with the governing documents. With respect to amenities, such as tennis or pickleball courts, our firm generally recommends that they be closed, as well, especially if there is not a way to regularly disinfect the gates, benches, etc. If you wish to discuss whether certain conditions could be imposed to keep an amenity open, please contact your association’s counsel for further guidance.

It is also our recommendation that access to all other portions of essential common areas (e.g., building lobby, building parking garage, etc.) be limited except to provide necessary ingress and egress to and from an owner’s unit.

The association should also implement procedures to increase sanitation/disinfection of all common areas. Special consideration should be devoted to high traffic areas, including doorknobs, tables,

desks, handrails, and elevator button. The Board should also consider limiting access to the common areas by vendors except for necessary maintenance or repairs. That said, certain vendors who perform outdoor services without regular contact with people, such as deliveries, landscaping, pool, and contractors are excepted under this Order.

Much like the guidelines that are regularly evolving as we learn how this virus spreads, so too will the association’s policy on closing common areas and amenities. The Board will need to take steps in providing good communication and updates to its members, in light of this Order and moving forward.

Importantly, we must point out that the Order limits residents from having guests and vendors at their homes. For those associations that have controlled access with guest registration (at the community entrance or with the lobby concierge), our

firm recommends that you speak with your association’s counsel to consider drafting enforceable rules pertaining to guests and vendors during this time.

If the Association becomes aware that someone has tested positive, the Association should: (1) notify the community without disclosing identifying information and (2) complete a full cleaning of all common areas.

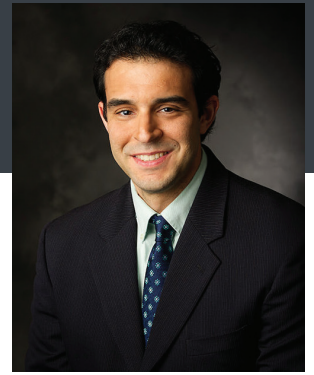
Further, it is our recommendation that all residents be familiar with and follow all guidelines and recommendations of the CDC and governmental officials. Each resident should continue to keep informed of any changes or updates to those guidelines and recommendations.

Our firm is committed to working with and providing guidance to association clients during this difficult time. Please contact your association’s counsel, should further questions arise. ❖



# Collection of Assessments During the Time of COVID-19

by | **Stephen A. Finamore, Esq.**



During these difficult and uncertain times, our firm has been receiving inquiries from clients concerning collection activities. The inquiries have ranged from whether assessments and

out-of-pocket expenses should be waived or forgiven, to whether collection efforts should be delayed or canceled. Our firm recommends that an association's standard operating procedure for collections should not be significantly altered during the COVID-19 pandemic.

## **Reduction, Stay, or Waiver of Assessments**

The assessments levied in the 2020 budget should remain in effect. Governing documents rarely permit a board to unilaterally reduce, stay, or waive any portion of the annual assessment or installments thereof. Even if a board is authorized to effectuate a change to the assessments, this would not be a prudent budgeting decision. The board cannot be certain how the association's financial needs may be impacted over the next several months. It may very well be that the assessments received from those who are able to pay over the next several months will be critical for operation of the association.

Assessments, late fees, interest, and other such charges should continue to be due according to Association's routine practices. Issuing a policy suspending all consequences for nonpayment before owners have decided whether to pay, undermines the goal of encouraging owners to continue to pay. By removing consequences, non-payment of assessments may become a self-fulfilling prophecy. Continuing routine practices is also a good way to incentive individuals who are experiencing hardship to approach the board with a proposal for resolution.

## **Working with Owners**

As always, facilitating voluntary payment from owners remains the most cost and time efficient manner of collecting unpaid amounts. The Association should communicate with the community requesting that any owner that is experiencing financial hardships as a result of COVID-19 pandemic to contact the Association. We encourage the Association to work with those owners to reach a reasonable plan to arrange for payment of assessments. Our firm is committed to working with our clients to help facilitate and finalize such payment plans.

In reaching agreements with owners, it is important to try to secure predictable timelines and assurances of payment. The agreement should identify a predictable schedule for payment and secure a remedy to the Association in the event of default. Waiver of late fees and interest should be deferred until the terms of the agreement have been completed. This operates as an incentive for compliance.

## **Collection Activities**

It is important for communities not to suspend, terminate, or delay all attempts to obtain payment of assessments. While the current situation is presenting challenges to owners and associations, boards need to balance the issues owners are facing with ensuring the interests of the association and the overall community are protected. Working with owners that are experiencing financial hardships as a result of COVID-19 is important, it is also important for boards to

take reasonable, appropriate actions to place the association, the community and the owners in the best possible position when the current situation is ultimately resolved.

So far, the ability to file recorded notices of lien, file lawsuits, serve those lawsuits, and file garnishments has remained mostly intact. While we are now beginning to see delays with our private process servers, it is important to recognize that this will be temporary. It is also important to recognize that many collection matters that have already been started may not yet be at the point where a potential delay or complication would be a concern. While there have been some delays in getting judgments entered and some limitations on filing garnishments, many of our firm's collection matters may still be months away from being at that point. For example, matters that have not yet been turned over for collections are a month away from recording a notice of lien and would be more than a few months away from the ability to garnish. It is also important to understand that the statute of limitations of four years for collecting assessments has not been, and most likely will not be, changed. Failing to take proper steps now may limit or defeat the available options later.

When the world returns to normal (and it will return to normal), the association's financial wellbeing may be significantly impacted by the actions taken and the decisions made concerning collection of assessments during this difficult time. ❖



# During These Unprecedented Times, How Should My Association Conduct Meetings? Is A Virtual Meeting Platform an Option?

by | Cynthia C. Hodge, Esq.

Over the past few weeks, we have seen a variety of social distancing and stay-at-home orders implemented by local governments, but the differing restrictions may not have been

as effective as local and state officials had hoped. As a result, a state-wide “stay-at-home” executive order (“Order”) goes into effect on April 3, 2020 and is intended to continue through April 30, 2020, although it is possible that it could be extended. Governor Kemp signed this order after receiving guidance from state and federal health officials and in light of the progressing statistics facing our state.

Below, we provide general guidance on conducting meetings during these unprecedented times.

## Membership Meetings

If the Association has any annual membership meetings scheduled in the coming weeks, it is our recommendation that those meetings be canceled and rescheduled for a later date. The Georgia Nonprofit Corporation Code (“Code”) provides that “failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation’s bylaws does not affect the validity of any corporate action.” As such, pursuant to Georgia law, the postponement of an annual meeting will not invalidate the actions of the Association. Additionally, postponement of any special membership meeting scheduled in the coming weeks is recommended.

The Board may want to consider taking an action (e.g., conducting an election) without a meeting during this time. Importantly, the Code permits such actions to be taken without a meeting if a majority of the members consent in writing to taking such action. However, your bylaws may require a higher or unanimous consent, so

it will be important for your association’s counsel to review your governing documents to evaluate this further.

Alternatively, elections can be conducted by written ballot, and one does not need a majority of all owners to approve. Rather, an association would need enough responses to reach quorum. Written ballots are a possible option, unless limited or prohibited by the bylaws or articles.

## Virtual Membership Meetings

Is conducting a virtual membership meeting an option? In certain situations, yes. By way of example, smaller associations, such as those that may have twenty or less Units or lots, may be able to reach out to all of its members to organize and run a virtual meeting without excluding anyone who is entitled to attend and vote at said meeting. It may be easier for the President, as the potential moderator of the virtual meeting, to allow for voting on certain actions.

Now, for larger associations, it would be more difficult to confirm that all owners have the ability to participate during a virtual meeting. Being able to vote on an action, such as an election by secret written ballot, would be challenging. Ensuring that all owners either have a computer or mobile device and the comfort to utilize the technology becomes more challenging, when we increase the size of the association. As such, virtual membership meetings for larger associations may not be feasible or practical, but not impossible.

For discussing your association’s needs further and investigating whether virtual

meeting option is possible, we encourage you to reach out to your association’s counsel.

## Board Meetings

Finally, as it pertains to Board meetings, it is our recommendation that the Association implement policies for Boards to meet via teleconference or virtually, in accordance with this new Order. There are several ways that the Board can continue to conduct the affairs of the Association while still limiting in-person interaction.

For instance, the Code provides that any and all directors may “participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting.” Provided that there are no limitations in your bylaws, the Board can conduct Board meetings by a conference call, GoToMeeting, Zoom, or such other similar means of communication.

Further, your association bylaws may provide that any action by the Board that is required or permitted to be taken at any meeting may be taken without a meeting if a requisite majority of the members of the Board consent in writing to such action. As such, utilizing email to conduct the business of the Association can be an appropriate measure.

If you have further questions about how your association can conduct membership and board meetings, please contact your association’s counsel for further guidance. ❖



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