

MERCERTRIGIANI

Living & Governing Through Coronavirus (and other Acts of God or *Force Majeure*)

Economics of Coronavirus

The Coronavirus pandemic is threatening all aspects of life in the Commonwealth of Virginia, and the world – including our typically strong economic foundation. While associations may not be impacted directly by what happens on Wall Street, boards should anticipate Coronavirus-related impact on association cash flow, whether due to unanticipated expenses or an increase in nonpayment of assessments.

Assessments – As with federal government shutdown of late 2018 and early 2019, boards should anticipate and plan for an increase in the number of owners unable to pay assessments as a result of business closures. Reduced assessment revenue means less funds on hand to pay association expenses.

While typical assessment collection policies include penalties like late charges and filing legal action, boards may consider suspending penalties or other actions as a way to help neighbors who may find themselves in financial distress. The association may offer payment plans to assist owners in managing payments before initiating legal action – total payment and compliance are the ultimate goals. Forbearance on assessments is *not* recommended.

In order to secure the debt, associations should continue to record assessment liens. The emergency circumstances created by the coronavirus will not and cannot relax legal deadlines for recording liens to secure unpaid assessments. Contrast that with filing legal action – for which the statute of limitations on a claim is three years. Because suits may be filed at a later date and court schedules are uncertain, suspending legal action may be advised.

Unexpected Expenses – Depending on the community, boards should anticipate unexpected and increased expenses as a result of changes necessitated by or resulting from managing through the Coronavirus crisis. Unforeseen circumstances may create expenses that could not have been anticipated during budget development. For example, associations may encounter increased common space cleaning costs or increased utility usage (because so many are working from home).

Navigating budget shortfalls, whether resulting from increased expenses or decreased revenues, may include using accumulated operating reserves, if available. Or, it may be necessary to adjust the budget by reducing other expenses (such as reserve contributions) or to borrow from reserves in the event operating reserves are insufficient.

Boards should seek guidance from association management and auditors to determine appropriate courses of action in managing budget shortfalls. Governing documents and tax consequences may limit how funds can be used and should be carefully considered.