

MERCERTRIGIANI

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

Frequently Asked Questions

Associations governing, operating and administering communities across the Commonwealth of Virginia are finding it necessary to navigate the impact of the Coronavirus pandemic at a thunderous pace. Volunteer leaders and community association managers are asking challenging questions. Some of the questions associations are frequently asking are set out below followed by responses.

There is no universal approach to the circumstances communities have been called upon to address. So, care must be taken to consider the nature and size of your community and the constituency you serve. It also is important to seek guidance when developing solutions. Volunteer leaders are called upon to be mindful of lessons learned – including the importance of planning and communicating the plan.

1. Can a board of directors meet remotely – by teleconference or electronically?

Yes, **but only if** (i) at least two board members are physically present at the meeting location *and* (ii) everyone participating in the meeting can be heard clearly by meeting attendees. Boards must limit physical attendance to no more than **ten** people to comply with Executive Order Number 53 (“Order”) issued by the Governor of Virginia. An open forum must be provided.

Boards should strongly consider canceling all regular board meetings, only convening by special meeting to take action when necessary. Boards also may take action outside of a meeting pursuant to authority established in governing documents and Virginia law, by written consent.

For more information and additional recommendations, the MercerTrigiani Coronavirus guidance document addressing *Board Meetings* offers more detailed discussion.

2. Must the association notify residents if a resident tests positive for COVID-19?

No, because associations are **not** responsible for health, safety and security of residents, associations are not obligated and in fact may be prohibited from sharing personal health information of residents.

Boards should adopt a common-sense approach considering the impact of sharing information on the community and community members. If a board feels compelled to notify residents that a community member has tested positive, that decision must be based on the determination that notification is in the best interests of the association. However, care must be taken to preserve individual privacy interests – any health information obtained by the association should be maintained confidentially in owner unit or lot files and should not be provided under any circumstance except where required by law or where authorized by the resident.

3. Should the board of directors close all common spaces and facilities?

Among other measures, the Order prohibits public and private gatherings of more than ten individuals and requires closure of all fitness centers, gymnasiums, recreation centers and indoor sports and exercise facilities. Associations *must* close any common facilities within the scope of the Order. For other common spaces (e.g., outdoor playgrounds, playfields, trails), associations must limit use to ten people *and* cleaning of touched surfaces should be increased. If boards cannot enforce limits on gathering or clean surfaces in accordance with CDC and other health organization recommendations, common spaces and facilities should be closed.

4. What should the board do about the onsite association office?

Associations are responsible for taking reasonable steps to maintain a safe workplace for employees. Reasonable steps may include increased cleaning of workspaces and encouraging employees to practice preventive hygiene. Because onsite offices receive regular foot traffic, boards may consider reducing operating hours, limiting resident access to the office (e.g., email or written communication only except in emergencies) or even closing the office and implementing a remote work policy.

Staff capabilities should be assessed along with whether the association can operate with a remote workforce. If the association is a *covered employer* under the Families First Coronavirus Response Act (“FFCRA”), the association must follow paid leave and other requirements established in the FFCRA, including posting required signage.

5. Can the board limit the number of owner guests and contractors allowed onsite?

To the extent permitted by association governing documents, boards may consider adopting rules limiting the number of guests using common spaces. Limiting access to individual lots or units may be subject to challenge. But, boards may have authority to establish policies requiring reimbursement for additional expenses incurred resulting from guest or contractor access. Non-essential work or visits should be limited.

6. What should we do about our upcoming annual meeting?

Because the Order prohibits gatherings of more than ten people, convening an annual meeting is problematic. Unless association governing documents require the meeting to be attempted, boards should strongly consider postponing the annual meeting. If the decision is made to proceed, owners should be encouraged to submit proxies.

For more information and additional recommendations, the MercerTrigiani Coronavirus guidance document addressing *Member Meetings* offers more detailed discussion.

7. Should the association suspend assessment collection efforts?

Forbearance on assessments is *not* recommended. Associations should continue recording assessment liens because emergency circumstances do not extend legal deadlines established in community association statutes. But, boards may consider suspending penalties like late charges and filing legal action. The association may offer payment plans to assist owners in managing payments before initiating legal action – total payment and compliance are the ultimate goals.

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March 27, 2020