RUGGIERI
LAW FIRM

MONTHLY NEWSLETTER

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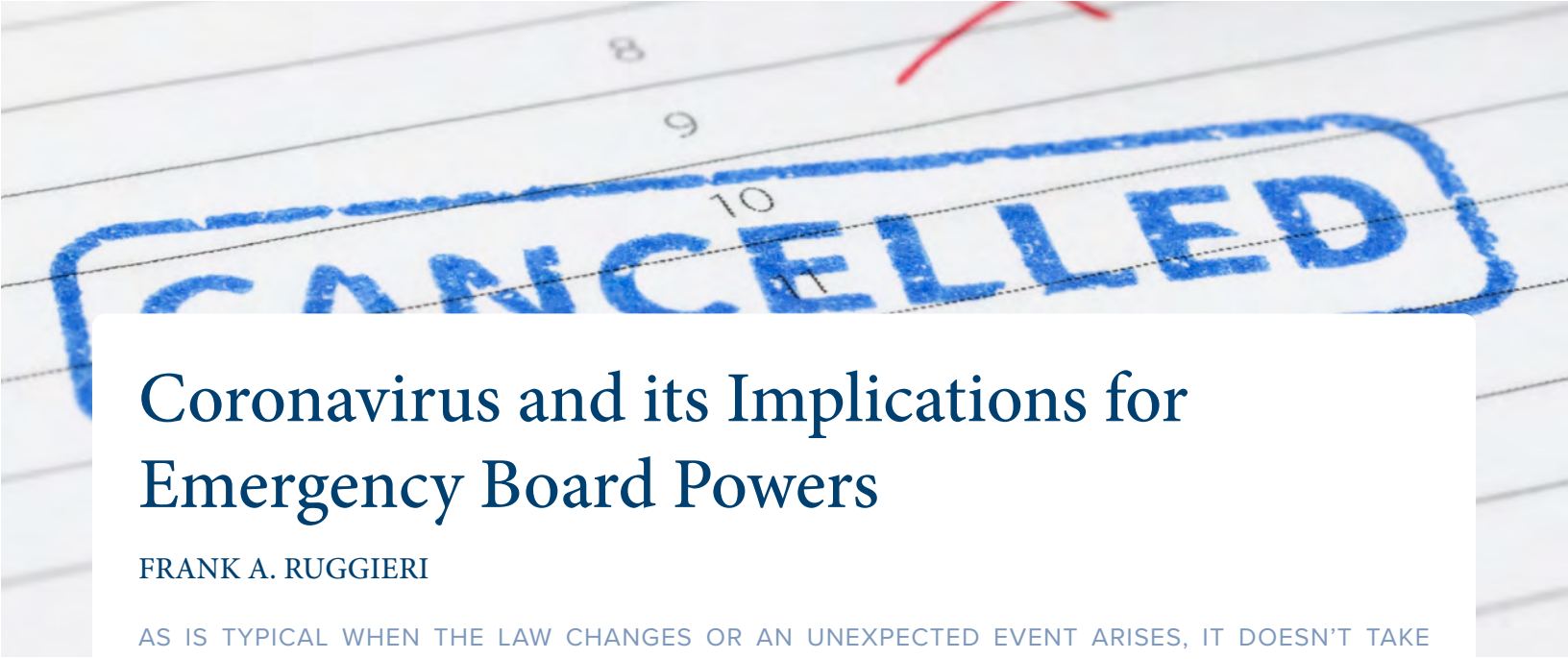


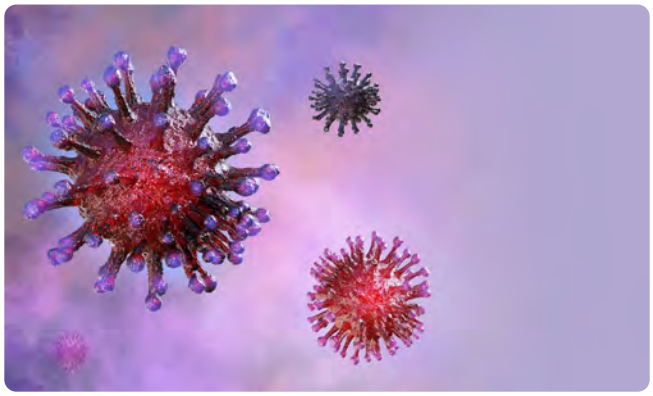
Coronavirus and its Implications for Emergency Board Powers

FRANK A. RUGGIERI

AS IS TYPICAL WHEN THE LAW CHANGES OR AN UNEXPECTED EVENT ARISES, IT DOESN'T TAKE LONG FOR THE ISSUE TO IMPACT ONE OF OUR FIRM'S CLIENTS IN A DIRECT AND MATERIAL WAY. THE CURRENT CORONAVIRUS PANDEMIC HAS HAD AN IMMEDIATE IMPACT ON ALL OF US, INCLUDING COMMUNITY ASSOCIATIONS.

Overnight, the way we socialize and interact with one another has been irretrievably impacted while nature and science find a conclusion to this horrible circumstance. The real-life impact includes the potential need to take action on an immediate basis by community associations, including the conduct of Board and Membership meetings. This has led to immediate and difficult questions concerning the Board's authority to alter the conduct and notice of its Board and Membership meetings, in addition to access to the Association's recreational and other facilities. Can the Association conduct Board and Membership meetings by digital or electronic means? Must the Association close a community recreational facility? Can it face liability should it fail or refuse to do so? These and many other questions must be met head on with little or no guidance to lead the Board's decisions.

Thankfully, Florida law does provide at least some recognition to difficult circumstances and the need to potentially make exceptions with respect to access to meetings, the conduct of meetings and elections, and the right of every homeowner to utilize and enjoy the common facilities. Chapters 718 (F.S. 718.1265) and 720 (F.S. 720.316) specifically address Association emergency powers where a state of emergency has been declared pursuant to s. 252.36, Florida Statutes "in response to damage caused by an event for which a state of emergency..." has been declared. The powers include the power to conduct Board meetings and Membership meetings without strict adherence to notice requirements, canceling and rescheduling meetings, and making portions of the community unavailable for entry or occupancy based upon the advice of emergency management officials or licensed professionals.



Rescheduling meetings or conducting them by alternate means are likely to be reasonable implementations of Board emergency powers. Deadlines in the governing documents or state statutes for action are a bit more difficult to navigate in these uncertain times. Where the documents or the statute require action within a certain timeframe (i.e., 30 days to reply to an ARB application or 60 days to address an item identified by Petition of homeowners), it will likely be necessary for the Board to explore options to conduct the meeting by alternative means. A Board or ARB Meeting can be conducted telephonically or by videoconference. If this option is not available to the Association without significant expense or equipment upgrades, providing notice to the homeowners of a time-certain delay in the meeting or decision of the ARB may be a viable option. For example, homeowners with pending ARB applications may be notified that the ARB will either meet to address their application or approve it within a time certain which is beyond the deadline but within a reasonable period of time (i.e., 30 to 45 days).

A novel crisis like Covid-19 and its current impacts will inevitably lead to novel and imperfect solutions. I believe the Board's primary and perhaps only obligation is to act in good faith with the best interests of the community in mind and explore all viable options when met with deadlines or the need to conduct meetings safely. Provided the Board conducts a reasonable investigation into its alternatives, the ultimate decision is less likely to be questioned.

As always, work closely with your Association counsel to guide the Board through this most difficult of times. ■

The Association's Right to Self-Determination

ANTHONY T. PARIS, III

SERVING AS A DIRECTOR ON A COMMUNITY ASSOCIATION'S BOARD OF DIRECTORS, (OR EVEN AS A MEMBER OF ITS ARCHITECTURAL REVIEW COMMITTEE), CAN BE STRESSFUL FOR A NUMBER OF REASONS; NOT THE LEAST OF WHICH IS THE POSSIBILITY OF GETTING YOURSELF OR THE ASSOCIATION SUED.

Luckily, "the business judgment rule" serves not only to protect individual directors from personal liability for their decisions while on the board, but also serves to protect the community association as well. Furthermore, thanks to the business judgment rule, Florida courts will not second-guess the board of director's decision when it determines that the directors appropriately exercised their business judgment or discretion. So how does this rule work?

In situations where the association has the contractual or statutory authority to perform an act, and its board of directors acts *reasonably* in having said act performed, the directors and the association will be protected from any liability resulting from said act. The term *reasonably* is emphasized here, since reasonable minds can differ. However, where the directors take care to inform themselves on the pertinent issue, and make their decision based on the information available to them, the courts will likely give their decision deference and protect them from liability.

A good example of this concept in action is the case of Miller v. Homeland Property Owners Association, Inc. In Miller, the board of directors decided to approve an owner's garage addition based on documents provided to them by the owner's hired engineer, as well as, the local building department. Initially, the board of directors suspected the addition was in violation of the association's governing documents; however, upon reviewing the materials submitted to it, the board decided to give the improvement its blessing. Consequently, when a different owner sued the association claiming a different engineering firm could attest to the garage addition's non-compliance with the governing documents, the court held that the association and its directors were protected by the business judgment rule. In Miller, the court reaffirmed the notion that where the association's board of directors exercises its business judgment, the decision will not be second-guessed.

It can be said that at the heart of a community association's purpose is the right of homeowners to self-determine the type of community in which they wish to live in. This is achieved through the election and appointment of a board of directors, as well as, corresponding committees. The decisions reached by these delegative bodies represent the will of the community and should not be subject to the scrutiny of outside parties. Of course, these decisions must be reasonable and serve the best interest of the community as a whole. Therefore, the brilliance of the business judgment rule lies not only its ability to protect communities and their directors from liability, but also in its capacity to strike a balance between the community's right to self-determination, and the necessity of employing reasonableness in its self-governance. ■

UPCOMING EVENTS

All of our classes have been postponed until further notice.
If you have any questions, email us at contact@ruggierilawfirm.com.

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