



## **How to Be Resilient and Overcome the Impact from COVID-19**

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In light of the COVID-19 pandemic, community associations will need economic stability, strong community relations, and to mitigate risks to the extent possible. All of these goals will depend on the ability of boards to communicate well and work together. Boards will need to put aside their personal differences, emotions, political views, etc. and focus on strategies that will further the interests of the community and its residents.

Indeed, personal concerns about the COVID-19 pandemic is impacting the interactions of community members and board of directors. For obvious reasons, fear and anxiety about the virus can lead to strong emotions and stress. Coping with stress, being understanding of your own feelings and the feelings of others, and focusing on the operations (and other important tasks) of the association will make your community stronger.

Although meetings are being held virtually or through conference calls, boards should maintain as much formality and adherence to the Open Meeting Act as possible, such as continuing a homeowner forum. In this same regard, board members must still make tough decisions, review and understand the facts, consult with experts, and make decisions in the best interest of the community. The business of the association should continue. Many legal experts agree, and the attorneys at SwedelsonGottlieb advise, that boards implementing the above strategies will be protected by the business judgment rule as well as other protections afforded under the law and the governing documents.

With the foregoing in mind, we will explore some hot topics that boards are confronting during the pandemic.

### **Reopening**

Understandably, with the mixed media reports and conjecture surrounding recovery efforts, there may be dissention about the best course of action for associations considering the re-opening of community amenities. For example, with the warmer weather, boards may feel pressure to open the common area pool areas. However, given the risks associated with COVID-19, associations will no doubt be exposed to liability even if a re-opening policy that waives liability and indemnifies the association is



adopted. In this regard, boards may consider retaining a qualified medical expert to provide advice concerning re-opening, in light of the unique characteristics of the community and its resources to execute the plan. Like the State's phased approach, we may see communities taking different paths. Many communities might feel comfortable opening when the public health departments lift the applicable orders. Other communities, such as a senior community, might choose to remain closed and see how other communities fair before opening. Whichever path the community takes, it will be unique to the particular community and reopening efforts and planning should be well-documented and thought-out. The reopening plan and reasoning should be communicated to the membership as soon as possible, based on expert consultation, which will go a long way to mitigate the liability risks associated with reopening.

### **Assessment Collection**

The economic fallout from the stay at home orders is still an unknown. Many owners are misinformed about whether HOA assessments are still owing, and owners may be unable to pay assessments. According to several reports, there is an unprecedented number of Californians filing for unemployment, owners are already requesting late fee waivers, and it is only going to get worse. While some may advocate for leniency, community associations only have one source of income. If too many members cease to pay assessments, associations will likely be unable to pay for essential services, such as common area maintenance, insurance, etc. Associations that end up in this predicament will be scrutinized by paying members. Those that did not try to pursue outstanding debts or implemented too lenient a plan may be subject to litigation by these members. To reduce liability, savvy boards will reach out to delinquent members and encourage them to seek payment plans and work out as many reasonable payment plans as possible. Boards should also consider communicating to the membership and clarifying the owners' payment obligations and payment plan policies.

### **Disagreements on the Board**

When there is a dissention amongst the board, the dissenters have a fiduciary duty to support the decision of the majority. Dissention that turns into hostility is not acceptable. As always, boards should attempt to discuss the issue informally in an attempt to resolve the issue amicably and consider adopting a Code of Conduct policy that discloses the various fiduciary duties owed by directors. Despite these efforts, if the rogue director is disclosing confidential information, undermining board decisions, creating a hostile environment, and/or otherwise making it impossible to conduct board business, the board may need to explore the enforcement mechanisms available in the Governing Documents, including censure, creating an executive committee, excluding the unruly board member from meetings on the topic causing disruption, and/or imposing sanctions. Associations should confer with corporate counsel to proceed with this action.



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In closing, we have seen great efforts on behalf of CAI, management companies, and service providers to keep our world moving. These are challenging times. No one should feel like they are in this alone. We are all together while #saferathome. We urge you to stay involved, stay informed, and take care of your health and wellness.