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DBPR Emergency Order 2020-04 Suspending Damage Requirement For Condominium Association Emergency Powers

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On March 27, 2020, Florida's Department of Business and Professional Regulation ("DBPR") issued Emergency Order 2020-04 in response to the severe outbreak of the Novel Coronavirus Disease 2019 ("COVID-19").

This Emergency Order suspends one of the preconditions on an association's use of statutory emergency powers upon a "response to damage caused by an event," which qualifying language is contained in Sections 718.1265(1), 719.128(1) and 720.316(1), Florida Statutes, of the Condominium Act, Cooperative Act, and Homeowners' Association Act, respectively. This qualifying language raised some concern among Florida communities of the applicability of the association's emergency powers in response to damages caused by infectious diseases in lieu of damages more commonly associated with hurricanes, floods, or other natural disasters. The Emergency Order affirmatively authorizes the use of an association's emergency powers under Sections 718.1265(1)(a)-(j), 719.128(1)(a)-(j) and 720.316(1)(a)-(h), Florida Statutes, to protect the health, safety, and welfare of the association, owners, family members, tenants, guests, agents, or invitees. Section 718.1265(1)(a)-(j), and the substantially similar language in Chapters 719 and 720, provides the association with the following emergency powers:

a) Conduct board meetings and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on the condominium property or any other means the board deems reasonable under the circumstances. Notice of board decisions may be communicated as provided in this paragraph.

- (b) Cancel and reschedule any association meeting.
- (c) Name as assistant officers persons who are not directors, which shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.
- (d) Relocate the association's principal office or designate alternative principal offices.
- (e) Enter into agreements with local counties and municipalities to assist with debris removal.
- (f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include, but is not limited to, shutting down or turn off elevators; electricity; water, sewer, or security systems; or air conditioners.
- (g) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.
- (h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.

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(i) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

The exercise of these emergency powers may still be prohibited by provisions in the association's governing documents, and associations should consult with counsel regarding your specific legal situation. Additional provisions of the Emergency Order clarify that emergency management officials under Chapter 718 and 719 commonsensically includes "public health officials," and suspends certain financial reporting requirements for condominiums, cooperatives, and timeshares.

For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our Shumaker COVID-19 Client Resource Center at [shumaker.com](https://www.shumaker.com). We have also established a 24/7 Legal & Legislative Helpline at 1.800.427.1493 monitored by Shumaker lawyers around the clock.

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