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Client Alert: DBPR Emergency Order 2020-04 Suspending Damage Requirement For Homeowners' Association Emergency Powers

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MEDIA CONTACT

Wendy M. Byrne
wbyrne@shumaker.com

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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 720.316(1), 718.1265(1) and 719.128(1), Florida Statutes, of the Homeowners' Association Act, Condominium Act and Cooperative 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 720.316(1)(a)-(h), 718.1265(1)(a)-(j) and 719.128(1)(a)-(j), Florida Statutes, to protect the health, safety, and welfare of the association, owners, family members, tenants, guests, agents, or invitees. Section 720.316(1)(a)-(h), and the substantially similar language in Chapters 718 and 719, provides the association with the following emergency powers:

- a. Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.
- b. Cancel and reschedule an association meeting.
- c. Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.
- d. Relocate the association's principal office or designate an alternative principal office.

- e. Enter into agreements with 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, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.
- g. Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.
- h. Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

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.