

**EMERGENCY ORDERS:
EXPANDING ASSOCIATION EMERGENCY POWERS
AND
OUTLAWING VACATION RENTALS¹**

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Dear Colleagues

Late Friday the Governor and the Department of Business and Professional Responsibility issued Emergency Orders that have immediate and significant impact to Florida real property law, and its practitioners.

ASSOCIATION EMERGENCY POWERS

Secretary of the Florida Department of Business and Professional Regulation, Halsey Beshears, entered [Emergency Order 2020-04](#).

Those administering these Florida community associations, managers, officers and directors have been looking for an official statement confirming their authority to take protective actions, and how to do so.

The Order seeks to allow the emergency powers provisions of the Florida Condominium Act, Cooperative Act and Homeowners' Association Act to apply to the current State of Emergency by waiving the limitation of the Acts to ""response to damage caused by an event"

The operative text for each of the Acts is the same, except for statutory references:

Application to Condominium Act:

The limitation within section 718.1265(1), Florida Statutes, of the emergency powers of a condominium association during a declared state of emergency being conditioned upon a "response to damage caused by an event" is hereby suspended. The emergency powers available to condominium associations' boards of administration, as described in section 718.1265(l)(a)-(j), Florida Statutes, are hereby available to help protect the health, safety, and welfare of the association, unit owners, unit owners' family members, tenants, guests, agents, or invitees.

Application to Cooperative Act:

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The limitation within section 719.128(1), of the emergency powers of a cooperative association during a declared state of emergency being conditioned upon a "response to damage caused by an event" is hereby suspended. The emergency powers available to cooperative associations' boards of administration, as described in section 719.128(1)(a)-(j), Florida Statutes, are hereby available to help protect the health, safety, and welfare of the association, unit owners, unit owners' family members, tenants, guests, agents, or invitees.

Application to Homeowners' Association Act:

The limitation within section 720.316(1), of the emergency powers of a board of directors during a declared state of emergency being conditioned upon a "response to damage caused by an event" is hereby suspended. The emergency powers available to boards of directors, as described in section 720.316(1)(a)-(h), Florida Statutes, are hereby available to help protect the health, safety, and welfare of the association, parcel owners, parcel owners' family members, tenants, guests, agents, or invitees.

The emergency powers are very broad, seeking to remove procedural and substantive hurdles from "common sense" operational needs that may not neatly occur in normal circumstances.

Readers are cautioned that emergency powers are not unlimited. Neither the emergency statutes nor the Order have been tested by the appellate courts. Many issues remain fluid in these unprecedented times.

RELIEF PART II: NO MORE VACATION RENTALS? AT LEAST FOR NOW, MORE OR LESS!

Vacation rentals are suspended in Florida! At least for the most part. There may be relief for communities experiencing transients bombing in from outside, not adhering to minimum community norms and safety protocols.

Florida's Governor issued Executive Order 2020-87 boldly starts its prohibitive impact with:

I hereby order all parties engaged in rental of vacation rental properties, as defined in section 509.242(1)(c), Florida Statutes, to suspend vacation rental operations. Vacation rentals are prohibited from making new reservations or bookings and shall not accept new guests for check-in for the duration of this order.

As of publication time for this memorandum, the order was not available on the State of Florida Governor's Executive Orders website. This may be because the Order was entered after 5pm on Friday.

Of course, the proverbial "devil is in the details." These include:

- Coverage: Generally, 30 day or less rentals, advertised and regulated
- Exceptions. There is long list of properties not covered, including: hotels, motels, inns, resorts, non-transient public lodging establishments, or time share projects.

- Duration: 14 days, subject to extension.

Perhaps the most significant exception to the prohibition is existing occupancies.

Enforcement may be the most difficult part, even though a violation is stated to be a second-degree misdemeanor.

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