

Law Office of Jonathan James Damonte, Chartered
Legislative Report
2020 Legislative Session



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CONDOMINIUM
AND PLANNED
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OVERVIEW OF 2020 FLORIDA LEGISLATIVE SESSION

- ✚ 3,578 bills filed by Florida State legislators
- ✚ 210 bills passed by both House and Senate Chambers
- ✚ \$93.2 billion State Budget passed
- ✚ Bills impacting community associations passed
- ✚ Executive Orders issued by Governor DeSantis
- ✚ Covid-19 Pandemic Survival Guide for Community Associations



The 2020 Florida Legislative session promised excitement with 3,578 bills filed but the COVID-19 pandemic forced changes of priority in the capital. Governor DeSantis issued several executive orders to address the pandemic including many impacting community associations. DeSantis's orders and 2020's passed bills community associations need to know are discussed below.

Checking out Bills & Laws

- ✚ Governor's website: www.flgov.com
 - ✚ Scroll down on the right side panel and click on the "2020 Bill Actions" icon



- ✚ 2020 Florida Executive Orders: <https://www.flgov.com/2020-executive-orders/>
- ✚ Legislature: www.leg.state.fl.us
 - ✚ Click on "Senate" or "House" and search by Bill number or text

2020 Legislative Changes for Community Associations

- ✚ SB 1048: Emotional Support Animals. The new law prohibits discrimination from housing providers to someone requiring an Emotional Support Animal (“ESA”), but also prohibits health care practitioners from providing information regarding a person’s need for an emotional support animal without having personal knowledge of the person’s need for the animal. The law requires a patient to establish their need for an ESA by delivering to the housing provider supporting information from a licensed healthcare practitioner who has provided in-person care or services to the patient on at least one occasion for the need for each animal. Housing providers may establish a routine method for receiving and processing ESA requests. However, they cannot require the use of any specific forms, deny a request solely because the resident did not follow their methods, or request information that discloses the diagnosis or severity of the resident’s disability. Community Associations cannot require a person with an ESA requesting reasonable accommodation to pay a fee for the ESA. The bill specifies that the individual requiring the ESA is liable for any damages to the premises or to another person resulting from the ESA. This bill also allows a housing provider to request supporting information regarding the individual’s disability or disability-related need for the ESA and creates a new cause for disciplinary action against a health care practitioner’s license for providing supporting documentation for an ESA to individuals who they haven’t treated. However, the request for supporting information may not seek information that discloses the diagnosis or severity of the person’s disability or any medical records relating to the disability. The bill creates criminal liability making it a second-degree misdemeanor for an individual to provide falsified and/or fraudulent information to obtain ESA documentation. Finally, the bills expressly provides that ESA registration of any kind, such as that commonly obtained on the internet is not, by itself, sufficient information to establish that a person has a disability or a disability related need for an ESA. This bill became effective July 1, 2020.



- ✚ SB 476: Law Enforcement Vehicles. The bill includes provisions which preclude a condominium, cooperative, and homeowners' associations, respectively, from prohibiting a law enforcement officer, who is a unit owner, or is a tenant, guest, or invitee of a unit owner from parking his or her assigned law enforcement vehicle in an area where the unit owner, or the tenant, guest, or invitee of the unit owner, otherwise has a right to park. The effective date of this bill is 2/21/2020.



- ✚ SB 140: Fireworks. The new law relates to the use of fireworks and defines the term "designated holiday". The bill provides for an exemption for the use of fireworks solely and exclusively during a designated holiday and prohibits homeowners' associations from promulgating certain rules or regulations restricting same. This bill authorizes the use of fireworks during designated holidays (New Year's Day, Independence Day and New Year's Eve) and prohibits homeowners' association from enacting rules or regulations restricting same. The bill, however, specifically states that it does not supersede any prohibition against the use of fireworks contained within a "legally executed and properly recorded" declaration for a homeowner's association. It is signed into law by the Governor and effective April 8, 2020.



- ✚ HB 469: Statute of Frauds. Signed into law on June 27, 2020 and effective July 1, 2020, this bill amends Florida's Statute of Frauds to specify that subscribing witnesses are not required on a lease for real property.

- ✚ SB 886: Errors in Deeds. This bill provides that a deed which contains a scrivener’s error effectively conveys title as if there had been no error in the deed if certain requirements are met including (i) record title to the property was held by the grantor of the first erroneous deed at the time the first erroneous deed was executed, (ii) within 5 years prior to the date of the erroneous deed, the grantor of the erroneous deed did not hold title to any other real property in the same subdivision or condominium, or in the same section, township and range described in the erroneous deed, (iii) the real property is not described exclusively by a metes and bounds legal description, and (iv) a curative notice meeting the requirements of the bill is recorded in the official records. The application of the bill is limited to deeds which contain a single error or omission in the legal description. Effective July 1, 2020.

- ✚ SB 374: Housing Discrimination. The Florida Commission on Human Relations (Commission) is charged with enforcing the state’s civil rights laws, including the Florida Fair Housing Act (FFHA), which prohibits a person from refusing to sell or rent, or otherwise make available, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion. The bill amends the FFHA to clarify that a person aggrieved by a discriminatory housing practice is not required to exhaust his or her administrative remedies prior to bringing a civil action under the FFHA. This change will make the FFHA substantially equivalent to the federal Fair Housing Act, which was called into question by recent state court decisions holding that a person must first exhaust his or her administrative remedies by filing a complaint with the Commission before pursuing a civil action under the FFHA. The bill also provides that a discriminatory restriction in a title transaction is unenforceable and extinguished under the Marketable Record Title Act. Additionally, the bill repeals certification of the 55+ housing by the Human Relations Commission. Community associations are no longer required to register with the Florida Commission on Human Relations. Further, community associations that qualify as “housing for older persons” under federal and state law no longer need to submit every two years a letter to the Commission stating the community complies with the requirements to be considered housing for older persons” under federal and state law. The change eliminates the administrative burden on community associations to initially register with the state and file a certification of compliance with the requirements to be exempt from Florida’s Fair Housing Act because the failure to do so has no impact on a community’s qualification as “housing for older persons.” Importantly, 55+ communities that claim to be “housing for older persons” exempt from certain provisions of fair housing laws must continue to publish and adhere to policies and procedures that demonstrate the intent to be such housing. 55+ communities must still comply with the federal regulations made by the Secretary of the United States Department of Housing and Urban Development for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance. Community associations that wish to confirm they are taking the appropriate steps to maintain their “housing for older persons” exempt status should immediately contact their legal counsel. The new law is effective July 1, 2020.

- ✚ HB 1339: Community Affairs. This bill makes substantial revisions to chapter 723 F.S. governing Mobile Home Parks. Effective July 1, 2020.
 - 1. It amends section 723.012 F.S. to include that if a mobile home park owner intends to include additional property and mobile home lots and to increase the number of lots that will use the shared facilities of the park, the mobile home park owner must amend the prospectus to disclose such additions. If the number of mobile home lots in the park increases by more than 15 percent of the total number of lots in the original prospectus, the mobile home park owner must reasonably offset the impact of the additional lots by increasing the share facilities. The amendment of the prospectus must include a reasonable

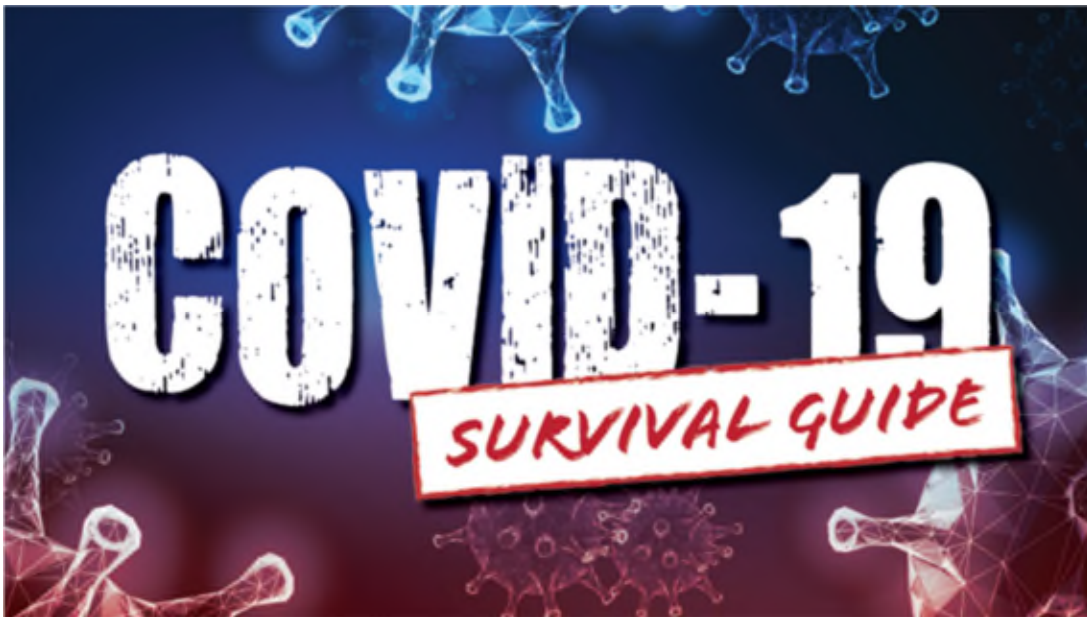
timeframe for providing the additional shared facilities. The costs and expenses necessary to increase the shared facilities may not be passed on or passed through to the existing mobile homeowners.

- 2. In section 723.037 F.S. the park owner may give notice of all increases in lot rental amount for multiple anniversary dates in the same 90-day notice.
- 3. In section 723.041 F.S. a mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, and built before the park was damaged or destroyed.
- 4. Section 723.061 is amended to include that when the park owner gives affected mobile home owners and tenants notice of eviction due to a projected change in land use then within 20 days after giving an eviction notice to a mobile home owner, the park owner must provide the division with a copy of the notice. The division must provide the executive director of the Florida Mobile Home Relocation Corporation with a copy of the notice. Also it adds that if a park owner accepts payment of any portion of the lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement due to a violation of paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e) does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, but not for any subsequent or continuing noncompliance. Any rent so received must be accounted for at the final hearing.
- 5. Section 723.076 added that upon election or appointment of new officers or board members, the homeowners' association shall notify the park owner in writing by certified mail, return receipt requested, of the names and addresses of the new officers or board members.
- 6. Section 723.1255 was changed to add that a dispute between a mobile home owner and a homeowners' association regarding the election and recall of officers or directors under section 723.078(2)(b) or regarding the inspection and photocopying of official records under section 723.079(5) must be submitted to mandatory binding arbitration with the division. The arbitration shall be conducted in accordance with this section and the procedural rules adopted by the Division. Each party shall be responsible for paying its own attorney fees, expert and investigator fees, and associated costs. The cost of the arbitrators shall be divided equally between the parties regardless of the outcome.



2020 Florida Executive Orders Related to Community Associations

- ✚ Governor Ron DeSantis has issued a total of 180 executive orders in 2020 as of the writing of this legislative report.
- ✚ Executive Order 20-94 Suspended statutes providing for an eviction cause of action under Florida law solely as it relates to non-payment of rent by residential tenants due to the COVID-19 emergency. Florida's County Clerks are responding in diverse ways with some Clerks permitting cases to proceed up to but NOT including a writ of possession and other Clerks prohibiting even the filing of new foreclosure and eviction cases. The result has been a growing impact on the ability of community associations to collect assessments and enforce their covenants and restrictions. On July 29, 2020, Governor DeSantis extended the moratorium on evictions and foreclosures until September 1, 2020, but limited the moratorium to cases involving a single-family mortgagor or residential tenant who has been adversely impacted by COVID-19. This will free up associations to pursue lien foreclosures in cases where the unit owner or tenant is deceased, or is not affected by COVID-19. However, we still expect that the backlog of eviction and foreclosure cases at the underfunded County Clerks' offices will cause further delays.
- ✚ The current list of 2020 Executive Orders along with their full text can be found here: <https://www.flgov.com/2020-executive-orders/>



Covid-19 Pandemic Survival Guide for Community Associations

- ✚ The Florida Department of Business and Professional Regulation (DBPR) Order 2020-04 granting emergency powers to condominium associations, cooperatives, and homeowners associations has expired, so the community association emergency powers are no longer in effect. Community Associations should return to conducting business in the regular way, including noticing all Board meetings and making them accessible to all unit owners, members, or shareholders, either in person or online or some combination of both.

- ✚ Arrange common elements (e.g. clubhouse, pool, etc.) to comply with social distancing, by maintaining 6 feet (2 meters) between chairs and tables and marking (e.g. with tape or paint on the ground) places lines form to help people maintain the 6 feet. Limit the number of people at gatherings to 10 people when possible and at maximum 50 people.
- ✚ Quarantine: There's no legal basis for a community association to enforce a quarantine. If the government requires it, then if someone comes back and doesn't comply with the government's quarantine requirements, you may call the police and report the incident(s) for the government to deal with.
- ✚ Pool Usage: Absent a governmental order requiring pools to be closed, it is problematic for a community association to completely close a pool absent a known case of an infected person in the community. We recommend: 1. Limiting the number of people who may use the pool at any one time to 10 or less, per CDC guidelines; 2. Requiring each person bring their own equipment (e.g. towels, floats, noodles and other item); 3. Space all chairs, tables and chaise lounges 6 feet (2 meters) apart; 4. Put time limits on use if necessary (e.g. sign up sheet with 1 hour maximum); 5. To the extent possible, have maintenance clean and disinfect as often as possible. Users should be asked to wipe down chairs, tables and Chaise lounges after use before they leave.
- ✚ Meetings: Most community associations are holding meetings by a combination of an online platform (e.g. Zoom, WebEx or Skype) and a physical meeting space. In the absence of legislation, Executive Order, DBPR statement, or court case, community association meetings are supposed to have a physical meeting place:
 - ✚ 1. Prepare and send notices of meetings with both the physical location and a call-in number or link to an online meeting place.
 - ✚ 2. At the physical meeting place, have a table up front, chairs spread out 6 feet (2 meters) apart, check in all attendees at the door by taking their temperature with one a handheld temperature device (e.g. infrared Thermometer), and ask each attendee at the check-in point if he or she has been exposed recently to Covid-19 or travelled outside the Tampa Bay area in the last 14 days (if so, they should be denied entry and advised to join the meeting online or on conference call). Require ALL in-person attendees to wear masks (they may take them down temporarily when speaking). Have some paper masks available at the check-in table if anyone needs one.
 - ✚ 3. Provide hand-sanitizer at the check-in table.
 - ✚ 4. Have one board member and one management representative at the front table to conduct the meeting. Again, wear masks when not speaking.
 - ✚ 5. Become familiar with Zoom. It has features that allow the moderator to mute everyone else and to allow everyone else to "raise their hands" electronically so that the moderator may un-mute them and speak.
 - ✚ 6. Do your best to otherwise conduct the meeting according to your normal rules and procedures.
- ✚ Visitors: Unit owners, mobile home owners, and tenants should be advised to restrict visitors to persons who have not tested positive for Covid-19, who do not have a temperature or cough and who have not been out of the Tampa Bay area for the last 14 days. Enforcement of this is problematic, particularly for communities that are not gated, but at minimum the recommendation should be made to restrict visitors.

- ✚ Resident Tests Positive for Covid-19: The infected person should quarantine in place and not come out of their house for anything. Neighbors and relatives can drop off food and other necessities at their door for them to reach out and pick up after they have left. If the infected person has recently been in a community common area it is reasonable to close that common area for 14 days and/or have it professionally cleaned prior to allowing people back into the area. People who have had recent contact with the infected person should be individually notified electronically or by telephone. The community may send out blast group emails to the entire community communicating the reporting of an infection in the community but may NOT identify the individual person who tested positive.

Other Notable Legislative and Executive Changes

- ✚ Governor DeSantis has said he will not issue a state-wide mask mandate. However, masks are now required in many Florida Counties including Hillsborough County, Pinellas County, Orange County, parts of Brevard County, Seminole County, Osceola County, parts of Polk County, parts of Volusia County, Alachua County, Broward County, Duval County, Gadsden County, Indian River County, Leon County, Miami-Dade County, Monroe County, Palm Beach County, Most counties, with some exceptions, exempt from the mask mandate: children under 2 years old, those with health conditions negatively impacted by wearing a mask, those in large open areas at least 6 feet from other.





Recommendations:

1. Review and update the Association’s policies for adapting to coronavirus with legal counsel.
2. Ensure your organization is ready to comply with the new law governing 55+ housing.
3. Contact legal counsel for guidance on executive orders impacting collections of past-due assessments, evictions, and foreclosures to help keep your community economically healthy.
4. Review community Emotional Support Animals policies with legal counsel.
5. Save time and money by learning how you can begin having documents signed, notarized and witnessed online.
6. Review insurance needs, reserves funding and facilities condition to storm-proof your community.
7. Contact our offices for information on revising your community rules and enforcing the rules that are already in place.
8. Create a plan for managing the arrival or absence of northern United States and Canadian residents returning to the community in the fall.

