

**“The Next Phase of COVID-19 Implications: Reopening,
Effect of Vaccines, and Conducting Business in a New World.”**

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- I. **THE PAST: A Look Back on How COVID-19 Affected Community Associations**
 - a. Remote meetings and elections
 - b. Financial Issues
 - i. Additional cleaning expenses
 - ii. Inability to collect assessment income
 - iii. Loss of income (pool passes, etc.)
 - iv. Construction projects – increased costs
 - c. COVID-19 Prevention Measures
 - i. Implementation of new “rules”
 1. Requiring face coverings
 2. Guest access
 3. Amenity usage
 4. Elevators
 5. Real estate showings
 6. Unit renovations/construction
 7. Deliveries
 - ii. Enforcement Issues
 1. “Rules” versus policies
 2. Ability to act on an emergency basis – ICPA Section 18(a)(21)
 - iii. Increased noise/nuisance complaints
 1. As a result of more people being home all the time
 - iv. Increased complaints about “rude” behavior – residents’ “sharp elbows”
 1. Mental health
 - d. Privacy Issues
 - i. Sharing COVID-19 infection information with residents
 1. Residents

2. Employees
 3. Vaccination status
 4. What to do about confirmed cases?
 - a. Enforcement of quarantine?
 - b. When is it okay to “re-enter” common areas?
- e. Employment Issues
- i. Time off for association employees who contracted COVID-19 – paid versus unpaid?
 - ii. Building personnel who were afraid to return to work due to increased risk of contracting COVID-19
 - iii. Bonuses and “battle pay”
 - iv. Requiring vaccinations
- f. Assessment Collection
- i. Moratoriums – collections at a stand-still

II. **THE PRESENT:** Where We are Today

- a. Most associations have “re-opened”
- b. COVID-19 is not gone
 - i. What about children, unvaccinated residents, and unvaccinated employees?
 - ii. Visitors
 - iii. Domestic help (tutors, nannies, cleaning staff, dog walkers)
 - iv. Food Delivery
 - v. Package Delivery
 1. Delivery lockers
- c. Assessment Collection
 - i. Governor Pritzker’s Moratorium on evictions (expired)
 - ii. CDC moratorium on evictions (extended to July 31, 2021)
 - iii. Associations must serve a covered person declaration on a unit owner at least five days before serving a thirty-day notice. The form covered person declaration is included in these materials.

- iv. Under Governor Pritzker’s executive orders, if a unit owner fills out a covered person declaration attesting that they are a “covered person,” an association may not pursue an eviction action against that person unless they pose a “direct threat to the health and safety of other tenants or an immediate and severe risk to property.”
 - v. As of June 25, 2021, associations may enforce “old” eviction orders (pre-March 20, 2020) and new eviction orders entered against non-covered persons.
 - vi. “Covered Person”
 - 1. “Any tenant, lessee, sub-lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person or entity with a legal right to pursue an eviction or possessory action, a Declaration under penalty of perjury” that:
 - a. The individual earned less than \$99,000 in annual income (or \$198,000 if filing jointly) in 2020 (or an individual who was not required to report any income to the IRS in 2019 or received an economic impact payment from the CARES Act);
 - b. The individual is unable to make full payment due to a COVID-19 related hardship (loss of income, loss of work hours, increase of costs);
 - c. The individual is making “best efforts” to make partial payments;
 - d. Eviction would likely render the individual homeless or require the individual to move into a shared housing facility.
 - vii. Courts and sheriffs still not fully operational
- d. Confirming vaccination status
- i. Residents
 - ii. Visitors
 - iii. Employees
 - 1. Union position
 - iv. Can associations require that their employees get vaccinated?

e. Association Amenities

- i. Fitness rooms
- ii. Party/meeting rooms
- iii. Swimming pools/pool decks
- iv. Considerations
 - 1. Proper ventilation?
 - 2. Cleaning protocols?
 - 3. Signage
 - a. Does signage protect the association?
 - b. Signs may not be effective
 - i. Assumption of the risk

f. Liability Issues

- i. Association Liability Insurance
 - 1. No coverage for infectious/communicable diseases
- ii. Claim Waivers
 - 1. COVID-19 specific waivers
 - 2. Liability waivers are enforceable in Illinois
 - 3. Language of the liability waiver must be “clear, explicit and unequivocal”
 - 4. Include covenants not to sue/indemnification provisions, especially where guests are involved
 - 5. Require waiver before amenities can be used
 - 6. Waivers may not be effective for claims brought by association employees or in the event of grossly negligent/intentional conduct
 - 7. Waivers do not protect the association from being sued; they provide a defense

g. Board Meetings

- i. In-person or Zoom

1. Pros and cons
2. Hybrid
3. Restricting access
4. Recording

h. Remote (“Absentee”) Elections

i. Section 18(b)(9)(B) and (B-5) of the ICPA govern “absentee” voting

1. Require rules
 - a. Rules must be passed at least 120 days prior to a board election
 - b. All rule change procedures must be followed
2. Prohibit voting by proxy
3. Voting to be done by ballot in one of three ways: (a) in person at the meeting; (b) by mail (or by depositing in a voting box if the association has one); or (c) by “acceptable technological means.”
 - a. What is “acceptable technological means”?
 - i. “includes, without limitation, electronic transmission over the internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the association, is deemed to provide reasonable security, reliability, identification, and verifiability.”
 - b. What is “electronic transmission”?
 - i. “Any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in paper form by the recipient through an automated process.”

ii. Specific time frames

1. Potential board candidates must be given twenty-one days to submit candidate nomination forms

- a. The deadline cannot be more than seven days before ballots are distributed to unit owners
2. Ballots must be mailed not less than ten and not more than thirty days before the annual meeting
- iii. Other requirements
 1. Ballots must include the names of everyone who has given timely notice of their intent to run for the board
 2. Ballots must include space for write-in candidates
 3. Unit owners must be permitted to revoke a ballot at any time up to the close of voting
- iv. Unit owners have veto rights over any rules enacted prohibiting proxies and allowing voting in this manner
 1. Twenty percent sign a petition within thirty days – must call a vote on the rules.
- i. Receiving consent to communicate with unit owners via email
 - i. Section 18.4(s) requires boards to obtain “written authorization for electronic delivery” of notices or other communications
 - ii. Section 18.8 allows voting to be accomplished using acceptable technological means but there must be “a record created as evidence” of that vote, which is maintained “as long as the record would be required to be maintained in nonelectronic form.”
- j. EVPs (Electronic Voting Platforms)
 - i. Are EVPs ballots or proxies? Proxies are prohibited by the rules
 - ii. How are ballots maintained through use of an EVP?
 1. ICPA Section 19(a)(8) inspection of “ballots” and “proxies”
 - iii. If the association uses a secret balloting procedure, how does this work with an EVP?

- iv. How are candidates present at the counting of votes if it is done automatically by an EVP?
- v. How can a unit owner void a vote, as required by the ICPA?
- vi. Signatures – the ICPA requires that signatures be verifiable. How does an EVP verify signatures?

III. **THE FUTURE: What’s Next? No Return to “Business as Normal”**

- a. Back to the future - lessons from 1917-1918 Spanish Flu pandemic
 - i. Future pandemics likely
- b. Return to pre-COVID-19 “normal”?
- c. Effects of COVID-19 experience
 - i. Board members
 - ii. Management/managers
 - iii. Employees
 - iv. Residents
 - v. Desirability of multiple dwelling unit living
- d. Association meetings
 - i. Board meetings
 - 1. Access
 - 2. Recording
 - ii. Unit Owner elections/meetings
 - iii. Committee/commission meetings
 - iv. Rule violation hearings
 - 1. Impact of court-imposed fairness requirements
 - v. Increased use/dependence on electronic communication
 - 1. Need consent
- e. Assessment collection
 - i. Back to pre-COVID-19 normal?
 - ii. Foreclosures
 - iii. Legislative action for the future?
- f. Planning for the Future – Lessons Learned

- i. Permanent “emergency” rules?
- ii. Lobbying to include associations in federal and local relief legislation

**[FORM] DECLARATION UNDER PENALTY OF PERJURY FOR
STATE OF ILLINOIS EXECUTIVE ORDER 2020-72**

This declaration is for tenants, lessees, sub-lessees, and residents of residential properties who are covered by State of Illinois Executive Order 2020-72 (“EO 2020-72”) temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Pursuant to EO 2020-72, you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or any other person or entity who has a right to have you evicted or removed from where you live in order to invoke the protections of EO 2020-72. Each adult listed on the lease, rental agreement or housing contract should complete this declaration. EO 2020-72 prohibits any person who submits this declaration from being evicted or removed from their residence through June 26, 2021, unless the person poses a direct threat to the health and safety of other tenants or an immediate and severe risk to property. EO 2020-72 may be amended or extended. EO 2020-72 does not relieve you of the obligation to pay rent or comply with any other obligation that you may have pursuant to your lease or rental agreement. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail or pay a fine if you lie, mislead or omit important information.

I certify under penalty of perjury, pursuant to 720 ILCS 5/32-2, that the foregoing are true and correct:

- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment pursuant to Section 2001 of the CARES Act;
- I am unable to make a full rent or housing payment due to a COVID-19 related hardship including, but not limited to, substantial loss of income, loss of compensable hours of work or wages or an increase in out-of-pocket expenses directly related to the COVID-19 pandemic;
- I am using best efforts to make timely partial payments that are as close to the full payment as my circumstances may permit, taking into account other non-discretionary expenses;¹ and
- If evicted, I would likely become homeless, or be forced to move into and live in close quarters in a new congregate or shared living setting because I have no other available housing options.
- I understand that I must still pay rent or make a housing payment and comply with other obligations that I may have under my tenancy, lease agreement or similar contract. I further understand that fees, penalties or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions, my landlord, the owner of the residential property where I live or any other person or entity who has a right to have me evicted or removed from where I live, may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to state laws and local ordinances.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant

Date

¹ “Non-discretionary expenses” include, but are not limited to, food, utilities, phone and internet access, school supplies, cold-weather clothing, medical expenses, childcare and transportation costs, including car payments, maintenance and insurance.