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SPECIAL ALERT

IMPACT OF RECENT COVID-19 EXECUTIVE ORDERS ON FLORIDA CONDOS & HOAS

By: Vanessa Fernandez, Esq.

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**Christopher J. Shields, Esq., Board Certified by the Florida Bar
in both Real Estate Law and Condominium and Planned Development Law**

Executive Order 21-81:

On April 2, 2021 Governor DeSantis signed Executive Order 21-81 which dealt with vaccination documentation to be effective immediately through all extensions of Executive Order 20-52. Executive Order 21-81 prohibits Florida government entities, subdivisions, agents, and assigns from issuing “vaccine passports, vaccine passes, or other standardized documentation” certifying an individual’s COVID-19 vaccination status or which otherwise share an individual’s vaccination record to a third party. In addition, this Order prohibits businesses in the State from requiring patrons or customers to provide any documentation certifying vaccination or post-transmission recovery to gain access to, entry upon, or service from the business, although businesses may continue COVID-19 screening protocols to protect public health. The Order states that requiring “vaccine passports” would reduce individual freedom, harm patient privacy, and create two classes of citizens based on vaccination. The Order also indicates that COVID-19 vaccination is not required by law and will not be mandated. Although the Order does not deal with condominiums and homeowners associations directly, it is reasonable to conclude that community associations should **not** be imposing or requiring proof of vaccination to enter the community or to participate in community activities, including, without limitation, association meetings.

Executive Order 21-94:

On April 27, 2021 Governor DeSantis signed Executive Order 21-94 amending and extending the state of emergency over the State of Florida concerning COVID-19 (originally entered by Executive Order 20-52, as subsequently extended) for another 60 days. This Order indicates that Florida continues to

deal with manageable trends in COVID-19 cases, that over 8.5 million individuals have been vaccinated, and that Florida maintains a 4.7% unemployment rate well below the national average. The Order goes on to state that Florida should prepare to resume non-emergency operations. The state of emergency, however, is still in effect through June 26, 2021, unless otherwise extended, repealed, amended, or superseded. At this point in the pandemic, condominiums and homeowners associations should be familiar with holding meetings in ways that allow for participation by proxy, virtual participation, social distancing, and/or telephonic participation. Additionally, the use of facial coverings and practice of social distancing in indoor spaces, on communal elevators, or in mail rooms should feel like a “new normal” for association employees, members, tenants, and their family members, guests, and invitees. Because the state of emergency has been extended, and because there is no practicable way to know who has been vaccinated in your community, associations should continue requiring the use of facial coverings and social distancing measures along with all other reasonable precautions in order to protect themselves from liability for COVID-19 related claims under Section 768.38 of the Florida Statutes, at least through the expiration of the state of emergency.

Executive Order 21-101:

On May 3, 2021 Governor DeSantis entered two similar executive orders (EO 21-101 and EO 21-102). Executive Order 21-101 will be effective on July 1, 2021 and will invalidate any emergency order issued by a political subdivision in the State of Florida due to the COVID-19 emergency which restricts the rights or liberties of individuals or their businesses. The Order does not prohibit political subdivisions of the State from enacting ordinances pursuant to regular enactment procedures for the health, safety, and welfare of their local populations, but it will serve to invalidate those emergency orders enacted prior to July 1, 2021. The important takeaway for community associations is that this Order does not invalidate your association’s rules and regulations relating to COVID-19. However, if those rules were adopted as emergency rules pursuant to Section 718.1265, Section 719.128, or Section 720.316 under Executive Order 20-52 keep in mind, that Order is set to expire on June 26, 2021 (and so will your association’s ability to operate under the statutory emergency powers). So long as your association has followed proper non-emergency procedures to promulgate COVID-19 related rules, and as long as there is still a reasonable basis to require precautions such as facial coverings and social distancing, community associations can continue enforcing rules that make personal protective equipment and social distancing mandatory. This may be a good time for community associations to revisit their COVID-19 policies and emergency rules to determine which policies should stay in place and which policies need to be eliminated.

Executive Order 21-102:

On May 3, 2021 Governor DeSantis signed Executive Order 21-102 which immediately suspended all existing local COVID-19 restrictions and mandates on individuals and businesses. The Order also prohibits counties and municipalities from renewing or enacting new emergency orders or ordinances using a local state of emergency or using emergency enactment procedures under Chapters 125, 252, or 166 of the Florida Statutes that impose restrictions or mandates upon individuals or business relating to the COVID-19 emergency. Again, political subdivisions may follow regular enactment procedures to

enact ordinances that protect the health, safety, and welfare of their populations, but the availability of emergency procedures for enacting emergency local orders and ordinances has been suspended. Keep in mind, this Order concerns political subdivisions, counties, and municipalities within the State and does not necessarily apply to condominium associations, cooperatives, homeowners associations, or other community associations organized under Chapters 718, 719, and 720 of the Florida Statutes. However, as stated above, if any rules were adopted as emergency rules pursuant to Section 718.1265, Section 719.128, or Section 720.316 under Executive Order 20-52, those rules may be set to expire on June 26, 2021 along with your association's ability to exercise any statutory emergency powers relating to the COVID-19 emergency.

Summary:

Our office has received a number of questions this week on the applicability of Executive Orders 21-101 and 21-102 over community associations. Ultimately, in our opinion, Executive Orders 21-101 and 21-102 do not invalidate or suspend any COVID-19 related rules that your community association may have imposed during the pandemic. However, the expiration of Executive Order 20-52, as extended by Executive Order 21-94, should be on every community association's radar since many rules were adopted under statutory emergency powers which are set to expire very soon. If your association intends to continue requiring the use of facial coverings and social distancing beyond June 26, 2021 and enforcing the same under its governing documents or statutory fining and suspension procedures, the association will have to ensure that the applicable rule has been adopted using non-emergency procedures. If you have any questions about the enforceability of your association's COVID-19 rules and regulations, consider reaching out to an attorney licensed to practice law in the State of Florida that is knowledgeable in community association law.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

Questions regarding the content of this article may be emailed to Vanessa Fernandez at vanessafernandez@paveselaw.com or Christopher J. Shields at cjs@paveselaw.com. To view past articles, please click "Publications" on our firm website. Ms. Fernandez is an associate with the Pavese Law Firm. Mr. Shields is a partner and Board Certified by the Florida Bar in both Real Estate Law and Condominium and Planned Development Law with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195; Fax: (239) 332-2243.

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