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The Alliance of Delray Residential Associations
proudly presents:

Everything is Changing!

**-- Covid-19, Florida's Legislature, and
your Community Association in 2022.**

By: Joshua Gerstin, Esq.
Gerstin & Associates

What To Expect From This Presentation

- ▶ Nobody can remember everything.
- ▶ Nobody expects you to remember everything.
- ▶ Be an issue spotter and delegate.
- ▶ Spotting a potential issue and knowing whom to ask is an important trait for any successful community association director.

What You Need to Maximize this Presentation.

- ▶ Due to time constraints, this presentation only covers the top five most important community association COVID-19 leadership issues and the top five most important legislative changes.
- ▶ Go to www.gerstin.com for this presentation to follow along. Top right-hand corner of the home page.
- ▶ Go to www.gerstin.com for “The Top 10 Most Pressing Community Association Issues In 2022.” Top right-hand corner of the home page.
- ▶ Go to www.gerstin.com for “2021 Florida Community Association Legislative Update.” Top right-hand corner of the home page.
- ▶ ****Top right-hand corner of the home page at www.Gerstin.com. Easy to find.*

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The Alliance of Delray Residential Associations

***The Top 5 Most Pressing COVID-19 Related Community
Association Issues In 2022***

By: Joshua Gerstin, Esq.
Gerstin & Associates

*The Top 5 Most Pressing COVID-19 Related
Community Association Issues In 2022.*

Item # 1 Aging Infrastructure.

- ▶ Surfside tragedy brings the maintenance and care of aging structures to the forefront.
- ▶ Covid-19 further delays projects due to excessive demand, labor, material, and supply chain issues.
- ▶ Florida legislature and local municipalities are drafting or updating inspection requirements.
- ▶ Most people examining the tragedy are focused on the structural aspect while missing the root cause, poor financial planning.
- ▶ On December 16, 2021, Freddie Mac, (A/K/A/ the Federal Home Loan Mortgage Corporation) issued regulations entitled “*Temporary Condominium and Cooperative Project Requirements and Topic 5600 Reorganization.*”
- ▶ These new regulations from Freddie Mac were expressly promulgated as a result of the Surfside tragedy and apply to all condominiums with five units or more even if the condominium is otherwise exempt from review.

*The Top 5 Most Pressing COVID-19 Related
Community Association Issues In 2022*
Issue # 1 Aging Infrastructure, Contd.

- ▶ Units in condominiums with critical repair needs will not be Freddie Mac eligible.
- ▶ Even if an association is diligent, the work has started, and the association is fully funded!
- ▶ Engineer's reports likely will be required as proof of completion.
- ▶ Special assessments are to be evaluated to determine if for critical repairs.
- ▶ A questionnaire consisting of five pages to be completed by the association or management is required.
- ▶ Requires interpretation of governing documents, disclosure of all litigation, evaluation of unit uses, multi-unit owners, and insurance.
- ▶ **Effective for closing dates as of February 22, 2022.**
- ▶ Published as being "temporary" but contains no end date.
- ▶ Condominium and cooperatives, only, for now.

*The Top 5 Most Pressing COVID-19 Related
Community Association Issues In 2022.*
Issue # 1 Aging Infrastructure, Contd.

- ▶ [For Freddie Mac Regulations, click here.](#)

- ▶ [For condo. questionnaire, click here.](#)

- ▶ Go to the top right-hand corner of the home page at www.Gerstin.com to locate this report and the above links to the Freddie Mac regulations and guidance.

*The Top 5 Most Pressing COVID-19 Related
Community Association Issues In 2022*
Issue # 2. ZOOM Meetings for Members & Directors.

- ▶ The Governor's Emergency Declaration is over.
- ▶ Without a state or county emergency declaration allowing video conferencing for members' meetings is no longer as easy.
- ▶ Associations can allow members to watch the Annual Meeting via videoconferencing.
- ▶ However, allowing members to participate, vote, and be counted towards a quorum via videoconferencing will require a change to the association's rules and possibly its Declaration or By-laws.
- ▶ Video conferencing is allowable for Board members and members at large to watch a Board meeting.
- ▶ Similar to member meetings, to allow a Board member to participate, vote, and be counted towards a quorum will require a change to the Association's rules and possibly its Declaration or By-laws.
- ▶ Allowing participation via ZOOM without the properly passed Rules or amendments will nullify the meeting and/or vote.

*The Top 5 Most Pressing COVID-19 Related
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Issue # 3. The Great Yankee Migration. Sales and Leasing Restrictions.

- ▶ The pandemic amplified an already existing trend; more people are moving to Florida than ever before.
- ▶ Many community associations recently made an unsettling discovery, their leasing and sales restrictions enforced for years are either outdated or do not exist at all!
- ▶ Blanket bans on felons are no longer enforceable and could lead to an expensive lawsuit.
- ▶ Credit score rejections without a specifically stated minimum score could also lead to an expensive lawsuit.
- ▶ Fair Housing Act complaints are brutally expensive and may not be covered by your community's insurance.
- ▶ Check and validate your leasing and sales restrictions before it is too late.
- ▶ HOA Practice Tip.

*The Top 5 Most Pressing COVID-19 Related
Community Association Issues In 2022*

Issue # 4. Running a Home-Based in Community Associations

- ▶ The pandemic amplified another already existing trend. More people are working from home or running a home-based business.
- ▶ Working from home is different from having a home-based business with pickup, deliveries, and the occasional customer.
- ▶ Most governing documents do not recognize the difference between the two, rendering most existing work at home/ home-based business restrictions useless.
- ▶ Local ordinances or county code compliant at home business does not mean the Association has to allow the business.
- ▶ Operating a home based business may be viewed as a “right,” forcing associations with Rules or amendments in place specifically prohibiting certain business activity may have to be grandfathered. The longer an association waits to update its Rules or other governing documents, the more likely it will have to grandfather unwanted business activity.



*The Top 5 Most Pressing COVID-19 Related
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Issue # 5. Pets, Pets & More Pets.

- ▶ During the pandemic, many people locked out of work or locked down at home adopted pets.
- ▶ Many of these same pet owners are now returning to work, leaving their pets at home to the chagrin of anyone within earshot or walking distance.
- ▶ Owners that adopted pets that do not comply with restrictions en masse suddenly needed emotional support animals.
- ▶ Association's without established Rules regarding emotional support animals, and the behavior of animals in general, risk being sued by owners that do not want to hear or see animals in the association.
- ▶ Although the requirements to maintain an ESA in an association are broad, there are still ways associations can somewhat handle this problem. Recent Florida legislation is helpful.



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The Alliance of Delray Residential Associations

The Top 5 Most Important Legislative Changes for 2022

By: Joshua Gerstin, Esq.
Gerstin & Associates

*The Top 5 Most Important Legislative Changes for
Community Associations In 2022.*

Issue # 1. Collections- Condos and HOAs.

- ▶ Condominium association collections are now similar to HOAs with two letters, 45-days apart, instead of 30-days apart.
- ▶ A new statute that applies to condos and HOAs requires a specific thirty-day notice to be sent to delinquent owners before sending the owners to the attorney for collection.
- ▶ Associations that do not follow the new law will be unable to recoup attorneys fees for the collection.
- ▶ Associations should consider sending the required letter with the association's first notice payment is due. This will avoid unnecessarily expanded delinquencies.
- ▶ The letter required by the statute is unique and can be found online in the 2021 Community Association Legislative Update available at www.gerstin.com

*The Top 5 Most Important Legislative Changes for
Community Associations In 2022.*

Issue # 2. COVID-19 Immunity- Condos and HOAs.

- ▶ If a community association follows safety guidelines properly, it may be immune to COVID-19 related lawsuits.
- ▶ The hurdles for a plaintiff to prove a COVID-19 infection was the fault of an association are sharply increased due to the new immunity law.
- ▶ CDC, county, and state guidelines should be promulgated as Rules. Abiding by these guidelines without adopting them as Rules could harm an association if they get sued.
- ▶ Warning and instruction signs at each common element/area, as well as waivers and releases are recommended as a “belt and suspenders” approach.
- ▶ Promulgating COVID-19 as Rules allows associations to easily amend or rescind the Rules when COVID-19 passes. Amending the Declaration to add COVID-19 rules could expose the association to liability if they cannot be amended once the issue recedes.

*The Top 5 Most Important Legislative Changes for
Community Associations In 2022.*

Issue # 3. Electric Vehicles – Condos only.

- ▶ Having an electric vehicle (“EV”) charging at your association increases the potential pool of buyers and may increase property values.
- ▶ Despite the need and value of charging stations, installing a charging station was considered a material alteration typically requiring 75% owner approval. Most condominium associations are unable to garner the requisite approval for charging stations.
- ▶ The new statute allows for installing electric vehicle charging stations or natural gas fuel stations on the common elements or association property. The installation of an electric vehicle charging station or natural gas fuel station will not constitute a material alteration or substantial addition to the common elements or association property.
- ▶ Condo associations can operate the EV charging station and charge a fee for its use.

*The Top 5 Most Important Legislative Changes for
Community Associations In 2022.*

Issue # 4. Real Estate Sales and COVID-19. Condos only.

- ▶ Many community associations exercised their emergency powers during the pandemic and forbid real estate agents from showing homes and common elements.
- ▶ The real estate agent lobby fought back, and the Florida legislature passed a new statute protecting real estate sales during a pandemic.
- ▶ A condo association's emergency powers cannot be used to prohibit owners, tenants, guests, agents, or their invitees from accessing a unit, common elements, and limited common elements if access is necessary to facilitate the sale, lease, or transfer of title to the unit.

*The Top 5 Most Important Legislative Changes for
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Issue # 5. Leasing Restrictions. HOAs only.

- ▶ Similar to condominium associations, amendments to homeowner association governing documents that prohibit or regulate rentals will apply only to owners acquiring title after the amendment is passed or to the existing owners that consent.
- ▶ Rental restrictions in a governing document amendment will not apply to owners that do not vote on the amendment or that vote no.
- ▶ Instead, the rental restrictions would apply only after the home is sold.
- ▶ A home transferred to an affiliated entity in which the beneficial ownership remains the same, or a home devised (transferred) through a will, does not give rise to the imposition of a rental restriction amendment.
- ▶ This new law does not apply to governing document amendments seeking to prohibit or regulate rentals for terms of less than six (6) months or seek to limit rentals to no more than three times a year. The new law also does not apply to a homeowners' association with less than sixteen homes.

*The Top 5 Most Important Legislative Changes for
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Bonus Issue. Reserves. HOAs only.

- ▶ Many HOAs have a fund or funds labeled as “reserves.”
- ▶ In actuality, most of these funds are not “mandatory or “statutory reserves” and are instead discretionary surplus funds. Mislabeling funds can lead to violations of the law, unnecessarily encumbered funds, upset and confused owners, and improper designation from lenders or insurance carriers.
- ▶ Mandatory/statutory reserve funds are required to be fully funded each year, and the spending is tightly regulated. Discretionary surplus funds have no such regulation and can be spent as directed by the Board on association expenses.
- ▶ According to the new Florida law, HOA reserves are to be considered mandatory only if the governing documents obligated the developer to provide reserves or the reserve(s) were approved at some point by a majority of the association’s total voting interests.

Conclusion

- ▶ Due to time constraints, this presentation only covered the top five most important community association COVID-19 leadership issues expectations and the top five legislative changes.
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