

NOWACK**HOWARD** presents

Community Advisor

E-NEWSLETTER FOR
COMMUNITY ASSOCIATION
CLIENTS AND FRIENDS



ALERT!

What Does Governor Kemp's Order Re-Opening Some Georgia Businesses Mean for your HOA and Condominium Amenities?

We are writing again to alert you to the latest issue facing our community association clients related to the COVID-19 crisis. On Monday, April 20, 2020, Georgia Governor Brian Kemp announced he signed a new Executive Order which begins the State of Georgia's plans to "incrementally – and safely – reopen sectors of our economy" by allowing gyms, fitness centers and other specified businesses to re-open beginning Friday, April 24. With residents now demanding community associations re-open amenities that have been closed, our phones and email have been overwhelmed by Boards asking if the new Order requires the re-opening of community association amenities.

What follows is our general guidance based on the latest information we have available. We recognize that circumstances are a bit different in each community and a customized strategy shaped by your governing documents is often required. The lawyers of NowackHoward are here to assist, if you need us, to address your specific issues and provide legal advice for your community in these rapidly changing times.

Does Governor Kemp's April 20th Executive Order *require* homeowner and condominium associations to re-open their amenities?

The answer is no.

The Governor's new Order allows the specified businesses not permitted to operate since the Governor issued his original shelter-in-place order on April 2, 2020 to now re-open as of Friday, April 24. The new Order will allow those specified businesses to perform operations to take minimum necessary activities to maintain the value of the entity, to manage inventory, deal with payroll, and take care of administrative items that most other businesses in Georgia have maintained.

Gyms, fitness centers and other amenities in community associations are not separate businesses with inventory, payroll, etc. Their continued closure will not decrease the value of the "entity." Many Boards closed their community amenities even prior to the Governor's original April 2 Order because of concerns for keeping the amenities clean and so their associations did not provide a gathering place that could contribute to the spread of the virus.

Because the Governor said in his announcement on April 20 that allowing specified businesses to re-open applies statewide and is the operational standard in all jurisdictions, suspending enforcement of any more or less restrictive municipal order or ordinance, some members have informed their

Boards that they *must* re-open the association amenities. That is not what the Order mandates. Even if the new Order applied to community association amenities and allowed them to re-open, it does not *require* their re-opening. The decision to re-open is left to the owner or operator of the business. The owner and operator of the amenities in homeowner and condominium associations is the Board.

Can your association meet the Governor's measures to mitigate exposure and spread of COVID-19?

If your Board decides to re-open your association's amenities prior to April 30, when the Governor's original Order expires, your challenge will be to maintain social distancing and meet the required virus mitigation exposure requirements. The Governor expressly stated, "The entities that I am re-opening are not re-opening for 'business as usual.'"

Under the new Order, each of the entities that are allowed to re-open will be subject to implementing measures to mitigate the exposure and spread of COVID-19. At a minimum, there must be adherence to social distancing, *which the property owner is required to enforce*, and enhanced workplace sanitation. The requirements of enforcing social distancing and enhanced sanitation of gyms and fitness centers will most likely require staff be assigned to sanitize the room and equipment on a continuous basis and to limit the number of users at a time. Few homeowner and condominium associations have the staff and the resources that will be necessary to meet these requirements.

If your Board decides to re-open amenities, the Board should consider how best to do that which will include:

- **Enhanced Sanitation.** Boards should implement appropriate enhanced cleaning measures in accordance with CDC guidelines and the Governor's Order, including placing hand hygiene at the entrances and disinfectant and sanitation products for the equipment.
- **Reservations.** Boards may want to require members to sign up for times to use the amenities to limit the number of users at any one time. Use times may be reserved using the association's website or web sign-up programs.
- **Warning Notices.** Boards should continue to emphasize that the association is not ensuring the health or safety of the users. Boards may post a warning notice at each amenity such as: **USE AT OWN RISK. CORONAVIRUS COULD BE PRESENT.**

The Governor's announcement provides specific guidance for re-opening businesses. In making your decision whether to re-open association amenities, the critical question is whether your association can comply with this guidance.

Governor Kemp stated on April 20, "Today's announcement is a small step forward and should be treated as such. The shelter in place order is still active and will expire at 11:59 PM on April 30 for most Georgians. We urge everyone to continue to follow CDC and DPH guidance by sheltering in place as often as you can. Limit your travel and limit who goes with you on errands to prevent potential exposure. If possible, wear face masks or cloth coverings when you are in public to slow the spread of coronavirus. For medically fragile and elderly Georgians, make plans to shelter in place at least through May 13 – the date Georgia's Public Health Emergency expires. *Given the heightened risk of adverse consequences from your exposure to coronavirus, this is the recommended – and safest – path forward.*"

We encourage every retainer client to contact us at any time. No question is too small. Please continue to reach out to us if we can help your community in any way.



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