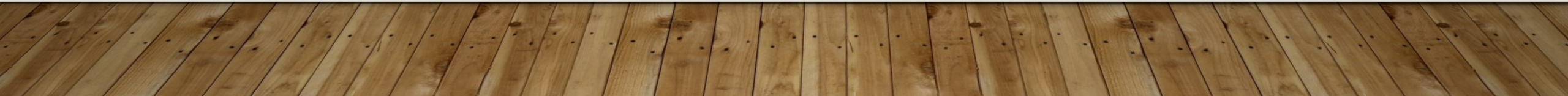


COMMUNITIES AND COVID-19:

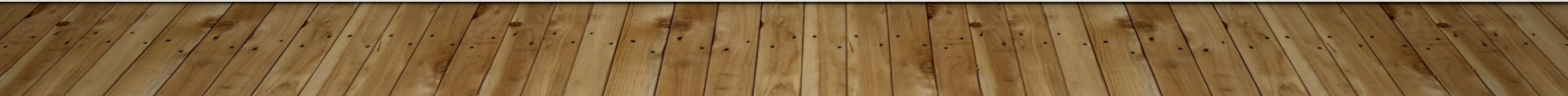
COPING WITH THE PANDEMIC - FEBRUARY 16, 2021



TOPICS TO BE COVERED:

- Legislation
- Annual Meetings
- Common Areas and Amenities (pools, clubhouses)
- Collections and Enforcement Issues
- Insurance claims, waivers, and releases

LEGISLATION



LEGISLATION

- Covid-19 Response and Reopening Liability Assurance Act
- Covid-19 Employment Rights Act

COVID-19 RESPONSE AND REOPENING LIABILITY ASSURANCE ACT

- “A person who acts in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm is immune from liability for a **COVID-19 claim.**”
- “An isolated, de minimis [minor] deviation from strict compliance with such statutes, rules, regulations, executive orders, and agency orders unrelated to the plaintiff’s injuries does not deny a person the immunity provided in this section.”

WHAT IS A “COVID-19 CLAIM?”

- “a **tort** claim or tort cause of action for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way **related to exposure or potential exposure to COVID-19**, or to **conduct intended to reduce transmission of COVID-19**.”
- “COVID-19 claim **does not include** an administrative proceeding or civil action brought by a state or local government prosecutor or agency to enforce state statutes and regulations, executive orders, or state agency orders applicable to COVID-19.”

“PERSON” IS PRETTY BROAD:

- “ "Person" means an **individual**, partnership, **corporation**, **association**, governmental entity, or other legal entity, including, but not limited to, a school, a college or university, an institution of higher education, and a nonprofit charitable organization. Person includes an employee, agent, or independent contractor of the person, **regardless of whether the individual is paid or an unpaid volunteer.**

THE ACT IS RETROACTIVE:

- “This act applies retroactively to any claim or cause of action that accrues after March 1, 2020.”

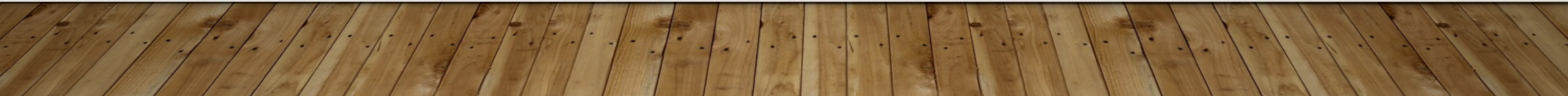
EMPLOYMENT RIGHTS ACT

- (1) Except as provided in subsection (2), an employer shall not discharge, discipline, or otherwise retaliate against an employee who does any of the following:
 - (a) Stays home after testing positive for Covid-19 or having contact with another employee who tests positive until certain conditions are met.
 - (b) Opposes a violation of this act.
 - (c) Reports health violations related to COVID-19.
- (2) Subsection (1) does not apply to an employee ... who, after displaying the principal symptoms of COVID-19, fails to make reasonable efforts to schedule a COVID-19 test within 3 days after receiving a request from their employer to get tested for COVID-19.

PENALTIES

- (1) An employee aggrieved by a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both, in the circuit court
- (2) A court shall award to a plaintiff who prevails in an action brought under this act damages of **not less than \$5,000.00**.




















ANNUAL MEETINGS






[HTTPS://WWW.MICHIGAN.GOV
/CORONAVIRUS](https://www.michigan.gov/coronavirus)

COVID-19
FEB. 8: GATHERING GUIDELINES


Open

 Two-household gathering (high precautions)*	 Manufacturing, construction, other work that is impossible to do remotely, including technical education	 Restaurants and bars*	 Theaters, movie theaters, stadiums, arenas
 Small outdoor gatherings (25 people)	 Public transit	 Professional sports**	 Bowling centers
 Retail	 Hair salons, barber shops, other personal services	 Parks and outdoor recreation	 Bingo halls, casinos, arcades
 Preschool through 12th grade (local district choice)	 Gyms, pools, roller and ice rinks	 Funerals (25 people)	 Contact/Non-contact sports
 Childcare	 Health care	 Indoor group fitness classes	<small>*See DHHS guidance for safety practices. **Includes a limited number of NCAA sports.</small>

Not open

 Workplaces, when work can be done from home	 Night clubs	 Water parks
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For more information about the order, visit [Michigan.gov/Coronavirus](https://www.michigan.gov/coronavirus).
Questions or concerns can be emailed to COVID19@michigan.gov.



ANNUAL MEETINGS

- The Nonprofit Corporation Act provides “ A corporation **shall** hold an annual meeting of its ... members, to elect directors and conduct any other business that may come before the meeting, on a date designated in the bylaws, **unless** the ... members act by written consent ... or by ballot....”

...WRITTEN CONSENT...

- “The **articles of incorporation** may provide that any action the ... members are required or permitted ... to take at an annual or special meeting may be taken without a meeting ... if written consents, setting forth the action taken, are signed and dated by the ... members or their proxies that have not less than the minimum number of votes that is necessary to authorize or take the action at a meeting...” The corporation shall give prompt notice of any corporate action taken ... to those ... members that did not consent to the action in writing.

... OR BALLOT ...

- A corporation may provide in its **articles of incorporation** or in **bylaws** ... that any action the ... members are required or permitted to take at an annual or special meeting, including the election of directors, may be taken without a meeting if the corporation provides a ballot to each ... member that is entitled to vote on the action in the manner provided ... for providing notice of meetings of shareholders or members.

BUT:

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- Many condominium bylaws that DO contain an “action without a meeting” provision provide “Any action which may be taken at a meeting of the members (**except for the election or removal of Directors**) may be taken without a meeting by written ballot of members.”

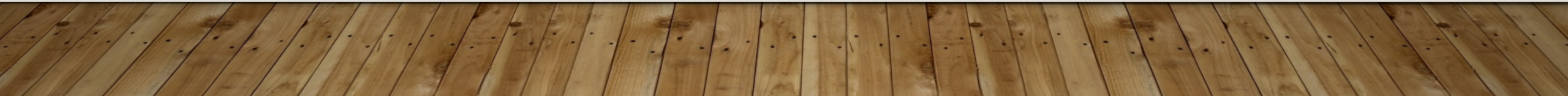
WHAT HAPPENS IF THE ANNUAL MEETING IS NOT HELD?

- “A failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at the meeting or any adjournment of the meeting, does not affect otherwise valid corporate acts...”
- “If the annual meeting is not held for 90 days after the date designated for the meeting, or ... for 15 months ... after its last annual meeting, the circuit court ... on application of a ... member, may **summarily** order that the corporation hold the meeting...”

GET READY FOR "REMOTE PARTICIPATION:"

- “ **Unless otherwise restricted by the articles of incorporation or bylaws**, a ... member or proxy holder may participate in a meeting by a conference telephone or other means of remote communication that permits all persons that participate in the meeting to **communicate** with all the other participants.
- Since 2015, participation by remote means is a **member right** unless the documents restrict that right. An association must either amend the documents, or provide a means of participation.

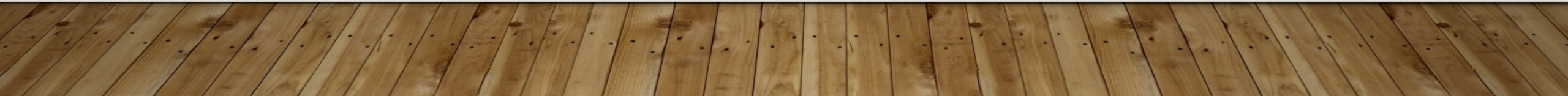
**WE SKIPPED OUR 2020 ANNUAL
MEETING; CAN WE SKIP AGAIN THIS
YEAR?**



THE BOARD HAS A DUTY TO INVESTIGATE THE AVAILABLE OPTIONS

- POTS
- Zoom
- WebEx
- Microsoft Teams
- GoToMeeting
- Facebook Live

COMMON AREAS AND AMENITIES



CLUBHOUSES

- **Per Health Dept:** Indoor gatherings outside the home of up to 10 people from no more than two households are allowed. Masks and social distancing are required at all public gatherings.

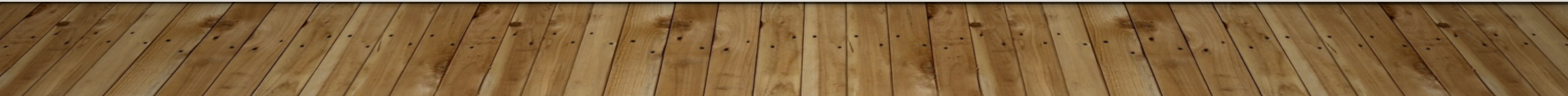
POOLS

- **Per Health Dept:** Pools are open for group fitness, individual exercise, 1:1 training, and swimming lessons, **but not for unstructured play across households**. A limited number of people are allowed to use a pool at one time. Masks are not required while swimming. Do not wear a wet mask. Facilities are required to collect names and phone numbers of visitors to assist with contact tracing. Entry will be denied to visitors who do not share their contact information.

IF YOU OPEN:

- Require sign in/sign out (or keep tabs electronically if you use fobs or cards)
- Remove or space out furniture
- Clean regularly (daily, between events)
- Do not provide towels
- Post signage (masks required, 6 foot distance, do not enter if you have symptoms, etc)

COLLECTION AND ENFORCEMENT ISSUES



FORECLOSURES AND EVICTIONS

- Some counties are holding foreclosure sales, some are not (Genesee (6/17/20), Eaton/Ingham (6/18/20) have resumed sales; Oakland, Livingston, Macomb, Lapeer have not resumed sales)
- An association can begin advertising even if sales have not resumed
- It is generally cheaper to adjourn a sale week-by-week than it is to stop and re-start
- CDC Moratorium on evictions extended through 3/31/21 (post foreclosure, bylaw violations)

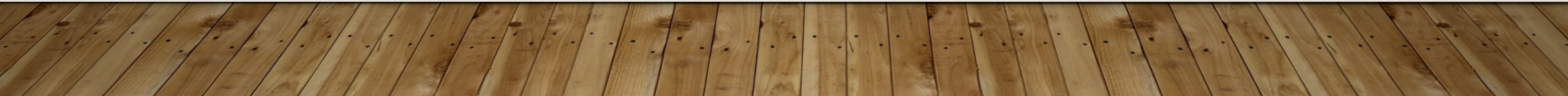
FEDERAL MORATORIA

- The federal moratorium on foreclosures applies only to “federally backed mortgages;” it does not prevent foreclosure of condominium liens.
- The federal moratorium on eviction from properties subject to “federally backed mortgages” **does** apply to eviction proceedings after a condominium lien foreclosure (the first mortgage survives a condominium lien foreclosure).
- The CDC moratorium on evictions may prevent an association from pursuing a post-foreclosure eviction or a bylaw violation eviction

ARE COURTS OPEN?

- Most courts are closed to the general public, but are holding hearings by Zoom
- Cases are moving slooowly (more so than usual)
- MiFile where available; mailing, faxing and e-mailing where not

INSURANCE CLAIMS, WAIVERS, AND RELEASES



WILL OUR INSURANCE COVER ANY COVID-19 CLAIMS?

- Most policies contain exclusions for pandemics, natural disasters, governmental orders (and insurrections, riots, or war) and other ***force majeure***
- Force majeure - unforeseeable circumstances that prevent a part from fulfilling a contract.
 - Event must be beyond control of affected party
 - Ability to perform must have been prevented, hindered, or delayed
 - Affected party must have taken all reasonable steps to avoid or mitigate

CAN WE REQUIRE A WAIVER TO (USE THE POOL, CLUBHOUSE, ETC?)

- Like chicken soup it can't hurt (“management not responsible for lost or stolen articles”)
- Most effective when it details the possible consequences
- Does not take the place of adequate signage, cleaning procedures, etc.

THANK YOU! QUESTIONS?

Steve Sowell

www.sowell-law.com