



# WATCHDOG

*Guarding manufactured/mobile home owner rights*

July 28, 2020

## HOA EMERGENCY POWERS/BYLAWS

A number of HOA's have asked about what to do about conducting meetings, operations Annual meetings and elections. Although we have not heard otherwise, we suspect our Clubhouses will remain restricted use or closed. After consulting with our Attorney FMO offers the following suggestions.

Chapter 723, F.S., has no meaningful statutory references that help resolve the problems facing the Chapter 723 HOAs. However, our FMO Membership consists of mainly members of not-for-profit corporations pursuant to Chapters 617. Chapter 723 is of little help (See Section 723.078(2)(c)1, 4, F.S.), but we can look to Chapter 617 for guidance.

It is our Attorney's opinion that we can rely on the "Not-for-Profit" laws, in Section 617.0207, F.S., (Emergency Bylaws) and Section 617.0303, F.S., (Emergency Powers) to allow Chapter 723 HOAs to operate their Association. We should note that "For Profit" HOAs can rely on Sections 607.0206 and 607.0207, F.S., which have almost exactly the same language as Chapter 617, F.S.

This would be accomplished by amending the By-laws of the HOA to include the stated provisions of Section 617, plus specific solutions to these problems. In this regard, we are advising our members that their Boards may wish to consider declaring an "emergency" and then the Board would, under its Emergency Powers, adopt By-laws that would initiate a "stand in place" for the remainder of 2020 and 2021. Simply stated, annual elections, Open Meetings, and large gatherings would be postponed for a year. The effect would be that the same Board, its officers, and committees, would continue in place until the end of 2021. Vacancies that might occur during this period would be filled by the Board.

Regarding the Division acting on this situation, we are not optimistic.

### **617.0207 Emergency bylaws.—**

(1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (5). The emergency bylaws may make all provisions necessary for managing the corporation during an emergency, including:

- (a) Procedures for calling a meeting of the board of directors;
- (b) Quorum requirements for the meeting; and
- (c) Designation of additional or substitute directors.

(2) The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession if during such emergency any or all officers or agents of the corporation are for any reason rendered incapable of discharging their duties.

(3) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

- (4) Corporate action taken in good faith in accordance with the emergency bylaws:

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- (a) Binds the corporation; and
- (b) May not be used to impose liability on a corporate director, officer, employee, or agent.
- (5) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

### **617.0303 Emergency powers.—**

- (2) During an emergency defined in subsection (5), unless emergency bylaws provide otherwise:
  - (a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;
  - (b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and
  - (c) The director or directors in attendance at a meeting, or any greater number affixed by the emergency bylaws, constitute a quorum.
- (3) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:
  - (a) Binds the corporation; and
  - (b) May not be used to impose liability on a corporate director, officer, employee, or agent.
  - (4) An officer, director, or employee acting in accordance with any emergency bylaws is only liable for willful misconduct.
- (5) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.
- (6) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency, and upon termination of the emergency, the emergency bylaws will cease to be operative.