



THE NEW NORMAL DUE TO COVID

by Mark S Coolman, CIRMS

I am not an attorney and this article is not legal advice. I am not a licensed claims adjuster and under NRS cannot issue formal coverage opinions on behalf of any insurance company. These are not the formal opinions of NFP Property and Casualty Services. I would invite every reader to visit <https://latest-insights.nfp.com/Updates-and-Resources> for official NFP information. My comments are that of an insurance agent with more than 20 years' experience that has placed insurance for over 700 common interest communities.

The new question I receive every day: Is COVID covered? Never say never, but probably not. The following review is based on my personal background and is not meant to address every issue. Insurance for Common Interest Communities requires several lines of coverage. Property Policies include business income (BI). However, the BI coverage is ONLY triggered when the BI loss is due to a covered physical loss of the premises. For associations, the BI Loss would be due to events that happened to the members personally not because they are part of the association. Directors and Officers Policies are often mistaken for catchall coverage in case a Board Member is named personally in a lawsuit. D & O is actually Errors and Omission insurance that has a specific exclusion for any claim that arises due to Bodily Injury and Disease. Workers' Compensation Insurance is specific for employees and volunteers in some policies. Workers Compensation has very complex rules and requires direct proof that the disease was caused by the employer. It is not an insurance that pays the HOA. General Liability Policies (GL) protect associations from bodily injury including diseases for which the association is legally liable. However, GL policies have an exclusion for Communicable diseases, which would prevent coverage for COVID. Excess Liability Policies follow the same form and exclusions as the underlining GL. So, the conclusion is the current insurance policies maintained by CIC using best practices do not provide coverage for COVID. Every Board Member and Manager should take note that if an issue arises from COVID the association must defend itself and bear the cost of that defense. Should the injured party be due indemnification the association must pay that amount from association funds. What we do before a claim and after that claim determines the amount of monies the injured party receives. I would suggest to act extremely conservatively.

So, the bad news is no insurance coverage. The Good News is we are being released from home confinement. Now we can open the pools, the clubhouses, the fitness centers, the playgrounds and all our other amenities. No more complaining members, the perfect cure to cabin fever. I would hold off opening anything. This is the first time in world history that the majority of sovereign countries united and actually slowed down the spread of a virus. The key here is Slowed Down the Spread. The directives and regulations issued by our Governor were designed to slow the spread of this virus so that the current supply of hospital beds and equipment was adequate to provide for the needs of the infected in Nevada. In my opinion it actually worked. We are having fewer new cases and patients are being released from hospitals. But, the virus is still present everywhere in Clark County and beyond. Once we are all cleared to return to our previous activities it will spread again and at a slightly increase rate. This was only the first round and we have round two that will last two to four months. Charvez Folger the Ombudsman for CIC and Condominium Hotels, issued a letter dated May 5, 2020. The letter advises each CIC to have a written plan for operating the CIC once the Governor releases everyone to normal activities. Understand normal activities will not be normal. We will need to address social distancing, disinfecting association property, budgets, and meetings.

I called the Southern Nevada Health District Aquatic Health Program at 702-759-0572 to discuss if they had any plans or recommendations on reopening pools. Their offices are closed with only a recorded message. I visited the website and there is no updated information at this time. Next, I called Clark County Emergency Management at 702-455-5710. The office was again closed with phones being answered with a recorded message. The website held no information on any reopening procedures. As the Governor provides a timetable for opening of business, my experience is the municipal government will issue



guidelines and standards to be used during the reopening. Check with your local government before reopening anything.

The community pool is the most common amenity that many CIC provide the members. It is now 100 degrees out and we all want to cool off in the pool. First, I would like to point out that simply opening the gate would leave that association exposed to a high risk of financial loss. Initial step is to make sure the pool meets the Southern Nevada Health District requirements. If your pool was due an inspection during the last two months you must wait until that inspection is finished before you can open. Once the decision is made to open, how will the association deal with limiting the people present to ensure proper social distancing? How will the association disinfect the lounge chair when one member leaves and another member sit there? How will the gate be disinfected between members touching it? My recommendation is to NOT open the pool until the virus is no longer an issue, perhaps in September or October. Now, if an association has the budget and the board feels the pool needs to be open, then I would recommend opening the pool on the weekend only with a full time janitorial staff member present. The pool attendant can ensure only a limited number of members in the pool area at one time, and can disinfect the pool furniture and the gate between uses. Additional signage approved by the association's attorney should be displayed explaining the new rules. Typically, the vast majority of boards will be aware they do not have budgeted funds to pay for pool attendants (not life guards). Then that is one of those hard decision that must be made. SNHD will be issuing new rules and capacities for pools which will be only minimums. Limit Liability by going the extra mile and making sure your procedures are stricter than the required directives. Pools are not the only amenity used by the members.

Playgrounds in the association park must be addressed. Place signage showing when the park is open for walking but include specific information about which amenities are closed. Only open the playground if you have a way to disinfect the equipment between uses. The same for picnic areas. You may need to use yellow plastic tape to show a specific piece of equipment is closed. Clubhouses same as pools. To open the clubhouse needs a plan as to how you will disinfect areas between member uses. Limited number of members in the clubhouse at any one point in time. Again, the answer may be one day a week for the clubhouse to be open. That can lead to other problems. Is anyone prepared to enforce every member is wearing a mask at any community amenity? How will Board Meetings, Hearings and Executive Meetings, be handled? When in-person meetings are resumed, is there a place large enough to meet and still maintain social distancing? Can Zoom, Skype, or Facebook play a part? Remember there is no one solution that everyone will love. Each solution has benefits and negatives. Board Members and Managers will need to compromise taking into account the budget limits and the technology limits.

There are many unknowns here to deal with after the release of citizens from home confinement. Everyday personal interaction does require each association to put into place a written plan for the remainder of 2020. We have no idea how the current unemployment will affect association assessment payments. My association we pay once a year in January. 2020 is already paid for by all the members. Now what additional costs must we place into the budget? How do we fund them? I do know, simply cutting the cost of existing contracts is not the answer. That will only lead to higher long-term costs and deferred maintenance build-ups. I urge every association to develop a written plan as to how they will cycle from home confinement to non-home confinement. Steps and policies by the month during the rest of 2020. That's a huge task and will require many hours of planning. Make sure that you involve the association's Attorney, Banker, CPA, Insurance Agent, County Agencies, and Emergency Government Management. Always keep in mind, as a Board of Directors, it is very important to keep your owners and all residents informed of the steps you are taking to protect the assets of the association with the assistance of your professional advisors. Be creative and unwilling to take unnecessary risk. Treat every claim as if COVID will be the alleged cause. Consider, however that chances are there will be no insurance coverage.