

Community Advisor

E-NEWSLETTER FOR
COMMUNITY ASSOCIATION
CLIENTS AND FRIENDS



ALERT!



Guidance for Re-Opening Association Amenities and Extension of Georgia Public Health Emergency

With last night's expiration of Governor Kemp's Shelter-In-Place Order for many Georgians, we are hearing from clients whose members interpret the expiration of the Shelter-In-Place Order as requiring the re-opening of community association amenities. That is not the case. Boards of Directors have the right to re-open tennis courts, gyms, and fitness facilities, but not the obligation. Each homeowner and condominium association Board must decide whether their association amenities should re-open based on its best business judgment.

The surest way to avoid a claim for liability is to not re-open. However, we understand residents are growing increasingly impatient and want to use the amenities, especially tennis courts. For those amenities that are not expressly subject to governmental orders, like tennis courts, there is still risk in re-opening amenities because of the opportunities for residents gathering in violation of Governor Kemp's Executive Order issued on April 23, 2020 entitled "Reviving a Healthy Georgia." (See our April 24th Client Alert and the Order itself. The April 23rd Order is in effect from today through May 13. However, if your Board has decided to re-open amenities, here is our general guidance as of today:

Swimming Pools

We advise to keep swimming pools closed until at least May 13.

The Governor's April 23rd Order mandates that all public swimming pools shall not engage in in-person operations and shall remain closed to the public while this Order is in effect. The State of Georgia and at least some county regulations define public swimming pools to include homeowner and condominium association swimming pools in this context and best guidance is to keep your swimming pools closed until this Order is lifted.

Swimming Pools

For tennis court amenities, your Board may consider asking residents to comply with USTA or other reputable guidelines when returning to the courts. USTA has developed two "Playing Tennis Safely" documents, one geared to players and one geared to tennis facilities. We suggest Boards consider which, if any, of these guidelines that residents should use if re-opening the courts. Playing Tennis Safely: Facility and Programming Recommendations. We suggest guidelines such as these would be self-enforced by the residents through each player's compliance. The benefit of adopting such guidelines would show that your association is encouraging the practice of social distancing and safe play in accordance with the Governor's Order.

We continue to recommend that signs be posted at tennis courts and other amenities such as: **USE AT YOUR OWN RISK. COVID-19 COULD BE PRESENT.**

Gyms and Fitness Centers

We advise only re-opening gyms and fitness centers if the association can comply with Governor Kemp's operational mandates.

Based on the Governor's Orders, we continue to advise community association Boards of Directors to keep closed the amenities subject to those Orders, which include gyms and fitness centers, unless and until the association can meet the operational mandates established by the Governor. The Governor's April 23 Order mandates the following on pages 14–15 for gyms and fitness centers:

1. Placing signage at any entrance to instruct patrons that they cannot enter if they have been diagnosed with COVID-19, had symptoms of COVID-19, or had contact with a person that has or is suspected to have COVID-19;
2. Placing signage at any entrance and throughout the facility to instruct patrons of the enhanced sanitation procedures, Social Distancing requirements, and other instructions and limitations, as applicable, set forth below;
3. Screening patrons at entrance. Patrons exhibiting a temperature greater than 100.4 degrees Fahrenheit, cough, shortness of breath, or other respiratory symptoms shall not be permitted to enter;
4. Limiting occupancy to enforce Social Distancing requirements and to prohibit Gatherings;
5. Utilizing contactless forms of patron check-in;
6. Providing hand sanitizer stations for patrons and encouraging use;
7. Providing sanitation wipes at or near each piece of equipment and requiring users to wipe down the equipment before and after use;
8. Requiring workers to patrol patron areas to enforce the equipment wipe-down policy and conduct additional cleanings during times when equipment is not being used;
9. Limiting use of cardio machines to every other machine to maintain acceptable Social Distancing between users;

10. Enforcing Social Distancing and prohibiting congregating between non-cohabitating patrons, Patrons should be encouraged to conduct their workout and exit the facility without unnecessary delay;
11. Halting the provision of group classes;
12. Halting the provision of in-facility child care services;
13. Closing the following facilities and equipment within a gym or fitness center: pools, basketball courts and other group sport areas, hot-tubs, saunas, steam rooms, and tanning beds;
14. Limit locker room use and avoid use if possible;
15. Requiring patrons to spray showers with a provided cleaning spray after use; and
16. Requiring workers to clean and sanitize bathrooms and locker rooms regularly throughout the opening hours in addition to the regular cleaning schedule.

Extension of Public Health State of Emergency and Shelter-In-Place Order for Medically Fragile and Elderly

In addition, we wanted to alert you that yesterday, April 30, 2020, Governor Kemp entered a new Executive Order, Renewal of Public Health State of Emergency. The new Order extends the State's Public Health State of Emergency through June 12, 2020.

Governor Kemp also extended Executive Order 04.08.2020.03, 04.08.20.05, and Section III of his April 23, 2020 "Sheltering in Place" Order through June 12. Section III of the April 23rd Order applies to all residents and visitors of Georgia who are at higher risk of severe illness as defined by the CDC. See pages 4–5 of the Order here. The Shelter-In-Place Order remains in effect for all persons who meet the criteria in this Section, which includes all persons 65 years of age or older and persons with chronic lung disease, moderate to severe asthma, severe heart disease, severe obesity, diabetes, the immunocompromised, among others.

We understand the difficult decisions community association Boards of Directors are facing. NowackHoward is here to help you navigate the issues. With each new Executive Order supplementing the previous Orders, we are seeing an increasing number of inconsistencies that require interpretation. We encourage you to reach out to us as you consider what is best for your community. Now, more than ever, ask if an action can be taken, do not wait to ask if it was alright that the Board took the action.

Please let us know how we can help your community.

Best regards,



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