

## COVID-19 and Assessments

Here are some answers to the most frequently asked questions regarding COVID-19 and Assessments:

1. Are Owners entitled to a refund of their assessments due to their limited ability or even inability to utilize common areas/amenities due to ongoing health concerns?

No. Most CC&R's are clear that no such reduction, refund or offset is permitted. Arizona law does not recognize an inability to utilize the common area or amenities, as a defense to failing to pay assessments.

Refunding owners a portion of their assessments would be considered a distribution to the membership, akin to a corporate entity issuing a dividend to its shareholders. Community associations who happen to be non-profit corporations (the overwhelming majority) are prohibited, under Arizona law and case law, from issuing distributions to their members. Community associations who do so risk their non-profit status, and the associated protections afforded to their board members.

2. Does the Trump administration's 60-day moratorium on foreclosure apply to community associations?

No. The moratorium on foreclosure action until May 17, 2020 specifically applies only to lenders who hold FHA-insured mortgages. The ability of community associations to foreclose remains unaffected. As of the date of this bulletin, March 24, 2020, the Superior Courts continue to process foreclosure lawsuits, the Sheriff's Office continues to conduct Sheriff's Sales, and they will continue to do so, absent being directed otherwise.

3. Should a Board agree to temporarily suspend the obligation of an owner, who has been financially impacted by the COVID crises, to pay their assessments?

The Golden Rule in collections, has always been that the longer you wait to collect, the longer it will take, the more expensive it will be, and the worse your results. To conform to the Golden Rule, community associations should pursue delinquencies early on, aggressively, and uniformly.

Community associations that failed to follow this approach during the 2008 downturn ending up being the hardest hit. They had some of the highest rates of delinquency and some of the hardest delinquencies to collect. Many had to raise assessments, impose special assessments, defer maintenance and even seek loans.

To the extent that a board is considering temporarily suspending the obligation of owners to pay because they have been directly impacted by the COVID crisis, doing so has the potential to put the community at long term risk.

Boards who are willing to consider an owner's COVID induced financial hardship are encouraged to do so consistently with how they have considered hardship in the past. To be clear, there is no legal requirement under the law to consider an owner's medical/financial hardship with respect to assessment based decisions. It is a matter of board discretion subject to a reasonableness requirement (unless and until the government intervenes in some manner). The key is to respond to such requests respectfully and uniformly. Boards who have formalized collection policies may have already adopted an administrative approach as to how such requests are to be treated.