

COMMUNITY ASSOCIATIONS BLOG

Understanding COVID-19 Liability Statute

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Burden of Proof. For a community association to be held liable for failing to protect a person against the spread of COVID-19, the person injured must show clearly and convincingly that: (1) the community association engaged in reckless or willful misconduct that caused the injured person to be exposed to COVID-19, and (2) the exposure COVID-19 caused the injury. Reckless is defined as “a conscious, voluntary act or omission in reckless disregard” of a legal duty and the consequences to another party. Willful misconduct means “an act or omission that is intentionally taken to achieve a wrongful purpose or a disregard of a known or obvious risk “that is so great as to make it highly probable that the harm will outweigh the benefit.” For example, willfully holding a meeting indoors where attendees inadvertently become exposed to COVID is not the same as willfully exposing individuals to COVID.

Assumption of Risk. A common defense to personal injuries claims is that the person injured assumed the risks associated with that particular action; i.e., a person is assuming some risks when sky diving.

In addition to the increased burden of proof, the legislation imposes a rebuttable presumption that a person is assuming risks associated with COVID-19 but only if a sign is posted in a clearly visible location at the entrance that states:

WARNING

Under Missouri law, any individual entering the premises or engaging the services of the business waives all civil liability against the individual or entity for any damages based upon the inherent risks associated with an exposure or potential exposure to COVID-19, except for recklessness or willful misconduct.

WE ARE STRONGLY URGING ALL COMMUNITY ASSOCIATIONS TO POST SUCH SIGNAGE AS SOON AS POSSIBLE AT ALL ENTRANCES AS WELL AS AREAS THAT ARE FREQUENTLY VISITED OR USED BY RESIDENTS SUCH AS CLUBHOUSE, OFFICE, POOL, FITNESS AREAS, ETC.

Statute of Limitations. If a person has an injury claim, the person must file the lawsuit within two (2) years after the date of the actual, alleged, feared, or potential for exposure to COVID-19.

Retroactive & Sunset. As the bill does not address whether this legislation impacts legal rights of those that might have a claim before August 28, 2021, it is possible that Missouri courts will only apply this legislation to those claims arising on or after August 28, 2021.

While we certainly hope that our fellow neighbors will get vaccinated as soon as possible and that such vaccines are effective against future variants, it is possible that this legislation will require renewal, as it terminates on August 28, 2025.