

FASSETT, ANTHONY & TAYLOR, P.A.

ATTORNEYS AT LAW

LADD H. FASSETT*
ROBERT W. ANTHONY
JOHN A. TAYLOR
PHIL A. D'ANIELLO
JAMES N. CARLIN, JR.
SPENCER M. GLEDHILL
*Of Counsel

1325 WEST COLONIAL DRIVE
ORLANDO, FLORIDA 32804

TELEPHONE (407) 872 - 0200
TELECOPIER (407) 422 - 8170

ROBERT W. ANTHONY

Direct Extension: 3010
E-Mail: ranthony@fassettlaw.com
<http://www.fassettlaw.com>

May 13, 2020

Via UPS and Email

Governor Ron DeSantis (GovernorRon.Desantis@eog.myflorida.com)

State of Florida

The Capitol

400 S. Monroe St.

Tallahassee, FL 32399-0001

Attorney General Ashley Moody (citizenservices@myfloridalegal.com)

State of Florida

The Capitol PL-01

400 S. Monroe St.

Tallahassee, FL 32399-1050

**RE: Claims on Behalf of Florida Vacation Rental Owners
Executive Order Number 20-87 (issued March 27, 2020)
Executive Order Number 20-103 (issued April 10, 2020)
Executive Order Number 20-112 (issued April 29, 2020)**

Dear Governor DeSantis and Attorney General Moody:

Treating vacation rentals differently from hotels and timeshares should not continue when there is no reasonable or rational basis to do so. Continuing the ban on vacation rentals also exposes all taxpayers in the State of Florida to tremendous liability. The taxpayers will be the ones who have to pay compensation through the State of Florida for the use of the vacation rental properties in the Governor's efforts to address the emergency situation with the Covid-19 virus.

This letter is being written on behalf of Pat and Ken Ross, the owners of two vacation houses in Carillon Beach, to provide you with a specific example of the tremendous financial harm that is occurring to the owners of vacation rental private property and to highlight the impact that this damage is having on unemployment for the thousands of workers who service the vacation rental industry.

For the two houses owned by Mr. and Mrs. Ross, they have refunded deposits to guests in the amount of \$77,316.29. They also had guests cancel reservations because of the Executive

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Order and those cancelled payments total \$37,802.18. Together, that is \$115,118.47 just for these two rental houses in Carillon Beach.

Furthermore, because of the Executive Order, Mr. and Mrs. Ross have been prevented from booking a total of \$52,406.53 of business that desired booking. These are the amounts only through May 11, 2020, and with the Executive Order being extended indefinitely, those amounts are expected to rise dramatically, especially with the Memorial Day weekend and the summer months just ahead of us.

The Governor's emergency management powers are provided in Chapter 252, Florida Statutes. Those emergency management powers include the ability to take many actions. However, Florida law does not allow the Governor to utilize or otherwise use private property such as vacation rentals without paying just compensation. It is critical that this tremendous risk to all citizens of Florida to compensate all vacation rental owners because of the Governor's action be fully understood.

In particular, Section 252.36(5)(d) of Florida law states that the Governor has powers to utilize private property, but it comes with a price that the taxpayers will have to pay. The law states as follows:

"In addition to any other powers conferred upon the Governor by law, she or he may:

(d) **Subject to** any applicable requirements for **compensation** under s. 252.43, **commandeer or utilize any private property** if she or he finds this necessary to cope with the emergency.

Although the Governor has not explicitly stated the rational basis for directing that all short term vacation rentals be shut down and therefore utilized for purposes of minimizing and/or addressing the threat of the virus, the impact of the Executive Order is that all short term vacation rentals are being utilized directly by the Governor. It appears to be an effort to reduce the number of visitors to the State of Florida or to reduce travel by Florida residents. While Chapter 252 does contain this provision granting the Governor power to utilize the private property, the legislature has clearly stated within the law that such utilization comes with the price of paying compensation under Section 252.43.

The specific law governing this action requires compensation unless the property owner has "volunteered her or his services or property." Mr. and Mrs. Ross have never volunteered their two houses to be utilized in this manner by the Governor. It is critical for the Governor to fully understand the impact of the Executive Order as compensation will be required under Florida law. The Executive Order does commandeer the properties the same as if police officers stood guard and refused entry.

Section 252.43 states as follows:

- (1) Compensation for services or for the taking **or use of property** shall be owed only to the extent that a claimant may not be deemed to have **volunteered her or his services or property** without compensation and only to the extent that such taking **exceeds the legal responsibility** of a claimant to render such services or **make such property so available**.
- (3) Compensation for property shall be owed only if the property was **commandeered or otherwise used in coping with an emergency** and its use or destruction was ordered by the Governor or a member of the emergency forces of this state.

The statutory framework in Chapter 252 constitutes applicable Florida law and all executive orders are subject to this Florida law. These executive orders are also subject to the United States Constitution and the Florida Constitution. One lawsuit is currently pending in federal court in Tampa on behalf of vacation rental owners raising many constitutional claims under both the U.S. Constitution and the Florida Constitution. This letter is not detailing all of those claims as the Governor has been made aware of them through previous correspondence and the pending federal lawsuit.

However, Mr. and Mrs. Ross do not believe that the Governor and the Attorney General have been fully focused on the specific provisions within Chapter 252 that make the financial risk to the State of Florida so significant if the Executive Order is not amended to allow short term vacation rentals to resume business activity.

This law firm has previously sent a letter dated April 28, 2020 outlining the numerous constitutional claims on behalf of other Florida vacation rental owners. The constitutional taking claim is different from the statutory compensation claim under Chapter 252. Courts across the United States have already begun issuing opinions confirming that constitutional rights must be upheld even in the face of an unprecedented crisis. Unequal, disparate treatment must be justified, and courts have been issuing opinions criticizing governors for not having legitimate, rational reasons for the broad executive orders being entered and enforced. In many situations the Constitution requires that the particular facts be reviewed to determine the specific constitutional rights at issue and whether they are being violated. As applied to Mr. and Mrs. Ross, the distinction between hotels and other tourist accommodations that are allowed to be open and operating simply cannot be justified on a rational basis.

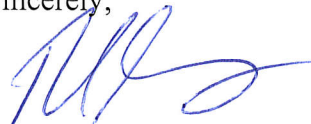
An example is an inn called the Carillon Beach Resort Inn located close to the two houses owned by Mr. and Mrs. Ross. This inn is not shut down and reports are that it

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will be fully operational at the end of this week. The Carillon Inn is within the same development as the two houses owned by Mr. and Mrs. Ross. Many of its individual room owners rent their rooms on numerous vacation rental websites. The inn is about two to three blocks from one of the two houses owned by Mr. and Mrs. Ross and the beach access for guests at the inn is immediately east of that house owned by Mr. and Mrs. Ross. However, the owners of the vacation properties at the Carillon Inn are shielded from liability, but Mr. and Mrs. Ross will be committing a crime if they attempt to rent their two houses.

Particularly troubling is that the most recent extension of the ban is indefinite. There is tremendous uncertainty among vacation rental owners as to whether it is a crime to continue to make reservations for future bookings for Memorial Day weekend, June and the rest of the summer. Mr. and Mrs. Ross are asking for fair and equal treatment. They ask that the ban be lifted promptly.

Sincerely,



Robert W. Anthony

RWA/kas
cc: Ken and Pat Ross (via email)