

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>

April 28, 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 and
ashley.moody@myfloridalegal.com)

State of Florida

The Capitol PL-01

400 S. Monroe St.

Tallahassee, FL 32399-1050

**RE: Constitutional 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)**

Dear Governor DeSantis and Attorney General Moody:

Th current ban on vacation rentals should not be extended for numerous reasons, including the liability that the State of Florida will face for the temporary taking of these properties without just compensation. Although the state certainly can use its police power to combat the COVID-19 virus, the United States Constitution remains in effect. When the state regulation denies all economically beneficial or productive use of land, the state must pay just compensation to the property owner under the Fifth Amendment and Fourteenth Amendment of the U.S. Constitution.

This letter is sent on behalf of Florida vacation rental property owners, specifically Jeff and Gina Paglialonga, owners of vacation rentals and also owners of Teeming Vacation Rentals LLC, a vacation rental management company that manages hundreds of vacations rentals in the state of Florida. The purpose of this letter is to protest any extension of the Governor's ban on vacation rentals and formally demand just compensation for property taken by the state under Executive Order Numbers 20-87 and 20-103.

Executive Orders 20-87 and 20-103 used the state's police power to deprive Florida vacation rental owners all economically beneficial use of their property from March 28, 2020 to April 30, 2020 contrary to their reasonable investment-backed expectations. These executive orders have forced vacation rental owners to refund all guests scheduled to check in during the banned period under the threat of criminal prosecution, discipline and vacation rental license forfeiture.

The state's temporary taking of private property necessitates just compensation under the Fifth Amendment to the U.S. Constitution (applied to the states through the Fourteenth Amendment), Article X, Section 6(a) of the Florida Constitution, and Section 252.43, Florida Statutes. The state of Florida is bound by the Constitution to provide vacation rental owners the fair value of the property lost under the executive orders.

The Supreme Court of Florida has held that temporary takings, even when done to combat a serious public problem, requires compensation to a landowner when the state has regulated a use which was part of the property owner's title to begin with. The current orders banning vacation rentals in Florida certainly render all vacation rentals "economically idle," which was a significant factor in allowing an award of just compensation to an apartment owner in *Keshbro, Inc. vs. City of Miami*, 801 So.2d 864, 875 (Fla. 2001). The *Keshbro* court held that the restriction was not specifically tailored under the circumstances, therefore requiring the temporary closure of an apartment complex resulted in a taking under the Constitution which required just compensation be paid to the property owner.

The Fifth Amendment to the U.S. Constitution provides in relevant part that private property shall not be taken for public use without just compensation. Temporary takings require just compensation the same as permanent takings and the Fifth Amendment is self-executing in character. *First English Evangelical Lutheran Church of Glendale vs. County of Los Angeles*, 107 S.Ct. 2378 (U.S. 1987). This Constitutional right cannot be restricted by the Governor's orders.

The COVID-19 pandemic does not obviate the state's obligation to provide vacation rental owners just compensation. The state does not enjoy immunity during an emergency, nor does an emergency preclude innocent property owners from initiating takings claims. *See Drake v. Walton County*, 6 So.3d 717, 721 (Fla. 1st DCA 2009).

When the state's use of police powers to control the spread of the citrus canker disease results in the taking of property without compensation, the state's action must be justified by the narrowest limits of actual necessity, and the threat must be imminently dangerous. *See Haire v. Florida Dept. of Agriculture and Consumer Services*, 870 So.2d 774, 782-785 (Fla. 2004)(utilizing the standard articulated in *Corneal v. State Plant Bd.*, 95 So.2d 1, 4 (Fla. 1957)).

Governor Ron DeSantis and
Attorney General Ashley Moody
State of Florida
April 28, 2020
Page 3

The vacation rental ban is not narrowly tailored. The state is actively using or promoting some vacation rentals as non-congregate sheltering for contagious individuals that have tested positive for COVID-19. Through participation in the Federal Emergency Management Agency (FEMA) non-congregate sheltering program, we understand that the state and some counties have accepted and used federal funds to house individuals with COVID-19 in vacation rentals. As a requirement of this program, FEMA and Florida have both deemed vacation rentals appropriate and safe housing for individuals known to have COVID-19. These conflicting state determinations constitute a double standard. It is illogical for the state to argue that banning vacation rentals is justified by the narrowest limits of actual necessity to prevent imminent danger caused by COVID-19, while simultaneously deeming vacation rentals appropriate and safe housing for individuals that spread the virus.

Furthermore, the categorical prohibition of all vacation rentals while allowing hotels, motels, inns, resorts, non-transient public lodging establishments, and timeshare projects to continue business operations also fails to meet the required standards of actual necessity and narrow tailoring. The distinction made between vacation rentals and other forms of lodging lacks a basis in reason and common sense. A stand-alone private house (serving as a vacation rental) does not pose a more significant threat for the transmission of COVID-19 than communal public lodgings, such as a hotel, motel, inn, or resort. Likewise, condominiums are occupied throughout the state by owner-residents and long-term tenants. Units in those same buildings are vacation rentals subject to the ban.

The blanket ban of vacation rentals is not narrowly tailored, let alone through the least intrusive means. The Takings Clause is designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. Vacation rentals have been singled out among numerous housing options to bear the cost of fighting the transmission of COVID-19.

Florida vacation rental owners ask that the ban be lifted or not extended.

Sincerely,



Robert W. Anthony

RWA/kas
cc: Teeming Vacation Rentals LLC (via email)