



## GETTING READY FOR POOL SEASON

**W**hile the residents may be all geared up and ready for the pool season to start, is the Association? If the answer is yes or no or somewhere in between, we suggest that the Association review its pool issues and policies to better prepare the Association for the pool season. Some of the issues that Associations must review and consider include:

- Reviewing the pool contract;
- Reviewing pool conditions for safety and adherence to local, state and federal regulations;
- Hiring lifeguards;
- Updating the pool rules and regulations; and
- Allowing swim lessons at the pool;

To start, the Association should review its pool contract and make sure that the contract is current and provides adequate provisions to properly service the Association's pool needs. Of course, as with most contracts, the Association should pay close attention to provisions concerning the scope of work as well as indemnification of the Association should any issue arise caused by their failure or negligence in the performance

of their service obligations. It is not a bad idea to have the pool contract reviewed by a professional to ensure that the contract provides sufficient coverage of services and indemnification.

The Association should schedule an inspection of the pool to ensure that there are not any conditions which would expose the Association to liability such as conditions which are not compliant with local, state and/or federal laws. Depending on the scope of work provided in the pool contract, the Association should schedule such an inspection prior to opening the gates to the pool at the beginning of pool season. If the pool contract does not include such an inspection, the Association should arrange for such an inspection with a pool expert.

One recent law that the Association needs to be aware of is the Virginia Graeme Baker Pool and Spa Safety Act. This federal law went into effect December 19, 2008 and requires all homeowner association pools to have conforming drain covers and be equipped with one or more additional devices or systems designed to prevent suction entrapment if the pool only

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has a single main drain. The Association's pool company can assist the Association in complying with the requirements of this law. Another issue that the Association may consider is the hiring of lifeguards at the pool. The Association should weigh the advantages and disadvantages of hiring lifeguards at the pool. Such considerations include costs to provide such services, adequate provisions in the lifeguard service agreement to safeguard the Association from any and all claims that may arise from any negligence on the part of a lifeguard as well as potential liability issues caused by the appearance that the Association is providing safety and protection of individuals at the pool by hiring lifeguards.

One way to dispel such misunderstandings is to have published Pool Rules and Regulations for the Association which includes a statement that residents and their guests use the pool at their own peril and the Association has no liability as to any injuries or even death that may occur at the pool. Furthermore, the Association may also want to state that any lifeguards hired are hired as a service to the community but in no way is that to be construed as the Association providing safety and protection to anyone using the pool.

The Pool Rules and Regulations should also include basic information such as the dates of the pool season, pool hours, prohibited activities at the pool; pool attire, as well as the Association's rights to suspend use of the pool for violations of such rules and regulations as allowed by the Association's governing documents. The Pool Rules and Regulations should furthermore include a

notice that if anyone vandalizes pool property, the Association will pursue all rights and actions afforded by the Association's governing documents and the law.

Another issue that often comes up is requests by residents to use the pool to provide swim lessons. The Association should consider the effect of allowing such activity at the pool in terms of the effects on other residents' use of the pool as well as potential liability issues for the Association. As such, should the Association choose to allow such activity, the Association should have the resident who is requesting approval to provide such lessons as well as his/her students to sign appropriate waivers releasing the Association from any liability.

These are just some of the issues that associations should consider as pool season approaches. Keeping these issues in mind, the Association should properly conduct a thorough review of all contracts, policies and procedures to adequately prepare for the start of the upcoming pool season. However, spring cleaning now should lead to a stress-free summer of fun at the pool for everyone!

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