

Condo Insights

#60 Swimming Pools – Part 2 To guard or not to guard

Part 2 of this three-part series will discuss whether to have lifeguards or leave the pool unattended, swim-at-your-own-risk policies, liability waivers and rules for conduct in the pool area.

Regardless of whether an association employs its own lifeguard staff or has a pool operator that provides lifeguard staff, recruiting and training lifeguards can be expensive and take a lot of time and effort. Although most condominium and community associations want to ensure the safety of their residents and guests, in New Jersey the law does not mandate the expense of a lifeguard for all swimming facilities. Under the New Jersey Bathing Code, a private non-profit community association swimming pool can be exempt from lifeguard requirements if it meets certain criteria. (NJAC 8:26-5.1)

Criteria for exemption include: the pool is restricted to association members, owners and their invited guests; the pool does not have a diving board or water slide; and no one under 16 is allowed in the pool without adult supervision.

Exempt pools are not required to have lifeguards but must still follow the requirements for the preseason checklist, lab testing, first aid kit, wading pool signage and more, but associations can choose to claim the exemption and opt out of the lifeguard requirements and the automated external defibrillator (“AED”) requirement.

If the pool doesn't voluntarily comply with lifeguard requirements, it must post a "No lifeguard on duty" sign at every entrance. All facilities must post signage that states "Persons under the age of 16 must be accompanied by an adult", even if there is a lifeguard on duty. (NJAC 8:26-5.1(d)1)

Associations that are exempt may choose to staff lifeguards when the pool is busiest, such as on weekends. Regardless, the pool must still meet all other safety requirements. Exempt facilities are subject to all Public Recreational Bathing Requirements except for the AED and lifeguard requirements.

Lifeguards are not permitted to perform any activities that would distract or prevent them from assisting people in the water such as using their cell phones, headphones or earbuds while on duty. Lifeguards should not be checking pool passes, passing out towels or performing any services such as testing or cleaning of the pool while on duty. If the pool has a lifeguard, it must also provide an automated external defibrillator (AED) on hand at all times. All pools are required to have a first aid kit available poolside and other lifesaving equipment.

Pools that have a diving board or water slide are required to have at least one lifeguard; the State Bathing Code requires pools larger than 2,000 square feet of surface area to have at least two lifeguards on duty. In New Jersey, for pools with a water surface area exceeding 2,000 square feet, or where there are diving areas or water depths greater than five feet, elevated lifeguard stands are required to ensure a clear, unobstructed view of the pool surface and bottom. (NJAC 8:26-5.2)

Regardless of whether it employs lifeguards, associations should ensure that their pool facility complies with State Bathing Code requirements for access control including fencing and gates. Swimming pools must be entirely enclosed by a barrier, a wall, or a fence that is at least 4 feet tall. This height helps keep climbing children and pets out of the pool when supervision isn't around. All gates and entry points must be both self-closing and self-latching. This helps prevent gates from being left open, ajar or unsecured.

The decision to operate without lifeguards should be made carefully and only after consultation with the association's legal counsel, insurance agent, and pool operator. If an association chooses to operate without lifeguards, there are procedures and safeguards the association should enact and follow.

The association should implement written rules and regulations for the pool use, stating the pool is unattended and is a “swim-at-your-own-risk” pool where there is no lifeguard on duty. Rules for behavior and conduct should be comprehensive, covering everything from behavior both in the pool facility and in the water, guests, children, music and noise, proper swimwear, eating and drinking, smoking and cellphone distance from the pool. The rules should state that parents and guardians are responsible for the safety of their children and assume all risks while using the pool facilities and include emergency procedures and contact numbers for life safety response and the pool operator. Legal counsel review of proposed rules can prevent the association from establishing rules that may be discriminatory.

The safety benefits of having a lifeguard are obvious, but there are other financial and liability considerations in terms of personal injury and increased insurance premiums. The association may want to confer with its insurance agent to ensure coverage should an incident occur at an unattended pool. Some insurance carriers will not cover pools that don't have lifeguards, so it is important to check with the association insurance agent before making the decision to eliminate lifeguards.

Association board members should check with their attorney and review their governing documents to make sure that a change to eliminate lifeguards doesn't require a vote or amendment of the association's governing documents before making a decision. It's important to post adequate signage around the pool area, communicate any change to the community to make residents aware of the decision and why it's being made.

Operating without lifeguards may be the right decision for some community associations. An exempt condominium association is legally entitled to operate in this way. The decision to do so, however, should be made carefully and only after consultation with the association's legal counsel, insurance agent, and pool operator.

Jim Yost owns Elite Management and Advisory Services, LLC and is co-owner / Managing Partner for Ocean Property Management Corporation, based in Wildwood. The firms provide management and advisory services to numerous community, condominiums and homeowner associations in southern New Jersey. He can be reached at yostopmc@comcast.net.

Karim Kaspar, Esq. is Senior Counsel with Lowenstein Sandler LLP. He serves as general counsel to numerous community and condominium associations throughout New Jersey. He specializes in complex commercial litigation and real estate matters and has been active and instrumental in the firm's pro-bono activities. He can be reached at kkaspar@lowenstein.com.

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