



Pool Your Resources

Association Obligations Regarding Lifeguards and Swimming Pools

[by Mary Joy Howes, Esq.]

Summer is over, but it is never too early to begin thinking and preparing for next year. Many associations have community pools, yet they are unaware of the Rhode Island law governing this common area. A frequent question asked is whether or not the association should hire lifeguards or simply have signs warning users of the risks involved in utilizing the pool. As it turns out, many associations are probably operating contrary to statute.

Section 23-22.15 speaks specifically to condominium projects on this issue and states:

“Notwithstanding any general or public law to the contrary, condominium projects with forty-five (45) units or less

are not required to have a life guard on duty at any swimming pool located on the premises. Provided, that where there is no life guard required to be on the premises, no minor shall be permitted access to any swimming pool on the premises unless accompanied by a parent or other responsible adult.”(emphasis added)

The general rule regarding lifeguards is found at 23-22-6 (b), which states: *“No lifeguard shall be required for any pool licensed in this chapter; provided, a lifeguard shall be on duty if the pool is used by a swim club or a group of unsupervised children who may have access to the pool. Operators of pools shall, when no lifeguard is on duty:* (1) Require an attendant and/or a me-

chanical system to limit access to guests and members only;

(2) Require a person trained in first aid to be physically located in close proximity to the pool in question;

(3) Require the following signs to be posted in a conspicuous place:

- (i) NO LIFEGUARD ON DUTY- SWIM AT YOUR OWN RISK (minimum 4” letters in RED)*
- (ii) NO ONE UNDER 18 PERMITTED UNLESS ACCOMPANIED BY AN ADULT*
- (iii) ADULTS SHOULD NOT SWIM ALONE*
- (iv) A SCHEDULE OF POOL HOURS*
- (v) NO GLASS IN POOL AREA*
- (vi) NO RUNNING OR ROUGH HOUSING*

3FT NO DIVING

Many associations have community pools, yet they are unaware of the Rhode Island law governing this common area.

(vii) *NO DIVING*

(viii) *NO ANIMALS OR PETS*

(4) *Require, in the case of outdoor pools, in addition to the above requirements, a fence with a lockable gate or door, a minimum of not less than six feet (6') in height, which completely surrounds the pool area. (emphasis added)*

Based on the foregoing, for those associations that are under 45 units, although no lifeguard is required, the statute prohibits use of the pool by children unless they have a parent or responsible adult accompanying them. The association should have a rule in place and signage to this point, as well as following the other requirements regarding signage and fencing and enclosure as set forth above.

For those associations that exceed 45 units, it is likely that a court would determine that a lifeguard is needed due to its size. That is, it is more likely that a group of unsupervised children would have access to the pool in a larger size

condominium. It would be prudent for an association of that size to not only have a lifeguard on duty, but to also post the signage and install the fencing and enclosure as required by the State of Rhode Island.

Any association with a pool should also maintain a set of rules with respect to the pool area. In the case of a lifeguard being present, this may create a false impression of security, causing parents to not be as diligent in watching their kids or grandkids swim. Moreover, as a landowner, in charge of a semi-public accommodation, the association has a duty to keep the premises reasonably free from hazards, such as drowning in the pool or sustaining massive head injuries while diving or perhaps even slipping on the pool apron. Granted, there is (or should be) adequate insurance to cover risks, it would be better if the association had an individual present to guard against, or at least minimize such mishaps. As discussed above, the proper signage should also be in place to, in effect, protect people from themselves. Rules

against horseplay, alcohol use, diving, running, etc., and after hours use should of course be implemented, respected, and enforced. Having rules in place, that the association may enforce via a statutory hearing, with resultant fines, may counteract certain lax behaviors, such as those behaviors outlined above.

Therefore, based on the above, not only is a lifeguard likely required for an association over 45 units pursuant to a statutory analysis, it is the responsible choice for the association. Additionally, all associations of all sizes should have appropriate rules, signage, fencing, and proper enclosures. It is best to pool your resources to implement these safeguards than find yourself swimming in a lawsuit. ■



■ MARY JOY HOWES, ESQ. IS AN ATTORNEY IN GOODMAN, SHAPIRO & LOMBARDI'S RHODE ISLAND OFFICE.