

Drones: The next challenge for private communities

Commentary by
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There seems to be a proliferation of drone sightings these days and not simply of the military variety.

OpenSky Drones LLC, a South Florida company, recently launched with a promise to offer engineers, architects and government agencies a less-risky way to inspect real property. In addition



Berger

and the real estate industry, drones are used in the movie industry and aerial photography. And some creative, high-end hotels are even using drones to create a “wow effect”



by delivering Champagne and other goodies to guests.

These devices can range in size from the palm of a hand to several feet in width and can cost less than \$500 and upward of \$10,000. Commercial drone usage is very restricted in the United States, with only two American companies having approval from the Federal Aviation Administration. However, that

is likely to change—and soon.

While drones begin to enter the zeitgeist, everyone awaits the FAA’s issuance of its notice of rule-making proposal; even the owners of these companies agree that the use of drones should be properly regulated and the operators licensed. After all, what goes up must come down, and a drone operator should be able to interpret aeronautical charts, respect air space safety and

understand how to launch and land these devices.

Given that Florida is home to 60,000-plus shared ownership communities, it will be interesting to see how the drone phenomenon plays out in these private residential communities. Drones could easily be embraced or reviled by both boards and residents.

HARASSMENT VALUE?

It is not easy to inspect the limited common elements of condominiums—think the 18th-floor balcony—and individual homeowner association lots to determine if violations and/or dangerous conditions exist without either securing the owner's agreement and cooperation, or taking some risks when entering someone's property regardless of the authority to do so conferred by the association's governing documents.

Some boards could see drones as useful new tools to enforce their governing documents with less risk and inconvenience. However, the association owners subject to a "drone inspection" will surely cry foul and claim that their privacy rights have been violated, regardless of the as-

sociation's rights to inspect and/or cure a violation.

In addition to potential uses for the board or association manager, it's likely that some communities will have resident hobbyists who, knowingly or not, invade their neighbors' airspace and privacy.

BOARD OF CONTRIBUTORS

Drones could also prove to be a handy new tool for the resident with a personal gripe against a neighbor or a board member. Just imagine the potential harassment value of a drone hovering outside your window or taking pictures while you lounge by the community pool?

STATE ACTORS

Drones are the latest in a wave of recent technology that includes Google Glass as devices with the ability to challenge our long-cherished privacy rights.

Otherwise idyllic private communities can soon find themselves embroiled in a constitutional law debate when it comes to whether or not their private restrictions trump

constitutional protections.

The Fourteenth Amendment, which makes most of the Bill of Rights applicable to the states, prohibits only state action when it comes to impairing constitutional rights.

Some experts argue that community associations are basically state or public actors as a result of their assessment and regulatory capacities, while others argue that these shared ownership communities are private entities. This public versus private distinction continues to be debated and conflicting rulings issued in various jurisdictions throughout the country.

Naturally, if communities choose to use or restrict drones for whatever reason, privacy concerns will undoubtedly spark debate and perhaps even litigation.

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