



Learning to fly:

DRONES IN COMMUNITY ASSOCIATIONS

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People keep shooting down drones. Surprisingly (or maybe not), one of the first reported drone shootings happened in New Jersey in September of 2014, when Lenny Helbig's neighbor, Russell Percenti, shot down Lenny's drone with a twelve-gauge shotgun¹. Percenti, who claimed he shot down Helbig's drone because he was "protecting his family's privacy," plead guilty to criminal mischief on February 14, 2016². Since that ill-fated drone excursion, similar incidents have been reported in numerous states, including Virginia, Kentucky, Tennessee and Louisiana³. But this article is not about shooting down drones; this article is about what is being done to regulate drones throughout the country and, possibly, in your community association.

On August 29, 2016, the first comprehensive set of operational rules for the routine commercial use of **Small Unmanned Aircraft Systems** ("UAS" or also commonly known as "**drones**") went into effect⁴. These long awaited operational rules, introduced by the Federal Aviation Administration ("**FAA**") in June 2016, were over two years in the making, with input from individuals as well as companies such as Google and Amazon.com⁵. The stated intentions of the new rules are many: spur job growth, advance scientific research, save lives and "opening pathways towards fully integrating UAS into the nation's airspace."⁶

UAS/drones are defined by the FAA as "an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft."⁷ So essentially, remotely-controlled devices that may take pictures or video or (one day) deliver a pizza.

To be clear, these new FAA rules only govern the **commercial** operation of drones conducting "non-hobbyist" operations; they do not apply to **recreational** drone use

- the drone may not operate over people not participating in the operation, under a covered structure or inside a stationary covered vehicle
- the drone may only have a maximum groundspeed of 100 mph, a maximum altitude of 400 feet above ground level, and may not travel within 400 feet of any structure

"CAN'T KEEP MY EYES FROM THE CIRCLING SKIES." -PINK FLOYD.

(those who fly drones as a hobby/for fun). However, these rules do impose a number of limitations, all of which aim to protect people and property, including:

- the drone must weigh less than fifty five (55) pounds
- the drone must remain within the visual line of sight (VLOS) of the person maintaining the controls at all time
- only daylight operations are permitted, except that twilight use (30 minutes before sunrise and 30 minutes after sunset) will be permitted for a drone with anti-collision lighting
- required certification of the drone operator, including a security background check (minimum age of sixteen (16) and a remote pilot certificate required)

- requiring drone operators to do pre-flight checks to ensure safety systems are functioning, including communications between the drone and the remote pilot.⁸

FAA Administrator Michael Huerta called these new rules a “first step,” noting that the FAA is taking a “careful and deliberate approach that balances the need to deploy this new technology with the FAA’s mission to protect public safety.”⁹

Again, because these new regulations only apply to commercial drones, the recreational drones that may be popping up throughout the country and in community associations are not subject to these restrictions (yet); however, more than twenty states, as well as numerous individual cities and towns, have approved laws regarding drones (both commercial and recreational) over the past two years, which place restrictions on where drones can be flown and also address privacy concerns.¹⁰

In addition to these local laws and regulations, many community associations are asking whether they can preemptively prohibit – or at least restrict – drones (again, both commercial and recreational) from operating in/over the association’s and/or members’ property. Other associations may also consider using drones themselves to monitor the common property and/or to inspect for rule violations. But how can an association board balance the

desire of some members to fly drones against the privacy concerns or possible damage that may be caused by drone usage? Who is liable if a recreational drone operating with an association’s approval causes damage to another owner’s home or vehicle or to the common property? Should an association require registration, insurance and a waiver prior to allowing any drone usage within an association? Or, if the municipality or state already regulates drones, should associations stay out of the drone-business altogether?

All of these factors will be necessary for boards to consider before agreeing to affirmatively allow drone usage within an association and/or adopting a formal drone policy/resolution. As a preliminary considerations of this issue, in addition to any local or state regulations, boards should review with association counsel whether: (1) the governing documents grant authority to adopt rules prohibiting/restricting drones from flying over common property/individual unit owner property; (2) assuming drones will be permitted, should boards adopt “time, place and manner” restrictions for the use of drones, such as prohibiting flying within a specified distance of any homes and/or obtaining permission from residents before using photographs; and (3) again, assuming drones will be permitted, should boards adopt registration, licensing and/or liability/insurance requirements.

And in considering whether your community association should adopt a policy regarding the use of drones, one of the primary issues to consider should be members right to privacy. Although the new rules do not specifically deal with privacy issues in the use of drones (commercial or otherwise), the FAA is acting to address privacy

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considerations and has recommended the “Voluntary Best Practices for UAS Privacy, Transparency and Accountability” issued by the National Telecommunications and Information Administration (“NTIA”) ¹¹. These “best practices” encapsulate the “Guidelines for Neighborly Drone Use,” which includes such suggestions as:

- if possible, tell other people if you will be taking pictures or video of them or their property before you do so
- if you think someone has a reasonable expectation of privacy, do not violate that privacy by taking pictures, video, or otherwise gathering sensitive data
- Do not fly over other people’s private property without permission
- Do not harass people with your drone ¹²

The operation and evolution of drone use throughout the country – and in community associations – is quickly evolving. For better or for worse, drones are here to stay, so, until the FAA releases operational rules for the **recreational** use of drones (which may not be far away), associations should proactively consider the issues discussed above and determine with the advice of counsel whether it is necessary and prudent to enact a resolution regarding drones within an association. Oh, and please stop shooting down drones – it is dangerous.

FOOTNOTES

¹ Greenwood, F. (September 26, 2016). *Shooting Down Drones Isn’t Funny or Brave*. Retrieved from http://www.slate.com/articles/technology/future_tense/2016/09/shooting_down_drones_is_dangerous_and_stupid.html

² Ma, M. (February 14, 2016.) *Lower Township man admits to firing shotgun at drone*. Retrieved from www.nj.com/news/.../lower_township_man_admits_to_firing_shotgun_at_dro.html

³ See note 1.

⁴ Federal Aviation Administration. (June 21, 2016). *DOT and FAA Finalize Rules for Small Unmanned Aircraft Systems* [Press Release]. Retrieved from https://www.faa.gov/news/press_releases/news_story.cfm?newsid=20515

⁵ Barber, C. Ryan. (August 29, 2016). *The New Drone Rules – Three Things Companies Need to Know*. Retrieved from <http://www.law.com/sites/almstaff/2016/08/29/the-new-drone-rules-three-things-companies-need-to-know/?slreturn=20161014094128>

⁶ See note 4.

⁷ Federal Aviation Administration. *Unmanned Aircraft Systems (UAS) Frequently Asked Questions/Help*. Retrieved from <https://www.faa.gov/uas/faqs/>

⁸ Federal Aviation Administration. (June 21, 2016). *Summary of Small Unmanned Aircraft Rule (Part 107)*. Retrieved from https://www.faa.gov/uas/media/Part_107_Summary.pdf

⁹ See note 4.

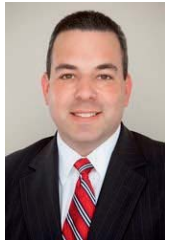
¹⁰ Odenthal, M. (April 2016) *The Drone Debate*. Retrieved from <http://cooperator.com/article/the-drone-debate/full#cut>

¹¹ National Telecommunications and Information Administration. (2016). *Voluntary Best Practices for UAS Privacy, Transparency and Accountability*. Retrieved from https://www.ntia.doc.gov/files/ntia/publications/voluntary_best_practices_for_uas_privacy_transparency_and_accountability_0.pdf


¹² See note xi. See also <http://knowbeforeyoufly.org>

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