

Becker New Jersey Community Update

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Becker Merges With New Jersey Community Association, Construction Litigation Law Firm



The firm is pleased to announce its merger with the Law Offices of Arnold J. Calabrese, a New Jersey-based community association and construction litigation law firm. The merger adds two attorneys – **Arnold J. Calabrese** and **Karl T. Meth** – to Becker’s Morristown, NJ, office. Calabrese and Meth, with combined industry experience of more than 60 years, will enhance the firm’s robust capabilities in these key areas of practice for which the firm is widely known.

Featured Q&A: Amendments to the New Jersey Public Recreational Bathing Code and the Effects on Your Community Association

Q: Our association is considering eliminating the lifeguard at our pool. Do we need to do anything other than post “swim at your own risk” signs?

A: Many communities throughout the State of New Jersey are giving serious



consideration to eliminating the lifeguard at their pool in light of the amendments to the Public Recreational Bathing Code, N.J.A.C. 8:26-1 (the “Code”), particularly those portions addressing the duties of lifeguards as they may result in increased costs. However, provided your association has been approved as a “specially exempt” facility, the association would be exempt from the

lifeguard requirements of the Code.

As you may be aware, the amended regulations require communities with pools larger than 2,000 square feet of surface area to have at least two lifeguards on duty. In addition to other changes, which are discussed in more detail below, lifeguards are not permitted to perform any activities that would distract them or intrude upon their attention from proper observation of, or prevent immediate assistance to, persons in the water. This means that lifeguards should not be texting or looking at their cellphones, checking pool passes or performing any services with respect to testing or cleaning of the pool while on duty. While this has always been the case, the language of the amendment suggest that local municipalities may enforce these requirements more strictly.

Despite any increased cost that may result to your community, we do not recommend that you completely eliminate the lifeguard at your pool. The safety benefits of having a lifeguard are obvious, but there are other financial and liability considerations as well. The elimination of your lifeguard will certainly increase your insurance premium and may expose your community to greater risk. For example, if you currently have a vendor providing lifeguard services, you will lose the benefit of insurance coverage and other protections afforded by this vendor. In the event that a lawsuit was filed in connection with an incident at or near the pool, your vendor and its insurance carrier would likely be required to defend and indemnify your community. Whereas, if you eliminate the lifeguard provided by the vendor, the association or its insurance carrier must absorb these costs.

If you are a qualified common interest community and decide to eliminate the lifeguard at your pool, the Public Recreational Bathing Code requires that you post a sign at least three feet by four feet in size, prominently displayed at every entrance to each swimming area, stating: (a) “No lifeguard on duty,” (b) “Persons under the age of 16 must be accompanied by an adult,” and (c) “No swimming alone.” This sign must include the hours the pool is open and all information on the sign must be easily readable with contrasting colors. At mobile home parks or retirement communities, the sign must also state: “This pool is closed when the owner or operator is not on the premises.” There are also additional signage requirements for a “Health Club” registered with the Director of the Division of Consumer Affairs pursuant to N.J.S.A. 56:8-39.

Given the insurance and legal implications, we highly recommend that you consult with your attorney and insurance agent prior to making any decision to eliminate your lifeguard.

Here are some other important amendments to the Code that will affect everything from preseason pool opening procedures to pool inspections and maintenance:

- Lifeguards are not permitted to perform any activities that would distract them or intrude upon their attention from proper observation of, or prevent immediate assistance to, persons in the water. This means that lifeguards should not be texting or looking at their cellphones, checking pool passes or performing any services with respect to testing or cleaning of the pool while on duty. While this has always been the case, the language of the amendment suggest that local municipalities may enforce these requirements more strictly.
- Twenty-one (21) days before the pool is set to open, the owner/operator must submit the Checklist for Public Recreational Bathing Facilities to the local health authority for approval to open. An initial water sample must be obtained prior to opening the pool and sampling must be done at least once every week thereafter;
- Bonding and grounding certificates must now be provided annually before the pool opens;
- A full spine board must be kept poolside;
- Pools must have at least one throw line which reaches the other side of the pool;
- All life-guarded pools must have an automated external defibrillator (AED);
- All pools with a depth great than five (5) feet, a diving area, or greater than 2,000 square feet in surface area must have elevated lifeguard platforms located at the water's edge;
- Emergency telephone numbers of the nearest rescue squad, police department, and other appropriate entities, along with the address of the pool, shall be posted in a weather-resistant display adjacent to the lifeguard station;
- While a written standard operating procedure aquatics facility plan is not a new requirement, there is some new information that must be included in the plan, including: the location of the emergency shut off switch for the suction outlets, the hours of operation of the pool, the schedule of operational activities (such as water testing), the zone of protection plan for lifeguards and a safety policy on water toys and floats.
- Dressing rooms and bathrooms shall be provided.
- For facilities constructed prior to November 4, 1986, dressing rooms shall not be required and bathrooms may be portable.
- For facilities constructed prior to September 7, 2010, dressing rooms and bathrooms shall be provided within 50 feet and at least one bathroom shall be provided and it may be portable.
- For existing condominiums where all residences are within 100 feet of the swimming pool, a separate dressing room and bathroom near the pool are not required.
- The circulation system must meet the following requirements:
 - The pumps, piping, return inlets/suction outlets, filters, etc. shall be

maintained to ensure the complete circulation of water throughout all parts of the swimming pool.

- The circulation system shall be operated so as to turn over the entire swimming pool water capacity at least once every six hours; and the wading pool water capacity at least once every hour. Pumps shall be operated 24 hours a day and seven days a week.
- The facility owner may install an energy efficient two-speed pump to save energy when the pool is closed at night. If such a pump is installed, the turnover rates do not have to be met during the night when the pool is closed.
- Swimming pool water clarity shall be maintained so that the deepest portion of the pool is clearly visible from the pool's edge.
- The pump and component parts of the circulation system, shall be operated in a safe manner that is not hazardous to the operator and maintenance personnel.
- Mechanical seals shall be corrosion resistant and shall be maintained in good repair.
- Direction of water flow and pump rotation shall be clearly indicated on the pumps & all visible piping.
- Strainers shall be provided on all filter systems, shall be removable, and shall be located upstream of the circulation pump(s) to remove solids, debris, hair, and lint. Water entering the pump shall first pass through the removable strainer.
- Filters shall be cleaned and maintained pursuant to the manufacturer's instructions, so that the circulation system can provide the required water clarity.

These are only some of the changes to the Code. Thus, we highly recommend that you first consult with and seek the advice of your counsel and pool management vendor before the upcoming pool season to ensure that your community is in compliance.

In the News

Angela Morisco, Esq., Presented Debt Collection Seminar: FDCPA, CFPB and TCPA Changes You Need to Know Now

**Hosted by the National Business Institute
Monday, April 16th
1:00pm - 2:30pm**



Angela Morisco is an attorney in the Morristown, New Jersey Community Association Practice Group whose practice is focused on community association collections and foreclosures. Angela gave this seminar, hosted by NBI, to attorneys, paralegals and CPAs for them to gain Continuing Legal Education credits and learn about the latest debt collection litigation, regulations and requirements. She included a discussion of relevant caselaw interpreting the FDCPA and the TCPA and the

implications for attorneys engaged in debt collection including collection of community association fees. Attendees also learned about H.R. 5082, The Practice of Law Technical Clarification Act of 2018 and its significance to attorneys engaged in debt collection. The seminar also included a discussion of dispute resolution techniques, mediation and judgment enforcement strategies.