

MURKY WATERS: Updated COVID-19 Pool Regulations in New Jersey

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On June 9th, 2020 Governor Murphy announced Executive Order 153 (the “Order”), laying out certain requirements for outdoor pool openings. Pursuant to the Order, pool facilities were required to comply with the standards set forth by the New Jersey Department of Health (“DOH”) and certain guidelines issued by the

Centers for Disease Control and Prevention (“CDC”). On March 19, 2021 the New Jersey Department of Health published an update to their 2020 pool guidelines.

As we explained last year, the requirements for pool openings are extensive and likely expensive for any Association to undertake. These most recent updates mostly serve as clarifications; however, a number of changes are of significance to community associations.

The following are the most noteworthy and relevant updates for community associations:

- **Masks in the pool area** (not within the pool) **are mandated when six-feet of social distance cannot be maintained.** Because keeping track of the distances between people is burdensome, we recommend that all people on the pool deck be required to be masked, whether or not they have been vaccinated.
- The COVID-19 ambassador will ensure that **any pool furniture, umbrellas, towels, and any other equipment provided by the facility for shared use will be available to one individual or assigned group at a time.** Additionally, the ambassador will ensure that **any furniture or equipment is cleaned and disinfected after use** and before another person uses it, pursuant to the procedures required by the DOH & CDC. An association must limit the sharing of patron furniture and equipment, and shall adhere to the requirements of Health and Safety Standards for High-Touch Amusement and Recreation Activities Pursuant to Executive Order No. 181.

Many associations who are opening their pools have decided not to provide chairs or lounges this year to reduce the burden and expense of monitoring and disinfecting them.

- **Pool facilities must conduct a staff questionnaire upon their entrance to the facility.** Any individual exhibiting a temperature of 100.4 or above, or who answers yes to any of the following or similar questions, shall be denied entrance to the facility:
 - Within the last 10-days have you been diagnosed with COVID-19, had a test confirming you have the virus, or been advised to self-isolate or quarantine by your doctor or a public health official?
 - Have you had any one or more of the following symptoms today or within the past 24 hours, which is not new or not explained by another reason?
 - Fever, chills, cough, shortness of breath, sore throat, fatigue, headache, muscle/body aches, runny nose/congestion, new loss of taste or smell, or nausea, vomiting or diarrhea?
 - In the past 14 days, have you had close contact as defined by the New Jersey Department of Health with an individual diagnosed with COVID-19?
 - While in many instances this burden will fall on the pool management company, it is up to the Association to confirm that the above requirements are being adhered to.
- **All pool facilities must identify, locate, and designate a COVID-19 emergency care area/room** for the emergency care of those who become ill while on-site. Pools under a 500-bather capacity are no longer exempt from providing an emergency care area/room.
- **Both staff and visitors to the pool facility must cooperate with local health departments and contact tracing personnel** during a public health investigation and possible contact tracing for COVID-19.

It is the association's responsibility to make sure all of the pool opening requirements are met. An association may delegate these duties to their pool contractor, employees, and their COVID-19 ambassador, however, it is ultimately the association's responsibility and the association should confirm that not only are the proper policies in place, but that they are actually being followed. Becker believes that the pool opening requirements are still as extensive and likely expensive as last year, and thus will make compliance difficult for most associations.

As was explained last year, most, if not all, association general liability insurance policies contain exclusions for communicable diseases and directors and officers' insurance policies have never covered claims for personal injury. This highlights the inherent risks in opening pools. Should a claim be filed, the association is unlikely to be provided a defense, which, alone, may be very expensive. And while it is believed that COVID-19 claims will be difficult to prove, should a judgment be awarded, the association would be required to assess their owners. Furthermore, the governing board members would have to

rely on indemnification from the association for any claim made against them personally.

For these reasons, our recommendation is for boards to carefully evaluate the risks and benefits to the association when determining whether to open swimming pools for the 2021 summer season. All boards are encouraged to consult with counsel before deciding on a pool opening policy.

Becker's Community Association Team is available to assist in preparing pool opening policies that best meet and protect your community's interests. Please contact us if you have any questions or concerns regarding this issue.