COMMUNITY MATTERS

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Eye In The Sky – Drones In Your Community

by | **Joseph C. Larkin, Esq.**

It has been projected that there will be over seven million drones in the United States by 2020. Perhaps now is a good time for community associations to put drone regulation "on their radars." Generally speaking, the question of whether community associations can regulate the usage of drones on their common area or common elements depends on the authority contained in community associations' governing documents. First, it is helpful to go over the state and federal laws governing the use of drones.

Laws and Regulations Applicable to Drone Usage

In addition to Federal Aviation Administration ("FAA") regulations, which are discussed below, there is a relatively new code section in Georgia that specifically pertains to the use of drones. Signed by Governor Deal May 9, 2017, and effective July 1, 2017, a new state law in Georgia is intended to limit local governmental authority to enact laws and ordinances concerning the use of certain drones. Codified at O.C.G.A. Section 6-1-4, the first paragraph defines "unmanned aircraft system" to be a "powered, aerial vehicle" that meets certain criteria:

- Does not carry a human operator and is operated without the possibility of direct human intervention from within or on the aircraft;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely; and
- Can be expendable or recoverable.

Subparagraph (b) provides that after April 1, 2017, only the State may enact laws related to the "testing or operation" of unmanned aircraft systems. However, it allows local government to a) enforce ordinances adopted before April 1, 2017, b) adopt ordinances that enforce FAA restrictions, and c) adopt an ordinance that would prohibit the launch or intentional landing of a drone from or on public property unless the drone is being operated for commercial purposes.

Finally, Subparagraph (c) of the new law allows the State or any agent or department of the State to prohibit the launch or intentional landing of a drone from or on its property.

That is pretty much all we have at a State level in Georgia at the moment. However, of course, the FAA has implemented some restrictions and safety guidelines. Perhaps most importantly, pursuant to FAA regulations, drone usage is prohibited within five miles of any airport. Thus, for community associations falling into that geographical category, the remainder of this discussion is moot. Flying a drone is prohibited on a federal level.

For everyone else, however, drone usage will be permitted so long as certain conditions are met. The FAA has put forth two sets of rules for such drones: one set that pertains to recreational or hobbyist use, and another set for commercial usage. For recreational or hobbyist use, the drone must be registered with the FAA and labeled with a registration number if the drone weighs between .55 pounds and less than 55 pounds. Drones cannot be more than 55 pounds. Drone operators must be at least thirteen years old, and the operator must be a U.S. citizen or legal permanent resident. Drones for commercial usage are more heavily regulated. Commercial usage is considered as in the "furtherance of a business purpose." All businesses operating small drones must comply with the additional rules, such as a) the operator must be at least sixteen years old; b) the operator must pass an initial aeronautical acknowledge test at an FAA-approved knowledge testing center; c) the operator must be vetted by the Transportation Safety Administration.

Additionally, some of the FAA safety guidelines for use of drones include a requirement that drones be flown at or below 400 feet, that it remain within eye sight, that it is never flown over groups of people, over stadiums or sports events, or emergency response efforts.

Can a Community Association Regulate Drone Usage?

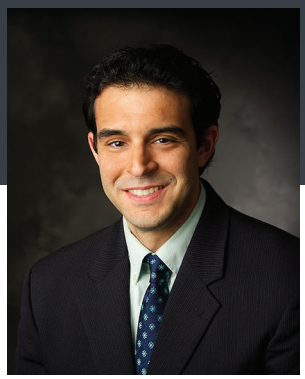
An association's authority to regulate drone usage on its common area or common elements is based on the same authority an association relies on to regulate other activities on its common area and common elements. Any rules and regulations promulgated by an association are, of course, in addition to any and all requirements put forth by the FAA and any local ordinance adopted on or before April 1, 2017 or adopted to enforce FAA restrictions, as discussed above.

Well drafted governing documents will grant the Board the power to adopt rules and regulations, and as such, community associations usually have the power to adopt rules and regulations governing the use of drones on their common areas and common elements. Should a community association have the authority to regulate drone usage on its common areas or common elements, such rules and regulations must be consistent with the FAA's and state regulations and should be designed to reasonably address legitimate concerns about the interference that drones represent to other owners' use of the common areas or common elements.

For example, drone-related rules and regulations might include a) creating a requirement that all owners and occupants receive written consent from the Board of Directors prior to operating a drone on the common areas and common elements; b) creating a requirement that drone operators must sign an indemnification agreement with the association; c) establishing a requirement that the operator provide proof of insurance covering the drone; d) establishing limits on the times of day that drones may be operated within the neighborhood; e) establishing a minimum distance that the drone may be flown near buildings, landscaping, and people; f) creating a designated flying/landing area; g) providing measures to protect the privacy of community owners and occupants; and h) creating a requirement that the operator comply with all current federal and state rules and regulations as well as any county, local or municipal ordinances adopted on or before April 1, 2017.

At this point in time, federal, state and local regulations involving drones are still relatively untested. That said, we suspect that rules and regulations governing the use of drones will be upheld, provided that the rules are reasonable and are enforced in a fair and consistent manner.

When To Start Collections: Ready, Debt, Go!



by | **Stephen A. Finamore, Esq.**

Is it too soon to start collections? Many boards of directors will be reluctant to initiate legal proceedings against a neighbor. Hiring an attorney to send a letter threatening a lien, lawsuit, and foreclosure is not the sort of thing that is easily laughed off at community socials. It can also make for some awkward elevator rides or walks to the mailbox. Regardless, the board has an obligation to make sure that the association's only source of income continues to flow as it should. Sometimes that means legal action.

It may not be surprising that an association's attorney would recommend legal action to recover unpaid assessments. Aside from the collection attorney's desire to handle the case, there are practical and legal reasons for having a process of early and often collections. Far too many boards find themselves in the untenable position of having too much debt to recover with too little capital to initiate legal action to collect what is owed. Even worse, some boards find themselves in position where a once valid debt needs to be written off due to the passage of time. Given the significant powers an association has in its declaration and under Georgia law to leverage its efforts, it is inexcusable for a board to suffer either consequence.

A small debt is easier to collect than a larger one. The farther an owner gets from their last timely payment, the likelihood of being able to get the owner to voluntarily pay lessens. While a debt of $1,000 may have been easily paid in a few installments, a debt of $5,000 may be insurmountable (or may seem insurmountable to an owner, thereby making even thinking about entering into a payment arrangement less likely). This is especially so when assessments continue to become due on top of the debt that is already owed. Moreover, if the debt accumulated over a number of years since the last timely payment, the owner may have changed jobs, bank accounts, or even moved to a new address in that span of time. These circumstances make collections more difficult.

While turning over a debt of $1,000 may seem somewhat obvious to an enlightened board, some associations have smaller annual assessments. If the annual assessment is only $200 per year, there would never be a collectible debt of $1,000 because of the "statute of limitations." The statute of limitations limits actions to recover assessments to four years after the assessment became due. For an association with annual assessments of $200 per year, the collectible debt will never grow beyond $800. The only way to prevent the assessments from expiring is to file a lawsuit to recover them before the oldest assessment becomes four years old.

The idea of filing a lawsuit and engaging a neighbor in collections litigation may seem daunting to some boards; however, a lawsuit is typically the last resort. Since the cost of collection and litigation will escalate as soon as the court is involved, it is prudent to attempt less aggressive measures first. The first step in any responsible collection practice is to send a warning letter advising the owner of the possible consequences of failing to pay. Most associations have authority to impose remedial charges such as late fees or interest and to include these amounts along with the assessments and legal expense as a lien against the property and the personal obligation of the owner. Many associations will have authority under their governing documents and Georgia law to foreclose the association lien on the property. Some will have the authority to regulate parking, amenity access, or utilities. Warning an owner of any, or all, of the consequences for nonpayment is often enough to compel payment without the need to engage in litigation. That said, there is an incentive for a board to begin the process of notice and escalation sooner rather than later.

The decision to begin trying to collect from owners who are not paying assessments is easy because it is necessary. How to go about collecting is more difficult and will require a review of the governing documents and knowledge about Georgia law to determine available remedies. The association's counsel should be consulted to determine what remedies and enforcement options are available.

Running on Empty:
Turning Off the Tap on Delinquent Homeowners

by | **Harrison J. Woodworth, Esq.**

Community associations provide a wide variety of services to their resident members, which can include essential utilities such as water, gas, electricity, heating, and air services.

These services can come at a cost to the association, and the timely payment of assessments by members is critical for an association to pay those utility bills. For that reason, governing documents that provide utilities to their association members paid for by the association often include provisions allowing the association to suspend or terminate utility services to non-paying members. In our practice, this most commonly takes the form of our client associations terminating water service to induce payment of past-due assessments.

However, just because an association has the ability to terminate water services does not mean you should rush to your ledgers to determine whose spigot is going to be turned off. It is vitally important that the proper procedures are followed for water service termination, and those procedures will vary based on whether an association is a common law association bound only by its governing documents, or whether the association is also subject to the Georgia Condominium Act (Condo Act) or the Georgia Property Owners' Association Act (or POA) in addition to its governing documents. The Condo Act and POA, largely similar in most regards, actually have an important distinction in this instance. The Condo Act requires that in order for an association to terminate water services to a delinquent member, a necessary pre-condition is the that association must hold a final judgment or judgments for damages against the owner of at least $750.00. The POA has no such restriction. Associations often view and use water service termination as a faster, less-expensive alternative to litigation, but for condominiums (and any association whose governing documents happen to have a similar restriction) it is solely a post-judgment remedy.

As a board member, if you think your association has the ability to terminate water service, and that the conditions have been met for terminating water service, the next question is, how to go about doing it. This may shock you to read in an article written by an attorney, in a newsletter from a firm that specializes in community association law, but our recommendation is that the matter be referred to the association's legal counsel. Following proper procedure is essential, and an association can face serious liability for wrongfully terminating an owner's utility. The attorney will be able to confirm that water service termination is a proper remedy, that the correspondence with the owner warning of water service termination is properly drafted and provides notice in compliance with the governing documents and relevant statutes, and that it is sent to all required mailing addresses using the proper mail delivery service. Sending this letter by certified mail, return receipt requested is often required, and it is highly recommended at the very least. The association should then stay in touch with its counsel to confirm that the notice period has expired and that the owner has not paid as required or is in the process of negotiating a settlement so that the association has the right to physically shut off the water service. As a rule of practice, we recommend adding in a "grace period" before terminating water service. For example, if the required notice is 30 days, we suggest waiting 35 or 40 days to account for mailing of letters and potential payments. We also advise against terminating water service if there are active, good-faith settlement discussions ongoing.

The threat of his or her water being shut off is something that often gets an owner's attention, and frequently this threat results in a payment in full or a payment plan for the unpaid balance. From time to time, owners will default, and our clients will ask if they can now proceed to shut off the water service. Our recommendation is that the process should restart from the beginning, a new notice should be sent, and the owner should be provided a full new notice period to remedy the balance before water service is terminated. The risks of wrongful water service termination greatly outweigh the expense, both in terms of time and cost, of sending proper notice. It is better to initiate something like water service termination correctly, even if it takes a little bit more time, than to do it incorrectly for the momentary satisfaction of feeling like something has finally been done to show how serious the Association is about delinquent accounts.

Further, the physical setup of the water utility may cause unique issues for your community. For example, if the actual point where water service is terminated is located inside the premises of an owner's house or unit, a court order may be required giving the association the right to enter the property. As always, our firm's attorneys are ready to assist and advise on water and other utility service termination as a potential remedy for collection of delinquent accounts in your community.

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