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Federal Changes to Pool and Spa Safety Laws

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Pools and spas have become the latest area where federal law will impact community association operations. In July 2007, Congress began consideration a bill called the Virginia Graeme Baker Pool and Spa Safety Act of 2007, (“Baker Pool and Spa Act”) designed to address pool and spa accidental drowning. The impetus behind the bill was a finding that drowning is the second leading cause of death of children between 1 and 14 years of age.

The President signed the Baker Pool and Spa Act on December 17, 2007. It is designed to create new and more stringent swimming pool and spa drain safety cover standards. Under the Baker Pool and Spa Act, all residential pools and spas must be enclosed by barriers that will effectively prevent children from gaining access by no later than December 20, 2008.

In addition, under the Baker Pool and Spa Act, all new and existing public pools and spas must be equipped with drain covers conforming to the American National Standard ASME A112.19.8-2007 Suction

Fittings for Use in Swimming Pools, Wading Pools, Spas and Hot Tubs published by the American Society of Mechanical Engineers. We encourage each of our Association clients that have swimming pools or spas to review these standards to determine whether their existing drain covers conform with these standards.

States will be required to adopt or modify existing pool and spa regulations to provide for a number of mandated safety features, including enclosure of all pools and spas by barriers to prevent small children from gaining unsupervised entry in to a pool area. States will also be required to adopt or modify existing regulations to provide that all pools and spas be equipped with anti-entrapment devices on pool or spa drains.

Regardless of the state regulations that will be imposed over the coming months and years, Associations must comply with the federal statute because Associations’ pools are considered public pools. As a result, if your association’s pool presently has a single drain or single main pump, the

association will be required to install or retrofit the pool with any of a number of entrapment prevention devices.

Also, by December 20, 2008, all new and existing pools and spas with a single main drain, other than an unblockable drain, must be equipped with one or more additional devices or systems designed to prevent suction entrapment meeting the requirements of any applicable ASME/ANSI Standard or applicable consumer product safety rule.

In some cases, Associations will not be required to modify their pool drain system. For instance, pools with an unblockable drain, which is defined as a drain of any size and shape that a human body cannot sufficient block to create a suction entrapment hazard, do not require a modified system. Additionally, some pools may be equipped with alternative systems that the Baker Pool and Spa Act recognizes as acceptable and not in need of modification. Examples of such acceptable alternate systems are a: (1) safety vacuum release system (SVRS); (2) suction limiting vest system; (3) gravity drainage system; (4) automatic pump shutoff system; or (5) drain disablement or other system determined by the Consumer Product Safety Commission to be equally effective in preventing suction entrapment.

In addition to retrofitting a pool to comply with the federal statutes, Associations must ensure that they comply with state and local ordinances already in effect. In Virginia, Maryland and the District of Columbia, a land line telephone must be located in the pool area that is easily accessible to the

members. The telephone must allow users to reach a 911 emergency service without the use of a coin and without connection to an internal switchboard. In addition, a list of the emergency phones numbers of the nearest available police, fire, ambulance service and/or rescue unit, and 911 must be posted next to the telephone. The Association must also post the name and address of the pool next to the telephone.

While lifeguards are indispensable to the health and safety of each person using a pool, we encourage associations to remind their members that they should keep children under close supervision at all times. We also encourage our community association clients to create and publish a set of pool rules, which should also be displayed prominently at the pool. Finally, management or a Board member should periodically inspect the pool area to ensure that all necessary safety measures remain in operable condition. For instance, we recommend that association representatives inspect for: (1) loose, damaged or missing drain covers; (2) confirmation that depth markers remain visible and accurate; (3) fences and gates remain in good and operable condition; (4) any objects around the fence that a child could use to climb over the fence; (5) all rescue equipment is accessible and in working order; and (6) the appropriate 911 address signage is present and readable.

Unfortunately, these new requirements are binding on community associations and are required by law to be implemented this year. Accordingly, your association should plan on complying with the requirements of the

Baker Pool and Spa Act by December 20, 2008.

If you have any questions regarding the requirements of the Baker Pool and Spa Act, please do not hesitate to contact any of our community association attorneys.