

Signs and Sample Documents for Opening the Amenities During COVID-19

Our office is, understandably, getting a lot of questions from associations about potential liability if the board of directors decides to open the amenities, such as the pool, tennis courts, clubhouse, and playground.

To be clear, **our office advice to all of our clients is to keep these amenities closed for as long as possible** in order to avoid as much liability as possible. That said, most of our clients feel a great deal of pressure from their members who want to use the amenities and are, therefore, leaning towards opening now or sometime soon. With that in mind, we have created suggested language for associations to post on signs at their amenities and a waiver/release sample for association members to sign before using the amenities, as discussed in more detail below.

Pool Opening Considerations

Governor Kemp, the CDC, and now the Georgia Department of Public Health (“DPH”) have provided a good bit of regulation/guidance in the last few weeks regarding reopening pools. The Kemp May 12, 2020 Executive Order contains mandatory requirements. The DPH COVID-19 Guidance-Public Swimming Pools (“DPH Guidance”) publication provides commentary and guidance on the Governor’s May 12 Order. The CDC published Considerations for Public Pools, Hot Tubs, and Water Playgrounds During COVID-19 (“CDC Considerations”) which are not stated by the CDC as being mandatory. The full set of CDC Considerations can be found here at this link: <https://www.cdc.gov/coronavirus/2019-ncov/community/parks-rec/aquatic-venues.html>. The DPH Guidance publication “strongly recommends” the implementation of the CDC Considerations. The full set of DPH Guidance can be found here at this link: <https://dph.georgia.gov/document/document/envhealthpoolcovid-19guidanceforpublicpools51320pdf/download>

Our office is preparing legal opinions for our clients regarding association responsibilities with respect to the DPH Guidance and CDC Considerations, possible liability issues, and insurance coverage issues. We are also preparing board resolutions and updated rules and regulations for communities planning to open their amenities. Please contact us for these additional, necessary items.

Playground Opening Considerations

With his May 12, 2020 Executive Order, Governor Kemp closed playgrounds at restaurants and other venues (such as theaters), but did not directly comment on other playgrounds. The State has not issued any direct guidance on this, but we believe that pursuant to the CDC, playgrounds would likely be considered “frequently touched surfaces” and could require pre-opening cleaning on a daily basis, at least once per day and potentially more frequently based on use. For this reason, we recommend that the playground stay closed for the time being due to social distancing challenges and cleaning/sanitation challenges. Our recommendation also derives from the CDC which is recommending that individuals not use public park playgrounds. The same concerns for public playgrounds can apply, on a smaller scale, to playgrounds at community associations.

Suggested Signs

Posting signage at or around the amenities is helpful because it: (1) puts people who decide to use the common property on better notice of potential hazards in the area; and (2) reminds people how to conduct themselves at the amenity to prevent the spread and transmission of COVID-19. It is more important to put people on notice of potential hazards so that people who use the amenity are on more equal footing with the association. The Association has greater potential

liability to people who use the amenities if the association has “superior knowledge” of a potential hazard. While everyone is aware (or should likely be aware) of COVID-19, they may not fully appreciate the risks associated with using the amenities during this time. Providing notice at the amenity helps bridge this gap. Linked her is our suggested [sign for the pool](#), our suggested [sign for the tennis courts](#), and our [suggested sign for amenities other than the pool or tennis courts](#). You will see that this signage may end up being big – but these are unique times.

In addition to our suggested signs outside the amenities, the CDC recommends four signs also linked here - how to [Stop the Spread of Germs](#), how to [Wash Your Hands](#), how to [Protect Yourself and Others](#), and [Face Coverings Do’s and Don’ts](#). The CDC states two example locations for these four signs: at deck entrances and at sinks – they want them in highly visible locations.

Suggested Wavier/Release Sample

Requiring owners to sign a waiver is essentially a trade-off for owners who are demanding that the pool and other amenities open up now. The association is saying to owners that they have to be willing to waive claims in exchange for the association opening the amenities (rather than the association keeping them closed, as the association could reasonably choose to do). Linked here is our suggested [waiver/release sample](#) that includes adults and has parents sign/waive on behalf of their minor children. The drafting of this waiver/release sample was a balancing act to create a document that hopefully protects the association from liability without being too onerous or lengthy.

Warning about Liability

We are still within a declared Public Health State of Emergency until June 13, 2020 and the pandemic continues. Those businesses that have been allowed to reopen during this time are required to meet stringent requirements to mitigate the spread and transmission of COVID-19. It is not business as usual. The above requirements, considerations, guidance, suggestions, signage, and sample documents highlight the continued health risks of the current pandemic, which, in turn, creates potential liability for anybody operating a business or amenity, such as a pool, tennis court, clubhouse, and playground during this time. In normal times, the association has a legal duty to maintain and keep in good repair its common property, but the existence of the current pandemic (arguably) creates an additional higher burden on the board as to cleanliness and other factors. Associations must remember that while signage and waiver/release documents can provide the associations and board members with elevated protection they do not act as a bar to litigation or to various elements of liability.

As most of you already know, there are previous blog posts, recordings of our weekly L&J Morning Break webinars, and additional [articles](#) and [QuickFacts™](#), on our [website](#), our [YouTube page](#), and our [Facebook](#) and [Linkedin](#) pages. Please visit any/all of these locations for additional information and resources from Lazega & Johanson, LLC. Take care and stay healthy!