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DRONE USE IN COMMUNITY ASSOCIATIONS

Whether we like it or not, drones are a reality today. Just like all exciting new technology – whether iPhones or robots – many worry foremost that their privacy is at risk. As drones become more commonplace, will we be vulnerable to unwanted surveillance or stalking? Will neighbors, strangers, the government or big companies use drones to monitor and market to us? The Federal Aviation Administration (“FAA”) estimates that commercial use of drones will increase from 600,000 (in recent years) to 2.7 million by the year 2020 and that hobbyists’ sales will grow from 1.9 million to 4.3 million by 2020.

In a community, it’s not hard to imagine neighbors using drones to spy on us by trespassing over property boundaries, or possibly even using drones to hack into personal computers. Drones might even photograph or surveil people at the pool or other amenity areas, or just be a nuisance buzzing around homes regularly. These and other situations highlight how drones can negatively affect a community.

However, drones also can be a valuable tool for associations. They may help with inspections of hard-to-see places, like gutters, roofs or backyard areas. They

also could be used for maintenance or fire inspections of hard to reach areas, such as being equipped with sensors for inspections around midrise or high rise windows and doors to help investigate water infiltration issues. Drones also might help to create marketing materials by taking community photos to use in social media or for local real estate brochures. Amazon even recently reported that it plans, in the near future, to deliver packages directly to a person’s door by drone. But, how do associations balance the positive uses for drones against the very real privacy concerns of community residents?

Let’s start with governmental regulations. The FAA is responsible for safe and efficient operation of all aircraft in national airspace. Only recently, the FAA created rules for commercial drones, as well as for drone hobbyists. These regulations require pilot certification, registration of drones, and a minimum age to pilot them. Additionally, commercial and recreational drones must stay within sight of the person piloting, only operated during daylight hours and flown no higher than 400 feet off the ground.

Many states and municipalities have

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adopted even more stringent regulations. After vetoing a proposed drone law in 2016, Georgia's Governor Deal decided it was time to set boundaries on local regulations concerning the use of drones. Effective July 1, 2017, O.C.G.A. § 6-1-4 was codified as part of Georgia's aviation statutes and governs a municipality's ability to control "unmanned aircraft systems" (i.e. drones). This new law specifically preempts cities and municipalities from enacting their own drone ordinances, unless: (i) the ordinance was adopted prior to April 1, 2017; (ii) the ordinance enforces FAA drone regulations; or (iii) the ordinance prohibits or restricts launch or landing of drones on public property except for commercial operations.

While state law exists, there is still a general lack of local regulation on drone use and unanswered questions as to how the new Georgia state law will apply to community associations. That said, residents are now looking to community associations as the governing entity tasked with ensuring that their interests are protected against drones. So how can a private community association regulate drones?

Most board of directors may have authority to regulate drones under existing governing documents. For instance, covenants may already allow for board administration of common elements or common property, allowing boards of directors to adopt reasonable rules and regulations on use of these areas. Many community covenants already may prohibit nuisance or other conduct that interferes with other residents. This may be sufficient authority to allow boards to adopt rules for drone use on homeowner property or may authorize boards to establish rules on homeowner property. Further, except where applicable

laws prohibit this, associations may adopt community regulations that are more restrictive than governmental regulations. So, many communities can regulate drones even though they may be permitted by law.

What about regulations on drone use on homeowner lots or property? The overall scope of authority is determined by the specific language in the covenants. If a board's rights and powers includes authority to adopt new rules and regulations pertaining to the community as a whole, this typically means a board can then restrict or prohibit drone usage on privately-owned lots or units and/or association property. However, if an association's covenants only allow a board to create rules and regulations specific to common areas, such association would have to adopt an amendment to the declaration to limit drone operation on private property. So, depending upon the association's current governing documents and the actual drone use site, boards may have to take different approaches to regulate drone use and protect privacy in communities.

Even if an association has rights and powers to regulate drone operation within a community, the issue then becomes to what extent the association should do so. At a minimum, associations may decide to create rules that aim to preserve and protect owner privacy, such as limiting time, place or manner that drones are flown in the community. On the other end of the spectrum, associations may opt to completely stop all use of drones in the community, except by the board of directors. While absolute prohibitions on drone usage may be allowed, it is ultimately left up to the board to decide if drones may

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be flown in a community and, if so, to define where, when, and how drones are used.

As you begin to craft drone policies and/or amendments, please keep some things in mind:

- ◆ First, take account of the particular form of the community and property ownership rights. High rise condominium buildings will have different drone concerns than a homeowner or property owner association with separate lots. An association's regulation of drone activity should be consistent with the association's scope of authority and the physical characteristics of the particular community.
- ◆ Second, if you permit drones, consider a registration process for any hobbyists (owner, resident, guest, etc.) with a drone. A registration form could include that the drone operator: (i) is FAA-compliant; (ii) holds liability insurance; (iii) received and agreed to the community regulations concerning drones; (iv) agrees to be directly accountable for any issues that may arise and to indemnify the association for all damages and/or third party claims. Incorporating these provisions helps to minimize an association's legal exposure.
- ◆ Third, decide whether to limit drone use to the drone owner's property, prohibiting hobbyists from flying drones on the association's areas. This location regulation can include reasonable restrictions on take-off and landing sites, time periods of use, and flight height. For example, the regulation might prohibit flying over other owner properties, common areas like decks and patios, and certain recreational amenities, like swimming pools and tennis courts.
- ◆ Fourth, create enforcement remedies and procedures available to the association against a hobbyist that fails to comply with association's drone policy.

As drone usage takes off, the buzz on drones will only get louder in communities and cause heightened privacy concerns. Addressing drone usage will eventually become inevitable for community associations. It's time to begin discussing ways to tackle drone usage and develop reasonable limitations that adequately protect your community.