

**LIFEGUARDS MAY NOT BE MANDATORY FOR COMMUNITY
ASSOCIATION POOLS
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The New Jersey Administrative Code permits a private nonprofit common interest community to operate its swimming pool without a lifeguard. Although most community associations want to ensure that their residents and guests have the protection of a lifeguard on duty, the law does not mandate the expense of a lifeguard for all swimming facilities, however, associations must be careful to fulfill other mandated safety requirements.

The New Jersey Administrative Code ("NJAC") generally requires that a *public* swimming facility operate with the following supervision and facilities:

- 1) A designated adult supervisor who is knowledgeable of the state law requirements for the operation of a swimming pool;
- 2) At least one person trained and certified in standard first aid and professional level infant, child and adult CPR shall be on the premises and be readily accessible when the swimming pool is in use. If the trained personnel are not stationed at the swimming pool side, then the facility shall conspicuously post a sign indicating the location and method of access to such personnel;
- 3) The maintenance and mechanical operation of a swimming pool shall be under the supervision of a trained pool operator. The trained pool operator shall be available for mechanical and maintenance repairs and detection. The trained pool operator shall have completed a pool operator course and shall have certification from a Department of Health and Senior Services approved organization;
- 4) At least one lifeguard certified by an organization recognized by the Department of Health and Senior Services as listed in the Appendix shall be on duty **for 60 or less swimmers at all times when the swimming pool is in use**. Additional lifeguards shall be required depending on bather load, bather activities, size and configuration of the swimming pool, and amount of surface area for shallow and deep water areas, emergencies, and lifeguard's ability to see bathers;
- 5) Lifeguard platforms or stands shall be provided for swimming pools where water surface area is greater than 2,000 square feet. Lifeguard platforms or stands shall be elevated and located at the water's edge so as to provide a clear unobstructed view of the swimming pool surface and bottom;

6) Each facility shall also establish a written aquatics supervision plan. This plan shall be maintained on-site. It shall be implemented by each facility and shall contain information including, but not limited to:

1. A diagram of the facility;
2. Swimming pool evacuation plans;
3. A schedule for and the number of lifeguards to be on duty depending on conditions and activities;
4. Responsibilities of all employees;
5. A list of emergency telephone numbers;
6. The location of first aid and rescue equipment; and
7. Staff emergency procedures.

However, the NJAC also exempts certain types of private pool operations from some of these requirements. Specifically, the NJAC exempts a "specially exempt facility" from the requirement of a lifeguard and a person certified in CPR and first aid under certain conditions. The "specially exempt facility" must be under the supervision of a certified pool operator and must post a sign at every entrance to each swimming area that states "NO LIFEGUARD ON DUTY – PERSONS UNDER THE AGE OF 16 MUST BE ACCOMPANIED BY AN ADULT – NO SWIMMING ALONE."

The NJAC defines "specially exempt facility" at N.J.A.C. 8:26-1.3 as follows:

"Specially exempt facility" means a private lake, river or bay or private community lake, river or bay association, or private nonprofit common interest community which restricts the use of its lake, river, bay or pool, as appropriate, to the owners of units thereof and their invited guests. Specially exempt facility also includes a campground, hotel, motel, mobile home park, or retirement community which restricts the use of its pool to renters of the lodging units or owners of the dwelling units, as appropriate, and their invited guests.

It also defines "common interest community" as follows:

"Common interest community" means:

1. Property subject to the Condominium Act, P.L. 1969, c.257 (N.J.S.A. 46:8B-1 et seq.), the Horizontal Property Act, P.L. 1963, c.168 (N.J.S.A. 46:8A-1 et seq.) and The Continuing Care Retirement

Community Regulation and Financial Disclosure Act (N.J.S.A. 52:27D-330 et seq.);

2. A housing corporation or association, commonly known as a cooperative, which entitles the holder of a share or membership interest thereof to possess and occupy for dwelling purposes a house, apartment, manufactured or mobile home or other unit of housing owned or leased by the corporation or association, or to lease or purchase a unit of housing constructed or to be constructed by the corporation or association; or

3. Real estate with respect to which a person, by virtue of the ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in the instrument, however denominated, which creates the common interest community. Ownership of a unit does not include holding a lease-hold interest of less than 20 years in a unit, including renewal options.

As defined then, most community associations would qualify as "specially exempt facilities" and the pertinent section on their duties in connection with the operation of a swimming pool is set forth at N.J.A.C. 8:26-5.1 as follows:

8:26-5.1 SPECIALLY EXEMPT FACILITIES

(a) Specially exempt facilities shall be exempt from mandatory compliance with the first aid personnel and lifeguard provisions of this subchapter at N.J.A.C. 8:26-5.2(b), (b)1, (d), and (e); 5.6(b); 5.7(a); 5.8(b) and (b)1; and 5.10(b), (b)1, (c) and (e). This exception shall not apply to specially exempt facilities which use ocean waters for bathing. For purposes of this subchapter, invited guests may include occupants or tenants who by affirmative designation by the specially exempt facility through bathing place rules, association rules and bylaws, and lease agreements, are granted such status and corresponding responsibilities normally associated with that of an invited guest.

(b) Specially exempt facilities which do not voluntarily comply with the provisions in (a) above shall post a sign at least three feet by four feet in size. This sign shall be prominently displayed at every entrance to each swimming area and shall state:

"No lifeguard on duty."

"Persons under the age of 16 must be accompanied by an adult."

"No swimming alone."

(c) At campgrounds, hotels, motels, mobile home parks or retirement

communities, a second three by four feet sign shall be posted at all swimming areas and shall state:

"This swimming area shall be closed when the owner or manager is not on the premises."

This notice shall also be posted on a sign at least eight inches by 10 inches in size at the registration desk and in each guest room or suite of the campground, hotel or motel used for occupancy by guests.

Community associations must balance many competing interests in operating their facilities. Many with swimming pools grapple with the high cost of operation and must determine what level of safety and service they wish to offer to their residents and guests. It is appropriate for those entities to understand the requirements of the law and the exemptions allowed.