

VIEW FROM LONG ISLAND

BY MARC H. SCHNEIDER

Pool Resource

The swimming pool season has just begun and a cooperative, condominium, or homeowners' association board with a pool faces many issues during the pool season.

The governing documents of many communities say that a breach of the house rules by a homeowner entitles the association to revoke the privilege to utilize the facility, in addition to other common elements. As such, it is important that you consider all issues applicable to the use and operation of the swimming pool when drafting the house rules.

The rules should include the hours of operation, as determined by the board. The board should also decide whether or not guests of the members will be allowed and if their hours will be limited. For example, there are certain communities where the occupancy of the homes is restricted to senior citizens. In those communities, the boards may decide that unit-owners should be able to enjoy the use of the pool during certain days and/or hours without having to contend with many guests. As a result, boards may want to restrict the days and times when guests are permitted to use the pool.

The board should consider whether to permit the use of inflatable toys, flotation devices, balls, and tubes. The consumption of food or beverages may be restricted. The consumption of alcoholic beverages should be prohibited. A rule requiring adult supervision for any children under a certain minimum age should be considered. The board must decide who may use the chairs and tables, and under what conditions. For instance, many people come to a pool hours ahead of time, place a towel on a lounge chair and disappear. This may prevent others from utilizing and enjoying the facilities.

In addition to setting house rules for the operation and use of the pool, the association must comply with certain requirements of the state and local municipalities. Some of the require-



ments include standards and regulations for the levels of certain chemicals and the condition of the water which must be maintained. If the water's chemical levels are not maintained, the community runs the risk of being fined and local or state authorities may shut down the pool.

In that regard, a "qualified swimming pool treatment operator" is required. The board must determine who is going to serve this role. Many boards elect to hire a pool company that employs the qualified individuals. If a contractor is hired, a written contract must be signed setting forth the specific responsibilities of the pool contractor (the scope of work, the frequency of the visits, and testing obligations). The contract should provide that the pool contractor will be responsible for any damages and fines that arise if he breaches the contract.

Should you employ a lifeguard? There are various issues to consider. First, under the laws of New York State, lifeguards are not required in swimming pools located in a co-op, condo, or HOA on Long Island. New York City has different regulations.

However, be careful: some county health departments have additional provisions that relate to pools. For example, in Suffolk County, once your property registers as having a lifeguard, you must continue to have one during all pool hours.

If the association decides to have a lifeguard present, typical services include supervising water safety, enforcing the association's house rules, and light maintenance of the pool and the pool deck. Many lifeguards are also qualified swimming pool treatment operators. As such, a lifeguard may

provide these types of services.

Lifeguards can be hired directly by the association in which case, they would be an employee of the association or, the lifeguard services may be contracted out. A certain portion of the liability can be removed from the association if a contractor/agent is hired to provide these services, as long as the contract states how many lifeguards will be provided, the dates and times they will be required, and a provision stating that the lifeguards employed by the contractor are his employees and not the association's.

The contractor should also have workers' compensation insurance as well as general liability and other required insurance. He should be required to hold the board, the association, and the managing agent harmless from any losses that arise as a result of his performance. The association and its managing agent should be named as additional insured. These protections will ensure that any claim relating to injuries and/or damages will be properly handled and covered by the contractor's insurance rather than the community's. In preparing the contract, all boards should consult with their attorneys.

In the event the association elects not to have a lifeguard, there should be prominent signs displayed at the pool that advise the bathers that they are using the pool at their own risk. There should also be a sign-in sheet that contains an acknowledgment that one uses the pool at one's own risk.

When the pool is not in operation, the pool's entrance must be locked to prevent anyone from accessing the area. Following these suggestions will help ensure that your community has an enjoyable swimming season. **H**

