# DRONES ARE IN THE AIR AND "SHOULD ALSO BE ON ASSOCIATIONS' AGENDAS"

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Drones may be put to use for a variety of purposes including recreational use, videography and photography, inspection of facilities, and safety purposes. In the near future it is likely that drones will be widely used in commercial ventures including delivery of packages to individual residences. There are so many potential uses for drones that one might say "the sky's the limit". And the use of drones raises novel legal issues that developers and associations should consider and plan for. Developers should consider including certain restrictions in homeowners' and condominium governing documents, and associations should begin planning for whether they should regulate the use of drones within the association, how they should regulate the use of drones, and how they can minimize potential liability arising from the use of drones.

Not only should associations consider regulations to address issues such as privacy, safety including physical injury or property damage that may result from the use of a drone, as well as nuisance issue, but associations should also review insurance issues relating to drones. An association should not assume that drones are covered by the association's insurance. Many insurance policies contain standard exclusions for aircraft. Drone-related property damage and claims by an association with this type of policy may not be covered. Associations should determine what their existing policies cover and whether any additional coverages are necessary.

Although developers should consider including, and associations should consider establishing basic regulations regarding the use of drones by way of rules or amendments to their governing documents, there must be a balance to avoid imposing unduly burdensome regulations or prohibiting drones outright. A complete restriction on the use of drones or owners requesting and receiving delivery by a delivery drone would likely drive away potential purchasers. However, there are reasonable restrictions that associations may consider relating to the use of drones, including the following:

1. Use Restrictions: Reasonable restrictions relating to safety and privacy concerns may include: (i) no person may go within 10 feet of a landing or departing drone, or otherwise interfere with an operating drone, (ii) drones must land on driveways or paved areas wherever reasonably possible so as to minimize potential damage to lawns, (iii) all persons operating a drone should be adequately trained in its use and operation, (iv) any use of a drone must fully comply with any Federal Aviation Administration requirements, including registration requirements, as well as any other applicable law, (v) drones must be operated at an altitude and speed to ensure that audio and video recordings of private spaces are avoided, and drone operators must obtain permission from residents before photographing them or their property, (vi) drones must be equipped with the capability to stabilize flight in the event the operator cannot control the drone, (vii) drones must be operated in a manner such that they are subject to observation by the operator at all times, without binoculars, to minimize the risk of harm or damage to persons or property, (viii) restrictions limiting the size of drones, and (ix) prohibiting drones from flying within a specified distance of units, homes, and other structures.

2. Common Area Prohibition/Designated Landing Site in Condominium Common Element: Limits on the way in which drones may land on lots/units/common elements/common areas within a neighborhood or condominium should be considered. For example, prohibiting the landing of drones within the common areas of a homeowners association and, in condominiums, establishing designated landing sites within a designated portion of the common elements should be considered. Reasons for prohibiting the landing of drones within the common areas are obvious -- drones pose potential safety hazards to persons on the ground in the form of dropped packages, improper landings on top of persons or structures, and mechanical failure, among others. An association should not have to assume the risk of potential claims arising from injuries to persons or property by a drone landing on the association's common area when an owner could direct the landing of the drone on the owner's lot instead. With the absence of individual yards in condominiums, such restrictions are trickier. Condominium associations may consider establishing a designated drone landing site within a designated a portion of the common elements. Such a site should clearly marked with warning signs so that bystanders do not accidently venture onto it.
3. Time Restrictions: Limits on the times of day that drones may be used and delivery drones may land in the neighborhood may be considered. Associations may want to consider permitting landings only at certain designated times, for reasons related not only to noise, but also so that landings can be made in the daylight and therefore bystanders can better observe and avoid landing and departing drones.
4. Liability Issues: Developers may consider including in governing documents, and associations should consider amending their governing documents to provide that the association is not liable for any damages to persons or property relating to the use of a drone and, in the case of delivery drones, the association is not responsible for any misdelivered or stolen packages. Additionally, the governing documents should provide that the owner or tenant using a drone or ordering a package to be delivered by drone agrees to indemnify the association in the event a claim is asserted against it relating to an act or omission involving the drone.

Drones are no longer a thing of the future; they are here. The challenge for associations is getting ahead of the fast-growing trend and finding ways to live with them. While this issue is not necessarily an urgent one, it is both an important and inevitable one. Developers and associations should begin considering these issues now so that they are legally prepared for the day when delivery drones take to the sky and before they begin receiving the inevitable questions, complaints and lawsuits relating to drones.

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