

Legal & Liability Issues for Programs & Activities

Get Covered

BY LIZ LENT 2017 JUNE

BOARD OPERATIONS



As more and more co-ops and condominium communities seek to attract residents, boards and managers have turned to attractive new programming opportunities for individuals and families. Whether it's a rooftop Fourth of July party, a gardening workshop, or an off-site dining experience, there is no shortage of options to entertain and engage residents and shareholders. As these options grow, however, it is important to keep in mind the inherent risks and issues of liability that could easily be overlooked amidst all the fun.



Being Prepared

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Today's co-ops and condos are adding social programs and activities to their menus of offerings as a way to not only entice new residents and shareholders, but to build a stronger sense of community. Whether catering to the children in the building with playrooms and movie nights or older adults with karaoke nights or younger singles with off-site restaurant trips and wine tastings, the goal is to bring people together and enrich their enjoyment of the place they call home.

Knowing in advance what kind of issues might arise with programs and activities such as these will help reduce the elements of surprise that can prove so difficult if anything goes wrong.

"Anything out of the ordinary is going to be an exposure, and thus put more liability on the community association," says Edward Mackoul, president of Mackoul & Associates, Inc., an insurer based in Island Park, New York and Morristown, New Jersey. "Whether it be adding an amenity such as a pool, gym or playground, which are normal these days, or having something like wine tasting at a restaurant or providing a shuttle for off-site trips. Some, such as off-site events, can provide additional liability and may require additional insurance policies."

Planning ahead truly is a key to success, says attorney Matthew Goldberg of Bancroft, Richman & Goldberg, LLC. which has offices in Chicago and St. Charles, Illinois. Assuming there are no questions of authority to engage in such a program, there are still liability risks," he says. "For example, if you have an association-sponsored physical activity and someone gets hurt, there could be liability. If you go off-site, there are any number of risks that are even further outside your control. What if the transport gets in an accident?"

One way to mitigate these risks is to talk with the experts: your insurance provider.

"Explain the plan or program and ask what coverage you have if anything goes wrong," says Goldberg. "They may also have suggestions for you on steps you can take to reduce the risk."

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On-site amenities and activities also may require additional examination to determine liability risks. "A building that provides a gymnasium or health club with or without a pool" could entail added risk, says Margery Weinstein, partner with the law firm Ganfer & Shore, LLP, in New York. "If you have in your building a community room that's used by people in the building for private purposes, you have additional risk. There's perhaps more risk when outsiders come into the building because they may not be signing any waivers."

Specifically, risks include "personal injury with the gyms or pools," says Weinstein. "In a party situation, issues increase if you're serving alcohol. For example, if there's a Fourth of July party with alcohol that's being held on the roof. There are noise risks with parties, and risks of inappropriate behavior and injury."

Goldberg adds that issues of liability are not always the only area of concern when planning programs and activities for residents and shareholders. "While liability is probably the first thing that goes through one's head, that tends to be a low probability risk," he says. "The real mistakes that happen more often than not [are] that the program either wasn't properly authorized or budgeted for."

For example, Goldberg says, "Say the board took money out of the operating account – an amount in excess of any spending limits – and spent it without permission. If a board wants to have a holiday party each year, include the anticipated cost of that as a line item in the budget. Form a committee to provide costs and a plan to the board. Make sure the board adopts the plan or expense at a lawfully called board meeting. Make sure there are rules in place for conduct."

Proper Coverage and Protection

Once a new event or activity is approved by the board and residents – but long before the popcorn is purchased for movie night – the board or planning committee's first move ✕ should be to contact the building's insurance broker. "They can let you know whether you need additional insurance, and if so, provide you with an estimate so you can budget for it," says Mackoul. "In addition, if the board is going to be hiring outside entities to work

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the event, your broker can help you understand what you should require from the vendor so that in the event they cause an injury to someone or damage to something, that the vendor's insurance policy provides coverage for the association."

Additional coverage for a specific event or offering can go a long way in easing any liability issues for boards members and program planners. "Most general liability policies will provide coverage for some of the out-of-ordinary events as long as they are made aware of it in advance and can either charge a premium for it or can make sure that everything is being done that can be done to reduce the risk," says Mackoul. "Something like a party where alcohol is being served for a fee would require an additional policy covering liquor liability, as that is normally excluded from the general liability. If the event is something that the insurance company does not want to provide coverage for, then the association would need to take out a special events policy, which is a separate policy providing insurance for that specific event."

Get Those Papers Signed

Another important aspect of preparation is ensuring that all city, state and federal requirements have been met. For example, "if you have people up on the roof or in a party room, you have to have fire safety compliance," says Weinstein. "If it's up on the roof, you also have to make sure it's compliant with handicap access."

Adds Goldberg, "In terms of legal planning, if you plan an outdoors event, a permit may be required. If you are using a building's roof deck, is noise or pollution a concern?"

One way possibly to help mitigate some risk is through the use of waivers. "Any program, whether it involves kids or adults, should include some sort of waiver," says Goldberg. "Not that waivers are foolproof – but they may help. For kids, it is even more important. You want to make sure you have appropriate levels of supervision. You wouldn't want someone walking out of the program with someone else's kid. If the program involves teenagers, let's face it – they often find their own mischief. Supervision and permission are paramount."

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Weinstein agrees. When one building she works with opened an on-site gym, her team worked with the board to create a user form. The first page of the form requested general information such as age and medical contacts. The second page outlined the assumption of liability, with the user acknowledging that there was inherent risk in using the gym equipment and signing off on the fact that they knowingly accepted all risks and released the co-op from responsibility. The third page included health and safety guidelines, reminding participants of basic rules such as not using their cell phones while exercising and not to share towels. The user then acknowledged their willingness to follow the rules.

When it comes to waivers and insurance, says Mackoul, "If there are no exclusions in the policy, then regardless of whether there is a waiver, coverage will apply. The waiver hopefully will restrict or deter the injured party from suing."

Getting an attorney involved early makes a lot of sense, says Weinstein. She and her team spent a number of months working "with a very savvy board" going over specific language in the assumption of risk and notification forms for an on-site gym before circulating the document for use among residents. Together the attorneys and board covered everything from questions on personal trainers and indemnification to liability concerns over building guests who used the facility. "As an attorney, I got involved in all of those details, and that worked well for the building," says Weinstein.

Goldberg concurs "Attorneys should be involved at the outset. First, you would want them to confirm the board has the authority to engage in a planned program. If a waiver is called for, then you would definitely want your attorney involved for that as well. Basically, if you are asking the questions 'can we (or how do we) do this legally,' then it is time to get the lawyer involved."

It is also important to remember that even if waivers are issued, they may not block all risk. "It is always a question of whether they are enforceable," says Weinstein. While they are written to provide as much coverage and protection as possible, no person can waive all their rights – meaning that unique situations can have unforeseen outcomes.

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None of this should deter any activity planners from launching and hosting the kind of social gatherings and events that can bring a co-op or condo community together and add extra value and enjoyment to day-to-day living. The key is simply to be prepared and think ahead. "Just think in advance of ramifications and liabilities," says Weinstein. "Shooting from the hip should be avoided."

Liz Lent is a freelance writer and longtime contributor to The Cooperator.



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