

## FREQUENTLY ASKED QUESTIONS ABOUT SWIMMING POOLS

Following are recurring questions we receive regarding pool rules and restrictions, and brief answers.

### Minimum Age to Use the Pool

**Q: The Board wants to prohibit children under the age of 18 from using the pool without adult supervision. Can it do so?**

**A:** No, but you can restrict children under age 14 from using those facilities without adult supervision. Because lifeguards can be certified at age 14, the effect of the Board's proposed rule would be that a 14 year old lifeguard must be supervised by an adult who may not even be able to swim! Further support for establishing the "cut-off" at age 14 are the state regulations which require that, if no lifeguard service is provided, the warning sign that must be posted must also state that "Children Under the Age of 14 Should Not Use Pool Without an Adult in Attendance."

### Adult Swim Times

**Q: Adult residents have complained that they are not able to swim laps or enjoy the pool because it is filled with noisy and playful children. Can the Board establish "adult-only swim times" for the pool?**

**A:** We would not recommend that the Board do so. In most cases, restricting children from the pool will likely be treated as a violation of the federal fair housing laws which ban discrimination on the basis of age or "familial" (i.e., family) status. Different rules may apply if the community is a qualified senior citizen (or "55+") development, in which case you should seek specific legal advice. Variations that have the same effect, such as setting aside specific times for "family swim" or "lap swimming only," would similarly be suspect and subject to challenge. However, designating one section of the pool for lap swimming would probably be acceptable, provided the pool's size or configuration is adequate and gives children the ability to use other portions of the pool at the same time.

### Swim Diapers

**Q: The Board is concerned about airborne and water-borne disease. Even with regular maintenance, the pool can be a vehicle for the spread of disease. Swim diapers are not 100% effective in preventing the escape of urine or diarrhea which may carry infectious germs and bacteria. Can the Board ban swim diapers in the pool as a further way to protect pool users?**

**A:** Yes, but even that will not be 100% protection because there is no way to prevent all germs and bacteria except by closing the pool. Barring swim diapers will effectively prevent parents from bringing their infants and toddlers into the pool and likely alienate that sector of the

community. There are less exclusionary tactics that the Board should consider, such as a guideline, directed not only to infants and toddlers, but also adults, who are incontinent, that requests regular changing of diapers and underpants (such as “Depends”™) and frequent trips to the toilet to reduce the chance of pool contamination. Such a guideline would not “single-out” children but would also apply equally to adults, and lessen the likelihood of a claim that the association is discriminating on the basis of age or “familial” status.

Also consider adopting additional rules that are consistent with state regulations, to prevent pool use by persons who have a “communicable disease while in an infectious state, suffering from a cough, cold or sores, or wearing bandages,” etc. Contact the association’s attorney about the current regulations on this issue.

### **Swim Attire**

**Q: Our rules state that swimsuits must be worn in the pool. The religious customs of a female resident requires her to wear “full garb” when in public, even in the pool. Can we stop her from using the pool unless she wears a swimsuit?**

**A:** Be very cautious about doing so and consult with the association’s attorney first. The resident’s religious customs may be protected by her right, under the U.S. Constitution, to freely practice her religion. Even though the association has legitimate interests in regulating pool clothing (which may, for example, get caught in drains and prevent the pool user from getting out of the pool), those interests may be “trumped” by the resident’s constitutional rights.

### **Swim Teams**

**Q: Our association, like many, is hurting financially. We want to raise money by allowing local swim teams to use our pool for swim meets for a fee. Can we?**

**A:** It depends. If the CC&Rs restrict use of the recreational facilities to residents and their guests, renting out the pool would violate the CC&Rs. Even if the CC&Rs permit it, opening up the pool to swim meets may result in the pool being treated as a “public accommodation”. If that is the case, the association may be required to update the facilities to meet current Americans with Disabilities Act (“ADA”) requirements. Be sure to consult with the association’s attorney first because the money that you receive may be far exceeded by the amount of money the association has to pay out to make the pool, including the toilets and changing areas, accessible to disabled persons.

If you need pool rules or have specific issues about your swimming pool, please feel free to contact us.