

Complying with the New Law on Pool and Spa Safety Requirements

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Beginning December 19, 2008, all public pools and spas must comply with a new Federal statute enacted to promote child safety in and around public pools, spas, and hot tubs. The Federal Virginia Graeme Baker Pool and Spa Safety Act ("Act"),¹ signed December 19, 2007, requires all public swimming pool and spa suction and drain covers meet certain performance standards. What this means for community associations is that to comply with the new law, associations must timely retrofit their existing pools, spas, and hot tubs to meet the Act's standards.

1. **Legal Requirements Under the Federal Virginia Graeme Baker Pool and Spa Safety Act.**

This Act only applies to public pools and spas. A public pool or spa is defined, in part, as one that is generally open to the public, or is open exclusively to any: members of an organization and their guests, residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area. As such, this new law applies to community association pools and spas.² The Act requires all existing public pools and spas be retrofitted, and that all new pools and spas be constructed, with the following drain covers and anti-entrapment systems.

First, all public pools and spas with a single main drain, or with multiple drains, must be equipped with anti-entrapment drain covers that meet ASME/ANSI A112.19.8 performance standards. The term "ASME/ANSI" refers to a safety standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

Second, all public pools and spas with a single main drain, other than an unblockable drain,³ must be retrofitted, at a minimum, with one or more of the following circulation systems: (1) Safety Vacuum Release System that complies with ASME/ANSI A112.19.17 or ASTM F2387; (2) Suction-Limiting Vent System; (3) Gravity Drainage System; (4) Automatic Pump Shut-Off System; (5) Drain Disablement; or (6) other system as determined by the Consumer Product Safety Commission to be as equally effective or better than the above systems.

Pools and spas with more than one drain or no drains are exempt from the circulation system requirement. A pool may have more than one single main drain if it has multiple suction outlets that are each connected to a dedicated pump. A group of suction outlets connected together is considered a single main drain if the centers of the outlets are located within three feet of each other. To determine if your pools and spas are constructed with single main drain or multiple drain systems, each community association should inquire with its independent pool contractor.

¹ 15 U.S.C. 8001, Section 1401 *et seq.* Section 1404(c) applies to community association pools and spas.

² Although the Act is a federal law, California also considers community association pools to be "public" pools. See Health & Safety Code §116049.1.

³ Pursuant to ASME/ANSI standards, an unblockable drain is a drain that is 18" x 23" in size.

2. **Retrofitting the Community Association's Pools and Spas.**

All public pools and spas must be retrofitted and compliant under the Act by December 19, 2008. The various systems and devices that may be installed in the pools and spas vary in cost and installation requirements. Some systems are only suitable for new construction pools and spas. Some community associations may find their pools and spas will not need any retrofitting, while others may find their pools and spas need extensive retrofitting to meet the specified requirements of the Act.

It is important to note the Act provides "minimum" safety requirements for public pools and spas. This leaves states free to enact more stringent standards than the federal law requires. Therefore, it is possible that at a later date, California could enact more stringent safety laws than those outlined in the Act.⁴ Regardless, community associations should still comply with the federal Act.

At the outset, each community association should promptly investigate its existing suction and drainage systems to determine what, if any, retrofitting is necessary. If the existing systems do not meet the minimum standards in the Act, the board or directors should carefully research the safety devices and systems available to it, prior to contracting for any installation.

3. **Penalties for Non-Compliance with the Anti- Entrapment Requirements.**

Public pools and spas that have not been opened for use on or before December 19, 2008 are required to comply with the new law before opening. Non-compliant public pools and spas will be prohibited from opening. For those public pools and spas without the required equipment, non-compliance may be considered a violation of the Consumer Product Safety Act,⁵ which could result in the imposition of significant civil or criminal penalties upon a community association.

If your community association needs further guidance, or has specific questions on whether its pools and spas are compliant with the Act, we recommend you consult your community association's licensed pool contractor, as well as your community association's independent legal counsel. If your community association does not have a licensed pool contractor, the California Contractors State License Board website (www.cslb.ca.gov) is a helpful resource for such information.

⁴ Note, however, the 2008 state legislative season is over until next year; therefore, any change to California's public pool and spa laws in regards to anti-entrapment devices will likely not occur until at least next year.

⁵ See 15 U.S.C. 2068(a)(1), Section 19(a)(1).