

## **The Buzz on Drones**

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Drones have become a frequent topic of conversation among association boards, management, and legal counsel. Unfortunately, legislation governing the use of drones has not necessarily kept up with the increased interest. While there are limited regulations in place, associations are generally able to enact restrictions governing drone use within their communities.

Airspace in this country is regulated by the Federal Aviation Administration ("FAA"). The FAA has determined that drones are considered "Unmanned Aircraft Systems" and they are subject to FAA regulation. The FAA has banned commercial or business use of drones, except under rarely-issued exemptions. Despite this ban, there still appear to be businesses using drones for commercial purposes (for example, for real estate marketing).

In December 2015, the FAA began requiring any owner of a small aircraft (0.55 lbs. to 55 lbs.) to register with the FAA. Users must be 13 years of age or older and must provide their name, home address and e-mail address to the FAA. While this may not have a significant effect on the use of drones, it shows that the government considers drones as legitimate aircraft, and we can expect to see tighter legislation. The FAA has also released an application for mobile devices that tells drone users about current or upcoming requirements and restrictions in certain areas, and whether the area is safe to fly.

The State of California has also begun to take steps to regulate the use of drones. In October 2015, AB 856 was signed into law by Governor Brown. This law expanded liability for physical invasion of privacy to include a person knowingly entering into the airspace above the land of another person without permission. On the other hand, the Governor vetoed SB 142, which would have extended liability for wrongful occupation of real property and damages to a person who operates an unmanned aircraft or unmanned aircraft system less than 350 feet above ground level within the airspace overlaying the real property, without the express permission of the person or entity with the legal authority to grant access or without legal authority.

These laws and requirements leave gaping holes in drone regulation. However, associations can take steps to attempt to regulate drone use in their communities. CC&Rs can be amended to restrict drone use within the community. Assuming an association has the authority to enact operating rules, a rule may be adopted as well. These restrictions can

prohibit the use of drones altogether, or regulate the time and manner in which they are used.

While associations may adopt restrictions regulating drones, there may be difficulty in enforcing them. Unless the Association is aware of who is operating the drone (which might be difficult considering the dynamics), there is no way to determine who to enforce the restriction against. Additionally, the Association cannot enforce a rule against a third party who is not subject to the Association's governing documents, limiting enforcement to identifiable owners or their tenants or guests.

Although we are seeing more and more proposed drone legislation, it may be some time before we see governmental regulation that has a significant impact on drone usage. In the meantime, there are steps an association can take to regulate drone use in their communities through CC&Rs amendments or rules and restrictions.

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