

REDUCING HOTEL AND RESORT LIABILITY FOR POOL SAFETY NEGLIGENCE

Drowning is the second leading cause of accidental death for persons 15-44 years of age in the United States. Each year, approximately 6,000 people drown in the United States and thousands more are injured in incidents ranging from slip and falls to shallow diving accidents.

Hotel swimming pools and spas are a major source of litigation. In May 2010, the family of a Michigan swimmer who died in a pool at a fitness club while a lifeguard was allegedly folding towels has sued the company for \$5.2 million. The suit charges that, while an on-duty lifeguard left the pool area to fold towels in an office, the swimmer drowned. This is but one example that demonstrates how diligent hotel and resort operators must be about every facet of pool safety in order to reduce their risk of liability for pool-related injuries and deaths. Hotels and resorts should have a well documented maintenance and safety check schedule (see attached example), and all personnel and managers should be trained in, and compliant with, the hotel's pool safety and risk policies.

In 2007, President George W. Bush signed into law The Virginia Graeme Baker Pool and Spa Safety Act which mandates safety devices to prevent drain entrapment in pools and spas. In addition to the federal law, hotel operators must be aware of state and local laws which may include provisions requiring fencing or that lifeguards be on duty, etc. These laws vary among states and municipalities, so be sure that your hotel is in compliance and these safeguards are included on the property's checklist.

Local building and health codes may not require the following safeguards, but implementing them could save your property millions of dollars if a claim is made. While the list of suggestions below may seem long, and daily surveillance and maintenance is required, the cost of prevention is small compared with the time, expense and interruption of a lawsuit. When a lawsuit does occur, compliance with safeguards provides a basis to defend the claim.

ADEQUATE SIGNAGE

International signs should be posted in highly visible areas to indicate:

1. No Diving – This should also be stenciled or indicated on pool coping.
2. No Lifeguard on Duty (if applicable)
3. Health and safety postings: No running in pool area, do not swim if you are ill, no children under 3 without swim diapers, and no glass in pool area.
4. Depth markers, above the water line and in the tile line, in both metric measurements and in feet.

Do not have one sign with a long list of items to save space. Make sure lettering is large, at least 4 inches high. Check the signage on a regular basis to be sure it is easily visible, still readable and in place.

GATES AND FENCING

Ideally, pools and spas should be surrounded by a fence with self-closing gates which are checked daily for proper operation. Fences should be checked regularly for holes, gaps, and easy scalability which might be tempting to children. If you have posted pool hours, lock the gates when the pool is closed.

SLIP AND FALL INJURIES

1. Pool decking should be of a non-slip surface.
2. Standing water should be marked by hotel staff immediately with tent signs and swept or wet vacuumed.
3. The decking should be checked throughout the day for broken glass and tripping hazards.

VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT

The Virginia Graeme Baker Pool and Spa Safety Act went into effect in December 2008. The Act is named after the granddaughter of former Secretary of State, James Baker III, who was entrapped by a pool drain and drowned as a result. The Act is administered by the U.S. Consumer Product Safety Commission (CPSC) and mandates, among other things, the use of anti-entrapment drain covers and anti-suction systems.

Your property should already be in compliance with this Act but regular inspection of the drain covers and anti-entrapment systems should be part of a property's daily checklist.

RECREATIONAL WATER ILLNESS (RWI)

Recreational water illnesses (RWIs) can occur when poor water maintenance in pools and spas allow the growth of germs that cause a variety of illnesses including gastrointestinal illnesses; ear, eye and skin infections; and respiratory illnesses. A hotel can reduce the incidence of RWIs by maintaining proper water quality through frequent chemical testing and balancing, educating swimmers and promoting good pool hygiene by guests, and having properly trained staff.

The Centers for Disease Control (CDC) has a large resource section geared to public pool operators. Visit <http://www.cdc.gov/healthywater/swimming/resources/fact-sheets/#operators> for more information and see the Twelve (12) Steps for Prevention of Recreational Water Illnesses (RWIs) (for pool and aquatic staff) attached.

Special thanks to Hamilton Miller & Birtbisel for providing the above information. For more information, please contact Jerry Hamilton at 305-379-3686 or at JHamilton@hamiltonmillerlaw.com.

CHECKLIST FOR HOTEL AND RESORT POOL SAFETY

- Water clarity – is the bottom of pool, in particular the main drain, clearly visible?
- Are self closing gates to the pool area operating properly?
- Is pool fencing free of gaps and holes?
- Are buoys and ropes indicating deeper water in place across pool surface?
- Is an emergency phone clearly visible and operating properly?
- Are life rings with throw ropes in good repair and clearly visible at pool-side?
- Are pool and spa chemicals checked and balanced daily or more frequently at peak bathing times?
- Are records of pool and spa chemical checks being documented?
- Are ladders in place, secure, and free from sharp edges?
- Has there been a check for broken tiles or coping which would cause abrasions, cuts, or tripping?
- Has pool deck been checked for standing water, tripping hazards, and broken glass?
- Is health and safety signage in place and clearly visible around pool or spa?
- Are depth markings and no diving signs clearly marked on both the tile and the coping of the pool in both metric and feet? Have the depth markings been verified?
- If your hotel employs lifeguard staff, have they been background and referenced checked? Have their certifications and credentials been verified? Are they kept up to date?
- Does the spa have an automatic timer to shut off the system after 10-15 minutes? Is it operating?
- Are pools and spas equipped with compliant anti-entrapment drain covers? Is there a clearly visible emergency shut off switch for the pump(s) in the event of an emergency?
- If the pool is open after dark, is there adequate lighting? Are all lights operating?
- When the pool is closed, are the gates securely locked?
- If handrails are in place, are they secure and well-maintained?