



Community Association Management Insider®

Helping You Run Your Condo or Homeowners Association Legally and Efficiently

SPECIAL ISSUE

FEATURE

You can use drones to ensure member compliance with rules, streamline management, and quickly detect maintenance needs.

Use Drones to Improve Association Efficiency

It seems as if drones—unmanned aerial vehicles without a human pilot aboard—have been increasingly in the news for their use by the military, commercial businesses, and private recreational users. The use of drones in combat has long been talked about, the retail giant Amazon has launched a new service that uses drones to deliver packages, and drones are common at parks and open spaces.

Managers should seize upon new technology if it can streamline operations and benefit the association, and drones are no exception. But before you put drones on your association’s radar as a solution to some typical HOA and condominium problems, familiarize yourself with this type of valuable tool. Be aware that members may also want to use drones for recreation. Make a rule and create a policy that allows for the fun use of drones, but helps limit risks that can crop up.

Here’s what you need to know about incorporating drones into your management strategy and giving members the freedom to enjoy this technology safely.

Enhance Administration Process

“From the association administration standpoint, there are lots of positive aspects to using drones,” says Seattle-based association management expert Paul D. Gruzca. “A drone has the ability to categorically validate alleged or perceived issues within associations—such as gathering images that provide information about CC&R infractions, covenant enforcement issues, whether architectural rule committee requirements are being met, infrastructure concerns, maintenance needs, or parking and trash rules compliance,” Gruzca explains. “Issues that can’t be seen by driving through a community in a car can be easily spotted by a drone. And issues that can be discovered by driving through a community—like parking or trash removal violations—can be done more quickly and efficiently by a drone.

(continued on p. 2)

IN THIS ISSUE

Feature: Use Drones to Improve Association Efficiency 1

- ▶ Determine What Drone Use, Model Suits Your Property 3
- ▶ Model Policy: Establish Member Drone Use Policy to Ensure Safety 6

DEPARTMENTS

Q&A: Electing to Vote Electronically 7

Recent Court Rulings 9

- ▶ Owner Couldn’t Use Litigation to Amend Governing Documents 9

PRODUCED IN CONSULTATION WITH



Use Drones

(continued from p. 1)

“Embracing drone technology increases the efficiency of an operation,” Grucza emphasizes. One example of drone usage that can hasten efficiency is taking photos of storm damage in a community that would be impossible to assess on foot or by car until flood waters subside or debris can be cleared. A drone provides evidence that can be immediately submitted to an insurance company, starting claims that can get a community back on its feet sooner.

PRACTICAL POINTER: Talk with your insurance agent about drone coverage. In some cases an association can obtain insurance through its property coverage if the association-owned drone damages property of a homeowner.

Proper Use Far Outweighs Risks

Members might have recreational drones as a source of entertainment. As long as they are following the FAA rules for the jurisdiction where they live and your association’s rules pertaining to recreational use of drones, there shouldn’t be a problem. Cases in Texas and California, where drones were used to spy on what neighbors in a planned community were doing, are the exception to the rule, says Grucza. He notes that the positives of using drones outweigh the negatives of an owner-to-owner situation that’s outside the realm of association drone usage.

“From time to time, drones are used in planned communities by members for purposes other than what they are intended to be used for, but we see mostly proper use of drones by associations, and by members for recreational use, especially in greenbelt areas in communities,” he says.

(continued on p. 3)

BOARD OF ADVISORS

Joseph E. Adams, Esq.
Becker & Poliakoff LLP
Naples & Fort Myers, FL

David J. Byrne, Esq.
Ansell Grimm & Aaron, PC
Princeton, NJ

Richard S. Ekimoto, Esq.
Ekimoto & Morris, LLLC
Honolulu, HI

Robert M. Diamond, Esq.
Reed Smith LLP
Falls Church, VA

V. Douglas Errico, Esq.
Marcus, Errico, Emmer
& Brooks, PC
Braintree, MA

Paul D. Grucza, CMCA, AMS, PCAM
The CWD Group, Inc. AAMC
Seattle, WA

Ellen Hirsch de Haan, Esq.
Wetherington Hamilton, PA
Tampa, FL

Benny L. Kass, Esq.
Kass, Mitek & Kass, PLLC
Washington, DC

Tammy McAdory, CMCA, AMS, PCAM
Kiawah Island Community Assn.
Kiawah Island, SC

P. Michael Nagle, Esq.
Nagle & Zaller, PC
Columbia, MD

Ronald L. Perl, Esq.
Hill Wallack LLP
Princeton, NJ

Tom Skiba
Community Associations Institute
Alexandria, VA

Clifford J. Treese
Association Data, Inc.
Mountain House, CA

Editor: Elizabeth Purcell, J.D. **Executive Editor:** Heather L. Stone **Director of Marketing:** Peggy Mullaney

COMMUNITY ASSOCIATION MANAGEMENT INSIDER [ISSN 1537-1093 (PRINT), 1938-3088 (ONLINE)]
is published by Vendome Group, LLC, 216 East 45th St., 6th Fl., New York, NY 10017.

Volume 17, Issue 4

SUBSCRIPTIONS/CUSTOMER SERVICE: To subscribe or for assistance with your subscription, call 1-800-519-3692 or go to our website, www.CommunityAssociationManagementInsider.com. Subscription rate: \$370 for 12 issues. **TO CONTACT THE EDITOR:** Email: epurcell@vendomegrp.com. Call: Elizabeth Purcell at (212) 812-8434. Fax: (212) 228-1308. **TO PLACE AN ADVERTISEMENT:** Please contact Heather Stone at hstone@vendomegrp.com or call (212) 812-8436.

DISCLAIMER: This publication provides general coverage of its subject area. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice or services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. The publisher shall not be responsible for any damages resulting from any error, inaccuracy, or omission contained in this publication.

© 2017 BY VENDOME GROUP, LLC. All rights reserved. No part of *Community Association Management Insider* may be reproduced, distributed, transmitted, displayed, published, or broadcast in any form or in any media without prior written permission of the publisher. To request permission to reuse this content in any form, including distribution in educational, professional, or promotional contexts, or to reproduce material in new works, please contact the Copyright Clearance Center at info@copyright.com or (978) 750-8400. For custom reprints, e-prints, or logo licensing, please contact Heather Stone at (212) 812-8436 or hstone@vendomegrp.com.

Use Drones

(continued from p. 2)

Assuage Members' Privacy Concerns

As with any type of new technology, there will be some concern about the implications of its use—and possibly reticence about using it. Because drones have the ability to fly above and around homes in a planned community and windows and balconies in a condominium, invasion of privacy is a common fear among members. So coming up with a policy for your association's use of drones, and explaining how drones can be a partner in the success of the association are key, says Grucza, who recommends holding information meetings. "Education sessions for members are the best way to allay concerns about invasion of privacy," Grucza stresses.

Let's say your association must have a multimillion-dollar envelope study for your condominium building. Using a drone can determine the extent of any damage, but it also might scare members who are concerned that a piece of equipment that can take photos will be near their windows and balconies. Holding a building meeting and inviting residents to come to it so you can discuss the implications of drone hovering and what it would mean to them is very helpful, says Grucza. You could explain that they will see the drone taking pictures and that it will see part of their home, but that there are easy solutions, such as closing their curtains or blinds if they are uncomfortable. "This can extinguish any objections that arose because members felt they had no choice but to give up their privacy," Grucza notes.

Advise the membership about why the association is going to utilize drone technology. "This is truly an education process," says Grucza, whose management philosophy includes an emphasis on education. He advises that inviting members to a meeting with refreshments and places to sit for a

(continued on p. 4)

► **Determine What Drone Use, Model Suits Your Property**

What a drone is used for and what type of drone is appropriate for that use will vary from association to association. For example, an association with trails and pools that are subject to CC&R and ARC enforcement could use a drone to make sure that members are properly maintaining trails and pools or are doing what they said they would do to those pools or trails in an ARC application.

A common drone use by condominiums is building investigation inspections. "Many are aging at the same rate and with that comes deterioration," says Grucza, who adds that drones are the best technology to come along for condo buildings because they allow managers to forensically look at the building breaking down and assess maintenance needs.

Grucza compares buying a drone to buying a car; drone prices have a wide range, with recreational drones being cheaper and more expensive models having higher capabilities such as image capturing and night vision. "Pick what you need, but only after doing your research," he advises. Recommendations can also be found through other associations' social media or online "word of mouth."

Use Drones

(continued from p. 3)

discussion can go a long way in encouraging members to learn about not just drones, but all new technology or initiatives in the community.

Informational meetings are especially helpful when the vendor who is providing a service or item to the association demonstrates its usefulness and how noninvasive it really is. A drone vendor could show footage of how the association's drone will operate, which would demonstrate how nonintrusive or noninvasive it will be. For example, the vendor could show footage of the drone zeroing in on blemished areas, instead of taking footage that seems excessive.

"You can minimize failure with any new issue that concerns members, whether that's drone usage, service animals, or electric charging stations, by educating them and demonstrating how it will be useful to the association and how it won't impact them negatively," Grucza explains.

Draft Official Drone Rule

Keeping control over the air space in your community is important for safety and privacy reasons. So while owners may be able to fly drones over their own property in your community, you should protect open areas that everyone in the community shares, either by not allowing drone usage, or setting rules for it. A drone that is flown improperly can crash, putting people at unnecessary risk. Consider using this language in your drone rule if your association prohibits common area drone usage:

Model Rule

Unmanned, remotely operated aerial vehicles (Drones). Drones may not be flown over any portion of the airspace above [*insert name for common area, e.g., the Concord*] nor may drones be launched from, controlled from, or retrieved to any portion of the limited common areas or common areas of the [*insert name for common area, e.g., the Concord*]. Exceptions to this rule may be granted upon request to management for the purpose of [*insert permissible purpose(s), e.g., real estate sales imaging, inspection of buildings in connection with the sale of property, or special occasions involving recreational activities.*]

If drone use is permitted outside of a member's property, consider adapting this rule:

Model Rule

Unmanned, remotely operated aerial vehicles (Drones). In addition to a member's private property, drones may be launched from, controlled from, retrieved from, and flown in the airspace above the following portions of the community: [*insert name for common area, e.g., the Greenbelt*]. Members must follow the Shady Acres Community Association Drone Policy at all times when operating a drone.

Include Key Elements in Policy

In addition to a rule, your association should have a drone policy setting out the requirements members must meet to use that technology in the community. "Decide what's reasonable, and list it all clearly in your rules," says Grucza.

(continued on p. 5)

Use Drones

(continued from p. 4)

Your policy, like our *Model Policy: Establish Member Drone Use Policy to Ensure Safety*, should cover the following points:

Purpose and timing. Spell out when owners can use drones and for what purpose. In other words, can owners use drones for recreation on your common areas like greenbelts or solely on their own property? Can owners receive deliveries from vendors by drone? Is drone use permissible at 6 a.m. on a Sunday or 10 p.m. on a Wednesday? [Policy, par. 2.]

Application. Require owners to apply to use a drone. One way to control drone activity is to mandate that owners clear it with you first. Create a process that starts with owners' submitting an application to the board or a drone committee. On the application, ask for the owner's purpose for the drone; the make, model, and weight; and the dates and times the owner would like to use the drone [Policy, par. 3].

Liability. Include on the form application disclaimer language drafted by the association's attorney stating that the association will hold the owner liable for any and all damage caused by drone use and that by signing, the owner agrees to indemnify the association for all damages caused. Then be sure owners sign to acknowledge those conditions [Policy, par. 4].

Insurance. Require that owners have insurance. Just as you should ask for proof of insurance in the application, be sure to stick to that requirement in your drone policy. If an owner submits a general homeowner's policy, have the owner also attach a statement from her insurer indicating drone use is covered under that policy. But you might find out that drones are so new that they won't be covered by all insurers.

Grucza points out that, as part of the application process, you should also require owners to submit evidence the drone is registered with the Federal Aviation Administration, if applicable (current FAA regulations require registration only if the drone weighs more than .55 pounds) [Policy, par. 5].

Damage. Warn owners they're responsible for damage. Don't just include discussion of responsibility for damages in your drone use application. Also spell out in your drone policy that the association will hold owners responsible for any damage they create with their drone use [Policy, par. 4].

Reporting. Notify owners that you'll turn them in if they're unsafe. If the board determines, in its sole discretion, that drone operations are unsafe, it will forward a complaint to the FAA. The operator can face civil penalties, including the revocation of a pilot's certificates [Policy, par. 7]. ♦

Insider Source

Paul D. Grucza, CMCA, AMS, PCAM: Director of Education & Client Engagement, CWD Group, Inc. AAMC, 2800 Thorndyke Ave. West, Seattle, WA 98199; www.cwdgroup.com.

▶ ▶ ▶ *Model Policy follows* ▶ ▶ ▶

MODEL
POLICY**Establish Member Drone Use Policy to Ensure Safety**

Drones can be used by associations in a variety of ways: to inspect buildings for damage, assess architectural review committee (ARC) compliance (to determine whether a member did what she said she would with regard to variances), and discover covenant violations. But they're also a source of entertainment when used recreationally. A policy that sets out requirements for recreational drone use is crucial so that fun doesn't turn into a dangerous situation. Include these points in your policy and ask your attorney to review them.

DRONES: UNMANNED AERIAL VEHICLES

- 1. Importance of drone rules.** For the safety of everyone at Shady Acres Community Association, it is essential that all members' follow association rules regarding the use of drones for personal recreation within the community, and required by law where applicable.
- 2. Hours of operation and purpose.** Members may use drones for recreation on *[list areas, e.g., common areas, such as greenbelts, or solely on their own property]*. Owners may receive deliveries from vendors by drone, provided the management office has been notified by email or phone call ahead of time that such a delivery will be made. Drone use is permissible during the following hours: *[insert hours of operation, e.g., 9 a.m. to 8 p.m. seven days a week]*.
- 3. Application for use.** Members must submit an application to the board or a drone committee in order to use a drone in the community. Members must list: (1) the purpose for the drone; (2) the make, model, and weight of the drone; and (3) the general days/times the owner anticipates using the drone—for example, recreational use on weekends.
- 4. Liability.** The association will hold the member liable for any and all damage caused by drone use. Please note the disclaimer language on the application stating this and understand that by signing, you agree to indemnify the association for all damage caused.
- 5. Insurance.** As part of the application process, members must submit proof of insurance that covers drone activity and evidence that the drone is registered with the Federal Aviation Administration (FAA), if applicable.
- 6. Revocation of permission.** The association reserves the right to, in its sole discretion, revoke permission for a member to use a drone if the member is using the drone in a manner that poses a safety risk to another member and/or violates the privacy of other members.
- 7. Notification to FAA.** If the board determines, in its sole discretion, that drone operations are unsafe, it will forward a complaint to the FAA. The member must deal with those penalties, and the association takes no responsibility for them.

Q&A

Electing to Vote Electronically

Q My association has really embraced technology for day-to-day management. We have a large membership and we've found that everything from organizational software to a drone for investigating maintenance concerns has streamlined community management. We'd like to extend this technology initiative by implementing electronic voting. What practical aspects should we take into consideration and what are the pros, cons, and ways to avoid any pitfalls?

A Electronic voting can benefit an association in a variety of ways. But managers and boards should familiarize themselves with the process and determine whether this system works for their community.

Understand Official Requirements

If an association is considering using electronic voting, there are official steps it needs to take to accomplish this. Electronic voting is either authorized by state law or by the governing documents, or both, says Tampa, Fla., community association attorney Ellen Hirsch de Haan. So, the first step is to determine what authority the board of directors needs to handle the election electronically. For example, does the law require authority to be in the documents? What voting procedures are required in the documents? Hirsch de Haan points out that there may need to be an amendment to the declaration to enable the use of electronic voting. In Florida, electronic voting is permitted by statute for all types of community associations. So it's important to do your due diligence.

Pros and Cons of Electronic Voting

While this legwork might seem onerous, there are multiple benefits to using electronic voting. Hirsch de Haan notes that accurate tallying of votes by the software program eliminates human error, while the association can avoid allegations of ballot tampering, and owners can vote from their home computers—which could encourage more participation in the voting process.

Ease of voting is a key benefit. “You can eliminate the mailing of ballots and potential for late delivery or a lost envelope in the process. Electronic voting also creates the perception of objectivity in the tallying process, if the voting process has been contentious for a community in the past. It can be used to vote in the election of directors, but also to vote for amendments, alterations, reserve funding, level of year-end financial reporting, rollover of funds at year end, and anything for which a membership vote is required by applicable state law,” Hirsch de Haan says. Potentially, the larger the community, the more electronic voting might be helpful, and solicit a larger return of votes, she adds.

There are some downsides to electronic voting, though. “The process is only as good as the software program, and cyber security is the paramount issue,”

(continued on p. 8)

Q&A*(continued from p. 7)*

Hirsch de Haan warns. There also are administrative challenges. For example, the owner list must be up to date and maintained on an ongoing basis. If a member's voting rights have been suspended for violations or failure to pay assessments, the database would have to be amended to remove the member's name during the suspension, she points out.

In Florida, the specifications and requirements for electronic voting are very detailed and spelled out in statutory language. They include password protection, verification of voter as authorized to cast the vote, ability to tally, ability to store records in case of a records' access request, and much more, says Hirsch de Haan. So if you do end up implementing electronic voting, make sure that you comply with your own state's requirements.

"Every 'I' must be dotted and every 'T' crossed to implement the system," Hirsch de Haan stresses. And, in at least Florida, if a person opts out of electronic voting, the association still has to send the paper notice and proxy for the vote to be cast.

Talk to Attorney, Membership Ahead of Time

First and foremost, managers and boards should consider the demographic and cultural makeup of the population, as well as the age of the members, when determining if electronic voting is feasible. There's still a large population of seniors who are not technologically comfortable and/or competent, and some still don't have email or smartphones. Language barriers can also be tricky. If there are members for whom English is not a first language that could be an issue.

"Before implementing electronic voting, it would be a good idea to have a dialogue with the membership, to find out if the community is interested in the electronic voting idea, and to answer any questions the members would have concerning both the process and the security of electronic voting," Hirsch de Haan suggests.

And, of course, the manager should consult with the association's attorney to confirm what statutory and/or documentary requirements there are related to initiating the process. Also, vetting the vendors who provide the software would be an important component to the investigation process, Hirsch de Haan notes.

All of this information should be gathered and then presented to the board of directors for consideration, before it is presented to the membership for approval (if needed) or implemented if membership approval is not required, Hirsch de Haan advises. ♦

Insider Source

Ellen Hirsch de Haan, Esq.: Partner, Wetherington Hamilton, 1010 N. Florida Ave., Tampa, FL 33602; www.whhlaw.com.

RECENT COURT RULINGS

➤ **Owner Couldn't Use Litigation to Amend Governing Documents**

FACTS: The water pipe serving an owner's condominium unit was constructed in such a way that it ran through a portion of the ceiling of an adjacent unit prior to entering the owner's unit. The adjacent unit underwent foreclosure. Subsequently, the utilities in the foreclosed unit were disconnected. Over the course of two years, the portion of the water pipe running through the foreclosed unit froze, broke, and caused damages. The unit owner had the subject water pipe and the damages repaired.

After he remediated these past damages, the unit owner sought reimbursement from the condo association. Based upon the governing association declarations and bylaws, the association wasn't liable for these past incidents and declined to reimburse the owner. But the association did advise him that he could seek recovery and reimbursement from the owner of the adjacent unit.

The owner sued the owner of the adjacent unit and the condo association. The damage claims were settled. At that point, the only remaining claims against the association were for declaratory judgment in connection to a claimed breach of fiduciary duty by the association.

The unit owner asked a trial court for a judgment in its favor, seeking to have the trial court judicially proclaim that the association would be subject to certain duties and obligations not contained in the existing condo association declarations and bylaws. Namely, that the association be deemed to have a prospective duty going forward to regularly inspect each of the individually owned condo units and to assume responsibility for any nonfunctional utilities.

The association asserted that all of the damages underlying the owner's litigation were fully repaired and he had been fully reimbursed. As such, "no remaining, present controversy was in existence to be adjudicated," the association argued.

The association said that the owner was "improperly attempting to bypass the mandatory statutory process for the lawful amendment of condominium declarations and bylaws in Ohio by seeking judicially imposed new requirements and obligations not contained in the existing declarations and bylaws."

State law establishes that no condo declaration or bylaw amendments are valid unless they're created using a specified amendment procedure, which in this case requires a successful vote of not less than 75 percent of the unit owners voting in favor of an express, proposed amendment, the trial court noted.

The trial court ruled in favor of the association. The owner appealed.

DECISION: An Ohio appeals court upheld the trial court's decision.

(continued on p. 10)

Recent Court Rulings

(continued from p. 9)

REASONING: The appeals court also denied the owner's request for a declaratory judgment modifying the association declarations and bylaws through a judicial ruling rather than through the governing amendment process set forth in the applicable statutes and the bylaws. The court acknowledged that the owner wanted the court to render an opinion in the event of future situations similar to the one that gave rise to his lawsuit. But the court said that it has no authority to issue an advisory opinion about possible future disputes. There was no "present underlying, justiciable controversy between the owner and the association" that the appeals court could even rule on.

The appeals court noted that the owner filed his lawsuit pursuant to a statute that governs condominium associations in Ohio, which mandates that, "No modification of or amendment to the bylaws is valid unless it is set forth in an amendment to the declarations and the amendment to the declarations is filed for the record." In this case, such an action would have required an affirmative vote by at least 75 percent of the association unit owners in favor of the proposed additions to the duties and responsibilities of the association. None of this occurred in this case, said the appeals court.

The appeals court stressed that all damages caused in connection to the owner's frozen pipe were repaired and that all reimbursement claims connected to these damages have been settled in the course of the litigation.

Furthermore, what the owner asked of the court would constitute judicial additions and amendments to the association's declarations and bylaws. Such amendments are not valid unless done in conformity with state statute and the associated bylaw mandating an affirmative vote of owners of at least 75 percent. Finally, the request from the owner to the court constituted "conjecture regarding future events which may or may not occur," said the appeals court. ♦

- Cooper v. Bernath Village Condo Association, et al., June 2017