

CAI – LAC Legislative Update – July 27, 2020

Introductory Comments by Ed San George, MPA, PCAM

Glad to be here and representing the LAC and introducing the Immunity Topic for today's update.

Each of us as panelists, practitioners and volunteers are acutely aware of the challenges that Covid 19 has presented to operating common facilities, most notably and recently, swimming pools and the mostly bold decisions by boards to not open pools this summer in NJ. We are also sensitive and acutely aware of the economic impact to pool operators, activity and amenity services providers and others who are valued members of CAI-NJ who are being adversely affected by restrictions to opening amenities. In fact our CAI-NJ board has approached CA-LAC to attempt to facilitate some form of legislation that will protect boards, management companies and service providers to operate without fear of legal jeopardy in the event that a Covid 19 claim is brought by an aggrieved owner, guest or service vendor. We on the LAC do understand why the board would make such a request of us, as the committee represents multiple interest groups in the industry and the committee has had such recent high profile successes with NJ Legislation, as follows:

- Mortgage Foreclosure Reform (extending priority of CIC liens to HOAs, and increasing the 6 month priority lien over mortgages by making it renewable each year for up to five years)
- Extending the schedule for DCA inspections for compliant associations from 5 years to 7 years
- Appeal of DCA's Radburn election and meetings regulations
- Successful revisions to DCA regulations regarding Adequate Reserves and Benefits Derived
- Successful opposition to bills seeking to restrict the ability of CICs to collect overdue assessments and related charges
- Passage of the NJ Uniform Common Interest Ownership Act (only to have it vetoed by Governor...re-introduced and passed again by Senate)

So, we humbly take this charge to not only monitor and adjust to pending legislation but to offer immunity legislation to the State of New Jersey.

What we are proposing is an immunity protection law that will be broad enough to cover our valued industry providers, our boards and the community association membership at large but that will be narrow to our specific industry. By narrowing the legislation to our industry we are hopeful the legislature will recognize the particular issues of our non profit community associations, our constituent membership in the industry, and the unique service requirements of community associations to offer recreational services and amenities—but not as our only or primary service, or as a profit center, or as business providing a livelihood to business owners, but as an adjunct to the overall operations and governance of a common interest community.

The immunity being discussed is for as broad an immunity as we can possibly get, to provide for Common Interest Communities (CIC), their boards and service providers immunity from Covid

19 related issues and claims. We will seek NJ legislation that will provide for immunity for claims and damages related to contracting the Covid 19 virus while on the premises of a CIC and under the control of the CIC. This would be for any internal or external amenity or feature where it could reasonably be traced to where a Covid 19 infection could have occurred. By example and not by limitation, this would be a community's swimming pool, exercise facility, management office, clubhouse, tennis courts, bocci courts, elevators, sun decks, fire pits, card rooms, and other amenities and facilities which the Association has jurisdiction to operate and maintain.

Matt will discuss some of the existing legislation that other states have adopted and will introduce you to what CA LAC will promote. Dave Ramsey and Michelle Jaker will discuss the process of seeking legislative approvals and the politics of the effort with legislators.

We wish to temper expectations both in terms of the successful track record of CA LAC, the political environment the state is in, and how receptive the legislature may be to offer immunity in a dynamic of requiring adherence to health guidelines and public policy to control the spread of Covid 19. All the while, not contradicting that direction and need by seemingly lowering the bar on adherence to the guidelines. Similarly, our pool seasons are at their traditional mid-season of operations right now, so it seems very unlikely that any immunity legislation could materially affect operating pools this season. Our effort and direction is to engage with the legislative process for the near future needs, given the uncertainty of a vaccine and the capability for widespread distribution to the citizens of the United States.

Furthermore, will immunity legislation truly be enough or will it lead to a false sense of security? Immunity, as we will discuss and propose, will set up a barrier and definition of protection for the proper actions of a board, but it is only a defense to the action. It does not stop a claim from being made and does not provide any ramifications (parameters?) of insurance protection. Immunity allows for an awareness of board protection and may stop some claims but it's not a guarantee. As Covid 19 claims are not covered by either general liability or directors and officers liability policies, the association will still need to provide a legal defense to such a claim. Merely initiating a defense and presentation to a court of the immunity protection could cost tens of thousands of dollars with no certainty of results. However, immunity protection is a form of risk management and which should apply and aid with board decision making and could have a beneficial effect on any lawsuit being defended and settled due to a Covid 19 claim.

We all agree that insurance coverage is the best defense but that it is not available and may not be. There has been discussion at the federal level of an OSHA program to protect workers, which is the democratic plan and broad immunity for governments, non profits and business, which is the republican plan. There is also discussion with the pending next stimulus package to have an indemnity provision. It is too early to tell what may come of these efforts but CAI National is monitoring and will try to have a legislation be more specific to common interest communities.