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NEFLCAI provides education, networking, resources, and advocacy for Community Associations in Northeast Florida and the professionals who serve them.

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**August 14th - Monthly Program
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**August 29th- Jumbo Shrimp Night
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Welcome To Our Newest Members!

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- **Steven Sheremeta CAM**, May Management
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- **Justin Ham**, 1951 Market Condominium Association
- **Alison Larson**, 1951 Market Condominium Association
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CAI Florida 2024 End of Legislative Session Report



The CAI Florida Legislative Alliance (CAI-FLA) worked tirelessly to navigate through many bills. There are more requirements imposed on community associations board members, but the result is still the best-case scenario for community association homeowners, boards, management professionals, and other professionals. Below is a brief overview from the 2024 Florida State Legislature:

HB 1029 My Safe Florida Home Program: Allows condominium associations within 15 miles of the coastline to apply for grant funds to make hurricane mitigation improvements to the condominium property after a hurricane mitigation inspection.

HB 1203 Homeowners Associations: Some of the changes are:

- Requires managers to attend at least one membership meeting or board meeting annually.
- Requires managers to post certain management company employee contact information and other data on the website of any homeowners' association client.
- Creates a new statute governing manager conflict of interest and create a mandatory process for disclosure and approval of any potential conflict.
- Requires additional educational requirements.
- Requires board members to complete an approved board member education curriculum within 90 days after being elected, covering financial literacy and transparency, record keeping, the levy of fines, and notice and meeting requirements and additional continuing education annually.

- Requires every homeowners' association with 100 or more parcels to have a website by January 1, 2025 and includes a list of official records that must be posted on the website.
- Creates new records access crimes, add new voting conspiracy crimes, and add penalties for other wrongdoing.
- Prohibits the use of an Association debit card for an expense not in the minutes or provided for in the budget would be theft.
- An association will no longer be able to limit or restrict interior changes to a dwelling if those changes are not visible from an adjacent property.
- Associations will no longer be able to fine for certain violations, and certain vehicles, including commercial vehicles may have to be allowed in the community.
- Association with 1000 or more parcels must prepare audited financial statements, notwithstanding the association's total revenue, and an association will no longer be able to vote to prepare a lesser financial statement two years in a row.

HB 59 Provision of Homeowners' Association Rules and Covenants: Requires HOAs to affirmatively provide copies of rules and covenants either physically or digitally, or have them on a website.

HB 293 Hurricane Protections for Homeowners' Associations: The bill requires homeowners' associations to adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the homeowners' association.

HB 1021 Community Associations: Some of the changes are as follows:

- Expands the authority of the Division of Condominiums to investigate additional matters; remove officers or directors; refer theft or embezzlement to law enforcement agencies ;create a database on its website of the condominium and cooperative associations that have completed their structural integrity reserve study; to attend Association meetings; and to request access to an Association website when investigating records retention and access issues.
- CAMS must return all official records within 20 business days of request or termination; disclose all conflicts of interest; include conflict disclosures on all contracts, the agenda, and minutes of the meeting to award or approve the contract; attach a copy of the proposed contract to the meeting agenda or otherwise make it available to owners before the board votes.

- Contracts with interested service providers must be approved by the affirmative vote of 2/3rds of board members participating at the meeting and 20% of the members may cancel contracts when a conflict is not disclosed.
- Association obligated to make good faith effort to obtain and/or recover records absent from inventory.
- Association must furnish checklist of records made available for inspection.
- There are enhanced penalties for willful / repeated violations.
- Websites are required for condos with 25 units or more.
- Association cannot waive financial reporting requirements for consecutive years.
- Association must hold board meetings at least quarterly and allow members to ask questions about certain matters.
- Requires recording of certificate attesting to vote to mandate hurricane protection.
- Owners who opt-in to electronic voting must be permitted to vote electronically.
- Association must notify owners 90 days prior to election of delinquency status and possible suspension of voting rights.
- All directors must attend education sessions approved by DBPR and complete continuing education.



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Are Your Association Members Being Charged by a Developer for Amenities It Does Not Own?

F E E S

Submitted by Becker & Poliakoff

In recent years, developers have hatched a new scheme to maximize their profits: the “club plan.” If your association has turned over but the developer still owns certain amenities, like the clubhouse, take a look at your declaration. Does it have a “club plan” attached? Does that club plan have a structure whereby your Association’s members are charged their pro-rata share of expenses plus a “club membership fee?”

If it does, and the developer makes a profit off the fees paid, that club membership fee may be unlawful. In a recent case, the 6th DCA found that these charges are essentially assessments under Chapter 720 and, accordingly, cannot exceed a homeowners’ pro-rata share of expenses. See *Avatar Properties, Inc. v. Gundel*, 372 So. 3d 715 (6th

DCA 2023). In other words, a developer (or any entity) may not make a profit off of assessments charged to homeowners. Chapter 720 also requires that the developer send each owner, on an annual basis, a financial statement showing all money collected and spent during the prior year. Despite this, most developers do not comply.

As it operates, the club plan affords developers the option of keeping (or selling) the community amenities in perpetuity, while charging a profit to the Association’s homeowners for running those amenities. Maybe that doesn’t sound egregious at first glance- but go back to your club Plan. Does it have a “club membership fee schedule?” At the bottom, there will be a disclaimer that notes: “From x date and thereafter, the club

membership fees shall be determined by the club owner.” Because the Association and/or its members have no control over these club plans, the developer (or whoever happens to own the amenities) can charge any amount they want after the Fee Schedule concludes. There is quite literally nothing stopping them from charging \$1,000/month or more. You can imagine what that would do to home values.

Now, what if they decide to charge a fortune? Under the Club Plan, homeowners are obligated to pay or face a lien on their property. You can see why the Avatar court ruled against these schemes.

While the developers are intimately aware of the Avatar ruling, they have not ceased collecting the Membership Fees from other communities. If your community is subject to one of these Club Plans, contact your legal counsel to make sure your rights (and pocketbook) are protected.

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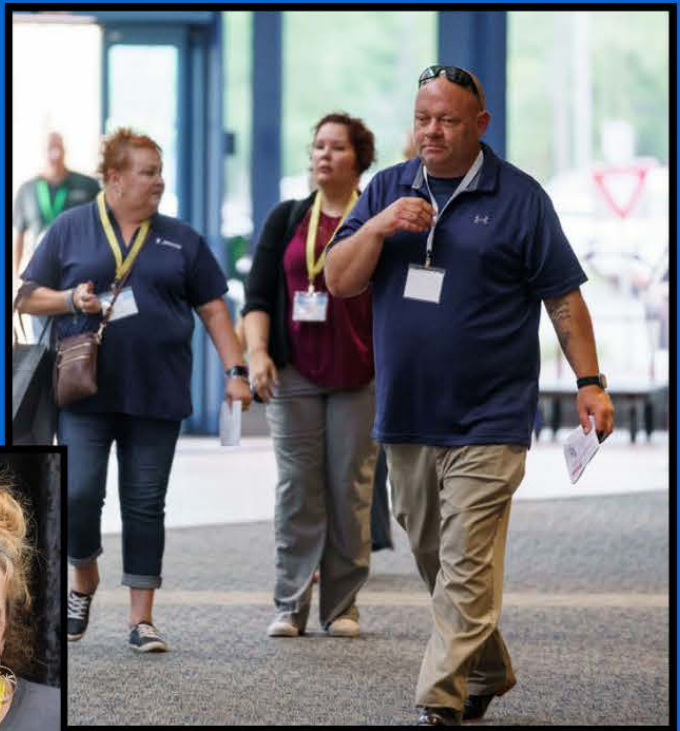












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An underwater photograph of three children swimming in a pool. The child in the center is a boy wearing blue goggles and black swim trunks, with his arms raised. To his left is a girl in a white swimsuit, and to his right is a girl in a purple swimsuit. The water is clear blue, and there are bubbles around the children.

Swim Season: Pool Safety Tips

by Laura Otto

Elina Gilbert, an attorney with Altitude Law in Lakewood, Colo., has some tips for building an effective and comprehensive pool policy that ensures both your community and its residents are safe to swim.

BEHAVIOR-FOCUSED RULES. Crafting rules based on behavior rather than personal characteristics is essential to avoid potential violations of fair housing laws, says Gilbert, a fellow in CAI's College of Community Association Lawyers.

For instance, rules can focus on conduct such as no running on the pool deck rather than imposing age-specific restrictions. Don't specifically mention toys, children, or adult swim. "Don't adopt rules that can't be enforced and expose the community to liability," she says. "Public pools can specifically mention children because they are not a housing provider." <https://hoaresources.caionline.org/hoa-pool-safety-debate-over-eliminating-lifeguards/>

LIFEGUARD CREDENTIALS. If your community hires lifeguards, Gilbert recommends communities ensure they are certified, and that there are enough to cover pool hours and size. This ensures an inclusive and non-discriminatory approach to rule enforcement.

SWIM-AT-YOUR-OWN-RISK POLICY. Adopting a swim-at-your-own-risk policy helps mitigate liability concerns for communities without lifeguards, according to Gilbert. This policy places the responsibility on individuals using the pool and reduces the association's liability in the event of an incident. Clear signage communicating this policy is important to ensure residents and guests are aware of the risks. "The association should have no role in protecting people using the pool," she says.

PROACTIVE ENFORCEMENT MECHANISMS. Establishing clear enforcement mechanisms for rule infractions is vital, according to Gilbert. She says determining in advance who will enforce the rules, how infractions will be handled, and whether the enforcement mechanisms are realistic and effective ensures consistent rule adherence.



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A FIVE-STEP PROCESS FOR BETTER BEHAVIOR AT YOUR COMMUNITY POOL



Question: We keep getting complaints about neighbor behavior at our community pool. It's driving us crazy — the pool is supposed to be fun, but it's become a sore spot at meetings. What can the board do to reign in some of the offenders?

Who doesn't love a community pool? I love this question, first because it reminds me of summer, but second because it reminds me that the best way for everyone to enjoy the pool is an agreed-upon set of pool rules. It's the perfect time of year to start thinking about how to set the pool up for everyone's safety and enjoyment.

To get some perspective on how to create and revise pool rules, we spoke with Dwayne Lowry, CMCA, AMS, general manager of New Territory Residential Community Association in Sugar Land, Texas. Create Rules that Cover It All. HOA board members and community managers need to make sure their pool rules are comprehensive, covering everything from guests, children, swimwear, slides, diving boards, and even smoking and cellphones. Lowry's community, New Territory, bans smoking at its pools for the comfort and health of all. In addition, cellphones must be kept at least 6 feet from the water. "People tend to do rash things to save a phone, and that would pose safety concerns for the guards," Lowry said.

And, for everyone's enjoyment of the amenity, proper swimming attire is required. New Territory bans cut-offs, inappropriate suits and loose clothing. It also implements a 10-minute safety break, observed each hour, at each of its pools. According to the rules, everyone must be out of the water.

Create Rules that are Fair and Legal. While community associations are responsible for the health, safety, and welfare of the people who use common area facilities, like pools, they're also responsible for writing rules that aren't discriminatory. The federal Fair Housing Amendments Act of 1988 forces associations to examine all rules regarding the use of the common facilities to ensure they do not discriminate against individuals protected by the act, including discrimination based on handicap and familial status.

Follow Basic Principles to Write Rules.

1. The board must have sufficient rule-making authority in its governing documents. Rules must be duly adopted at a board meeting and, once passed, they must be published and distributed to association members before they are enforced.
2. The rule must be reasonable, and it must relate to a legitimate purpose. It should be a good response to the problem being addressed.
3. The rule must be uniformly enforced.

Go Overboard on Education. It's not enough to simply post the rules around the pool. Reminders need to be sent, and new residents should be briefed. "Since new people are constantly moving in and out of the neighborhood, there are always new residents to educate," Lowry said.

Enforce the Rules. Whether you've got new or long-time residents, the rules need to be enforced to be effective. How can rules be enforced? "People simply aren't allowed into the pool, or they can be removed from the pool by the pool management company and their facility usage can be suspended," Lowry said, explaining what happens to New Territory's pool rule breakers.

No rules are foolproof of course, but covering the basics and tailoring the details will make the summer at the pool easier — and more fun! — for you, your staff and your residents.



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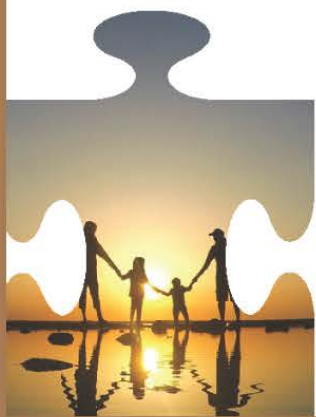
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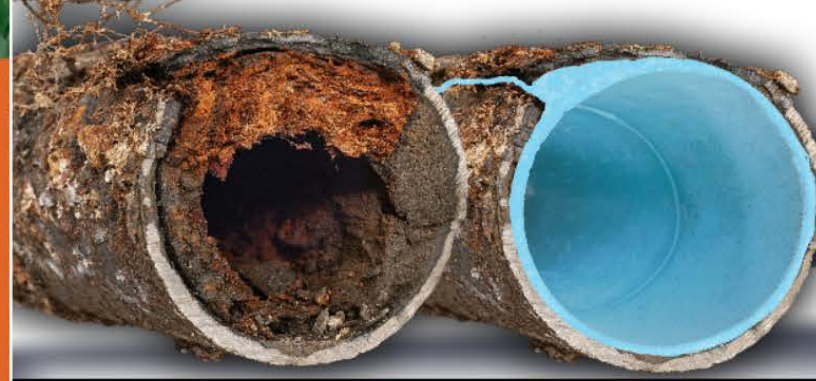
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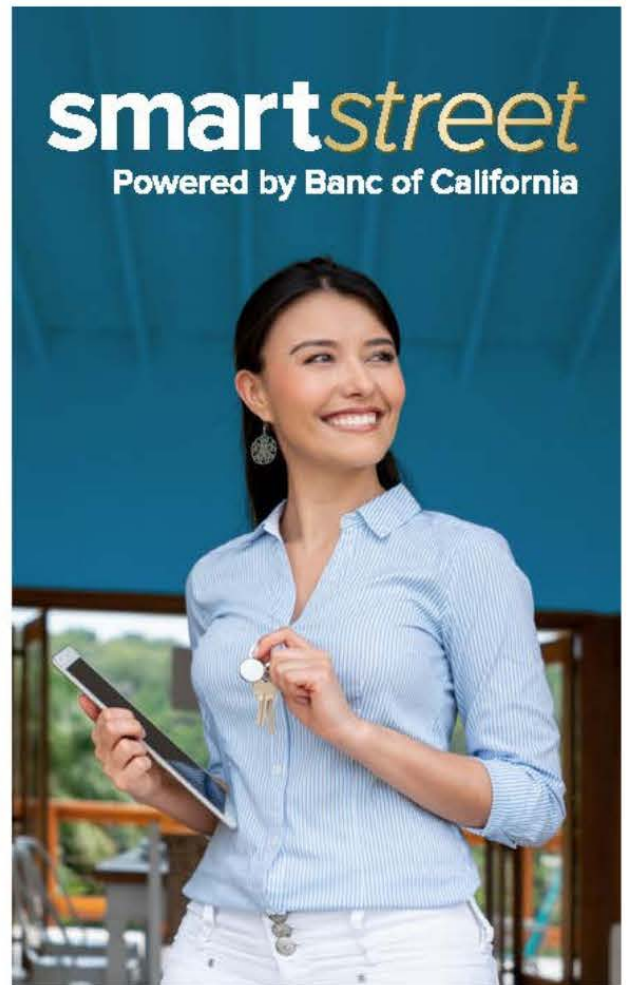
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