



The Elite Insider

Solar Panels, HOAs and Condominiums in North Carolina

By: David Wilson

Inside this issue:

Solar Panels, HOAs and Condominiums in North Carolina 1

Fair Housing Act vs. HOA pool rules 2

Thank you Board Members! 3

Grill Safety Tips 3

Calendar of Events and Office Closings 3

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Our modern society is always looking for opportunities to limit our footprint on the environment and to increase sustainability in a modern world. Wind, solar, and other renewable resources are common topics of conversation. As part of this push, many states have enacted laws that encourage businesses and individuals to incorporate and use these technologies as a part of our everyday lives. For those of us who live in a condominium or homeowner's association, we may or may not have rules that either allow or prohibit installation of solar panels.

The first relevant date for a homeowner's association in North Carolina is October 1, 2007. If the association is older than that, then any general language of architectural control governs (restrictions in the governing documents and/or the same type of architectural guidelines as other structures with regards to aesthetics, appearance, other homes, etc.). So, if your association's

governing documents are older than October 1, 2007, then the statute does not affect your HOA's ability to make its own rules about solar panels.

For deed restrictions, covenants, or similar binding agreements that run with the land and that are recorded on or after October 1, 2007, the current statute gets a little complicated. First, the statute provides that restrictions that outright prohibit solar installation are void and unenforceable. However, the statute also provides that an Association may still regulate the location of the installation and require screening so long as doing so does not "have the effect of preventing reasonable use of a solar collector for a residential property." In addition, the statute specifically permits an Association to prohibit installation of solar panels that are visible by a person on the ground:

1. On the façade of a structure that faces areas open to common or public access (more often than not this is going

- to be the front of the house);
2. On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces (more often than not, this is going to be the front roof); or
3. Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure (usually this is going to be in the front yard, but may vary depending on the location of the house, size or shape of the house or yard, and other factors).

Later additions to the statute made it applicable to townhomes and to condominiums that are not "stacked," meaning they are set up in a similar manner to townhomes. If you have questions about whether your HOA's restrictions permit installation of solar panels, or whether North Carolina's solar panel laws apply, please contact me. I work closely with HOAs and homeowners on a regular basis and would be glad to review your HOA's restrictions to see whether, and under what conditions, solar panels may be permitted in your neighborhood.

Fair Housing Act vs. HOA pool rules By: Bill Hamel



Most swimming pools have a list of rules posted somewhere on the premises. We've all seen them. The rules contain common sense prohibitions against dangerous pool activities, such as having glass in the pool area and diving into the shallow end.

And almost every set of pool rules contains a statement similar to this: "No one under the age of 18 may use the pool unless accompanied by a parent or guardian." It makes sense, right?

According to a 2012 federal court opinion from California (Iniestra v. Cliff Warren Investments), a pool rule requiring adult supervision violated the Fair Housing Act (FHA) because it discriminated against families with children.

FHA Explanation

In explaining its opinion, the federal court found the rule requiring adult supervision to not make perfect sense if its goal was to ensure the safety of all swimmers. The court noted that the Iniestra children, who were not allowed in the pool facility without a parent, but yet adults who never swam a day in their life could use the pool facility without supervision. Also illogical was that a certified lifeguard who was under 18 could not use the pool without the presence of a parents or guardian.

Most homeowners' associations boards are aware that the FHA prohibits discrimination on the basis of race, religion, sex and disability.

But the law is much broader. The FHA also prohibits discrimination on the basis of "familial status," which applies to children who live with a parent or other guardian.

Just as with the other forms of discrimination prohibited by the FHA, homeowners' association boards, their directors and managers can be sanctioned, ordered to community service or FHA training, and fined. So swim clubs or any other common area or amenity areas where the HOA rules treat children differently than adults could violate FHA and those rules should be vetted for enforceability and potential for liability.

This could include rules designating "adult swim" periods or curfews on children in the common areas or other restrictions for amenity use by children. Other federal cases have held that "adult swim" periods violate the FHA, but suggest that associations can avoid a violation by allowing general "lap swim" periods that are not restricted by age.

N.C. laws

North Carolina law requires the posting of warning signs at pools that potentially violate the FHA. In North Carolina it is necessary to post that "children should not use the swimming pool without adult supervision."

There are also general state laws requiring parents or guardians to properly supervise juveniles. While federal laws typically trump state laws,

logic dictates that some reasonable form of age restrictions relevant to pools would ultimately pass an FHA test as nondiscriminatory purely as a safety measure if nothing else.

Age-neutral rules

So how do we make commonsense rules for the safety of the people who use our amenities without violating the FHA? The simplest explanation is to make rules as age-neutral as possible. Instead of requiring "supervision by an adult," we might say "supervised by a competent swimmer." Instead of having a rule that "children" should not play in the parking areas, we might say that "no one" should play in the parking areas.

Review before summer

The FHA is a complex maze of well-intended protections. Judges, attorneys, and legislators often disagree as to what the FHA means and what it prohibits. On top of that there are exemptions that could apply, such as for a senior-living community where rules regarding children may not violate FHA. Associations should have their policies relating to children reviewed, starting with pool rules. Summer is looming.

Thank you!



Thank you Board Members, for all the volunteer hours you give!

- B** Brave, Budgeting, Build, Balancing, Believe
- O** Organization, Orientation, Opportunity, Overview, Open-Minded
- A** Appreciation, Activities, Action, Achievements, Accomplishments
- R** Rewards, Recognize, Respectful, Resilient, Reserve
- D** Develop, Dedicated, Deliver, Diverse, Determined

Grill Safety Tips



When firing up your grills this summer, the U.S. Consumer Product Safety Commission (CPSC) reminds you to barbecue safely whether you use gas or charcoal.

Gas Grills

Liquid petroleum (LP) gas or propane, used in gas grills, is highly flammable. Each year about 30 people are injured as a result of gas grill fires and explosions. Many of these occur when consumers first use a grill that has been left idle for a period of time or just after refilling and reattaching the grill's gas container.

To reduce the risk of fire or explosion, consumers should routinely perform the following safety checks:

- Check the tubes that lead into the burner for any blockage from insects, spiders, or food grease. Use a pipe cleaner or wire to clear blockage and push it through to the main part of the burner.
- Check grill hoses for cracking, brittleness, holes, and leaks. Make sure there are no sharp bends in the hose or tubing.
- Move gas hoses as far away as possible from hot surfaces and dripping hot grease. If you can't move the hoses, install a heat shield to protect them.

- Replace scratched or nicked connectors, which can eventually leak gas.
- Check for gas leaks, following the manufacturer's instructions, if you smell gas or when you reconnect the grill to the LP gas container. If you detect a leak, immediately turn off the gas and don't attempt to light the grill until the leak is fixed.
- Keep lighted cigarettes, matches and open flames away from a leaking grill.
- Never use a grill indoors. Use the grill at least 10 feet away from your house or any building. Do not use the grill in a garage, breezeway, carport, porch or under a surface that can catch fire.
- Do not attempt to repair the tank valve or the appliance yourself. See an LP gas dealer or a qualified appliance repair person.
- Always follow the manufacturer's instructions that accompany the grill and when connecting or disconnecting LP gas containers.
- Consumers should use caution when storing LP gas containers. Always keep containers upright. Never store a spare gas container under or near the grill

or indoors. Never store or use flammable liquids, like gasoline, near the grill.

To avoid accidents while transporting LP gas containers, transport the container in a secure, upright position. Never keep a filled container in a hot car or car trunk. Heat will cause the gas pressure to increase, which may open the relief valve and allow gas to escape.

Charcoal Grills

Charcoal produces carbon monoxide when burned. Carbon monoxide is a colorless, odorless gas that can accumulate to toxic levels in closed environments. Each year about 30 people die and 100 are injured as a result of carbon monoxide fumes from charcoal grills and hibachis used indoors.

To reduce carbon monoxide poisonings, never burn charcoal indoors, in vehicles, tents or campers, even if ventilated. Since charcoal produces carbon monoxide fumes until the charcoal is completely extinguished, do not store the grill indoors with freshly used coals.

Calendar of Events and Office Closings

JUNE

Board Education Seminar June 29th—6:00-8:00 PM at Elite Management Professionals

Come join us to review the important role of serving on the Board, how to review the financial statements, governing documents and review your community websites. Please contact Dawn Hatcher to register.

JULY

July 4th— All Offices Closed

SEPTEMBER

September 7th— Labor Day All Offices Closed

September 29th— 2015 Fall Festival

NOVEMBER

November 26th and 27th— Thanksgiving Holiday All Offices Closed

DECEMBER

December 8th— Holiday Open House

December 24th and 25th— Christmas Holiday All Offices Closed

JANUARY 2016

January 1st— New Year's Day All Offices Closed

