

## Virginia Community Association Law Blog

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## Drones and HOAs: How Homeowners Associations and Condominium Associations Can Be Prepared to Deal with the New Technology



Amazon.com's recent announcement – that in the future it may utilize unmanned drones to deliver packages to individual residences – has created a host of novel legal issues that all homeowners associations should consider and plan for. Although commentators believe that the commercial use of delivery drones may be a few years off, associations should begin planning now for whether they should regulate the use of drones within the association; how they should regulate the use of drones; and how they can minimize potential liability arising from the use of drones.

While the public has so far only been provided with bits and pieces of information about the make-up and capabilities of unmanned delivery drones, some general information is available: a drone will carry a package and will fly from a warehouse to an owner's house, with the goal of attempting to deliver the package in a very short amount of time right after it has been ordered. The drone is designed to land, helicopter style, on an owner's lawn and drop off the package. The drone will then use its helicopter-style propellers to vertically ascend from the owner's lawn and return to the warehouse.

### Should Associations Regulate the Use of Drones Within Associations?

The short answer as to whether associations should regulate drones is yes, but with many caveats. Whenever a new technology emerges, there is a temptation for associations to heavily regulate its use, if not outright prohibit it. There are very good reasons for associations to move cautiously in the context of delivery drones, such that they establish some basic regulations, while avoiding imposing unduly burdensome regulations, or prohibiting delivery drones outright. If an association enacted, via its governing documents, a complete restriction on owners requesting delivery via a delivery drone, or a complete restriction on the landing of delivery drones within a neighborhood, it would likely drive away potential purchasers (especially younger people and technologically-savvy people), who would perceive the move as a stodgy attempt to stifle innovative technology.

### How Should Associations Regulate the Use of Drones?

There are several moderate restrictions that all associations should consider adding to their governing documents relating to the use of delivery drones:

Common Area Prohibition (In a Non-Condominium Setting): within a homeowners association (also termed a “property owners’ associations” in Virginia), delivery drones should be prohibited from landing in the common area (and owners should be prohibited from placing an order for a delivery drone to land in the common area, or otherwise directing the package shipper to land the drone there). The reasons for this are obvious: drones pose potential safety hazards to persons on the ground in the form of dropped packages, improper landings on top of persons or pets (which could be exacerbated by the presence of their propellers), mechanical failure, etc. The association should not have to assume the risk of potential claims arising from injuries to persons or property via a drone landing on the association’s common area, when an owner could direct the landing of the drone on the owner’s lot instead. The one exception to this would involve a community of townhomes that contained extremely small lots (in that case, associations should consider a process similar to that described below for condominium associations).

Designated Landing Site in Condominium Common Element: within a condominium association, the issue of delivery drones landing on the common element is trickier. Many unit owners in condominiums will find it to be technologically impossible to have a delivery drone land on property constituting their unit (whether due to the presence of stacked units, a small porch, a roof, etc.). Therefore, condominium associations many want to consider establishing a designated drone delivery landing site in a portion of the common element. Such a site should be fenced-in, and clearly marked with warning signs so that bystanders do not accidentally venture onto it. Given the current state of the delivery drone technology, condominium associations have no need to rush out tomorrow and establish such sites, but as the technology is implemented in the coming years, condominium associations should plan ahead and begin considering where they could designate such a delivery site. Association attorneys should also begin to think through the need to make any necessary amendments to the governing documents to permit the association to restrict a portion of the common element for the exclusive use of owners utilizing delivery drones.

Time Restrictions: associations should adopt limits on the times of day that delivery drones may land in the neighborhood. While we know little about the volume of noise that will be generated by delivery drones, it seems likely that their propellers will create a noise that’s louder than that generated by a motor vehicle. Associations may want to consider only permitting landings between 8 a.m. and 5 p.m., for reasons related not only to noise, but also so that landings can be made in the daylight and therefore bystanders can better observe (and avoid) landing and departing drones.

Use Restrictions: associations should also adopt limits on the way in which drones may land on lots/units /common element within the neighborhood. Some restrictions associations should consider include: (i) no person may go within 10 feet of a landing or departing drone, or otherwise interfere with it, (ii) drones must land on driveways wherever reasonably possible (so as to minimize potential damage to lawns), and (iii) all delivered packages should be removed from the outside of the residence within two hours.

Liability: associations should consider amending their governing documents to provide that the association is not liable for any damages to persons or property relating to a drone delivery, nor is it responsible for any misdelivered or stolen packages. Additionally, the governing documents should provide that the owner or tenant ordering the package agrees to indemnify the association in the event a claim is asserted against it relating to an act or omission involving a delivery drone.

Should Associations Utilize Delivery Drones for Their Own Use? Should association managers or directors or officers place orders for products for association use, and have them delivered by drone to the association’s common area/element? Given the liability concerns discussed above, some associations may want to avoid utilizing delivery drones for association business. To that end, those associations should include a provision in their management contracts that provides that the managing agent will not place an order for delivery via drone,

which would land on the association's common area/element.

### Will There be Governmental Regulations on Associations' Ability to Regulate Delivery Drones?

If past history is any guide, it seems likely that if associations begin enacting an array of burdensome restrictions on the use of delivery drones, state governments or the federal government (or both) may step in and begin enacting laws prohibiting associations from unduly regulating (and outright prohibiting) delivery drones. The legal regime relating to satellite dishes provides a good example for how the regulation of delivery drones may unfold: many associations initially prohibited (or otherwise heavily regulated) the use of satellite dishes, and in response (and at the urging of the telecommunications industry), the federal government adopted the Over-the-Air Reception Devices rule (commonly referred to as "OTARD"), which limited the right of associations to regulate such devices. It's not difficult to envision the federal government responding in the same manner if onerous restrictions on delivery drones become the norm among homeowners associations.

### Conclusion

While this issue is not necessarily an urgent one, it is both an important and inevitable one. Associations should begin discussing these issues with their legal counsel now, so that they're legally prepared for the day sometime in the future when delivery drones take to the sky.

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