

AUGUST 2020

POOL SAFETY

Few things are more appealing to your guests than a refreshing jump in your hotel's pool. However, a swimming pool also significantly increases the risk exposure for your property. A swimming pool is also considered an "attractive nuisance," similar to a construction site or playground equipment, in that it strongly appeals to children. An attractive nuisance is a building, structure, area, or activity that attracts visitors who may not be welcome.

The hotel has the power and ability to deny entrance onto its property and into its pool by trespassers. A case decided in the Ohio Supreme Court determined that property owners may be held liable for the injuries of trespassing children. In this case, the hotel's pool was closed, awaiting repair, when a child crawled through a hole in the fence and fell in. His mother proceeded into the pool after him and they both drowned.

Drowning remains the second leading cause of unintentional, injury related, deaths to children under the age of 14. Two minutes following submersion, a child may lose consciousness and irreversible brain damage may occur after four to six minutes. This time period determines the immediate and long-term survival of the child. Nearly all children who require CPR either die or are left with severe brain damage.

A recent study suggests that medical costs for a near-drowning victim can range from \$75,000 for emergency room treatment to \$250,000 per year for long term care. The cost of a near-drowning incident that results in severe brain damage can exceed \$5,000,000.

In the past 20 years, at least 36 children have died and 147 others have been injured after becoming trapped underwater in pool and hot tub drains. The *Virginia Graeme Baker Pool & Spa Safety Act of 2007* provided new requirements for pool construction, retrofitting and maintenance. In addition to installing anti-vortex drain covers, pools operating with single drains may also be required to install devices which automatically shut off suction when a drain is blocked. Violators can face fines or criminal penalties.

With regards to attractive nuisance situations, negligence can mean that the property management or ownership were aware that someone could get hurt on the property and did not provide adequate protection. This negligence can significantly increase the liability exposure to ownership and management. Your team should take all necessary precautions to protect all guests on property, invited or otherwise.

DID YOU KNOW?

In the United States, approximately 10 people every day die from drowning—the fifth leading cause of unintentional injury death for people of all ages.

Injuries linked to pool chemicals accounted for 3,000–5,000 emergency room visits each year. Almost half of the patients are under 18 years of age.

- Center for Disease Control and Prevention (CDC)

FROM YOU:

- Q:** Can non-hotel guests use the hotel pool and exercise facilities with our permission? Can a hotel guest rent the pool area for a party?
- A:** *Use of the pool and exercise facilities by individuals other than current guests of the hotel as well the rental of the pool area for parties or events is prohibited. The risk associated with the exposure of non-hotel guest use or event rental is extremely high.*

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POOL REGULATIONS

Every hotel is required to be in full compliance with all federal, state, and local pool regulations. While not an exhaustive listing, The Marshall Hotels & Resorts Risk Management Team strongly recommends implementing at least the following regulations:

- The pool is only for the use of registered guests.
- Inspect the pool area daily and conduct safety checks at least three times a day, or according to your local pool regulations. Correct any unsafe conditions immediately.
- The pool should be fenced and secured by a self-locking gate or door accessible only via valid key card. Gates should never be propped open. Any openings in the pool fencing must meet local Health & Safety Code.
- If no lifeguard is on duty, conspicuously post "Swim at Your Own Risk" signage.
- Provide the required adequate and accessible rescue equipment.
- If your hotel is considering hiring a lifeguard or lifeguard firm, consult in advance with The Marshall Hotels & Resorts Risk Management Team.
- Post all pool rules prominently. This includes the maximum number of guests allowed in the pool, no glass containers, location of the emergency phone and phone instructions.
- Acceptable swimwear must be worn by all guests (no belts, buckles, denim, etc.).
- Any person with a visible infectious disease or open wound should not be permitted to use the pool, hot tub, or sauna.
- Guests who appear to be under the influence of drugs or alcohol should be asked to leave the pool immediately.
- Require all children to be accompanied by an adult.
- Individuals who excrete bodily fluids in the pool should be asked to leave immediately and the pool should be closed for disinfecting, as required by state regulations. Children who are not potty-trained should only be allowed in the pool if they are wearing an approved swim diaper and a swimsuit. Cloth or disposable diapers are not appropriate attire.
- Mark pool depths with clear markings on the deck, at maximum and minimum depths, slopes, and on all sides of the interior of the pool.
- Ensure that pool water meets all clarity requirements according to local, state, and federal code.
- Always walk, do not run, on a pool deck and around the facility.
- No diving, somersaults, or dangerous jumping.
- Provide first aid equipment in an accessible location for use by guests and employees. At a minimum, the kit should include disposable gloves and sufficient materials to stop bleeding, clean and bandage minor wounds.
- Place a telephone within 100' of the pool, with emergency phone numbers clearly posted. The phone should also be well lit.
- Maintain poolside furniture in good condition. Firmly secure any outdoor poolside furniture in advance of severe weather.
- Maintain floor in and around the pool area. Floor must be free of any conditions that may injure bare feet (holes, chips, glass, or debris). This includes the interior walls and bottom of the pool.
- Keep pool deck free of any items that may present a slip or trip hazard. This includes hoses, cords, tools, and other debris.
- Ensure that all chemicals are stored properly, in labeled containers, with necessary MSDS signage, and secured out of access to the public.
- Keep a daily record of all injuries and operational data; including fecal accidents, chemical levels, water temperature, water clarity and any chemicals added throughout the day. Record every four hours during operation.
- A recent CDC study found that 1 out of 8 public pool inspections resulted in immediate closure because of at least one identified violation that represented a serious threat to public health. Use a DPD testing kit for measuring the concentration levels of chlorine or bromine, pH, total alkalinity, cyanuric acid and water temperature.
- Ensure that pool water is circulated continuously during any time that the pool or hot tub is in operation and that the pool water temperature does not exceed 90°F.
- Animals should not be allowed in the pool area, or on the pool grounds.

POOL DRAINS & POOL LIFTS

Federal law requires that your hotel's pool(s) comply with the following regulations:

- All pools must be equipped with anti-entrapment devices or systems.
- Each pool with a single, main drain (other than an un-blockable drain) must be equipped with at least one device or system designed to prevent entrapment (such as a safety vacuum release system, suction limiting vent system or gravity drainage system).

The requirements described in the federal law are intended to be minimum standards, as many states have more rigorous safety rules. Each hotel's pool must be in compliance with both federal and state codes.

Federal ADA law requires hotels to have a means of access to their pools, usually through a pool lift. The pool lift should be affixed to the pool deck, in operation at all hours the pool is open, and available without assistance from hotel staff. All properties should train staff on basic lift maintenance and operation.

As many lifts are battery-powered, it is key to ensure the lift's batteries contain ample charge for operation. Additionally, under the ADA requirements, a pool lift may not be covered unless a disabled guest would be able to remove the lift cover without assistance from hotel staff.

QUARTERLY INSURANCE MARKETPLACE UPDATE

As I have mentioned in previous updates, the decade from 2010-2019 was the most expensive on record at nearly \$3 trillion in weather and natural disaster event costs. In addition to the COVID-19 pandemic, 2020 has also brought with it a new record. The US has reached 10 weather events of \$1 billion or more in damage, at the fastest pace in the history of tracking such events. With approximately \$75 billion in global losses in 2020, reinsurers (the insurance behind the insurance), who are predominantly internationally based, have been severely impacted as well. The outlook for the balance of 2020 is still an insurance marketplace forecast of 20%-30% premium increases with increases of 50%-60% and higher in CAT (wind, hail, flood and earthquake) exposed areas. Hotels with adverse loss experience are seeing even higher increases or non-renewals from their carriers. On the liability side (General Liability, Automobile, Umbrella) poor underwriting results for the insurance industry, driven by inadequate premiums to cover claims (which continue to increase due to larger liability awards and pro-plaintiff court decisions), are resulting in higher premiums, deductibles and more difficulty in procuring necessary umbrella limits. If your hotel participates in The Marshall Hotels & Resorts Master Insurance Program, this places you in a unique position to outperform the "average" increases being seen by the industry. Approaching \$4 billion in assets protected across our hotel verticals, we continue to bring the expertise, purchasing power and partnership clout that is required to put you in the best possible position from a risk management, cost, coverage and risk reduction perspective.

In any market cycle, especially in a hardening market, aggressive risk management at your property is the best defense against rising premiums and diminished coverages. Our team will continue to assist you in managing the property and liability exposures at your property, which will significantly reduce claims activity and set you apart from the average hotel across the country. The entire Marshall Hotels & Resorts Risk Management Team looks forward to continuing to work with you and your team in the implementation and execution of the risk management techniques that continue to make a proven difference.

ADDITIONAL RISK MANAGEMENT RESOURCES, INCLUDING YOUR GUIDE TO CLAIMS REPORTING, ADDITIONAL CLAIMS FORMS, PAST AND CURRENT NEWSLETTERS ARE ALWAYS AVAILABLE ONLINE AT:

WWW.DII-INS.COM/SPECIALTY-PROGRAMS/MHR-MASTER-INSURANCE-PLAN