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Cover Story

# Luxury Amenities Come With High Risks

Managing liability in condos with pools, gyms, and rooftop spaces

Condo residents are seeking ever higher levels of amenities and recreational options. This ranges from club houses to swimming pools, state-of-the-art gymnasiums, and rooftop gardens.

Premium additions come with a higher price tag and expose condo corporations to additional liability in the event of an accident and injury while a resident or their guest is enjoying the facilities. This article will provide a comprehensive approach to minimizing potential legal liability and financial risks to the condo corporation.

## Swimming Pools and Water Safety

One of the most attractive but potentially risk laden recreational facilities is the swimming pool. According to Health Canada, between April 1, 2011, and April 13, 2023, some 56.3 per cent of 1,109 recorded drowning-related cases occurred in residential or public swimming pools. While the breakdown doesn't specify condominiums, pools can pose a danger to adults as well as young children and require vigilance and high levels of safety. Nor do those figures include people who slip and fall on the slippery surfaces around pools or experience other medical emergencies in and around the pool.

## Gyms Create Other Hazards

While it's difficult to create an accurate Canada-wide picture of gym specific injuries, Statistics Canada found that 35 per cent of general injuries occur during sporting or exercise activities. While accidents may be due to negligence by a person working out, injuries like slips and falls could occur due to wet floors or poorly maintained exercise equipment. Rooftop gardens may carry risks from tripping hazards, ice and snow build-up in the winter season and other threats.

There are several simple but important steps to keeping residents, visitors and others safe when using these facilities.

## Insurance Coverage

Making sure that the condo corpora-

tion is covered by a comprehensive commercial general liability insurance is an important first step to ensuring adequate coverage arising from injuries and accidents in these much sought after amenities. Some condo corporations may require specific policies or limits for high-risk areas or umbrella coverage for additional protection.

Determining the right coverage is best addressed by a broker. It is also important to select an appropriate level of coverage. In selecting the amount of coverage, condo corporations should be aware of recent personal injury settlements awarded by Canadian courts that are continuing to increase. One case that is particularly instructive for condo corporations involved an apartment complex



ILLUSTRATION BY TOMIO NITTO

where the landlord was found negligent and liable for a 2-year old's fall from the fifth floor of his aunt and uncle's residence due to a broken screen in the bedroom window. The child suffered severe injuries and permanent brain damage. It was deemed that the landlord had not repaired the screen when previously requested and a settlement of \$14.2 million was awarded. \*

*\*Lexpert, Business of Law, Largest personal injury settlement amounts in Canadian history, Kairos Anggadol, <https://www.lexpert.ca/news/legal-faq/largest-personal-injury-settlement-amounts-in-canadian-history/378856>, Aug 18, 2023 (There are other instances that have exceeded \$17 million.)*

### Signage and Waivers

It is important to post clearly written and highly visible signage in high-risk recreational areas. This includes specifying safety rules, age and height restrictions, and other hazards that could exist. Under the Occupiers Liability Act (OLA), condo corporations must take a reasonable level of care to ensure that someone using the facility is kept safe. Limits can be placed on liability but only if the person using the facility signs a written waiver which is highly recommended.

The waiver should provide details of the risks and dangers to the people participating in the activity. Also, it should specify that the individual should not be intoxicated or under the influence of narcotics or medications while swimming or working out. Alcohol consumption may become an issue if a person is intoxicated and injures themselves on the property, which in some cases could imply liability. Residents should know the risks and understand the rules for them and guests. Bylaws limiting liability are not advised.

### Maintenance and Inspections

The OLA requires that the condo corporation carry out routine inspections of the amenities to ensure that all equipment meets the building code and appropriate provincial legislation to ensure that spaces are safe. This includes inspecting pool ladders and stairs, making sure the pool deck is clean and fix-

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ing cracks and uneven surfaces in the area around the pool. These inspections – along with regular, written reports – are important in the event of a claim. Maintenance protocols are essential as they address potential hazards quickly. It also shows that the property manager has a procedure in place to ensure defective equipment is taken out of service and repaired or replaced. Consideration should also be given to installing cameras to provide an additional level of security and oversight.

### Common Sense Prevention

Non-slip flooring should be installed around the pool and other slip-resistant mats should be placed near ladders along with adequate handrails and other signage to advise caution and warn of slippery surfaces. Similar cautions should be posted in gyms. Gyms should also have adequate towels for mopping up spills and anti-bacterial sprays for wiping down equipment. Gyms and hot tubs also present special problems as they are often conduits of high levels of noise that create a nuisance and the potential for litigation.

### Staff and Training

Property managers, volunteers and qualified personnel should be fully trained in maintaining the facility's amenities and engage qualified technicians to repair any malfunctioning equipment as soon as possible. Ensure people are trained in CPR and emergency response especially property managers who might manage these spaces and common areas. Lifesaving equip-

ment such as an automated external defibrillator (AED) should be installed along with a ring buoy, a throw line, rescue pole, first aid kit and phones with emergency contact information. Gyms should have appropriate emergency kits including an AED too. These kits need to be examined and updated as per the manufacturer's recommendations.

### Rules and Regulations

Ensuring rules are enforced and circulated amongst residents via e-mail, safety notices delivered to residents and posted in all public spaces such as the pool, hot tub or gym areas is important. Guest policies should also be clearly displayed in these areas.

### Resident Communication

Informing residents is key, so it's important to provide them with regular updates and discussions at board meetings to update any bylaws, rules or regulations needed as well as discussion relating to maintenance and inspections. Residents should have an opportunity to provide feedback regarding safety concerns and ensure that they know who to communicate with.

### Risk Assessment and Management

Conducting a regular risk assessment to identify any potential dangers and liabilities is essential. Consult with the corporation's legal counsel to get appropriate legal advice and ensure that risks are being addressed and managed according to the law.

While accidents are rare, they do happen. Condo corporations need to be prepared for such an event and follow these simple steps to ensure a safe environment for residents and minimize their risk and liability. Your insurance broker is a person to start with if you have any questions about what steps to take.

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