

Additional Swimming Pool Legal Requirements Effective December 2008

Additional federal pool safety laws became effective December 19, 2008. As of December 19, 2008 all “public” pools and spas, including those located in property owner association communities (including condominium communities) must be equipped with approved anti-entrapment drain covers.

Texas laws and state agency rules will continue to apply to these pools and spas, and most of the state law requirements equal or exceed the requirements of the newly-effective federal laws, with the exception of the requirements for drain covers. **Because of the fact that the Texas requirements are at least as stringent or more stringent than the new federal law, you will be in compliance with both state and federal law if you follow the Texas requirements, with the exception for the drain cover requirements.** In short, if your community pool is already in compliance with Texas law, the only changes that the new federal law will necessitate are (1) ensuring that your main drain covers are in compliance with the new federal law, and (2) if your pool utilizes an atmospheric venting system (see further details below), you will have to install an alternate safety vacuum release system.

The Texas Department of State Health Services has taken this position on the new federal laws regarding drain covers: all public pools or spas must be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8-2007 performance standard or any successor standard by December 19, 2008. *TDSHS has stated that if a pool is closed and will not reopen until the 2009 swimming season, replacement of the non-ASME/ANSI A112.19.8-2007 drain covers can be delayed. However, the pool or spa cannot be reopened until the non-compliant drain covers are replaced.*

The federal law supercedes state law as it relates to drain covers, and also supercedes any local or national standards that conflict.

What is a compliant drain cover? You can tell if a drain cover is compliant because all approved drain covers that are compliant must have the following markings:

Permanently marked or embossed “ASME” seal referencing A112.19.8-2007 (this is visible when installed) or the “ASME A119.19.8” logo followed by the year of the standard (the logo is similar to a no diving logo with a circle around a cartoon swimmer, the letters “ASME” above it, the letters A112.19.8” below it, and the year of the standard (such as 2007) below it. Covers may also include the text “ASME A112.19.8-2007”, a flow rating “life: x years” and manufacture and model.)

You may obtain a list of approved drain covers at: <http://www.cpsc.gov/businfo/draincman.html>.

Please be reminded that Texas rules, as of now, allow the use of grates that are 12” by 12” or greater and do not meet the older AMSE/ANSI A112.19.8M standards. Under the new federal law, all 12” by 12” or greater covers or grates must meet the standards described herein.

Also please note that although current Texas rules allow an AVS (Atmospheric Vent System) to be used as an approved method of protecting against entrapment, the newly-adopted federal law will not allow the use of an AVS until there are international standards developed and published with a test process to assess performance, so you cannot count on those to achieve compliance. As a reminder, current (and long-standing) Texas law requires community pools to either have two main drains, or one main drain coupled with a SVRD (Safety Vacuum Release Device.) Previously, an AVS could qualify as an SVRD, but no longer under the new Federal Law until international standards are developed. Also please note that TDSDS has taken the position that in order to qualify as having “two main drains”, a pool’s two main drains must be at least three feet apart.

Associations are advised to consult a reputable swimming pool service for further guidance. You may also get more information on the federal law at the Texas Department of State Health Services Swimming Pool Resource Page at <http://www.dshs.state.tx.us/poolspa/baker.shtm>.

Firm information

Niemann & Heyer LLP has been representing POAs and specializing in POA law for more than 20 years. Our lawyers have been instrumental in drafting virtually all POA law in Texas, including the Texas Uniform Condominium Act (Property Code Chapter 82) and the Texas Residential Property Owners Protection Act (Property Code Chapter 209). Connie Niemann Heyer is a past president and current board member of the Austin chapter of the Community Associations Institute, and is a lobbyist for the Texas Community Associations Institute Legislative Action Committee.

This article represents the opinion of our attorneys. Other attorneys may have different opinions.