

**CALIFORNIA COMMUNITY ASSOCIATIONS ARE NOT CONSIDERED
GOOD SAMARITANS WHEN IT COMES TO AED DEVICES, COMMONLY
REFERRED TO AS A DEFIBRILLATOR**

By David C. Swedelson, Esq. / Swedelson & Gottlieb

Many community associations have been anxious to get their hands on an automated external defibrillator (AED) device, believing that this may help save lives at the association. No one can really question the fact that defibrillators do save lives. Nevertheless, most community association attorneys have been advising community association boards against obtaining a defibrillator as many lawyers (the author included) believe that the risks may outweigh the benefits.

The main risk that most of us attorneys fear is the reality that the defibrillator will not be properly maintained, and when there is an emergency for which the defibrillator is needed, it won't work. In that event, the family of the individual that died will claim that the association was negligent for not properly maintaining the device, and they would be right. And if the association gets one AED, someone will claim that the association was negligent as it should have had more than one or located it in what they believe was a better location. As the old saying goes, no good deed goes unpunished.

Community associations are not alone in fearing exposure to lawsuits. The February 24, 2010 edition of the Wall Street Journal (WSJ) carried a story entitled "Why Hotels Resist Having Defibrillators."

That article pointed out that the hotel industry has likewise taken the position that the risk of being sued as a result of having an AED on the premises outweighs the lifesaving benefits to the public of putting them there.

No one can question the fact that the number of civil lawsuits has and continues to grow. Community associations, and most businesses in general, are reluctant to voluntarily take any action, even for the public good, which could subject them to a lawsuit.

Some may say that it is a sad state of affairs when, as reported in the WSJ article, a hotel (or community association) has to be worried that by spending as much as \$1,800 for a lifesaving AED, they risk being sued because it does not work or for having too few AEDs on the premises. None is OK, but one could land you in court.

No one can question the fact that having quick access to an AED can save lives and as a result, laws mandating their installation have become more common. AEDs are presently required by federal law on commercial aircraft and cruise ships. Many states (including California) require AEDs in health clubs and gyms (this does not include the gym at a California community association), dental offices, schools, athletic events and public access

Branch Offices

Orange County
5000 Birch Street
Suite 3000, West Tower
Newport Beach, CA 92660
Telephone: 949/476-3789
Facsimile: 949/752-2160

Ventura County
1484 E. Main Street
Suite 200
Ventura, CA 93001
Telephone: 805/650-7899
Facsimile: 805/653-2518

Inland Empire
3400 Inland Empire Boulevard
Suite 101
Ontario, CA 91764-5510
Telephone: 909/476-3530
Facsimile: 909/460-0018

facilities where large numbers of people gather such as airports and transit stations.

As the numbers of AEDs, and the lives saved due to their presence increases, the more it can be argued that the absence of an AED falls below the reasonable standard of care in the community and exposes the owners and/or operators to negligence litigation. But the law is not yet there.

And to be sure, there is the argument that having an AED is the right thing to do for the community association. The problem is that while it's reasonable to expect the association that places an AED in the common area maintain it properly, just as it would a fire extinguisher or a smoke alarm, the reality is that for many community associations, this is just too big a burden as they do not have any staff or employees.

And it goes without saying that a trained paramedic would be preferred over an untrained association employee or community resident activating an AED. In the case of a sudden cardiac arrest, experts say that the chances of survival are as high as 70% if a defibrillator is utilized within the first 5 minutes of an attack and around 5% by the time 10 minutes go by. There is no question that the odds weigh heavily in favor of immediate defibrillation, even if given by an untrained individual. But for many community associations, where to locate and install the AED may be as problematic as ensuring that it is properly maintained and operating when needed.

By now, you may be asking yourself why the Good Samaritan Law won't protect the association. These laws were enacted to give a bystander protection from civil liability for voluntarily giving medical aid to someone who is injured or ill in an emergency situation. They were designed to reduce the reluctance of persons to render aid or assistance for fear of being held liable for their actions in a civil or criminal lawsuit. California's Good Samaritan statute has been held to protect those rendering emergency medical care at the scene of a medical emergency. The Good Samaritan Law does not limit the liability of the association owner of the AED. If the AED is not working when needed in the event of an emergency, the association could be held liable for wrongful death and the alleged damages could be in the millions of dollars.

In addition to the Good Samaritan Statute, California law does afford specific protection to those providing and utilizing AEDs. Individuals who operate an AED in an emergency situation are protected from liability under Civil Code §1714.21(b).

Community Associations that have an AED do have some limitations on liability under Civil Code §1797.196 if the Association complies with the following conditions:

- The AED be maintained and regularly tested.
- The AED be checked for readiness after each use and at least once every 30 days if the

AED has not been used in the preceding 30 days.

- Any person who uses an AED contacts emergency personnel as soon as possible, and reports any use of the AED to a licensed physician and to the local emergency medical services agency.
- For every AED unit acquired up to 5 units, no less than 1 employee per AED unit shall complete a training course in CPR and AED use.
- There is a written plan that describes the procedures to be followed in the event of an emergency that may involve the use of an AED.

The maintenance and readiness checks can be accomplished by simply observing the AED and assuring a blinking green light is present, indicating it is "ready." But for many community associations, especially those without any employees or staff,

there is no guarantee that this monitoring will happen. While training at least one employee may seem reasonable and easily accomplished, even for those associations with employees, there is a concern that it just won't be done.

Obviously, each association must decide for itself if the benefits of acquiring an AED outweigh the risks. But until California law extends limitations on liability to community associations that have AEDs, California attorneys are going to continue to discourage their community association clients from exposing the associations and their owners to potential liability for millions of dollars in alleged damages for wrongful death as the result of lawsuits brought by the families of those that died allegedly because the associations AED was not working.

David Swedelson is a partner at Swedelson & Gottlieb, Community Association Attorneys, and a principal of Association Lien Services, the Assessment Lien Foreclosure Specialists. Readers are invited to visit hoalawblog.com for more articles relating to California community association issues.