

Drones: The Risk and Exposures to Your Public Garden

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OVERVIEW

This article may look familiar as we posted it in December of 2017, but as drones become increasingly popular, we found it important to revisit the topic. Whether you own a drone, or allow third parties to bring them on-site, there is risk involved and important to identify in order to protect your garden. To further the point, [here is a link](#) to an article of a situation gone wrong highlighting the legal and financial implications it presented.

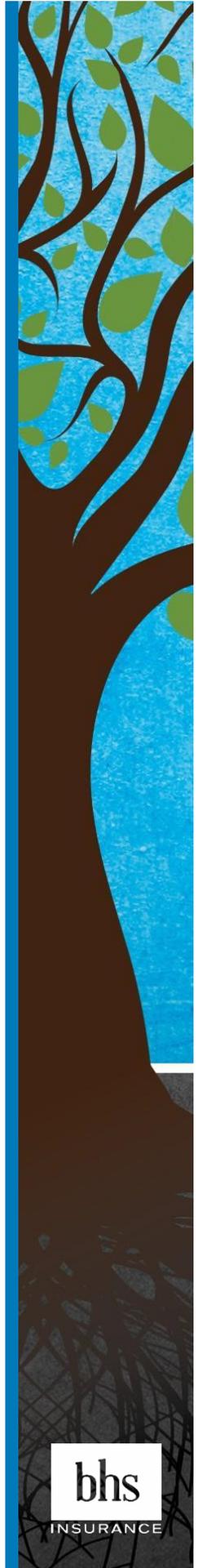
HISTORY AND REGULATION

THE FAA currently considers unmanned aerial systems (UAS) to be the same category as manned aircraft, and they have released rules on the commercial use of drones that weigh less than 55 lbs. They are as follows:

- An operator may use a camera system to control a drone, but also be close enough to see it if something unexpected occurs. Additionally, the operator must have a visual observer who remains in constant line of sight with the drone.
- Operators cannot fly the drone over anyone who is not directly participating in the drone's operation.
- Drones may carry an external load if it's securely attached and doesn't adversely affect the controllability of the aircraft.
- Operators may transport property for compensation within state boundaries.
- Commercial drone operators need a remote pilot airman certificate with a small UAS rating, or be under the direct supervision of a person who holds such a certificate.
- Drones used for commercial purposes must be registered with the FAA.

UAS that are used only for recreation are still considered aircraft and most of them must be registered with the FAA. Here are the basic guidelines for registering recreational UAS:

- UAS that weigh between 0.55 lbs. and 55 lbs. must be registered online. If a UAS weighs more than 55 lbs., it must be registered by paper.
- Once registered, the UAS operator will receive a registration number that must be placed on all applicable drones.
- Registration is valid for three years. Failure to register may result in regulatory and criminal sanctions.



The FAA also has regulations that apply to both commercial and recreational UAS:

- UAS must fly below a height of 400 feet above ground level and weigh 55 lbs. or less.
- An operator must maintain a visual line of sight with his or her UAS.
- UAS cannot be flown within 5 miles of an airport and must remain clear of all manned aircraft and obstacles.
- UAS cannot be flown near people or open-air stadiums.

Because the FAA currently considers UAS to be in the same category as manned aircraft, any attempt to damage or destroy one can result in federal penalties—up to 20 years in prison and \$25,000 in fines.

PHYSICAL LOSS: BEYOND THE DRONE

With UAS, it's often the loss of the payload—not the aircraft itself—that can be the costliest. One of the most widespread applications to date has been in unmanned aerial photography. Business in real estate, agriculture, filmmaking, and insurance all have interests in surveying and photographing land, and the cameras used to do so can get expensive.

Because of the increasing affordability of drones, the payload often has a higher intrinsic value than the aircraft itself. Additionally, cameras and other payloads are usually slung below the aircraft, meaning that in the event of a hard or emergency landing, damage to the payload is almost certain.

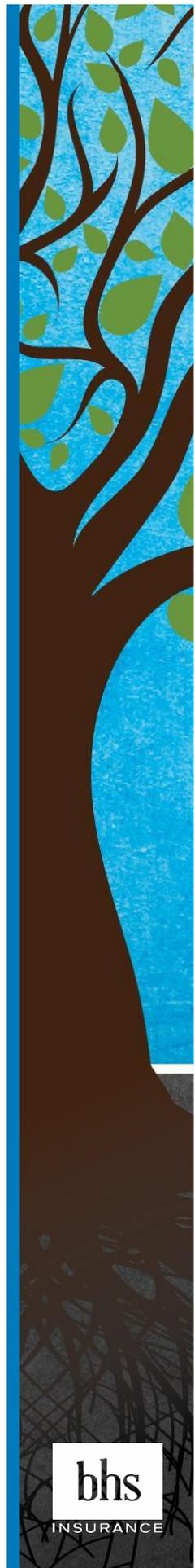
PLANNING FOR OBSOLESCENCE

Technology itself could prove to be especially costly in the event of a UAS loss. The production of UAS is neither regulated nor standardized, which means there are a number of manufacturers in the market, each adhering to different standards. Many haven't diversified, and should some technological advancement prove to be too costly for certain smaller companies to adopt, those companies could potentially go out of business.

Bankrupt or defunct manufacturers, coupled with a lack of industry standards for design, could mean that the loss of a relatively inexpensive motor today would instead be a total financial loss on the aircraft five years from now, when replacement parts are completely unavailable.

CASUALTY AND LIABILITY

As with conventional aircraft, a UAS crash could mean a hefty casualty claim. While the crash rate is actually relatively low with conventional aircraft, UAS are not subject to the tight maintenance requirements or the stringent operator regulations that make conventional commercial aircraft crashes so rare.



Eventually, mechanical failures and operator errors will likely result in crashes. Businesses—especially those who operate in UAS in populated areas, should make sure they are adequately covered by insurance in the event of property damage or injury to a third party.

THEFT AND FRAUD

A couple of benefits of UAS—their portability and advanced technology—can also prove to be great liabilities. Small UAS make easy and attractive targets to thieves and the industry hasn't developed many internal safeguards against stolen drones.

BROAD USE

Another benefit that could become a potential liability is the flexibility of the technology—that is, a drone's potential as a broad-use aircraft. In theory, the same UAS that photographs a parcel of land on one day, could be used to survey a hazardous chemical spill the following day.

This kind of flexibility offers a broad number of business opportunities, but each new opportunity brings with it attendant exposures that compound upon one another. Public Gardens will have to think through how they plan on using their UAS in order to make sure that their FAA authorization and their insurance cover each arena of commercial use.

WHO WATCHES THE WATCHERS?

Privacy represents one of the largest exposures with regard to drones. A highly maneuverable technology that gives remotely operated cameras virtually unfettered access to any location is bound to result in claims of privacy breach. What's unclear, however, is how both of the legal system and insurers plan to address these new exposures.

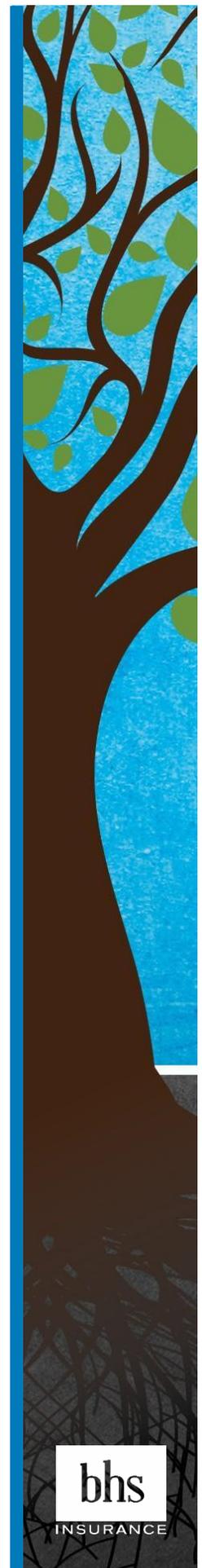
Currently, carriers exclude all privacy-related claims, but the increased exposure means that there's a potential market for such protection. However, without some kind of precedent, it's unclear how, if at all, the insurance industry will respond.

POLICIES AND PROCEDURES

Having a no-use drone policy for your public garden is important to manage unwanted drones in your space. If you do allow third parties to bring a drone on site (such as a photographer), it is important to know that they comply with the rules, show evidence of such, and have proper insurance in place.

A standard liability policy excludes coverage for aircraft therefore you need to purchase a liability endorsement in order to secure Bodily Injury, Property Damage, and Personal Injury Protection.

The key questions a public garden needs to answer in order to secure proper insurance



protection include:

- Description and size of drone owned by the garden/arboretum, including the make, model, and serial number—as well as monetary value of the drone.
- Provide the planned use and area of operation for the drone.
- Provide the estimated annual number of flights.
- A copy of the proof of registration with the FAA. [Here is the link](#) to register, as well as additional helpful information.
- Does the drone operator hold a remote pilot certificate with the sUAS (small unmanned aerial system) rating? A copy of proof of UAS rating needs to be provided. Do you intend to apply for any waivers to Part 107 to operate the drone outside of the parameters set forth in Part 107 of FAA regulations?
- Do you hold any Section 333 exemptions? If so, what were the terms of the exemption?
- Confirm that you do not intent to operate the drone in controlled airspace.
- Privacy Implications—Do you have a no-use drone policy or statement for guests to adhere to?

MORE INFORMATION

For more information, please call a member of the BHS Insurance Public Garden team at (800) 350-7676.

