

# Lights, Camera, Action

## Does Your Association Need to Consider Security?

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Security provided by community associations has become a hot topic at board meetings, as well as the subject of a fair amount of litigation in recent years. The legal duty on the part of a condominium or homeowners association to provide security is evolving as the courts are carving out law on a case-by-case and state-by-state basis.

### Responsibility of the Board of Directors

The source for determining all responsibilities of a board of directors is the governing documents of the association, i.e. the Master Deed or Declaration, and the Bylaws. Typically, the board's powers are expressed with language similar to the following:

*The Board of Directors is responsible for the management and upkeep of the Property and the administration of the Association. Unless otherwise specifically provided in the Act or the Association Documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors on behalf of the Association.*

The board of directors is generally not charged with the duty to keep the members safe within the community.

### Creating an Obligation to Provide Security

In certain limited situations, however, the board of directors is required to provide security or to prevent harm from a known criminal element. These situations generally occur if:

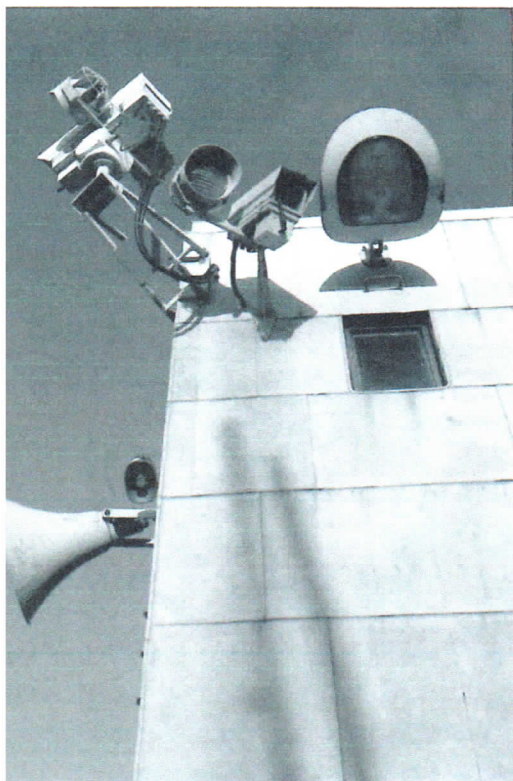
- The community was specifically marketed to the public by the declarant as one with heighten security features; or
- An increased fee is charged to support and pay for security features; or
- The association has voluntarily taken on the duty to provide security.

In a recent case, an association was held liable for its failure to prevent a shooting incident within the community, although it was the first such incident of violent crime. The court found that the board created a heightened duty to protect the residents against crime, founded on particular obligations of the association to do so. The developer advertised the safety of the community, and the association included specific safety provisions in the basis of its assessment. The court held, "Since the very purpose of what the association and [the declarant] agreed to do was to exercise reasonable care to prevent *any* criminal incident from occurring, it cannot matter that the deadly incident in question was the first one".<sup>1</sup>

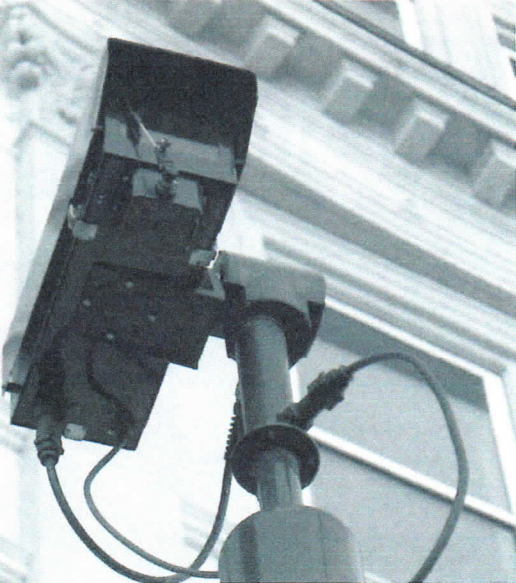
### Associations Responsible for Safety?

The standard rule in Virginia is that there is no common law duty for an owner or occupier of land either to warn or to protect an invitee on his property from the criminal act of a third party.<sup>2</sup> Courts in Maryland and the District of Columbia, however, have ruled that a landowner has a special duty of care to his or her tenants, which requires the owner to maintain the common areas under its control. These courts have also held that an owner may be held liable for the criminal acts of third parties where the failure to maintain the common areas is the cause of injury to his or her tenants.<sup>3</sup>

Applying the standards to community associations, in Virginia associations generally have no responsibility for the safety of the individual unit or lot owners, whereas in Maryland and the District of Columbia, associations have an affirmative responsibility to ensure the safety of owners. In any jurisdiction, it is important for the association to maintain the common areas against safety risks that are foreseeable. ➔







There are several cases in which associations were sued for allegedly failing to provide adequate security. In these cases, the courts decided that the associations had a duty to protect their residents and secure the communities. In light of the particular facts of the cases, however, the associations were not liable for the criminal acts of third persons due to the absence of foreseeability of the criminal acts.<sup>4</sup>

### Increasing the Duty of Safety

Associations can exponentially heighten their duty to maintain safe premises by engaging in acts that create an "impression of security." Security features installed in the community, such as security cameras or a controlled access gate, can create an expectation in residents or their guests that the community is secure.<sup>5</sup> In these situations, liability is found not under a tort theory, but a breach of contract, or breach of implied contract theory. Courts look at the reasonable plaintiff's expectation developed from the form of security provided, and the reasonable person's "impression of security" created by the security provided.

There are several factors which appear to be determinative in deciding the question of whether the association should be held responsible for the criminal acts by third parties:

- Prior reports of crime in the community;
- Notice to the association of dangers by an aggrieved party or others;
- Representations made or action undertaken by the association regarding security and the plaintiff's reliance thereon;
- Defective and/or inadequate security devices such as gates, locks, lights, etc., installed by the association; and
- Inadequate security procedures, such as failure to safeguard master keys to units.

When associations do recognize foreseeable security risks, courts have generally found that the associations do not have a legal obligation to ensure safety or to guarantee protection. Security precautions or measures must merely be adequately and reasonably tailored to the facts and circumstances within the knowledge of the board of directors. A court will not second-guess the judgment of the board members unless their judgment or actions are proven to be unreasonable.

### Reasonable Security Measures

So the question becomes what security measures should a board consider? This question may be best answered by a security consulting company, with an accompanying opinion from legal counsel. Two of the most effective and common security devices installed in communities are lights and cameras. It is important to note that, like all security devices, once lights or cameras are installed, they must be maintained in proper working order.

### Lights

One of the most effective and easiest methods of increasing security in a community is increasing visibility for your members by installing and actually turning on the lighting in the community.

Some homeowners associations and townhouse communities have adopted "Lights On" policies, requiring owners to turn on an exterior light on their home during certain nighttime hours. The board of directors can adopt this as a policy resolution and take measures to enforce compliance by their members.

Installation of sodium lighting or light posts in front of units will also increase visibility within the community. While effective, this can be expensive. The lighting can often be funded through capital improvement special assessment procedures. In some situations, the association may be able to obtain partial or full funding by working with the county or city public works or police departments that have street lighting programs.


### Camera

Security cameras are another highly effective security device, but are also expensive to install and maintain. If the association decides to install security cameras, a policy for use of the cameras and monitoring of the video captured must be put in place. Improperly installed, maintained or moni-

tored cameras can heighten the association's liability, as earlier discussed. If the Board decides to install cameras they should be monitored at all times. In essence, do it right, or don't do it at all.

If the board feels that security cameras are necessary, the board should contact the local police department. Many departments have limited funding for installation of cameras in the community. These cameras would be installed, maintained and monitored by the police, resulting in zero cost and no increased liability exposure for the association.

### Conclusion

The existence and extent of an association's duty to take action will be based on the community's problems and needs. Associations must take into account their location and past experience when considering security measures. The particular facts and circumstances at hand will determine the nature and degree of the precautionary measures, if any, that should be taken. Obviously, associations should not make the mistake of ignoring security problems or making promises that are not followed through. To the extent any security procedures are employed, they should be reviewed from time to time, and they should be reasonably and uniformly implemented. Such action, based upon prudence and common sense, is the safest and best way to avoid legal problems and potential liability, and most importantly, to prevent crime. 

<sup>1</sup> Vazquez v Lago Grande Homeowners Ass'n, 900 So.2d 587, 593 (Fla. App. 2004).

<sup>2</sup> Yuzefovsky v. St. John's Wood Apts., 261 Va. 97, 106, 540 S.E.2d 134, 139 (2001).

<sup>3</sup> See Hemmings v. Pelham Wood Ltd. Liab. Ltd. Partnership, 375 Md. 522 (2003), and Spar v. Obwoya, 369 A.2d 173 (D.C. 1977).

<sup>4</sup> See *Admiral's Port Condominium Association, Inc. v. Feldman*, 426 So. 2d 1054 (Fla. 1983) and *King v. Ilikai Properties, Inc.*, 632 P.2d 657 (Haw. 1981).

<sup>5</sup> See Prosser, Law of Torts, Sec. 33 at pp. 174-76 (4th Edition, 1971)



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