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Security

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In increasing numbers, condominium and homeowner associations are being requested by their members to provide security services to their communities. This development, in some measure, explains why the issue of security has been the subject of a fair amount of litigation in recent years involving community associations.

The legal duty on the part of a condominium or homeowners association to provide security to its community membership is evolving as the courts are carving out law on a case-by-case and state-by-state basis.

Thy Brothers Keeper?

The recent trend of case law suggests that courts are increasingly receptive to arguments that condominium/homeowner associations do have a duty to protect residents from the criminal acts of third persons. A number of these decisions have held that a condominium/homeowner association has the same duty of care in this regard as is owed by a landlord to his or her tenants with respect to protection from criminal acts.

In contrast to the courts of other states, the Virginia Supreme Court has ruled that there

is no special duty of care between a land owner and his or her tenants to protect the tenant from the criminal acts of a third party. *Klingbeil Management Group Co. v. Vito*, 233 Va. 445 (1987). But Virginia has also left the door open to such claims based upon the particular facts and circumstances of the specific case.

Like the courts of other states, the courts in Maryland and the District of Columbia have ruled that a land owner has a special duty of care to his or her tenants, which duty 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 under its control is the cause of injury to his or her tenants. (See *Hemmings v. Pelham Wood Ltd. Liab. Ltd. Partnership*, 375 Md. 522 (2003), and *Spar v. Obwoya*, 369 A.2d 173 (D.C. 1977)).

Foreseeability

In most cases, whether a landlord (or any owner or controller of land) is responsible for criminal acts of third parties will be based on the particular facts and relationships of the parties, expectations of

security, and whether the criminal acts were foreseeable. A land owner may, under certain circumstances, be the only party in a position to control, maintain and secure any common areas and facilities. (See *Nottingham Associates v. Christian*, 29 Va. Cir. 175 (1992)).

Consequently, we believe it is important for associations to take reasonable steps to maintain the common areas under their control and to safeguard residents in those common areas against foreseeable risks. Courts have charged associations with this responsibility because they find that associations, through their governing documents and their own actions, are performing and accepting responsibility for a broad range of business functions in their respective communities, which have or should encompass the issue of security.

The duty of care imposed by the courts upon condominium/homeowner associations is far from absolute; rather, liability is generally predicated upon the failure of the association, specifically its board of directors, to exercise reasonable care to prevent injury or loss which was or should have been foreseeable under the particular facts and circumstances applicable. In several cases where associations were subjected to litigation for failure to provide adequate security, the courts decided that the associations in question did have a duty to protect its residents and secure the community, but that under the case's particular facts the association was not liable for the criminal acts of third persons due to

the absence of foreseeability of the criminal acts. (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)).

Important Considerations

From the available case law, 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:

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

Courts have often been careful to state that even when associations do recognize foreseeable security risks, there is no legal obligation to insure safety or to guarantee protection. Security precautions 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 judgments or actions are proven to be unreasonable.

In sum, associations must base their actions in this field by reasonably evaluating their own community. The existence and extent of a 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 their security situation and 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.