

Safety and Security Basics: What Property Managers and Board Members Need to Know

Hosted by:

Presented by:



Lara A. Anderson

Fullett Rosenlund Anderson PC

847-259-5100

l.anderson@frapc.com

Lara A. Anderson

Lara Anderson is an attorney and shareholder in the law firm of Fullett Rosenlund Anderson PC. Her practice is concentrated in all aspects of the representation of condominium, cooperative, townhome, homeowner and other community associations. Lara received a B.S. in Accounting with honors from Northern Illinois University in 1989, passed the CPA exam and then received her J.D. from Northern Illinois University's College of Law in 1992.

Lara has extensive litigation experience representing associations and has had the privilege to argue before the United States Court of Appeals for the Seventh Circuit and the Indiana Supreme Court. Due to her reputation in the industry, Lara was asked to join a homeowners association's litigation team when it appealed a case to the Indiana Supreme Court. In that case, *Villas West II v. McGlothin*, 885 N.E.2d 1274 (2008), Lara was instrumental in convincing the Indiana Supreme Court to reverse the lower court and hold that the association's rental restriction did not violate the Fair Housing Act.

Lara is currently a board member of the Illinois Chapter of the Community Associations Institute (CAI), a member of the Association of Condominium, Townhouse and Homeowners Associations (ACTHA), as well as a member of several bar associations and other professional organizations. Lara has served as an instructor for accredited continuing legal education courses and has authored numerous articles discussing community association legal issues. Lara is frequently asked to speak before various groups and has been a presenter at numerous events including CAI's National Law Seminar, the CAI-Illinois Annual Conference and Trade Shows, ACTHA's Trade Shows and Expos, and The Chicagoland Cooperator's Condo Expo.

Safety and Security

- Community Association's Duty to Protect Residents
 - Against 3rd Parties
 - Against Other Residents
- Security Measures
 - Neighborhood Watch Groups
 - Security Cameras
 - Security Guards

Did you know . . .

- The average cost of settling a negligent security claim is between \$500,000 and \$600,000!
- The average jury award is more than \$1,000,000!
- The average cost to defend a negligent security claim is \$100,000!

Safety and Security

Community association's duty to protect residents against criminal acts by third parties.

Community Association's Duty

Where Does it Come From?

- **Laws**
 - Generally, there is no statutory duty to protect residents from criminal acts of third parties

- **Declaration and By-Laws**
 - Generally covenants do not impose a duty to protect residents from criminal acts of third parties

- **Voluntary Undertaking**

Community Association's Duty

What is it?

→ Duty of Reasonable Care ←

A community association may be held liable for the criminal acts of third parties when it voluntarily undertakes to provide security measures, but performs the undertaking negligently, and the negligence is the proximate cause of the injury to the plaintiff.

Community Association's Duty

What is it?

- The criminal act must also be foreseeable.

A criminal act by a third party is reasonably foreseeable when the circumstances are such as to put a reasonable prudent person on notice of the probability of a criminal act.

- Have there been other criminal acts?
- Were the other criminal acts similar?
- Do conditions exist that would foster criminal acts?

Community Association's Duty

Scope of Duty

- Liability is limited to the scope of the voluntary undertaking.
- Courts will look at the intent of the undertaking.
 - Protecting property vs. protecting people
 - Complying with maintenance responsibilities

Safety and Security

Case Example

Morgan v. 253 East Delaware Condominium Ass'n

FACTS: The Association had a doorman who was required to stop all visitors to the building and make sure that a resident authorized the visitor's entry. In this case, an individual entered the building and advised the doorman he was there for "13G." The doorman called 13G and told the resident that his guest was downstairs. The resident in 13G told the doorman to "let him up." The individual entered the elevator with Morgan, who was a resident returning home. When they reached the 10th floor, the individual poked a gun in Morgan's back, forced her out of the elevator and into the stairwell. He then beat and robbed her. Morgan sued for injuries alleging that by hiring a doorman, the Association assumed a duty to protect its tenants and was negligent in such undertaking.

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Case Example

Morgan v. 253 East Delaware Condominium Ass'n

COURT HOLDING: The court found that while the Association did undertake to secure the building, the extent of the undertaking was limited to screening guests. Since the doorman followed proper procedures, the Association was not liable for failing to protect Morgan. The court also noted that there was no evidence of prior robberies, beatings or muggings in the building.

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Avoiding Liability

- Do not voluntarily undertake security measures.
- Hire a professional security firm to perform security services.
- Clearly communicate that the purpose of the security measures is to protect the Association's property not to protect the safety of its residents.
- All procedures should be written and strictly followed.
- Conduct routine audits/checks to ensure written procedures are being followed.

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Case Example

Rowe v. State Bank of Lombard

FACTS: Two employees of a business located in a commercial office building with eight units were attacked and shot by an intruder. One died and lawsuits were filed against the property manager for failing to provide adequate security. The intruder was a former employee of one of the businesses in the building who still had a set of master keys to the building. The property manager was aware that not all the master keys were accounted for.

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Case Example

Rowe v. State Bank of Lombard

COURT HOLDING: The court found that because the property manager knew that there were missing keys to the building, the property manager had a duty to either warn those rightfully on the premises of the danger or to take reasonable precautions to prevent foreseeable unauthorized entries into the building. Since the property manager did not do either, the court found he breached his duty and was liable for the criminal acts.

Safety and Security

Avoiding Liability

- If you are aware of a condition that could enable a criminal act or is otherwise potentially dangerous, you must act.
 - Correct the condition
 - Warn others of the condition – *in writing*
- Use common sense in determining whether something is a potentially dangerous condition:
 - Broken locks or doors that will not lock
 - No lighting in areas of ingress and egress
 - Unsecure vacant units

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Community association's duty to protect residents against other residents.

Safety and Security

Neighbor-to-Neighbor Disputes

➤ Governing Documents

➤ Nuisances

- Violation of laws constitutes a violation of declaration or by-laws

➤ Fair Housing Act

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Case Example

Reeves v. Carrollsburg Condominium Unit Owners Ass'n

FACTS: Mr. S engaged in a campaign of racially and sexually motivated verbal assaults against Ms. Reeves, including threatening her life. Ms. Reeves repeatedly reported Mr. S to the police and to the association. The Board wrote letters directing Mr. S to cease and desist but did not pursue any other action against Mr. S. The association's by-laws made any violation of local or federal law a violation of the association's rules.

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Case Example

Reeves v. Carrollsburg Condominium Unit Owners Ass'n

COURT HOLDING: The court found that the association's failure to enforce its covenants to protect Ms. Reeves from Mr. S. could constitute a violation of its duty under the Fair Housing Act.

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Avoiding Liability

- Know the association's duties imposed by its governing documents.
- Do not ignore neighbor-to-neighbor complaints.
- Investigate complaints of covenant violations and hold hearings when appropriate.

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Avoiding Liability

- If the Board finds that a member has violated the declaration or by-laws, take appropriate action.
- Report threats to the association and board members to local law enforcement.
- Call local law enforcement when individuals become unruly or threatening at meetings or association events.

Safety and Security

Neighborhood Watch Groups

Safety and Security

Case Example

Trayvon Martin - George Zimmerman Case

On February 26, 2012, George Zimmerman fatally shot Trayvon Martin in Sanford, Florida. Martin was a 17 year old high school student who was visiting his father after receiving a ten-day suspension from school. Martin's father lived in the Retreat at Twin Lakes Association, a gated community in Sanford, Florida. At the time, Zimmerman was a 28 year old college student and the neighborhood watch captain for the Association. While driving through the Association, Zimmerman noticed Martin walking through the Association and called 911 to report "a suspicious person" in the neighborhood. After the phone call, there was a violent encounter between Zimmerman and Martin which ended with Zimmerman fatally shooting Martin.

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Case Example

Trayvon Martin - George Zimmerman Case

The Retreat at Twin Lakes Association is a 260-unit gated townhome community. From January 1, 2011 through February 26, 2012, the police were called to the Association 402 times. Crimes committed at the Association in the year prior to the shooting included eight burglaries, nine thefts and one shooting. In September 2011, the residents held a meeting to create a neighborhood watch program. Zimmerman was selected as the program's coordinator. Prior to the shooting, it is reported that Zimmerman had called 911 to report suspicious activity in the neighborhood about 50 times.

It has been reported that the Association settled a wrongful death lawsuit filed by Martin's parents for \$1,000,000.

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Avoiding Liability

Neighborhood Watch Groups

- The Association should not undertake to form a neighborhood watch group.
- Call the local police department or sheriff's office and ask for assistance and training
- Establish written rules and procedures.
 - Do not approach suspicious individuals.
 - Do not intervene in any situation.
 - Call 911 to report suspicious individuals or situations.
 - Do not patrol while intoxicated or drink while patrolling.
- Work in teams.

Safety and Security

Avoiding Liability

Neighborhood Watch Groups

- Wear clothing (t-shirt, hat, vest) that identifies the individual as a member of the Neighborhood Watch Group.
- Carry pen and paper and keep logs of activity.
- Communicate with the residents.
- Remove volunteers if they do not follow the rules or act appropriately.
- If the Association organizes, supports or endorses a Neighborhood Watch Group, it must actively monitor the Group to ensure that it is following procedures.
- Call your insurance broker.

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Surveillance Cameras

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Surveillance Cameras

Generally it is legal to install cameras in all areas except those where residents may have a reasonable expectation of privacy:

- Locker rooms
- Bathrooms
- Where the camera may record the interior portions of the resident's unit.

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Surveillance Cameras

- ⦿ Studies on the effectiveness of surveillance cameras suggest that they are effective at reducing low-level crimes, such as automobile break-ins and burglaries.
- ⦿ Surveillance cameras have also been effective in helping prosecute individuals caught in the act of committing a crime or in enforcing violations of association rules.

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Surveillance Cameras

Nader v. Carlyle Condominiums

FACTS: Association installed surveillance cameras in the pool area. The estate of a Nader, who drowned in the pool, brought a wrongful death action against the association. The estate argued that the association assumed a duty to protect Nader when it installed the cameras because the Nader relied on the monitoring of the cameras while she swam alone in case of emergency.

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Surveillance Cameras

Nader v. Carlyle Condominiums

COURT HOLDING: Due to the fact that the association had posted several signs near the pool that stated no lifeguards were on duty and that swimmers swam at their own risk, court held that Nader could not have believed that the cameras were installed to protect her from the dangers of swimming in the pool.

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Avoiding Liability

- Establish a maintenance schedule to ensure they are always operable.
- Do not install cameras in an area where individuals have an expectation of privacy. Make sure the cameras are not directed at the inside of a unit.
- Clarify that the purpose of the cameras is to protect the property of the association, not the security of the residents.

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Avoiding Liability

- Inform residents whether the cameras are monitored or record activities.
- Do not disclose footage from a security camera to anyone without a court order or as otherwise required by law.
- Contact your insurance broker. The association may be entitled to a discount in its insurance premiums.

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Surveillance Cameras – Dummy Cameras

- Dummy or fake cameras can result in liability when someone depends on them for protection and is harmed because there is actually no protection.
- When an association installs a dummy security camera, it is representing that there is a security measure in place, when in actuality, there is not.
- Associations should not install dummy cameras, and they should make sure that any cameras that are installed, work properly.

Safety and Security

Avoiding Liability

- Do not install dummy cameras.
- If the association insists on installing dummy cameras, notify residents that the cameras are not real and should not be relied upon for safety purposes.
- Clarify that the purpose of the dummy camera is to protect the association's property, not to protect its residents.
- Contact your insurance broker and make sure you have insurance to cover any claims resulting from the use of dummy cameras.

Safety and Security

Other Security Measures

Safety and Security

Security Force

The Illinois Supreme Court recently held in *Poris v. Lake Holiday Property Owners Association* that community associations have the power to enforce their own rules against their members through a private security force.

- Security force could stop residents speeding through the association and issue them an association citation.
- Authority is only over residents.

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Tenant Criminal Background Checks

- Do not require owners to provide the association with tenant criminal background checks.
 - This is a security measure. If the association receives tenant criminal background checks there is a perception that the association will prevent criminals from residing in the association. The association's failure to prevent a criminal from residing in the association could expose it to liability.
 - Such acts could also give rise to claims of discrimination.

Safety and Security

Conclusion

- Community associations are generally under no legal obligation to provide safety or security measures for their residents against the criminal acts of third parties.
- If an association decides to implement security measures, it may be exposing itself to liability if it is negligent in implementing such measures.
- If possible, hire an outside professional security firm to provide security measures.
- Communicate to the residents that any security measures provided are for the protection of the association's property only.

The End

Thank you for attending our webinar!

For more information about safety and security issues
or any other topic, please contact:

Lara A. Anderson

Fullett Rosenlund Anderson PC

Phone (847) 259-5100

l.anderson@frapc.com

Fullett Rosenlund Anderson PC

Fullett Rosenlund Anderson PC (FRA) is dedicated to providing the highest caliber of legal services to residential and commercial condominium associations, townhome associations, homeowners associations and other community associations throughout Northern Illinois. The firm offers a full range of transactional, assessment collection, litigation, and corporate counseling service for its clients.

FRA's work in both transactional and litigation matters is tailored to the individual needs of each association client. The firm prides itself on its commitment to providing personal services and observing old-fashioned business values in a world increasingly dependent on impersonal, electronic communications. While FRA remains on the cutting edge of technology with state-of-the-art data management systems and portal capabilities, its attorneys strive to develop close personal relationships with their clients and become each association's trusted counselor.

Fullett Rosenlund Anderson PC's main office is in Lake Zurich; however, it maintains offices in downtown Chicago and Homewood to further service the needs of its clients. For more information about how Fullett Rosenlund Anderson PC can serve your association, please contact Lara A. Anderson at:

Lara A. Anderson
Fullett Rosenlund Anderson PC
430-440 Telser Road
Lake Zurich, Illinois 60047
Phone: 847-259-5100
l.anderson@frapc.com