



Resident Safety Deep Dive Dialogue, Part II: Association Security Risks & the Duty to Exercise Reasonable Care

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Let's Talk About Safety – and Security

- Merriam-Webster says:
 - Safety: the condition of being safe from undergoing or causing hurt, injury, or loss
 - Security: the quality or state of being secure, such as freedom from danger and/or freedom from fear or anxiety



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Isn't Security a Boring Topic?

- Unfortunately, boards, property managers, and residents overestimate how secure their condominiums are, or consider security to be a boring topic they can evaluate once and leave behind.
- However, condominium security measures and a board's duty to provide security to residents are rapidly changing aspects of life in a modern condominium.
- Boards should take seriously a regular evaluation of their security measures, duty, and messaging to residents.



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How Do Condominium Residents Feel About Safety and Security?

- Condominium residents often look to their condominium association and condominium management to provide for their security and safety, even in the absence of messaging that indicates the association is providing security.
- In surveys conducted by the CAI Foundation for Community Association Research from 2005-2002, 20% of community association residents interviewed said that a “safe neighborhood” was one of the best aspects of living in a community association
- However, most associations are not equipped to provide security services which adequately improve the safety of their residents.



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Association Duty to Provide Security

- Associations and property managers in Massachusetts did not previously hold any specific duty of care to condominium residents, their duty was unclear
- A 2022 Suffolk Superior Court case: *Field, et al. v. Highbridge Concierge, Inc., et al.*, 1784 CV 02486-B (Mass. Super. Ct. July 5, 2022) (Roach, J.) helped to add context and clarify the duty that is owed to residents
- What is now clear: It is time to take security more seriously!



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Field, et al. v. Highbridge Concierge, Inc., et al. – The Facts

- Civil case – arose from the murder of two doctors in their penthouse unit, personal representatives brought claims under the Wrongful Death Act against the management company, concierge service provider, and the condominium association.
- The condominium is a 144 Unit, 11-story building in South Boston with a three-level parking garage.
- Entering the lobby required either a key fob or to be buzzed in by a concierge.
- A concierge was on duty 24 hours a day, 7 days a week, and there were 14 close-circuit television feeds viewable by the concierge



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Field, et al. v. Highbridge Concierge, Inc., et al. – The Facts

- There was one CCTV feed from the parking garage pointed towards the garage doors
- Anyone could enter the service elevator from level P-1 of the parking garage, but a key fob was required to send the elevator to a residential floor
- Anyone without a key fob could gain access to any floor by waiting inside the elevator until it was summoned to a residential floor
- Upon entering a residential floor, anyone could then access the unlocked internal stairwells to enter any other floor



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Field, et al. v. Highbridge Concierge, Inc., et al. – The Allegations



- The Plaintiffs allege that the murderer, Bampumim Teixeira (“Teixeira”), was able to enter the building, invade the victims’ home and commit the murders because of the negligence of the Defendants.
- The Wrongful Death Statute permits a claim for negligence that causes the death of another.
- To prove a claim for negligence, a plaintiff must establish that:
 - the defendant owed the plaintiff a duty of reasonable care
 - the defendant breached that duty
 - the plaintiff was harmed, and
 - there was a causal relationship between the defendant’s breach and the plaintiff’s harm.
- The Defendants each moved for summary judgment arguing that they had no duty to protect the decedents from criminal activity. The court disagreed.

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What to Take Away from Field

- The Court stated that the condominium association has a duty to exercise due care for the condominium residents’ safety in those areas reasonably within the association’s control.
 - This is the same duty that a landlord owes to its tenants, that is, not to guarantee safety, but to address reasonably foreseeable risks of harm to tenants that could arise from unlawful intrusions.
- The Court stated that management owed the same duty of due care as the association due to its management agreement and its actions in attempting to provide security
- Security is important – the messaging surrounding it matters and the way it is handled matters



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Two Important Field Caveats

- Field is a Suffolk Superior Court case, not necessarily controlling precedent in any state court
- Field had a very specific set of circumstances and a specific setup of the Condominium, which really built up the idea of a duty being owed to the Condominium's residents



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What should Associations do in Light of this Evolving Duty of Care?

- Evaluate the Condominium's security measures
- Evaluate the Condominium's messaging surrounding security in the Condominium
- Preferably with professional assistance



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Let's talk about Security Messaging

- Security messaging to residents matters
- If a Board and property manager create an environment that indicates that a condominium will be secure, residents will expect security
- The more an association emphasizes security, the more likely it is that a higher duty is owed to residents



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What Do Existing Security Measures Indicate?

- If your condominium association has security measures, it is important to evaluate the message being conveyed to unit owners by those measures.
 - ✓ If an association has cameras, are they monitored 24/7? If not, probably best to tell residents that they are unmonitored.
 - ✓ If an association has engaged a contracted security provider for coverage on evenings, nights and weekends only, those hours should be communicated to your residents.
 - ✓ What role do residents play in the security of the condominium?



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Evaluate and Assess Security Measures to Ensure Proper Performance

- Incorporate security into the culture and decision making process of the property
- Perform a security assessment on a regular basis
- Start with a neutral, impartial, and unbiased eye
- Check your mindset for feelings and opinions which may skew the results
- Remember, past incident history alone does not specifically dictate what may, or may not, happen at your property tomorrow!



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Physical Security Measures

- Physical security measures are those tangible measures we put in place to protect assets from unauthorized access, loss, or damage
 - ✓ Doors controlled by metal keys and locks along with other traditional door hardware
 - ✓ Elevator controls
 - ✓ Local door alarms or an alarm system which alerts staff if a door is unsecure
 - ✓ Bollards which stop a vehicle from driving into the front of a building
- Access points are an Important Physical Component and good place to start
- Create a checklist for evaluating access points
- Create an action plan which allows for testing of ongoing performance and to address issues.



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Access Points Matter

- Evaluate perimeter and interior access points at your property
- Do they “effectively and consistently create separation”
- Examples include:
 - ✓ main lobby doors
 - ✓ stairwell doors which open up at the perimeter
 - ✓ overhead loading dock doors
 - ✓ pedestrian doors at loading docks
 - ✓ overhead vehicle doors
 - ✓ secured resident storage areas
 - ✓ secured mechanical spaces
 - ✓ doors which separate common areas and commercial tenants
 - ✓ access points into common areas from enclosed parking areas
 - ✓ stairwells and elevators at a lower garage or lobby level



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Addressing Issues Found

- Issues that are discovered should be addressed promptly
- Do you have a way of prioritizing internal work orders for items which are impacting your building's physical security?
- If you are utilizing a vendor for related services, are they obligated under agreement to respond in a timely fashion to address the issue, including off hours, as needed?
 - ✓ For example, if your garage door fails on a Friday afternoon before a long holiday weekend, do you have a plan in place which would mitigate the risk created by the open garage door? That plan might include temporary staffing to standby and conduct access control, a vendor who is under agreement for immediate responses to the site for urgent needs or even holding “attic stock” of hard-to-find but critical parts to get your door back up and running as quickly as possible.



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Related Written Policies and Procedures

- More complicated components of your security initiative such as key fob, access card, or vehicle transponder electronic access control systems, require a higher level of care, management, and evaluation
- Your review of these types of systems should be based upon a specific written policy and procedure which dictate its day-to-day use and management
 - ✓ Electronic access control case study



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Takeaways

- Security is an important consideration for Boards and Property Managers.
- The duty of care to provide residents with security measures by condominium associations is changing, that is, a greater duty is being required of associations
- The Field case is an important example of what can go wrong when security is not seriously appreciated, regularly
- Evaluate the messaging being sent to residents regarding security measures and the “feeling” of safety at the condominium – is your association providing security or just the illusion of security?
- Evaluate condominium security measures for effectiveness on an ongoing basis
- Take proper action to ensure that security measures are working properly and are kept working properly



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QUESTIONS?



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