

Security in Community Associations

Lapses and Liabilities

Thursday, February 2, 2023

1:00 pm – 2:00 pm

Webinar

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Christopher Lanni, CPP, CMCA, AMS is the President and Founder of Secure Residential Services, LLC an independent consulting firm specializing in security, risk management, premise liability and the use of security-related technologies in the residential property management setting. He also serves as Barkan Management Company, Inc.'s corporate Residential Risk Advisor providing these services to a portfolio of over 160 properties and numerous projects in development. He has over 30 years of experience and is both protection and property management certified.

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Scott Eriksen, Esq. is a partner at Perkins & Anctil and leads the firm's community association and condominium practice. He enjoys the variety and challenges of the issues that condominium associations and property managers face on a daily basis, and has become well versed in all aspects of association practice. He handles a host of issues ranging from the drafting, amendment and enforcement of governing documents to negotiating and preparing vendor contracts. Scott is a member of several CAI-NE chapter committees and is an active participant in the community association forums throughout Massachusetts and New Hampshire.

Security Board Responsibility & Liability



Scott Eriksen, Esq.
Perkins & Anctil, PC

As if You Didn't Have Enough to Think About...



- Board members and managers at community associations always have a lot on their plates.
- Evolving trends in the legal landscape have given rise to some new (or enhanced) considerations, particularly as they relate to security.
- Over the course of this program, we will discuss these trends and review strategies for boards and managers to use to mitigate risks to their communities.



Changing Landscape?



- Generally, one party is not liable for criminal actions of another (absent collusion, etc.); however...
- Steele v. Kings Way Condominium Trust: A resident with a history of mental illness and violence befriended another resident. After the new friend rebuffed the offender's requests to hangout, the offender attacked with a baseball bat. The victim tragically died after the incident.
- Field et al. vs. Highbridge Concierge, Inc., et al.: Recent tragic case of a couple who were viciously murdered in their Boston penthouse by a property management employee who exploited lapses in security to access the victims' unit.



Changing Landscape?



- In both of these cases, the courts found that the associations may have some responsibility to residents on account of the criminal behavior of others.
- New questions have come up as to the scope of a board's duty of care for residents' safety in common areas under its control for all "reasonably foreseeable" harms.
- Ultimately, the Board likely has an obligation to address reasonably foreseeable risks.
- In Field, the court found that since board controls conditions of common areas much like a landlord, and that **opportunistic crime** is a reasonably foreseeable harm, the board cannot ignore that reasonable foreseeability and may be subject to liability if it does not meet its duty of care.



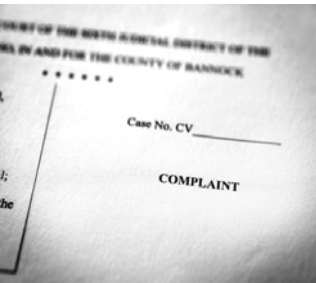
Risk Assessment

What is at risk if community associations continue business as usual and don't learn from these trends?

Board members and managers cannot take an "ostrich" approach.

Community leaders must consider different risks on account of their duties to owners:

- Risks associated with injury or property damage; and,
- Risks associated with potential breach of duty.



What's in a Claim?

- There is a difference between a claim and liability.
- A claim is an *attempt* to impose liability for alleged damages, where liability is the *obligation* to pay for or otherwise be accountable for the damages.
- Even if the risk of liability is low, the risk of claims should not be ignored. While the association may prevail in any ensuing litigation resulting from these claims, the costs, time, frustrations and uncertainty associated with them must be considered in weighing the risks.



Duties and Potential Liability



- Generally, no duty exists to protect others from criminal activities of a third person.
- However, such a duty may arise if a defendant realizes or should realize that their act or omission involves an unreasonable risk or harm to another through criminal conduct OR criminal conduct will be viewed as foreseeable if the defendant recognized or should have recognized that their conduct likely created a situation that afforded an opportunity to a third person to commit a crime.
- Potential sources of duties of Boards and managers:
 - When you voluntarily assume certain obligations concerning the third person or risk;
 - If there is a "special relationship" - arises when the injured party has a reasonable expectation and reliance that the other party will anticipate harmful acts of third persons and take appropriate measures to protect the other from such harm; or,
 - Contractual obligations.



Preventative Measures



What is a Board or manager to do:

- Take safety concerns seriously - at the time you are alerted, you are on notice.
- Assess safety and security issues periodically as you would properly maintain any other common area element.
- Clarify and delegate security responsibilities amongst parties.
- Consider hiring a security consultant.
- Don't make safety decisions based solely on financials.

Security Cameras – Food for Thought



Generally speaking, boards have broad power and control over the common areas they oversee, and these powers typically include the rights (and duty) to maintain the common areas in a safe and secure fashion. However, the board's right to install and operate these systems may be limited in a few important respects.

- Condominium considerations: Is it an “improvement” – what are the statutory and/or governing document requirements for installation/operation?
- Privacy law considerations: Most states have statutory privacy protections. Board's should review and understand/comply with these obligations. Most of the time, there is no “reasonable expectation of privacy” in common areas.
- Audio recording considerations: Audio recording may be fraught with issue. In, MA for example, the statute prohibits recordings unless parties have knowledge. Consider this when installing security systems.

Handling Claims



If your association ends up with a claim:

- Report, Report and Report...do not wait;
- Document: take pictures and save receipts;
- Act as needed to prevent further injury or damage; and,
- Lean on your professionals (insurance, management, security consultant, legal, etc.).



Insurance: The First Line of Defense

Generally speaking, in the event of a claim or loss, the association's first line of defense is going to be its insurance policies.



Make sure you have proper coverage - speak with your agent on a regular basis to confirm.

Which policy comes into play depends on the nature of the loss/claim:

- General liability;
- Property;
- Workers Comp;
- Directors and Officers; and,
- Employment practices.



Establishing and Maintaining Reasonable Security Measures

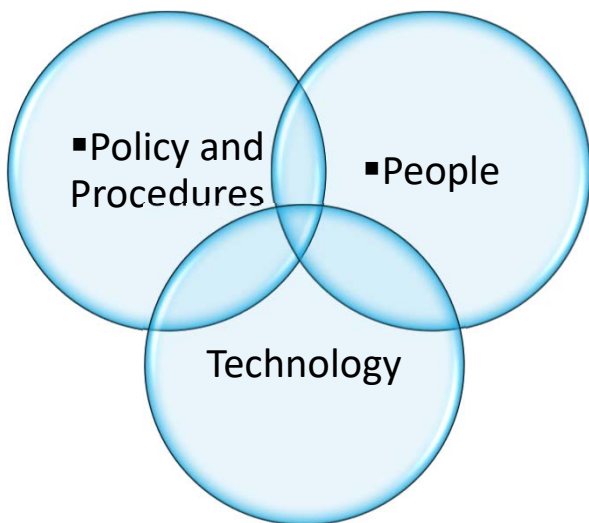


Christopher R. Lanni CPP, CMCA, AMS
Secure Residential Services, LLC

What is a Security Initiative ?

“An association’s security initiative is established by the use of policy & procedures, the use of technology and the actions of individuals to limit liability, risk and exposure to loss and/or interruption.”

Components of a Security Initiative



Check Your Mindset

“We’ve never had anything like this happen here before.”

“We never thought an incident like this could happen here at our community.”

“We don’t have security here at our property.”

“Something like that could never happen here.”

Acknowledge the Implications

- Twin Parks High-Rise Residential Fire in Bronx, NY
- Champlain Tower South Building Collapse in Surfside, Florida
- The COVID-19 Pandemic
- Gun violence against property managers and board members in Atlanta, Toronto, Florida and Rome

Google Alerts

Long Island Cops Stabbed Responding to Fire Extinguisher Attack at Condo Complex
Downtown Miami condo residents upset over yelling from inmates at adjacent jail
Vandalism at Clarksville condos - YouTube
Burglar caught on video breaking into package closet at South End condos - WSOC TV
33-year-old man fatally shot at West Palm Beach condominium - WPTV
Couple found dead inside condo in South Loop - WGN-TV
36-year-old man found dead at condos near Millenia - Orlando-News.com
Nether Providence police charge Glenolden man in attempted catalytic converter theft
Deputies arrest 2 men in fatal shooting at The Plaza at Millenium condos - WFTV
Nearly \$350000 in cash, jewelry stolen from Powderwood Drive condo in burglary
Shootings at South Fulton condominium complex, restaurant under investigation
Duo wanted for stealing car from Cleveland condominium complex, police say
Sheriff's Report: Burglary suspect likely scaled balconies to steal more than ... - Park Record
Affidavit: Longwood man who set his condo on fire after getting upset with HOA charged with arson
Authorities Raced To Identify & Mystery Woman Caught On Video Near A Strange Murder Scene

Recognize that Safety & Security is Important to your Residents

Community Association Superlatives

Best aspects of living in a community association, average top responses from 2005-2022

Worst aspects of living in a community association, average top responses from 2005-2022



- Clean/attractive neighborhood (21%)
- Safe neighborhood (20%)
- Nothing bad (17%)
- Maintenance-free neighborhood (17%)
- Property values (11%)
- Responsible neighbors (8%)
- Everybody knows the rules (8%)
- Amenities like swimming pools and tennis courts (7%)
- Quiet neighborhood (5%)
- You have a say in the rules (3%)

- Restrictions on exterior home improvements (18%)
- Paying dues (18%)
- The rules (11%)
- Restrictions on parking (10%)
- Dealing with neighbors/ members (8%)
- Dissatisfaction with the board (7%)
- Restrictions on landscaping (7%)
- Nothing good (6%)
- Meetings (2%)

Acknowledge the Uniqueness of your Property

“Our property is different than any other property.”

- Location
- Physical characteristics
- Board philosophy
- Staffing level
- Budget
- Demographic
- Risks

Gather Input from Varied Sources

- Potential risks of “working in a vacuum”
- Legal counsel
- Insurance carrier or risk advisor
- Condominium documents
- Independent consultants
- Local police department
- Product representatives and installers
- Peer network
- Guidelines, standards and best practices
- Management companies

Additional Factors to Consider

- Incident history
- Police calls for service and crime data
- Risk assessment
- Site survey
- Community standard
- Tolerances (user, financial, resources, building operations, etc.)

Conduct a Site Survey

- Qualitative – “The study of things as they naturally exist.”
- Status of existing conditions and measures
- Are measures serving their intended purpose
- Are measures functioning as designed
- Are measures applied consistently throughout the property
- Benefits of conducting a site survey
 - Identify exposures to be addressed prior to incident
 - Establish existing conditions at a specific point in time

- Challenges of conducting a site survey
 - Resources (time, participants, etc.)
 - Requires neutral, unbiased and objective eye
 - Question and challenge “the norm”
 - Effectiveness could be impacted by familiarity

Examples of Key Site Survey Points

- Access Control Measures
 - At building access points
 - Within the building(s)
 - vertical & horizontal breaks
- Enclosed Parking Areas/Bike Storage Areas
- Loading Docks and Service Entrance Locations
- Amenity Spaces
- Commercial Tenant Space
- Package Storage Areas
- Unit Door Locks and Door View Finders
- Current Condition of Door Locks, Latches, Closers, etc.
- Inspections and Maintenance of Hardware
- Lighting Conditions
- Signage
- General Cleanliness and Upkeep

Understand Tolerances

- Convenience vs. security
- Resident engagement and participation
- Association's tolerance to risk
- Financial tolerances
 - Potential issues with disproportionate funding
 - Potential issues with forgoing altogether vs. scaling

Evaluating Products & Services

- Identify the problem or need first
- Then clearly identify the expected outcomes of deploying the product or service
- Ask if the proposed product or service sufficiently addresses the items above
- Ask if the proposed product or service will work with identified tolerances

Policies and Procedures

- Post orders, shift instructions, operating procedures, etc.
- Memorializes the wishes of the board
- Examples (fob issuance, access control, contacting 911, review of video, etc.)
- Benefits of policies and procedures
 - Consistency in how situations are addressed
 - Establishes expectations before the fact
 - Provides clarity and desired outcomes
 - Limits interpretation, “freelancing”, etc.
 - Consistency in training
 - Aid in defense against claims

- Potential issues with policies and procedures
 - “Everyone here knows what they should be doing.”
 - Living document which requires review and updating
 - Requires resources to maintain, communicate, etc.
 - Consequences of not following established policy and procedures
 - Hurt in defense of claims if not accurate, being followed, etc.
- Evaluate and review upon changes or at least annually
- Team approach to review process encouraged

Continuously Evaluate

- Security initiatives are not “set it and forget it”
- They require ongoing evaluation, care, maintenance, managing and modification
- Approaches, technology, risks, environments all change over time
- Post incident review is a good practice
 - What worked and what didn't work ?
 - Where were the exposures ?
 - Ways to eliminate or at least reduce the exposures ?
- Address “action items” with an agreed upon plan with decisive and timely actions

The logo features the year '2023' in large, stylized numbers. The '2' is blue, the '0' is yellow with a crown on top and a gear-like base, the second '2' is grey, and the '3' is orange. To the right of the numbers, the words 'Chapter Partners' are written in a large, black, serif font. A horizontal green line runs across the page behind the numbers and the first part of the text.

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