



## *Preventing Crime and Limiting Liability for Community Associations*

### **MULCAHY Community Association Cheat Sheet®**

#### **BRINGING ANSWERS TO COMMUNITY ASSOCIATIONS**

*This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.*

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#### **THE HIGH COST OF CRIME FOR COMMUNITY ASSOCIATIONS**

According to the United States Department of Justice, a property crime is committed every three seconds, a burglary takes place every twelve seconds, a motor vehicle is stolen every twenty seconds and a murder occurs every twenty-three minutes. Unfortunately, these statistics affect every segment of our society, including community associations. Increased crimes committed in community associations have lead to a drastic increase of lawsuits filed by plaintiffs claiming inadequate security. Typically, the plaintiff files the lawsuit against the community association, management company and individual board members.

#### **ESTABLISHING NEGLIGENCE: DUTY AND THE STANDARD OF CARE**

One of the fundamental issues regarding community associations and premises liability is what duty, if any, an association and its individual directors owe owners and their guests. Arizona Supreme Court applied a standard analogous to a landlord's duty to its tenant when determining whether a condominium owners association is liable for injuries of a person lawfully on the Association's property. It is our opinion that the same standard applies to planned communities.

#### **MARTINEZ V. WOODMAR IV CONDOMINIUM ASSOCIATION**

In *Martinez v. Woodmar IV Condominium Association*, the Arizona Supreme Court found the association had a duty to use care to maintain the safety of the common areas. The plaintiff attended a graduation party as a guest of the tenant at the defendant's condominium complex. Later, the plaintiff and two other guests returned to the complex's parking lot, where they found a group of local young people sitting in and on one the guest's cars. An altercation ensued and the plaintiff was shot in the back. The plaintiff, his friends, and the live-in security officer recognized the group as a gang of young people from a neighboring complex that would often gather in the parking lot to take part in illegal activities. In the past, security guards broke up their mischief but with budget constraints, the association's security guard patrolled the complex for limited evening and early morning hours. The plaintiff sued the association claiming the association was liable for failing to prevent the attack.

The Arizona Supreme Court found the Arizona Court of Appeals mischaracterized the case and while the association had no responsibility to control the shooter, a duty existed on the part of the association with respect to the property. The court held that with the respect to common areas under its exclusive control, a condominium association has the same duties as a landlord. The court held the association liable because it found evidence that the association knew the gangs gathered in the parking lot and other common areas, knew the gang engaged in criminal activity, was warned by its own security guard of the need for 24-hour patrols, hired a second security guard but later terminated him because of expense considerations, and knew the neighboring complex hired off-duty police officers to patrol.

**The *Martinez Court*, finding that the association should be held to the same standard of care as a landlord, focused on the element of control that it said created an "affirmative obligation to exercise reasonable care to inspect and repair such parts of the premises for the protection of the lessee; and the duty extends also to members of the tenant's family, his employees, his invitees, his guests and others on the land in the right of the tenant". Thus, the court stated that the association's duty with respect to the common areas, like that of a landlord, extended not only to unit owners but also to those on the land with consent of the owners and their tenants.**

The court also stated that the duty to maintain the safety of common areas applies not only to physical conditions on the land but also to foreseeable and preventable dangerous activities on the land. The condominium association therefore, had a duty to owners and their guests to maintain the common areas safe from foreseeable dangers.

## PRACTICAL SUGGESTIONS FOR LIMITING LIABILITY

### On-site Suggestions:

- Install a controlled entry system using guarded gates, electronic gates and/or telephone entry systems.
- Implement a security patrol enforced by foot, bicycle and/or vehicle depending on the size of the property.
- Install surveillance cameras or closed circuit television, especially in entrances and frequent used common areas. An association should consider changing the videotape as frequently as daily and keeping each tape on file for one week. Surveillance cameras record date and time are thus good for tracking vandalism and theft.
- Install proper lighting in the association's common areas and consider using motion sensors to control outside lights in areas where extra security is needed.
- Screen all association employees for criminal records and prior work history.
- Reduce the size of shrubs, particularly in front of windows, to eliminate hiding places for criminals.

### Programs and Information:

- Create neighborhood watch groups to help detect suspicious activity and possibly deter crime.
- Recognize volunteers by creating an award to be given during the annual meeting for crime prevention efforts.
- Create a program for engraving valuables. The association needs a few small hand-held engravers that can be purchased at many hardware stores for about \$20. A volunteer checks them out to residents. Residents permanently mark their valuables engraving them with driver's license numbers, which are easier to trace than social security numbers. The association may also provide a window sticker that notifies potential burglars that valuables have been engraved and will be more difficult to sell.
- Create a vehicle registration program. The vehicle registration program can be used for many purposes to control association access or to support neighborhood watch programs by increasing resident awareness of vehicles that would not ordinarily be in a particular community.
- Create a bicycle registration program. To implement this easy program take a picture of each bicycle for the owners. The picture becomes a permanent identification of the bike to be kept by the owner with a record of the bike's make, model, serial number and other identifying information. If the bike is stolen, a full report can be made to police and the bike can be clearly identified if located.
- Use an out-of-town watch program. In many cities a homeowner notifies police of their planned absence. While homeowners are out of town, officers drive by their home more frequently. If an out-of-town program is not available in your city, initiate one using your neighborhood or security patrol.
- Create a bimonthly or monthly newsletter (or include in the regular newsletter) informing owners about the association's neighborhood watch groups and crime activity within the association and surrounding areas.
- Hire the local police department or a security professional once a year to speak to the association and the neighborhood watch program members regarding trends in crime and new crime prevention techniques.
- Show security measures by posting neighborhood watch signs and by placing security alarm stickers in windows.

### Suggestions for the Board of Directors:

- Do not misrepresent the quality or level of security.
- Review state laws and local ordinances and know what security measures are required.
- Create a handbook for safety and crime prevention for your association. The handbook can contain tips on subjects such as crime prevention, fire, tornado, winter, and Christmas safety. The handbook can also include forms for suspect descriptions, vehicle identification and inventorying personal property.
- Have a plan of action. If problems develop, implement additional security measures and notify residents that they must take steps to protect themselves.
- Do not reduce security without allowing members to vote on such a reduction.
- Notify residents if security is reduced by newsletter, letter, bulletin board, website, etc.
- Obtain adequate insurance for the association's common areas.

## DEVELOP AND IMPLEMENT STRATEGIES FOR CREATING A SECURE ENVIRONMENT

Associations need to be informed about the fundamental issues surrounding premises liability, claims against associations and the potential financial exposure for associations. Associations also need to develop and implement a strategy for creating a secure environment within the association, and they must take immediate action if crime is committed. While some expenses are associated with increasing security measures, these actions can actually save money when considering the high cost of litigation and the potential exposure for premise liability claims.

Most importantly, these suggestions will make the community safer for homeowners and guests.