



Burdman Law Group
Construction Defect Attorneys
8440 West Lake Mead Blvd., Suite 100
Las Vegas, Nevada 89128-7648
Telephone: (702) 387-2400
Facsimile: (702) 387-2401
Toll free: (888) 350-9080

Law in Hand

IS YOUR ASSOCIATION SUFFERING FROM INSECURITY?

A homeowner association's relationship with its members has often been likened to that of a landlord's with its tenant. This is so because an association and a landlord perform many similar business functions such as maintenance and repair of common areas and enforcement of rules and regulations for the community. Landlords and associations also have another critical and often ignored concern in common, namely that of providing security to its members.

This issue of security has been directly addressed in an important California case named Frances T. v. Village Green Ass'n (1986) 42 Cal.3d 490, 229 Cal.Rptr. 456. In this case, as a result of a prior burglary, a unit owner requested her association's board of directors to install more exterior lighting. When the board failed to act, she installed her own additional lighting. The board informed her that her action violated the CC&Rs, ordered removal of the new lights, and prohibited her from using them pending removal. Since the additional lights were on the same electrical circuit as the original ones, cutting off the power left the exterior in total darkness. She was subsequently raped and robbed. The unit owner sued her association and board of directors for failure to provide adequate security.

After having the case dismissed by the lower courts, the owner appealed the case to the California Supreme Court. The California Supreme Court held that, with respect to common areas under its exclusive control, a condominium association is for all practical purposes the project's landlord. Therefore, traditional legal principles impose on homeowner associations that maintain the common areas of a large condominium complex, a duty to exercise due care for the residents' safety in those areas under their control (similar to a landlord's duty). The Court further reasoned that since the association was aware of the need for additional lighting and of the fact that the lighting could deter potential criminal conduct, failure to provide reasonable security measures exposed the association to liability for negligence.

This decision recognizes that a condominium association controls all aspects of maintenance and security for the common areas and usually forbids individual owners from taking on these chores. This element of control creates an affirmative obligation on the part of the association to exercise reasonable care to inspect, repair and maintain the common areas it controls and to implement measures to protect owners and their guests from dangerous conditions or activities on the premises.

The Frances T. case cautions that it is better to take a proactive rather than a reactive approach to security issues. A simple yet effective two step approach to security often avoids potential dangers. The first step is for the board of directors to keep alert and abreast of potential security problems by instituting economical warning mechanisms such as suggestion boxes or security hotline numbers. Once the board has knowledge, it must proceed with the crucial second step of taking some action to minimize danger. Even modest measures such as raising assessments to cover additional security costs, making security evaluations on a regular basis and establishing roving patrols evidences that an association is attempting to carry out its duty of reasonable care.

Many associations remain unconcerned about security until some catastrophe brings it to their immediate attention. This is unfortunate as well as short-sighted because being attentive to problems and implementing clear policies often dramatically decreases an association's potential for liability. The trite but true maxim of "Better Safe than Sorry" should be the motto for every association concerned with providing security and safety for its homeowners.