

Association Duties: Does an Association have a duty to prevent crime in common areas under its control?

An Association in Washington likely has a duty to take measures against foreseeable crime in a common area under its control, but there is no obligation to prevent criminal activity that the Association has no reason to anticipate, unless the Association volunteers or promises to do so.

Duty to Safeguard Against Foreseeable Crimes

Washington law is silent as to whether an Association has a specific obligation to safeguard owners or members of the public from criminal activity within the community. However, one of the most notable cases relating to the obligations of Associations and their Boards with respect to criminal activity, *Frances T. v. Village Green Owners Ass'n*¹, is instructive.

In that California case, an owner had repeatedly informed the Board that external lighting on a green belt near her unit was insufficient (at one point, there was no light at all). The owner's unit had previously been burglarized, which the Association was aware of. Given the inadequate lighting and a spike in crime in the area, the owner was concerned she would once again be the victim of criminal activity. The Association did not address the lighting issue and, when the owner erected her own makeshift lights, the Association informed her that the lighting structure violated the community's CC&Rs and instructed her to remove it. The same night the owner complied with the Board's order, she was raped and brutally beaten by an intruder in her unit.

The California Supreme Court held that the Board was liable for damages to the owner because the Board's refusal to address a known dangerous condition (insufficient lighting that provided a safe harbor for criminals) was unreasonable under the circumstances. It explained:

When the only persons in a position to remedy a hazardous condition are made specifically aware of the danger to third parties, then their unreasonable failure to avoid the harm may result in personal liability.

If they apply this same rationale, Washington courts are likely to conclude that a Board's refusal to remedy known hazardous conditions that foreseeably increase the risk of criminal activity is unreasonable, in violation of the duty of care owed to owners. (See chapter entitled: "Board of Directors: What is a Board member's duty of care?")

Although the *Frances T.* case recognizes an Association's duty to safeguard against foreseeable crime, it does not require an Association to prevent all crimes within its community. It requires only that Associations take reasonable measures to protect residents from crimes the Association knows or should know have a high risk of being committed in the community. In *Frances T.*, the Association could likely have fulfilled this duty by installing better lighting in the common areas, as the unit owner repeatedly requested it to do. In an Association experiencing a wave of car theft, the Association might be expected to advise the owners of the problem and, perhaps, install security cameras or hire a guard to patrol the parking areas. The specific measures required will vary with the circumstances; however, the Board should remember that it is at risk if it fails to respond to foreseeable criminal activity in the community. The Board must be reasonable.

Neighborhood Watch and the Perils of Vigilante Justice

As discussed, an Association generally is not liable for damages simply because a crime, which was not foreseeable to the Association, happens on its grounds, but if an Association warrants that it will prevent all crimes, or a given type of crime, a court may hold the Association to its promise by recognizing a so-called “gratuitous duty.”

Likewise, if an Association holds out one resident or a group of residents, such as a neighborhood watch group, as a resource for residents to contact instead of law enforcement regarding crime, the Association may be opening itself up to potential liability if that resident or group fails to protect residents or, in doing so, uses unlawful force or causes harm.

Associations should be careful not to step into the role of law enforcement or encourage residents to do so by investigating, tailing, or otherwise chasing down suspected criminals. This type of vigilante action is almost always beyond the Association’s authority. Not only could it expose the Association to potential liability to both the alleged criminal and victim, but the individual vigilante involved could face personal civil and criminal liability as well.²

A better course of action would be for the Board to initiate a dialogue about neighborhood safety and how owners should respond to crime if it occurs, namely by contacting law enforcement. The Association could also take more passive security measures, such as installing better lighting and security cameras or hiring professional security. An Association is also in a good position to advocate for the owners with law enforcement agencies, reporting incidents and requesting additional police presence in the community as needed.

¹ *Frances T. v. Vill. Green Owners Assn.*, 42 Cal. 3d 490 (1986) (court found that appellant had alleged facts sufficient to show the existence of

a duty, that respondents could have breached that duty of care by failing to respond in a timely manner to the need for additional lighting and by ordering her to disconnect her additional lights, and that this negligence - - if established -- was the legal cause of her injuries).

² An example is the now infamous 2012 Trayvon Martin incident, in which George Zimmerman, a neighborhood watch leader in a Florida HOA, shot and killed an unarmed teenager who was walking through the community, where he had been visiting family. The HOA had empowered Zimmerman, who was not a law enforcement officer, to pursue suspected crime in the community. It had also recommended in the community newsletter that residents contact Zimmerman regarding any criminal activity in the community so that he could address the issue. Following the shooting, the Martin family filed a wrongful death lawsuit against the HOA, which settled for an undisclosed sum believed to be over \$1 million. Zimmerman was also prosecuted for second degree murder arising from his actions.