



## Warning About Offender Warranted

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Since my recent column regarding sex offenders living in community associations (see *Coping With Sex Offender In Your Area*, May 19, 2005), grisly headlines continue to remind us that our society has more than its fair share of sociopaths. Unfortunately, those monsters are no less likely to live in association-operated housing simply because of their perversion, and in fact may seek the opportunities presented by the familiarity associated with community living.

Coincidentally, since my recent column, a Florida appeals court has issued a significant ruling that may greatly expand an association's duties in this thorny area.

In March of 2004, a nine year old girl was lured with the promise of toys into the meter room of a Fort Lauderdale apartment complex, and sexually assaulted. Allegedly because the police advised the management to "avoid hysteria", and because the identity of the perpetrator was unknown, the management took no steps to inform the other tenants of the incident. The internal incident report prepared by management indicated that the victim had seen the attacker before, suggesting that a tenant could be the perpetrator.

Thereafter, a second child was attacked. In this case, a child and her two siblings cut through an opening in the community's fence, while on their way to school. The assailant, the same person who committed the prior offense, and who was indeed a tenant in the

complex followed the children, and sexually assaulted one of them at an abandoned building located off the premises.

Although one might ask why this tragedy is of interest to community associations, Florida's courts have consistently applied legal standards applicable to the landlord-tenant relationship in determining the scope of an association's duties regarding security matters. In this case, because the incident occurred off-premises, the issue was resolved in favor of the apartment owner and management in a legal proceeding known as summary judgment. The judge basically decided that management was not negligent, because it had not violated any duties owed to the tenants.

On appeal, a three judge panel from Florida's Fourth District Court of Appeal reinstated the suit, holding that the landlord owed a duty to warn the tenants about the incident. The appeals court ruled that a jury should be allowed to decide whether or not the landlord fulfilled that duty.

Noting that the law does not generally require one person to protect another from criminal acts committed by a third party, an exception exists where a "special relationship" exists between the parties. The court found such a special relationship to exist and said: "The rule in Florida is well established that a landlord has a duty to protect a tenant from reasonably foreseeable criminal

conduct.” Citing a 1999 condominium decision the court went on to note that the landlord must have prior knowledge of similar criminal conduct occurring on the premises.

Even though the attack occurred on property which the landlord had no ability to control, the prior incident, and the fact that the assailant followed the children from the complex were apparently enough

for the appeals court to decide that a jury should hear the case.

The case does not specifically address what should be done when a registered sex offender resides in a community but has committed no crime there. As discussed in my previous column, there is no “right answer”, but most experts appear to agree that some type of warning is in order. ■

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*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*

**Question:** Six months ago, my condo apartment's kitchen sink and dishwasher backed up, creating water damage. This is the fifth time this has happened. I was on vacation when the latest incident occurred. The manager called the association's plumber. They now want me to pay his bill, and the plumber is threatening to ruin my credit rating if I do not pay. I thought the condominium association is responsible. J.T. (via e-mail)

**Answer:** First, you did not hire the plumber, the association did. Therefore, the plumber has no right to threaten your credit standing, and could be subject to penalties if he wrongfully slanders your credit. You should tell the plumber that he should take up his grievance with the association.

Whether you are liable to the association to reimburse the plumber's charges will depend on why the back-ups have occurred, and whether the area where the problem exists is part of the common elements, and therefore the responsibility of the association.

In most cases like yours, the plumbing problem exists outside of the boundaries of the "unit" (apartment) and is therefore the responsibility of the association.

You could be responsible if the pipe is described as a "limited common element" in the governing documents, and if the documents also make you responsible for the pipe. You could also be liable if negligence in the disposal of your out-bound plumbing is causing the problem.

**Question:** Can you please advise me what Florida Statute allows the board of directors of a condominium association to make alterations to the common areas to enhance the safety of the community. M.L. (via e-mail)

**Answer:** There is no statute on point. You are referring to what is often called the "necessary maintenance" exception to the "material alteration" rule. This exception has been created by the courts, and is applied to

eliminate the requirement for membership approval of common area alterations, when they are necessary for the preservation of the property.

The court decisions which have addressed this topic have limited the exception to maintenance issues, not safety or security.

Florida's condominium law also provides for arbitration of condominium disputes where these issues are adjudicated. Although they do not carry the force of law, arbitration decisions are given some weight as precedent when addressing condominium legal issues.

I am aware of one arbitration case where the arbitrator found that the necessary maintenance exception to the material alteration rule could be applied to permit the installation of security cameras in a condominium parking lot. However, the arbitrator held that the exception could only be applied, and the requirement for a unit owner vote avoided, if there was a history of criminal activity at the condominium which would justify the board taking action without a membership vote.

**Question:** I am new to condo living and have a problem with giving the association a key to my home. I understand that they may need access, and I am willing to let them in when need be. What is the law on this? R.S. (via e-mail)

**Answer:** The Florida Condominium Act provides the association with a right of access to each unit for the purposes of maintaining those portions of the condominium property which the association is required to maintain.

Access must be reasonable, which means that the association should only enter a unit during reasonable hours, except in the case of an emergency. In my opinion, reasonableness also means that the association should minimize the intrusiveness of its entry, including the giving of prior notice.

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The statute does not deal with the key issue. However, several arbitration cases have found that an association may enforce a key requirement, if the requirement is duly enacted in the written condominium documents.

The same arbitrators have also ruled that once an association requires a key to be posted, the burden shifts to the association to ensure adequate security against unauthorized use of the key. ■

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