MERCERTRIGIANI

SAFETY & SECURITY CONSIDERATIONS

Safety is a top priority for many common interest community associations. Discussions surrounding building security, alarm systems and personal protection are ongoing and oftentimes paramount in providing resident peace of mind. Associations are no different in wanting to tackle or, at the very least, reduce security breaches before security concerns escalate into serious matters. Protecting people and property are top-of-mind considerations for boards of directors, especially following incidents in which owners, residents and guests feel less safe.

While there is no "one-size-fits-all" approach for associations to follow, there are general steps a common interest community association may take to address safety and security concerns in the community. Before undertaking security measures, governing documents and applicable statutes should be evaluated to determine whether proposed measures are within association authority.

ASSOCIATION OBLIGATION

Generally, common interest community associations are not responsible for the security of owners and residents. Neither the Virginia Condominium Act nor the Virginia Property Owners' Association Act expressly require an association to protect or ensure the security of residents from criminal activity.

It is important to make clear that the responsibility of associations and Boards for safety and security is limited. Virginia adheres to the principle that a common interest community association is not liable for criminal acts committed by others *unless* a special relationship is created, including assumption of duty. Care and attention should be given to defining any role the association may play in safety and security, to avoid increasing owner and resident expectations for association responsibility to ensure personal safety.

Associations should be careful not to engage in activity that could be viewed as creating the duty to provide law enforcement activities, for example. When criminal activity is observed or merely suspected on association property, local law enforcement should be called to investigate. Law enforcement is best equipped to address criminal conduct. Owners and residents should be reminded of these limitations.

COMMUNITY SAFETY & SECURITY PRACTICES

Neighborhood Watch & Security Committees

A Neighborhood Watch Committee or Security Committee ("Committee") have traditionally served as a way to encourage resident participation in addressing security concerns within the community by:

- Gathering and communicating resident concerns about security;
- Encouraging owners and residents to report suspicious activity to local law enforcement;
- Coordinating crime prevention programs and educational opportunities with local law enforcement agencies;
- Identifying common area that may benefit from additional lighting or other security improvements; and
- Providing recommendations to the Board for consideration.

Committees serve in an advisory capacity and are not responsible for providing security services. Committee members are not responsible to and should **not** investigate crimes, confront suspicious individuals or attempt to enforce criminal laws. Committee members should be instructed to contact local law enforcement when criminal or suspicious activity is observed.

The effectiveness of the Committees depends on participation. Community interest should be polled and considered to determine whether there is sufficient interest to support ongoing Committee work and whether proposed activities would provide a meaningful benefit to the community. It may be determined that periodic resident communications, educational programs or a designated representative to communicate with local law enforcement would accomplish the same objectives without establishing a formal committee.

If it is determined that a committee would be beneficial, we recommend adoption of a resolution or *committee charter* establishing the committee and clearly defining committee responsibilities and limitations.

Coordination with Law Enforcement

We recommend maintaining an ongoing dialogue with local law enforcement regarding security concerns within the community. Local law enforcement agencies may be able to provide information regarding criminal activity in the surrounding area. It may be helpful to invite local law enforcement representatives to attend a board meeting to discuss community concerns, answer questions from owners and residents and provide information regarding criminal activity in the surrounding area.

Local police departments or sheriff's offices may have designated officers or community liaisons assigned to particular neighborhoods and common interest communities. Where available, such arrangements may provide an additional resource for addressing community concerns. Local law enforcement may also offer Neighborhood Watch programs, crime prevention presentations and community security evaluations. Associations should contact local law enforcement agencies to determine what programs and services are available.

Boards may designate a board member, committee member or other association representative to serve as the primary point of contact with local law enforcement agencies. A designated liaison may help maintain communication between associations and law enforcement and ensure that information and recommendations are brought to board attention. The designated liaison may be responsible for:

- Communicating recurring security concerns to local law enforcement agencies;
- Requesting periodic briefings or updates regarding criminal activity and security concerns in the community and surrounding area;
- Requesting information regarding crime prevention programs;
- Coordinating law enforcement participation in meetings or other community programs; and
- Reporting information and recommendations received from law enforcement to the board, management and community.

The liaison's responsibilities should be clearly defined to avoid creating an expectation that the liaison or association will provide security services. The liaison should serve only as a point of contact and is not responsible to and should **not** intervene in or investigate criminal activity. Owners and residents should continue to report criminal or suspicious activity directly to local law enforcement.

Security Evaluations

Boards may request a law enforcement representative or engage an independent security professional to evaluate common area and provide recommendations regarding security improvements. An evaluation may identify areas of concern and determine which measures may be appropriate. Security evaluations may include consideration of:

- Cameras and video recording systems;
- Lighting in common area, parking facilities, entrances and walkways;
- Landscaping and conditions that may obstruct visibility; and
- Door locks, gates and other access controls.

Written evaluations are most helpful. Identified concerns and recommendations should be reviewed to determine which measures, if any, are appropriate and feasible. It is important to recognize that security measures, including cameras, lighting and access controls, cannot prevent all criminal activity. Boards should avoid creating an expectation that installation of such measures will ensure safety and security.

OTHER CONSIDERATIONS

Policies & Resolutions

If governing documents provide express authority, a resolution may be adopted establishing rules addressing agreed-upon safety and security measures. Rules may address use of entrances and gates, reporting concerns involving locks or other security equipment and procedures for issuing and replacing keys or access credentials. However, without resident compliance with board-adopted rules and a shared understanding of common warning signs, advisory policies and guidance on safety and security may prove ineffective.

Costs & Maintenance

Consideration should be given to costs associated with security measures. Association finances should be evaluated to determine whether sufficient funds are available to implement and sustain proposed measures. Boards should avoid implementing security measures that cannot be adequately maintained or supported long-term.

Insurance

The Association insurance carrier should be consulted before undertaking security measures or establishing security-related committees. Particular consideration should be given to whether Board or committee activities are covered under the Association's general liability and directors and officers liability policies, as applicable. Insurance professionals may also publish helpful information about security initiatives. Boards should also inquire whether proposed security improvements or services would affect existing coverage or premiums and whether additional coverage or safeguards are recommended. We recommend that all responses and recommendations from the Association's insurance carrier be provided in writing.