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Security Cameras: Are They Really the Answer?

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With increasing rates of violence and vandalism, many associations are looking to implement greater measures to protect association members and association property. So it is that security camera installation enters the conversation. However, installing security cameras could increase the risk of liability to an association.

In recent years, courts have examined association liability for criminal acts of third parties committed on association property. In *Martinez v. Woodmar IV Condominiums Homeowners Association, Inc.*, 189 Ariz. 206, 941 P.2d 218 (Ariz. 1997), the guest of a tenant of a unit owner was injured in a shooting that occurred in the common area of the condominium. The Arizona Supreme Court held that a condominium association (or a planned community) has the same duties as a landlord. Namely, that an association's duty is to maintain the areas under its **exclusive control** (the common areas) in a safe condition and to protect owners, tenants and their guests from dangerous conditions or activities. The court also found that criminal acts of which an association has notice can constitute a dangerous condition.

Martinez means that an association must take reasonable measures to ensure the safety of its common areas. But, will installing security cameras accomplish this? Do the benefits of installing security cameras outweigh any potential liability for their use?

It's a close call. By installing security cameras, the Association is taking a step to increase the safety of its common area. Visible security cameras, even "fake" ones, can act as a deterrent. Real cameras with recording capability could provide evidence in a court proceeding. Adding cameras may be no different than adopting other reasonable security procedures. However, cameras may instill a false sense of security in association members if they know, or think, that someone is watching. If a person is attacked on association property, it is foreseeable that he or she would rely on the cameras and reasonably believe that someone was watching and coming to the rescue. This concern may be lessened if the Association informs owners that the cameras are not monitored by a security person. This information could be included on video camera signs. For example, the signs could read "All activity in this area is being recorded by video cameras. The cameras are not constantly monitored by individuals, but recordings are regularly reviewed." However, that type of sign may negate its deterrent capability.

The Association could also face liability for use of the security cameras if the cameras were malfunctioning or being improperly used, resulting in the failure to capture criminal activity on the property. To avoid this situation, the Association should routinely inspect the camera equipment to ensure it is in proper working order.

The topic of video surveillance also raises concerns about access to recorded information and other issues. Who owns the recorded footage? Is that footage a “record” of the Association, as it involves owners’ access to Common Area facilities? Are there insurance considerations that should be disclosed to the Association carriers so that any necessary riders are negotiated? There are no clear answers, and these issues, together with privacy concerns, should be enough to make an association carefully consider the installation of surveillance cameras. Ultimately, a Board must weigh the costs and balance the risks of installing cameras, and make its decision based on the best interests of the Association.

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