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## Association Law Bulletin

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TUCKER & TIGHE, P.A. offers personal attention and personal service legal representation to condominium and homeowner associations. The firm provides this legal bulletin for property managers and the firm's Association clients. For questions on matters covered by this bulletin, or other legal assistance, please contact one of the firm's attorneys.

## Association Liability for Crimes

Associations can be liable for crimes committed against their residents. Whether the Association is liable first depends on the foreseeability of the criminal act and, next, if there is foreseeability, depends on whether the Association has taken reasonable steps to secure the safety of the residents.

As an example, in Czerwinski vs. Sunrise Point Condominium, 540 So.2d 199 (Fla. 3<sup>rd</sup> DCA 1989), an intruder assaulted a unit owner after using a ladder from the condominium's unlocked storage room to enter a window where the building

was unlit and overgrown with foliage. Based on the prior criminal history of the area, mostly burglaries, the appellate court ruled that the Association could be liable to the unit owner, and allowed the claim to go to trial.

Another case on the subject is Newell v. Best Security Systems, Inc., 560 So.2d 395 (Fla. 4<sup>th</sup> DCA 1990). In Newell, the Court ruled that evidence of residential burglaries in the neighboring areas was sufficient to allow a claim against the condominium for liability for assault to be submitted to a jury for decision.

Thus, Associations should review security where there is a record of prior crimes, and review their insurance coverage.

Boards have authority to implement most or all necessary security measures. For instance, in a condominium, the owners' approval is not necessary to install chain-link fences or security lights. While these additions would ordinarily be thought to be material alterations for which a unit owners' vote is necessary under the condominium law, numerous condominium arbitration decisions have ruled otherwise.

Also included in this issue, on the reverse side:

- Background Checks Provide Protection Against Liability for Crimes by Employees
- Fifty Million Americans Live in Associations

## Background Checks Provide Protection Against Liability for Crimes by Employees

Management and Association employees have knowledge and access in communities which gives them the opportunity to commit crimes.

If an employer can reasonably foresee an employee's criminal propensity, the employer (including associations and management companies) can be liable for "negligent hiring" or "negligent retention."

Florida Statutes Section 768.096 provides a shield against such liability.

This statute states that employers are presumed not to be negligent in hiring employees if they do a background investigation of job applicants. The background investigation includes interviewing the job prospects and requiring a detailed application, making reasonable efforts to contact references and former employers, and doing an investigation for prior crimes and a driver's license check (which latter two items are available through private investigation companies).

Thus, management

companies and associations should follow Fla. Stat. 768.096 when hiring employees to obtain protection from liability for crimes committed by employees.

For those wishing further information, Tallahassee Furniture Company v. Harrison, 583 So.2d 744 (Fla. 1st DCA 1991) is a well known case holding an employer liable for an employee's acts.

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## Fifty Million Americans Live in Associations

Homeowner and condominium associations have become an important part of living in the United States. According to the Community Associations Institute:

- The United States has 250,000 associations (comprised 50-55% of homeowner associations, 40-45% of condominium associations, and 5-7% of cooperatives).

- These associations contain 20 million homes in which reside an estimated 50 million Americans.
- If you serve on an association board or committee, you are among 1.5 million Americans who do so.
- Four out of five housing starts are being built as part of an association governed community. About 7,000 new

community associations are formed each year.

In Florida, over 24,000 condominiums are registered with the State. While homeowner associations are not registered, based on the national average there would also be at least that many homeowner associations. Eleven thousand licensed community managers are registered with the State of Florida.

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For additional legal information, TUCKER & TIGHE, P.A. offers the following online resources and articles for our clients and website visitors at [www.associationlaw.com](http://www.associationlaw.com) :

- Homeowner Association Statute • Condominium Statute • Associations' Rights to Control Satellite Dish Placement •
- Getting Rules Enforced • Homeowners Associations - The New Local Governments •

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The contents of this Association Law Bulletin are for general information only and not intended to give any specific legal advice or opinion. The facts of any particular situation need to be examined before deciding on a legal course of action.

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