

# **The Duty of Condo/HOA Boards to Provide Safety and Security for Residents: How To Identify Your Role**

An Exclusive Special Report  
from [HOAleader.com](https://www.hoaleader.com)

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HOAleader.com's attorney editors and experienced journalists constantly research the latest developments in HOA law affecting homeowner and condominium associations across the U.S. Then we publish plain-English analyses of what those developments mean to you as an HOA leader, and what you need to do now to comply with HOA laws, steer clear of legal trouble, avoid or resolve conflicts within your homeowners association, make HOA management easier, and safeguard your community association's property values and quality of life.

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The screenshot shows the HOAleader.com website. At the top is the logo with the tagline 'THE PRACTICAL GUIDE TO HOMEOWNER ASSOCIATION MANAGEMENT'. A navigation bar includes links for Home, Browse by Topic, Discussion Forum, Research, Search, and Member Log-in. The main content area features a large orange sidebar on the left with a sign-up form for a 'FREE HOAleader Tip of the Week' and a search box. The central article is titled 'Practical Advice for Condominium and Homeowners Association Leadership' and lists target audiences such as board members and association managers. It includes a 'Start Your Free 7-Day Trial' button and a 'Browse by Topic' link. On the right, there are sections for 'FREE WHITEPAPERS' (with a link to 'HOA Finances') and 'SPONSORED LINKS' (with an advertisement for 'Is your community reaching its potential?').

# A Message from the President

Dear HOA Leader,

What if there's a burglary within your community? What about a sexual assault? A murder? Those can be tragedies, but they also happen outside community associations, so does that mean you don't have to think twice about how crime might affect your community?

Actually, it's complicated. In this comprehensive report, *The Duty of Condo/HOA Boards to Provide Safety and Security for Residents: How To Identify Your Role*, we've sought the advice of legal and community management experts nationwide. The communities they advise have faced nonviolent and violent crime, and those communities have turned to those experts for guidance on this challenging issue.

We're confident the information in this report will help you begin to identify your duties when it comes to community safety. We're also confident it'll provide new and unique ideas and tools to help you navigate this difficult responsibility.

Now, more than ever before, you need to be proactive about the possibility of violence and unrest affecting your HOA while still being sensitive to residents' peaceful assembly rights.

In this report, you're getting concrete, helpful information, including:

- What is your condo/HOA's responsibility for preventing crime?
- The risk of condos/HOAs doing too much on safety and security
- When residents want to create a neighborhood watch in your condo/HOA
- Can your condo/HOA owners go too far with their security measures?
- 7 ways to better spotlight your condo/HOA lighting
- 5 new technologies and tactics condos/HOAs are using for security
- 4 steps for responding to incidents in your community
- And more

Our mission is unchanged: Here, we offer you useful information in our characteristic clear, plain English that's easy for you to adopt in your association.

As always, when it comes to issues of legal compliance for condos and HOAs, it is important to remember that each state has its own rules, and you should consult with an attorney or other professional as to the appropriate steps for your specific situation.

Our goal for this report, as for all [HOAleader.com](https://HOAleader.com) information products, is to help make your association a better run organization and help make you a better leader for your community. I am confident that you will find concrete ideas you can put to work in your condo or homeowners association.

To find more HOA governance tips, visit [HOAleader.com](https://HOAleader.com) today.

Best regards,



**Matt Humphrey**

President

Plain-English Media

Publisher of [HOAleader.com](https://HOAleader.com)

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# What Is Your Condo/HOA's Responsibility for Preventing Crime?

Before you install a camera, hire a roving guard to patrol your property, or send notice to your residents of a crime in your area, you first need to know the extent of your responsibility as an association to address safety and security for your community and its residents.

Frankly, that's a tough one. Different experts will offer different interpretations of the laws and governing documents in their area when it comes to the duty to provide safety and security in a community association.

## **Not your job, some say**

Some experts say this isn't a role for community associations. "I can make this short by saying that the purpose of a community association is to protect and maintain the association's common area component," reports [Mary Arnold](#), CMCA®, AMS®, the Austin, Texas-based vice president of operations of the community manager success group at Real-Manage, an [association management firm](#) headquartered in Dallas, Texas, that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas. "You don't see anything in that statement about security, right?"

"In general, unless it's in the community's documents that they're responsible for providing some level of security, that's not their job," she continues. "That's what the police are for. Another example is an association that might take on the responsibility for tracking registered sex offenders, but then they miss one. Imagine the liability they take on."

"An association is a nonprofit," she stresses. "Its job is to maintain the common areas and enforce restrictions. The association has no responsibility for preventing crime."

That's also the view of [David Firmin](#), managing partner at Altitude Community Law PC in Lakewood, Colo., with satellite offices in Loveland and Colorado Springs. "Generally, the association has no responsibility," he says. "As set forth in the Colorado Common Interest Ownership Act, associations must protect property values and govern the community as a whole. The Uniform Common Interest Ownership Act also includes a statement that community associations aren't created to prevent crime."

That's generally consistent with premises liability and other laws that apply independent of their context within community associations. "The primary responsibility always lies with the homeowners using common sense, such as locking their doors, locking their windows, and being aware of their surroundings," explains [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC in Edina, Minn., who advises homeowners associations. "The owner or operator of a property isn't an insurer or guarantor of the safety of its premises and can't be expected to prevent all criminal activity."

## **From there, it gets complicated**

Still, you've certainly seen communities with key fobs, gates, and guard houses, so how do they fit in? That typically comes down to particular provisions in specific governing documents, where some communities have expressly included this responsibility in the list of duties the association will agree to take on.

"There are associations that will assume this duty, such as a gated community," says Firmin. "Or you'll also see that typically in a high-rise building, where you have fobbed entries. Those associations have assumed the duty.

"Often they'll have stated purposes," he explains. "They state that they'll provide a front desk or maintain the gate under a reasonably prudent standard, and they won't be responsible for breaches of that duty. There's no guarantee, and you can't assume 100 percent that owners are adhering to your policies, such as not letting in the person behind you in without a key. It happens because it's general nature to hold doors for others."

That's also the case in Michigan, where the law holds that if your community has undertaken a duty to handle safety, it must act competently in fulfilling that duty. "There's an offshoot of premises liability in Michigan, and it's called negligent security," explains Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA. "Basically, it can come up in the context of condos, rentals, and commercial properties. Under it, associations don't have the duty of safety, but if they undertake the duty, they must do it competently."

## **Check your governing documents**

In addition, under some provisions in your governing documents, you may be obligated to act if certain situations arise. "In most governing documents for both condos and HOAs, there are provisions saying that no immoral or illegal activity may take place on the premises," notes Wloszek. "They might also say there can be no nuisances or no noxious behavior."

How does that apply to safety, security, and specifically crime? "If the association is aware illegal activity is happening in a unit or home, then under those provisions, there's a duty on the association's part to enforce the documents as written," asserts Wloszek. "I know of a subdivision in a well-to-do area in which one of the residences was basically a drug house. People would stop into this very nice home and buy their drugs.

"The association became aware of the issue when one of the owner's sons — who was purchasing drugs from this home — disclosed the fact that this was his drug house of choice," he recalls. "Once the association became aware of the issue, it involved the local police, and the police took down this house.

"The question is: Did the association have an obligation to inform the police of this activity?" posits Wloszek. "Yes, under their governing documents, they did."

Associations may also learn of criminal activity in other ways, and their duty in those situations would also depend on the governing documents. "Also, we had case where an individual was using a basement in a house for a marijuana grow operation," he recalls. "The electricity for the community was shared, and electricity use went through the roof. Residents started asking: Why are we suddenly paying all these costs?"

"The governing documents had a waste provision, which meant the board had a duty and obligation to find out who was responsible for the spike in electrical usage and why," states Wloszek. "They told all homeowners that something wasn't right, and they made a request of them to check their electricity usage. One unit refused access, which was a dead giveaway. Again, the association got the local police involved."

### **A contrary view**

Though he's not a lawyer, one expert with a decade of experience in the community association business, and he's not so cautious. "I think whatever boards want to do is fine," says [Bill Worrall](#), vice president of FirstService Residential in Hollywood, Fla., which manages 1,300 condominium and homeowner associations totaling 310,000 residential units.

"I've heard the arguments from attorneys," he admits. "And you know who else argues that communities shouldn't take on security? It's the attorneys for developers. When they're building a new community, they're very careful in their marketing materials describing 'security.' What does security mean? It's about how you describe security and what you promise.

"We manage a condo, and it happens to be a marina, too," explains Worrall. "Each boat slip is a condo unit. As you can imagine, it's more open than a regular community. A thief can come in through open water on a rowboat. Recently, we had some issues, and we went the technology route. It was mostly cameras that were installed, and we added an extra guard, more hours of roving cars, and more lighting.

"From there, we were able to give images and data to the police department, and they were able to make arrests and secure convictions," he states. "In no case were we fearful we were going too far. That was a decision the board made, and they made the decision based on realty and the facts, in addition to complaints and concerns from unit owners."

### **Where it becomes easy: You're not qualified**

Whatever your state law, it's important to remember what not to do, advises Molly Peacock, counsel at Rees Broome in Tysons Corner, Va., who has represented condos and HOAs for nearly 15 years. "It's sort of like when you're looking at a photo," she explains. "Let's make sure we're aware of the negative — I don't mean bad stuff. I mean be aware of what we're not supposed to do.

"We're not supposed to be the police," says Peacock. "We're not equipped. We don't have the knowhow or training, nor are we entitled to be the police. Associations aren't supposed to be in charge of owners' and residents' safety.

“But here’s what we can do, and that’s to always be mindful and to do what we can to improve safety,” she states. “Whenever the issue of safety or security is discussed by the board, the board should say these two things: ‘We can’t and won’t certify to you, the residents, that we’re going to look at your safety in any meaningful way like the police and you yourself are supposed to do. That being said, we’ll do what’s reasonable to improve everything, from the lighting to the flowers and landscaping, as we best we can.’”

# The Risk of Condos/HOAs Doing Too Much on Safety and Security

You get it: In most states and under most governing documents, it's not your duty to wrap safety into the basic bundle of services you provide residents.

But what's the harm if you do? The harm is that you may be increasing the liability your association faces, and the level of service you provide on that front can become a very slippery slope.

## A false sense of security?

Ask any lawyer about preventing criminal acts in community associations, and they'll tell you how worried they become when their clients want to do that. A seemingly common-sense move may end up costing the association a lot of money.

"If you take on too much, you're increasing liability," reports [David Firmin](#), managing partner at Altitude Community Law PC in Lakewood, Colo., with satellite offices in Loveland and Colorado Springs. "It's the proverbial case of assuming a duty of security, and therefore other people may not take it seriously among themselves."

That's also a concern of [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC in Edina, Minn., who advises homeowners associations. "Boards ask, 'Can we put up a sign that people are under surveillance?'" she explains. "With fake signs, associations may be seen as giving the impression that they're taking on more responsibility than they are. It's not like a homeowner putting up a fake camera; that's on them. But you've got the question of whether homeowners are reasonably relying on your efforts."

You can also take on something you have no business attempting to accomplish. "About 10 years back, I attended a law seminar, and an Indiana lawyer had drafted an amendment to the governing documents banning sexual predators from the community," recalls [Mary Arnold](#), CMCA®, AMS®, the Austin, Texas-based vice president of operations of the community manager success group at RealManage, an [association management firm](#) headquartered in Dallas, Texas, that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas. "He thought that was enforceable, and I don't know how he thought that was enforceable."

"I've also seen communities that say they want to identify sex offenders, and I think that's wrought with peril," adds Arnold. "What if you're wrong? Those lists aren't perfect. And what if you miss somebody? Also, if a person is out of prison and complying with their mandate, whatever that may be, we shouldn't be an additional barrier to them. They probably have to notify people, anyway, so it's not the association's job. I don't like the practice."

## If you do it, do it right

You also have to make sure you're doing correctly whatever you do. "We had a lawsuit where an association installed cameras, and someone died in the pool," recalls Firmin.

“Family members sued the association claiming that because the association had a camera on the pool, someone should have seen their family member floating unresponsive.”

Firmin also mentions the California case [Frances T. v. Village Green Condos](#), which HOAleader.com has [covered](#). Residents in that community complained to the condo board about cars being broken into and people hanging out in the dark. After her own unit had been broken into, Frances T installed a spotlight over her patio doors, but the board forced her to take it down. Frances T was later raped after an assailant broke into her condo. In a lawsuit against her association, Frances T contended the forced removal of necessary lighting enabled her attack.

The appellate court held that the facts in that case were sufficient to show the existence of a duty on the association’s part and that the association may have breached that duty by failing to respond in a timely manner to the need for additional lighting and by ordering Frances T. to remove her lighting. “By forcing that resident to remove the light, the association essentially assumed the duty to protect her,” argues Firmin. “Aside from the bad stuff that can happen, as in that case, you as an association have opened yourself up to liability.”

You’ll find cases with similar liability for associations in other states, too. “I read about a case where a woman came into a parking garage below the condo she lived in,” recalls Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA. “The condo association had installed dummy, or fake, security cameras to try to deter potential criminals.

“A man came up to the woman and physically assaulted her, and she thought she was protected in the sense that the association would have his face on their camera,” he notes. “Lo and behold, there was no video. She sued her association and won under the theory of negligent security.

“Very rarely am I dealing with a ton of premises liability issues, but this can happen in condos,” says Wloszek. “By having the security cameras, you’ve assumed a duty. This association didn’t have one previously, but by putting up these fake security cameras and by not having them connected and working, that association became liable for damages caused by its negligent security.

“I advise my clients that if they’re going to implement a security program or system, they have to do it uniformly to make sure they’re not opening the association up to greater liability for duties they wouldn’t ordinarily have,” he notes. “They don’t have this duty, but if they undertake the duty, they must do it competently.”

### **How far should this go?**

Firmin offers another example of how this concept of providing security can go awry based on an incident in which a criminal appeared on an association’s premises.

“In this particular community, there’s a reminder message sent annually, and it’s discussed at the annual meeting,” notes Firmin. “The message is that residents live in a semi-secure building, but it’s not perfectly secure, and residents can play their part in keeping it secure.

"Then, someone did get into the building and committed a burglary," he explains. "The burglar was finished and on their way out, and the owner saw the burglar leave. The front desk got notified, and employees were waiting at the elevator. They'd called the police, but they also tried to delay the burglar's departure until the police got there by asking him, 'What are you doing?' and walking in front of him. And the bad guy pulled a gun.

"At that point, it comes down to the training," says Firmin. "What do you train your employees for if your association has that type of setup? What are you telling your employees to do? Do they stop the bad guy? Are they affirmatively policing? I really don't want our clients' employees carrying weapons.

"I think the better action is to train employees not to stop someone in that situation," he advocates. "For their own employees' safety, I think associations should train their employees to let that person go. Also, if the bad guy shoots the employee, the employee's family then has a lawsuit against the association arguing that the employee wasn't trained and that safety wasn't in the employee's job description. Moreover, what if they wrestle the burglar to the ground, and then the burglar sues the association claiming a use of excessive force?

"So my response would be no, this shouldn't be an association responsibility," Firmin concludes. "However, if the board wants to bring in an independent company that's professionally trained and providing security is in its job description, that's a better choice. But I'd require that the security company have indemnity provisions in their contract. It's not the association's function to provide armed security."

## **How to know what you can do**

So where exactly is the line between doing what's reasonable and taking on too much liability? That will depend on your state law and your governing documents.

"I don't see boards going too far too much because of the cost, to be honest," says Polomis. "I don't generally see boards wanting to do more than I'd recommend because all those lights, cameras, and other tools cost money.

"That said, if a court in Minnesota were evaluating this issue, I suspect they'd start from the landlord-tenant standpoint, and the standard there is what a reasonably prudent owner or operator would provide under like circumstances," she explains. "That's very fact dependent.

"Things to consider might be the location of property, the feasibility and cost of various security measures, and the risk of personal harm the owner-operator, in this case the association, knows or should have known would happen," adds Polomis. "I know of one association in close proximity to a commercial property with a lot of pedestrian activity. Someone from that area broke into a home violently, and the association didn't have security cameras on that side of the property.

"Yet I don't believe the association would have any liability in that case," she opines. "These were single-family homes, so the association would probably have even less responsibility than in a condo community. In conversations with police officers, they've stated to me that cameras are a deterrent to crime, but they shouldn't be relied on to

catch criminals. Associations can't necessarily turn a blind eye to potential risks, but they're also not Big Brother, and they're not the landlord of owners."

As Polomis notes, your responsibilities will depend in part on the physical setup of your community. "Security is a tough one," admits [Bill Worrall](#), vice president of FirstService Residential in Hollywood, Fla., which manages 1,300 condominium and homeowner associations totaling 310,000 residential units. "Associations have to start with real-life, boots-on-the-ground stuff like what are the characteristics of their community?"

"Do you have a guard house or not?" he asks. "What's the perimeter of the community like? Is it totally open? Fenced? Some communities are wide open, and there's not a whole lot you can do when the general population can cut through your community. A community that has a staffed guard house, a big budget, and roving guards, has a much higher responsibility to prevent crime than a community that doesn't have all that.

"Once you know your physical characteristics, I think you then want to hire a security consultant — we have one on staff of our management company — to give you recommendations," advises Worrall. "Those are almost all of the time about preventing access or access control. Then you can take that plan and look at what its components would cost and go from there."

# When Residents Want to Create a Neighborhood Watch in Your Condo/HOA

We'll be honest: When we asked our experts neighborhood watch groups, for several of them, the first words out of their mouth were "Trayvon Martin."

For those of you who may have forgotten, Martin was a 17-year-old visiting his mother at a gated townhome community in Florida on Feb. 26, 2012, [when he was shot](#) by a neighborhood watch group volunteer, George Zimmerman. Martin died, and in July 2013, Zimmerman was acquitted of criminal charges stemming from Martin's death.

Many of the details are disputed. For instance, Zimmerman has been identified in the media as a neighborhood watch "captain" and in other reports as a "volunteer." The community association in which Martin's death took place, The Retreat at Twin Lakes in Sanford, has never publicly commented on the incident.

However, it reportedly [settled](#) a wrongful death lawsuit with the Martin family in April 2013 for an undisclosed amount. Because the community's leaders and legal representation have never spoken publicly about the issue, other community associations can only speculate on the truth and the effect of this incident on the community. But it does make our experts wary of neighborhood watch groups.

## Neighbors want to be involved

It's always great when residents are invested in a community. But let's be honest, that doesn't happen as often as board members like.

"We honestly don't see a lot of requests to form neighborhood watch groups because it's hard to get the volunteers," states [Bill Worrall](#), vice president of FirstService Residential in Hollywood, Fla., which manages 1,300 condominium and homeowner associations totaling 310,000 residential units.

But they do exist, and it's entirely possible you'll face a request from homeowners to create such a group. Our experts advise a careful approach.

"Proceed with caution," advises [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC in Edina, Minn., who advises homeowners associations. "Personal biases can lead to tragedy, and perhaps liability, of the HOA. So I wouldn't recommend that the association have any oversight of that committee."

That's also the thinking of Molly Peacock, counsel at Rees Broome in Tysons Corner, Va., who has represented condos and HOAs for nearly 15 years. "Let's say the board becomes very energized to become the neighborhood watch," she says. "Unfortunately, we've seen it seeming to suggest to people that they can engage in an altercation or physical violence in the name of safety. It can also embolden people who might have

a misunderstanding that they're just like police and that they're even HOA-sponsored police.

"That's a risk of being unclear about the fact that the community association isn't the police department and that if residents see a crime, they should call the police immediately," she adds. "Boards should tell residents that residents can inform the board about crime they've witnessed or experienced. There may be a way under the civil law the board can do something, or perhaps it can notify residents. But we can't and aren't going to be law enforcement."

## **The best approach**

If you're considering or asked to form a neighborhood watch group, our experts prefer distance, though they differ somewhat on how much distance to seek.

"For our associations, we recommend candor when it comes to security issues," suggests Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA. "Maybe you have a monthly newsletter, so you might want to put out there that there's a group of homeowners who've decided to create a neighborhood watch group, and should owners wish to join, they can contact so and so neighbor. What you're saying is that this isn't a group under the association's umbrella, that it's separate."

That's also the approach [David Firmin](#) would recommend. "I think it's fair to say that the board can't participate," says the managing partner at Altitude Community Law PC in Lakewood, Colo., with satellite offices in Loveland and Colorado Springs. "If they want to issue a statement that there's a group of owners who are interested in putting together a neighborhood watch and that owners should contact these people, that's fine. Otherwise, that's it for the board."

Firmin also mentions [National Night Out](#), an event to raise awareness of community policing. "I also don't mind board members on their own participating in National Night Out, but I think they should have someone else doing the legwork and planning the event, and no association funds should go to the NNO event. I've also seen a bunch of meetings where the neighborhood group, not the board, brings that NNO coordinator out as a guest speaker."

Board member participation is truly a challenging issue, and Polomis is a little more conservative than Firmin on that front. "I'm torn because the sentiment is laudable," she states. "Regardless of whether a board member is sitting at a board table or at her coffee table, anything she does or says is going to be attributed to her as a board member of the association. Putting on my attorney hat, rather than an ethical person hat, I'd discourage it."

She does believe you might get some good guidance by contacting your municipality. "I'd suggest the interested homeowner contact the city," advises Polomis. "Sometimes cities have organized programs and signs they'll give to the neighborhood. They might also have police officers come out and do some training — all of which is great. But I wouldn't want the association overseeing and directing that because that could create significant liability."

What if your owners get frustrated with your hands-off approach? Point back to your governing documents. "I suggest boards get together with local law enforcement, who can talk to interested homeowners and give them guidance," recommends [Mary Arnold](#), CMCA®, AMS®, the Austin, Texas-based vice president of operations of the community manager success group at RealManage, an [association management firm](#) headquartered in Dallas, Texas, that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas.

"But I'd also tell them not to get angry if the board doesn't put together a neighborhood watch," she adds. "If the documents don't call for it and you want to change that, then you have to modify your documents."

### **Maybe start with a discussion**

Though she advises distance, Peacock has additional thoughts on this challenge. "I'd say, number one, 'Let's have a meeting, neighborhood watch advocates,'" explains Peacock. "At the meeting, I'd ask: 'Am I correct your goal is to reduce crime?' Of course, the answer will be yes.

"I'd then advise them that, as a lawyer, I've heard from a few different boards who've told me that their local police have discouraged boards from inviting or organizing a neighborhood watch because the police say they've been counterhelpful," she adds. "It's not that law enforcement is hearing complaints, but they say a neighborhood watch doesn't achieve the objective its members think they're achieving.

"That's from local police in Virginia whom I've talked to about this recently," notes Peacock. "That's pretty locality specific, and maybe in Washington, D.C., the police would encourage the right neighborhood watch, whatever that might be.

"The bottom line is that the third party in the room that's an essential entity in the discussion of whether and how we do a neighborhood watch is your local law enforcement," she contends. "I think they should be at a meeting at which you discuss this. Or maybe we do a field trip to the police department to make it convenient for law enforcement or to at least solicit feedback from them on whether we should do a neighborhood watch.

"Unless there's a member of law enforcement on the board or on the neighborhood watch who has the expertise or knowledge that's essential to understanding the putative purpose of a neighborhood watch, the board should seek that input," advises Peacock. "You want to know what would be achieved by adding a neighborhood watch or, going the other way, whether it would invite more crime or liability such that it's not worth the effort."

Peacock's position on this has changed over time. She used to advise boards to be completely hands off from a neighborhood watch. "It's a subtle change because if somebody is energetic enough, the challenges can be resolved," she states. "My concern is how you truly separate the HOA from a neighborhood watch.

"Perhaps even the Trayvon Martin case had twists and turns in the way that case was reported so that it ended up being misleading," Peacock wonders. "Maybe the person who killed Mr. Martin was on a sanctioned neighborhood watch. That's what we're led to

believe. But I'm not sure it was sanctioned or not. What if it wasn't, and the association got buried anyway?

"Also, I'm not sure it's totally possible to truly separate the concept of the neighborhood watch from the HOA," admits Peacock. "So I'd rather have the board educated on the whole process than to just say, 'No way, we're not going to do it.' I think it's better to have a study in which you talk to a police representative to educate you. Then, if it's viable, you should address what you should do to make sure there aren't more risks? But if you don't have the energy or interest to consult with police, then don't do it."

### **Should you care if owners carry guns?**

The idea of a neighborhood watch member carrying a gun isn't outlandish — Zimmerman did.

So what if your owners want to carry a gun on a nonHOA sanctioned watch? Remain hands off, for the most part, say our experts. "If it's not sanctioned by the board, the board wouldn't have any governance over it," states Arnold.

That's also simple for Wloszek. "In Michigan, we have concealed carry," he states. "If residents have the right to carry guns, from our perspective, we're indifferent. As long as they're acting legally, the association doesn't get involved. Is it a smart move for neighborhood watch members to carry guns? Debatable. Is it smart of the association to get involved in that debate? No."

That's a similar approach to Firmin's. "At that point, I can't do anything about it because they're not part of the association," he states. "A neighborhood watch is supposed to operate by calling the police if they see something going on. If they're walking around armed, they're doing it on their own, though I may ramp up the disclaimers to make it clear we have nothing to do with these people. I might say, 'While they may be your neighbors, they're not representing the association.'"

Peacock might do the same. "I think the board should get ahead of the matter by issuing a statement that indicates that the board knows there will be a neighborhood watch, and the board wants it to be clear the board isn't associating itself with the neighborhood watch and doesn't endorse or sanction it," she explains. "I'd be delicate on how to phrase it because you don't want to fully condemn what seems a noble effort. And maybe I'd repeat that message on a yearly basis."

### **Disclosure might be wise**

You might also want to let your residents and law enforcement officials know about armed patrollers, both for their own safety. "You may not be able to prohibit residents from having guns," says Polomis. "But I might suggest the board call the police and have a conversation about it so the police are aware people are out there patrolling with guns."

"I think a board would be hard pressed to get anyone to leave their gun at home," she admits. "But as a homeowner, I'd want to know if my community was being patrolled by residents with guns, especially if I have children or if I'm, to be diplomatic, not like the others in the community."

Alerting law enforcement also seems wise to Peacock. "If the board has knowledge that there might be active citizens who are armed and who feel like they might be local police, the board might want to contact the police privately," she suggests. "The board might say, 'This is what we know. We've discouraged the neighborhood watch, and we expect and hope nothing bad will happen. But we're worried about this and want you to know about it.'

"It's also tempting to say that the board should contact their insurance company," adds Peacock. "But you should at least check that your insurance is good. You just might want to be on record, so to speak, creating a paper trail somewhere telling people that a representative of the neighborhood watch might be armed. You're essentially saying, 'We disagree with what you're doing. We think crime fighting in a potentially deadly way should be handled by the police only. But we know you have your right. And we want you to know what our position is.'"

Peacock is exactly right, that many Americans legally carry guns, and they may not be doing anything improper by doing so in your community. That's especially true in Firmin's neck of the woods. "We're still part of the west, and concealed carry is a thing here," he says. "We have a rural county here in Colorado that was ranked number two in the state for concealed carry, and the sheriff showed up and said his mission was to get it to number one. There are definite and philosophical differences among residents and among states. But that shows you what an association can do.

"I was talking to a manager, and I know this is anecdotal, but her standard boilerplate for a document amendment is, 'No guns in the community,'" states Firmin. "I thought: How are you going to enforce that? You're going to tell someone that something that's legal is something they can't have in their house?"

# Can Your Condo/HOA Owners Go Too Far with Their Security Measures?

“What we’re seeing more and more is the Ring doorbell,” reports Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA. “Homeowners are getting them because of packages being stolen. They provide a great extra layer of safety for the community because they pick up things that otherwise wouldn’t be picked up. It’s a good prophylactic.”

Many people would agree with Wloszek, but also picture this: With the rise of Ring and other camera systems, and especially the social network they often provide, you could see an alert that could become a powerful and virtual neighborhood watch: “Watch out for this guy who stole a package off my porch.”

That can really be effective.

Less effective and potentially challenging if it’s somehow tied to your community association is another common type of alert: “These strangers were hanging out on our street; they look suspicious.” That can be especially worrisome if the strangers are a different race from many in the community.

All of this leads us to this question: Are there homeowner security measures your community should be concerned about? If so, how can boards best deal with them?

## **Not your equipment, not your worry**

Our experts aren’t particularly worried about owners’ efforts to beef up their security, though there can be a few isolated issues.

“An online network like the one Ring has isn’t an association media, so the association can’t control what’s on it,” says [Mary Arnold](#), CMCA®, AMS®, the Austin, Texas-based vice president of operations of the community manager success group at RealManage, an [association management firm](#) headquartered in Dallas, Texas, that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas.

“From an association perspective, it doesn’t worry me,” agrees Wloszek. “If people are communicating to each other on Ring or other social media, as long as the association isn’t running a Facebook group that people are communicating in such a way on, it’s not really a problem. That’s typically what we recommend to our clients: Stay out of it. It’s not worth the potential liability from comments being viewed as coming from the association.”

Also not particularly concerned over owners adding security is Molly Peacock, counsel at Rees Broome in Tysons Corner, Va., who has represented condos and HOAs for nearly 15 years. “I haven’t had any trouble with homeowners using Ring, and I think we welcome it.

"In my opinion, any potential unintended negative consequence would be on the homeowner," she opines. "Let's say the homeowner films something bad; they'll be the recipient of any subpoena. I also think it would be helpful to have some sort of monitoring that's privately sourced. So far, things have been really peaceful with regard to homeowners stepping up and installing such systems."

### **Where it might become an issue**

The catch is that even if you've distanced yourself from private online community, if there's a problem, you can still be sued, no matter how weak the claim is.

"The association always gets brought into lawsuits because it's got the money," admits [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC in Edina, Minn., who advises homeowners associations. "Although I can see someone trying to pull the association into a lawsuit, at the end of the day, if it's a completely separate network from anything involving the association, I'd be hard pressed to see the association being held liable."

"But I'd certainly be reminding board members about what they might post," she states. "It may sound very innocent to them, but that could be interpreted very differently. If they say there are 'suspicious-looking characters,' what makes those people look suspicious? Is it because it's 2 a.m.? Or is it because they don't dress like we do? That's subject to interpretation."

Polomis also hesitates to reject owners' requests when they ask to erect signs for security reasons. "We've seen posters and signs that announce: 'We share video with local police,'" she explains. "Again, associations can't regulate absolutely everything. Some do have provisions in their decs that say there can be no signs except for-sale signs, in which case that sign would be a violation. That would be the cleanest way to deal with the issue."

It's important to remember that our experts aren't saying that owners can add whatever they want without following your normal procedures. "Of course, whatever owners install needs to conform with architectural guidelines for additions and alterations to the property," Arnold states. "And a neighbor shouldn't point a camera at another person's window. But again, that's between them."

You might also run into trouble by denying reasonable requests. "One question I get is when homeowners want to put a camera facing toward his own door because he claims packages are being stolen, people are stalking them, or what have you, or they've already put up the camera," explains Polomis. "Then the board calls me about it."

"There are always privacy issues," she notes. "Ultimately, as long as the installation isn't going to damage the exterior, if the association maintains the exterior of the property, and that equipment is focused solely on the homeowners' property, I'd be OK with it."

"The flip side is if they ask and if they've shown a legitimate reason for the request and then you say no — and then something happens," according to Polomis. "The logical conclusion for the homeowner to reach is that it happened because you didn't let the owner have a camera. Or that they'd know who did this thing if you'd have let them install equipment."

You might also see privacy issues in condo communities, according to [Bill Worrall](#), vice president of FirstService Residential in Hollywood, Fla., which manages 1,300 condominium and homeowner associations totaling 310,000 residential units. "I don't see pushback on Ring and other camera systems in HOAs with single-family homes," he explains. "But in a condo, that's where you're taking pictures of people walking up and down the halls."

"In condos, where we're seeing owners saying they want a Ring or other camera system, there are so many issues, and we haven't worked them all out yet," he admits. "One is architectural modifications, such as changes to the door jamb. The other is potential privacy issues. That's become a little challenging, but we'll figure it out."

And, of course, there's always someone willing to take an issue in a direction you didn't expect. If your association is on social media, owners can say things you don't approve, which can increase your liability. Wloszek suggests his clients take steps to reduce that risk.

"Let's say you have an association Facebook page, I'm pretty sure there's a setting that prevents comments being added or posts being made unless a moderator approves them first," he explains. "If an association wants a Facebook page and wants to send out notices that way, they can limit the settings so that no posts can go through unless they're approved by a monitor, which could be the board or a committee created by the board."

"That's why we tell our clients it's not smart to have your Facebook page open to the public," adds Wloszek. "All communications on the Facebook page should come through the board. They make the statements themselves, such as: 'Here's information on our upcoming annual meeting.' 'Here are our governing documents.' And they should restrict people's ability to allow your community Facebook page to become a gripe fest or a place that could incur liability because someone in the community has said something inappropriate."

## **Beware tools for enforcement**

Finally, beware of allowing owners' equipment become tools for violations enforcement. "The Ring camera and other technology like that could become a problem from the point of view of it being used for covenant enforcement," says [David Firmin](#), managing partner at Altitude Community Law PC in Lakewood, Colo., with satellite offices in Loveland and Colorado Springs. "Neighbors will complain about what another neighbor has done because they've caught it on their camera."

"In Colorado, it's illegal to record audio without the consent of one of the participants of the conversation, and by definition, if you're not there, you're not participating," adds Firmin. "That's technically the crime of eavesdropping in Colorado. So when a client wants to install cameras that record audio, I hesitate and have to dissuade them of that for that reason."

That's a concern in Michigan, too. "Do associations have the issue of wiretapping since some cameras are coming with audio?" asks Wloszek. "Can you communicate from afar with the person there? If you have security cameras that record sound, are you in violation of the penal code in Michigan with regard to wiretapping? That's an interesting issue and one not addressed yet by the courts. But as technology and sound quality gets better, that will become more of a concern."

# 7 Ways to Better Spotlight Your Condo/HOA Lighting

Ask any community association expert, and they'll tell you that one of the smartest ways you can provide a better experience at your community is with the effective lighting.

"There's nothing sexy and exciting on lighting — it's still the same as always," reports [Bill Worrall](#), vice president of FirstService Residential in Hollywood, Fla., which manages 1,300 condominium and homeowner associations totaling 310,000 residential units. "All these areas in your community need to be as well-lighted as possible. The good news today is that the investment is so much less than in the past because of LEDs. So good lighting is easier to achieve than ever before."

Here are seven ideas to ensure you're using lighting smartly in your community.

**1. Remember that lighting is a frontline issue.** "This is basic, but I recommend that dark spots be lit," says [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC in Edina, Minn., who advises homeowners associations. "Sometimes running electricity to places like the remote areas of the parking lot can be cost prohibitive, but the biggest deterrent to burglary and robbery, I'm told, is light. If you have your community reasonably well lit, you're going to deter people because they don't have anywhere to lurk."

And remember, she says, lighting can help you in other areas of community association management. "There should be lighting in places like garages also to prevent personal injury," says Polomis. "Somebody will fall and get hurt, and then they'll call their lawyer. It can also highlight ice and snow, which can help prevent injuries, too."

Worrall agrees. "If I could make any recommendation, I'd say boards should start with lighting first, and there they should start with their perimeter," he notes. "I've seen communities spend a whole lot of money on technology for security only to find out after an incident occurred that the technology didn't perform well because the community didn't have the basics like lighting in place."

Another proponent of spending some time on lighting issues is Molly Peacock, counsel at Rees Broome in Tysons Corner, Va., who has represented condos and HOAs for nearly 15 years. "I've seen boards tweaking their budget and find commonsense ways to do things like improve lighting and erect signs, and it's worked," she says.

**2. Get advice from experts.** "Contact a lighting expert and ask that person to do an analysis of where lighting should go in the common areas only," recommends [Mary Arnold](#), CMCA®, AMS®, the Austin, Texas-based vice president of operations of the community manager success group at RealManage, an [association management firm](#) headquarter-

tered in Dallas, Texas, that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas. "Then follow that expert's advice."

**3. Carefully consider residents' requests.** Your owners and residents often have good suggestions for adding lights, though not always. The key is to take each request seriously. "Evaluate those on a case-by-case basis," advises Peacock. "Let's take the case of a homeowner saying that it's really dark in the common area near their home and that it's an invitation to crime. Most courts wouldn't require the board to light up a private person's lot for the sake of safety and security."

"Before doing nothing, I'd hope the board has looked at the area, talked to their lawyer, made sure they understand the cost of adding lighting, and determined whether there's merit to the statements of the homeowner," she states. "A major objection to lighting is commonly the cost. I've encountered dozens of situations that involved lighting, and boards have been able to fold that lighting plan into improvements in a way that makes the additional lighting affordable."

"In one case, the board member called a manufacturer and got a great deal," recalls Peacock. "Sometimes the cost can be cleverly investigated and reduced by a board. You have to weigh the benefits, but it seems to me that most of the time additional lighting is a great benefit and worth paying for, and boards can often get the cost to a palatable level."

**4. Let willing owners do their part.** If owners are asking to add lighting to their property at their own expense, do all you can to accommodate those requests. "I think if there's someone saying an area is dark, and they're willing to add lighting on their own, let them do it," contends [David Firmin](#), managing partner at Altitude Community Law PC in Lakewood, Colo., with satellite offices in Loveland and Colorado Springs. "Is what they're asking to do really that architecturally heinous? Is a motion sensor light really going to cause problems?"

"I get that some boards want to maintain architectural cohesiveness," he admits. "But I ask them: 'What's the real problem?' And I try to walk them through the issue. A little common sense goes a long way."

**5. If you're worried about brightness, try motion sensors.** "I've heard boards say, 'Do we really want all these lights on all night?'" reports Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA.

"I tell them they can have lighting that's motion sensor based," he notes. "One of my clients came up with motion-sensored lights, and the police officer involved in the community said those can surprise a burglar or someone trying to do something inappropriate. So remember, when you're talking about lighting, it doesn't have to be permanent but can be surprise or motion-based and still provide an extra level of security."

**6. Don't forget the basics.** "Have your existing lighting in the common areas regularly checked, such as every other week, and be sure to check it at night," advises Arnold. "Don't wait for something to happen or for some homeowner to report it. Also advise owners to keep their porch and patio lights on as a really good, additional deterrent to crime."

**7. Contact your municipality.** "I've often had owners or residents say they want more street lights," reports Arnold. "A lot of times, that's city property those residents are asking for more lighting on, and the HOA can't control that. I suggest residents get together and go to a city council meeting to ask for that additional street lighting."

# 5 New Technologies and Tactics Condos/HOAs Are Using for Security

Cameras are so yesterday! Actually, they're not. They're getting better and better, and they're being supplemented with other tools at condos and HOAs nationwide.

Here are five things our experts are seeing on the tech and other new-idea front, along with their advice on how to effectively deploy this technology.

**1. Cameras and keys** — "I think my clients are mostly relying on security cameras and key fobs — stuff that's been around for a while," says [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC in Edina, Minn., who advises homeowners associations.

The news with cameras is that they're getting more sophisticated. "Camera system companies are adding infrared so the cameras will better work at night," reports [Bill Worrall](#), vice president of FirstService Residential in Hollywood, Fla., which manages 1,300 condominium and homeowner associations totaling 310,000 residential units.

"Cameras have to be functional at night as well as during the day, and this also ties into the conversation over lighting at a community," he says. "If you have poorly lit areas and you can't get clear images at night, the camera system isn't effective. These are more expensive cameras with digital infrared technology, so they produce the images the police department needs."

**2. Drones** — "Drones are here, and boards are purchasing them for their communities," says Worrall. "I don't yet have an opinion on them because we haven't seen them long enough. But the concept of using them makes sense.

"The footage has to be stored, but the drones are supposed to send an alert when something is happening," he explains. "Then management will look at the footage. Drones are also supposed to be smarter so that if there's activity or movement on the perimeter of the property, the drone deploys and goes to the activity and takes pictures."

Worrall says his clients have typically purchased a system with two drones and a docking station so that one is operating while the other is charging. "You can program them to do laps, say every hour or so," he adds. "They're cool, but we need to see more results."

**3. Biometric devices** — "The other thing I'm seeing is mostly in building and club-houses, but if you really want to lock a property down, it's biometrics, or palm readers," reports Worrall. "A minority of my clients are doing it, but I feel like it's becoming more and more popular.

"It's not just crime, but you're also battling the short-term rental debacle we're all seeing," he adds. "These tools are expensive, and there are maintenance agreements. So they're a little more expensive to maintain than your traditional fob system. But they do work. And they work well."

"The typical system scans the right palm of someone before access is granted," Worrall notes. "I also have one building in which, if you place your left palm to the reader, it'll send a distress signal. These systems are getting pretty sophisticated. And I'm seeing no pushback from residents on these. Most of the time these tools are accepted, and people like them."

**4. License plate reader cameras.** "We're seeing them, but not a whole lot," according to Worrall. "Among our clients, they're used the same amount as the biometric systems right now. Where you have a guardhouse scenario, it's very common that we take pictures of the license plate when someone pulls up to the guard house. In more open communities, where people can drive through the community, we haven't seen these license plate readers as much."

"I think that's one of the technologies communities are going to look at more often," predicts Worrall. "Municipalities have implemented these to great success, so I think you'll see more HOAs implement those."

It's happening in Colorado. "I've seen an association that has installed license plate readers so that they know who's in their community," states [David Firmin](#), the managing partner at Altitude Community Law PC in Lakewood, Colo., with satellite offices in Loveland and Colorado Springs. "However, I also have a good friend who does insurance defense, and he says, 'Boy, it's a great day for me when they install those.'"

"He feels associations will be sued for claims in which owners argue the association didn't do something or for an invasion of privacy claim when someone's driving through the community," explains Firmin. "The general law is that you have no expectation of privacy if you're in the open or going through a common element. And I personally think that if it's a gated community or a private street that goes through a condo, for instance, the association wants to know who's coming and going. I don't see a problem with it."

The question, however, is who has access to the information that's gathered. Our experts have differing opinions. "From a legal perspective, there can be unintended consequences of such systems," says Molly Peacock, counsel at Rees Broome in Tysons Corner, Va., who has represented condos and HOAs for nearly 15 years. "I don't want to be burdened with all these extra records of photographs of license plates."

"Also, what are our obligations and who's going to pay for pulling those records if they're requested by homeowners," she asks. "And what could possibly be a proper purpose for them to request such records? In my state, you have to state a proper purpose when you do a books and records request."

"But let's say homeowners get past that hurdle," adds Peacock. "You also have to charge owners for the records, and that takes accounting, too. And what are we going to do about divorce lawyers who are going to subpoena us for such records?"

"Maybe we value the crime-solving aspects of this tool, and maybe we can contain the negative side of this issue by being open," muses Peacock. "The photos of the tags are being sent off site to XYZ tag reader, and after 30 days they're destroyed permanently. I love putting an end time on the retention of those records. With a system like this, I'd want to weigh the advantages of crime fighting and whether those will outweigh those costs. But I'd be interested in trying these systems."

Firmin has landed on some of those answers for his clients pioneering with the tech. "What I do with monitoring cameras is recommend that the board determine who has access to that information and what the association will do with the information gathered," he says. "But I don't even want my clients giving images to the police without a warrant."

"I've heard people say, 'What if it's a life-safety issue and the police need the image instantly?'" asks Firmin. "Even then, you have to go find the image, time stamp it, and so on, so the police have time to get a subpoena. Then the question is always: 'What about a kidnapping?' My point is that if you give the police more information than they need, homeowners will say they get to see the information, too."

The answer is much more simple to Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA.

"I say boards should give the information to law enforcement if something happens," he says. "We encourage our associations to work cooperatively with law enforcement — period — to generate that goodwill and not make things difficult for them. We don't go down the path of forcing law enforcement to subpoena the recordings if it will benefit the community or stop additional crimes."

Under Michigan law, owners would also be able to access the records, though as in Virginia, they must show a proper purpose for the request. "They have to demonstrate that purpose," explains Wloszek. "A fishing expedition to look at the images would be denied. A spouse cheating isn't a proper purpose. I think the association would be within its rights to deny that request, though that doesn't preclude someone from filing a lawsuit and trying to compel the association to turn over that information."

**5. Good, old-fashioned drive-bys.** This isn't high-tech, but roving drive-throughs, sometimes called rovers, are gaining in popularity. "Hire third-party courtesy officers who do drive-through patrols at night," suggests [Mary Arnold](#), CMCA®, AMS®, the Austin, Texas-based vice president of operations of the community manager success group at RealManage, an [association management firm](#) headquartered in Dallas, Texas, that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas.

"That's something I've seen increase, and they could also look for overnight parking issues," she explains. "They drive through wearing a uniform, which can help as a deterrent."

"Each association is unique, so I suggest clients consult with their attorney if they're having issues with crime and want to go that additional step of hiring a third-party ser-

vice,” states Arnold. “If they’re not having crime, they need to remember that any time they take on more responsibility for security, they’re adding more liability. That’s why it’s important to check with your attorney.”

### **Wading through your options**

Ultimately, how do you know what systems are right for your community? Get expert advice. “Talk with a security company about safety and security in community associations,” advises Peacock. “I’d tell my boards: ‘I’m the lawyer, and I gave you the spiel where I’m saying you’re not the police and to do what makes sense, and now I’m turning it over to the tech company. It has really excellent ideas on how to improve security from a tech perspective.’”

“You’re essentially inviting an expert from a vendor trying to sell you something,” she admits. “Then you should take that advice with a grain of salt because they are trying to sell you something.”

Your local police might also have insightful suggestions. “I’d start with the police department,” suggest Worrall. “Remember, the security and tech companies are incented to sell you more stuff. So start with the police — they’re not incented to sell you anything.”

### **Nothing is perfect**

Remember, however that tech isn’t foolproof. “Even with those systems, technology can break or be hacked,” warns Polomis. “These aren’t failsafe systems.”

That’s also a concern for Peacock. “To me, one drawback is the limit of technology,” she explains. “What if it goes down? What if nobody can access it because it goes haywire? And how many companies use technology that’s archaic to do things like handle pool access, climate control, and track assessments but where they can be turned against the association?”

“That’s a really important tech angle, that vendors look at what they’re supposed to be in charge of, and their own system may be fine,” says Peacock. “But they’re not in charge of other systems in the building. It’s easy to lose track if you’re not aware of the need to harmonize the technology that exists. That should be an agenda item for a board meeting to have an expert do a tech audit and ask some questions about how your systems work and interact.”

# 4 Steps for Responding to Incidents in Your Community

This actually happened in a community managed by [Mary Arnold](#), CMCA®, AMS®, the Austin, Texas-based vice president of operations of the community manager success group at RealManage, an [association management firm](#) headquartered in Dallas, Texas, that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas.

“It was a felon the police were looking for multiple crimes,” she recalls. “They came into the neighborhood, and there was a SWAT team crawling all over the community. The owners were understandably upset, and they wanted answers — and the association didn’t have them.

“Obviously, the police didn’t want the association publicizing that they were going to do a raid on that day because then they’d be giving the bad guy a heads up,” says Arnold. “And it’s not like the association can determine who’s in the community at all times. If you’re an owner, they can’t get rid of you, and if you’re a tenant, they probably can’t bar you from accessing your unit.”

Turns out, the SWAT team didn’t find the bad guy in the community Arnold manages.

An extreme situation, yes, but less-extreme situations happen in community associations regularly. The question is whether and when to inform your owners of what’s taken place. If your community has suffered a criminal act, or a string of them, should you notify residents?

There are no easy answers. But here are four steps to take when you’re facing down that situation.

**1. Ask law enforcement if they’ll take the disclosure lead.** “I’d contact the police and ask if they’re willing to issue a statement to homeowners,” advises [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC in Edina, Minn., who advises homeowners associations. “That way, they’re responsible for any statement made. And, frankly, homeowners might pay more attention to what the police say than what the association says.”

**2. Evaluate whether you’ll disclose what’s happened.** If law enforcement doesn’t speak up, you need to determine whether your association will. Our experts disagree somewhat on when and what to disclose.

“You don’t want to alarm residents unduly and create more problems,” explains Molly Peacock, counsel at Rees Broome in Tysons Corner, Va., who has represented condos and HOAs for nearly 15 years. “I normally tell boards that any time they hear about something — an attack, an arrest — that they don’t have a legal obligation to disclose. I also tell them that maybe they have a legal obligation to be careful.

"So maybe we'd better get all our facts right because, if we don't, that could lead to a discrimination problem, a perception problem, or who knows what administrative or safety problems," she adds. "The question is how accurate we can be and how many questions would we raise if we gave what little information we do know, let's say from a police report?"

But there's also a risk of not disclosing. "The other side is that I've seen blogs of homeowners saying, 'I can't believe the board didn't tell us XYZ happened,'" says Peacock. "You have to balance those issues."

"Homeowners will feel entitled to be told when a bike is stolen, when someone is assaulted, or when something else terrible has happened," says Peacock. "They'll say, 'How dare you keep this a secret?' The answer there is that we didn't keep anything secret and that homeowners are entitled to the same information the association is entitled to — such as a police report. The answer is also that we have no legal obligation to get that police report or to interpret it for residents."

Considering all that, Peacock reaches the following conclusion: "For petty crimes or those not quite as horrific, it might be worth telling membership, 'Hey, there's been a string of robberies. Please secure your bike and your car. Here's the website where we found this information, and we have no more information than what was provided there. Please contact the police for more information.' You should probably speak with a lawyer or other expert to word things so that you're not causing more problems."

Another tactic is to disclose practically everything. "We always recommend full disclosure," states Joe Wloszek, a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA. "More communication is important."

"I understand the concern about not alarming members," he admits. "But you can say, 'This is what's going on, and here are the locations we're seeing these issues. Law enforcement is involved, and the association is reviewing its options with law enforcement to see if there's anything that can reasonably be done to increase security for all residents. If you have concerns or see activity, call the police; here's the deputy who's aware of these issues and has been looking into them.' Be sure to identify people with direct knowledge of the issue to nip in the bud questions to the board."

"Those types of disclosures are appropriate, particularly when you have a string of incidents," asserts Wloszek. "You can say, 'Don't leave electronics in your car because someone's coming in at night and doing smash-and-grabs.' That's an important communication, and it's important for the board to be open with members about being on the lookout."

**3. If you disclose get your facts straight, and protect victims.** "Everything is public record now with police reports," notes [Bill Worrall](#), vice president of FirstService Residential in Hollywood, Fla., which manages 1,300 condominium and homeowner associations totaling 310,000 residential units. "Assuming the incidents have been reported to the police, everybody can see those reports. There are also crime statistics out there."

"So you want to know what the facts are," he states. "Then we meet with the police, and we go through the crime statistics not just in the neighborhood but in the general area. We talk to law enforcement and get their advice. And once you leave that meeting, you have basic facts, and you have to communicate the facts. We're going to tell members the truth."

If you don't have all the facts, you can issue a general notice, if you so choose. "The association could issue a vague statement advising owners of an increase in incidents without providing more details," says Polomis. "What you don't want to do is identify victims."

"But you can confirm that police are investigating, if that's the case," she adds. "You can also remind everyone of the commonsense rules that if you see something, say something and to call police if you see something that doesn't feel right. Calling the police is a far better choice than calling the property manager."

**4. Ask law enforcement if they'll come to your next meeting.** "We then invite the police to association meetings to address questions from the membership," explains Worrall. "They've been so willing to engage and come out, and they can provide advice on how homeowners can help avoid problems in the future."

# What to Consider Before Your Condo/ HOA Implements a Key Fob System

Key fobs can be an effective way for boards to deal with owners' violations—in some cases, you can deactivate the fobs until owners come into compliance. Sweet!

That, however, isn't the only factor you need to weigh before switching to fobs. Here are some issues to mull over, along with the answer to a question [an HOAleader.com reader has asked](#): Can owners get more than one fob, and for whom?

## The Pros of Going to Fobs

Implementing access control to the community and its [common elements](#) is an effective way to help ensure compliance with community guidelines, says Zuly Maribona, LCAM, a vice president at KW Property Management who leads the company's Region 2 office headquartered in Bonita Springs, Fla.

"The technology is advancing and becoming both more common at home and work and simpler and more convenient for residents," she says. "That aids in compliance and their general acceptance."

That may be why it's a common topic for our experts. "We definitely talk with boards about key fobs—they're pretty common these days," reports [Elina Gilbert](#), a shareholder at Altitude Community Law in Lakewood, Colo., who's specialized in community association law for 19 years. "Personally, I usually do support the fob system, assuming it's a system that allows the association to activate and inactivate fobs remotely and track who's got the fobs.

"For example, I was at a meeting a few nights ago in an association with a clubhouse and pool where people access the pool through a fob card," she states. "The community doesn't have cameras. But when they have an incident or someone's at the pool after hours and does some damage, they can see if there was a fob card used after hours to access the pool. That allows them to have a better idea of who might have been out there.

"Also, when [owners are delinquent](#) and not allowed to use the pool anymore, it's easier to deactivate the fob card than to say, 'Give us back the pool key,'" says Gilbert. "You have to have the right to suspend use of facilities in your documents. To amend your documents to allow that, it usually requires a homeowner vote because you're taking away someone's right."

In Ohio, it's permissible to suspend the use of some facilities when owners are delinquent, says Jeffrey Kaman, a partner at Kaman & Cusimano, which represents condo and HOA associations throughout Ohio. "We're not involved a whole lot in key fob issues—they're more of a [management issue](#)," he says. "To the extent we are involved, it's in trying to restrict access, especially to those people who are delinquent. Here, associations can suspend the use of recreational facilities for owners who are delinquent.

A lot of our associations have a key pad or a fob system, and if they don't, many are looking at it."

## **There Can Be Challenges**

Overall, Gilbert says fobs allow better and easier management of [HOA amenities](#). "At the same time, the question depends on whether it's something the association can afford," she adds. "Is yours a big community with a lot of users? It also depends on what your amenities are like. If all you have is a basketball court, that might not warrant investing all that money into a fob system."

Also, your community might already have a system, or it may not have the infrastructure for an easy transition. "My typical response to a board asking about key fobs would be, first, that it's a great solution for most associations," says Maribona.

"I'd also want to know a little more about their [common areas](#) to ensure we're taking into account other access control systems they may already have in place," she says. "All too often, we find they may have other amenity buildings that may have gate codes or access cards. Maybe they have a gate system when they drive onto the property. Then you're giving residents two and three types of access they have to remember. So you need to assess current access to the community."

Also, Maribona asks, does the infrastructure support the addition of fobs? "That often depends on the age of the property," she says. "If the property is older, maybe they'll have to do a lot of wiring and so forth to get the system there. Or if they're going to extend the key fob to, say, a pool area, I've heard that it can take more money. Depending on the distance, it can be expensive."

The other challenge for Maribona is that she's often brought in when there's a patchwork of systems already installed. "We come in, and there's not one but sometimes two and three solutions in place," she says. "Maybe the builder didn't think of fobs and instead included a keypad and gate. The builder didn't want to spend the money to extend the infrastructure all the way to the gate. These are afterthoughts. That can make them pricey when we're upgrading from one or two systems or they've inherited several systems and we're trying to clean that up for them."

For Kaman, the question is often how associations can pay for installation. "Some [governing documents](#) have limits on what the board is allowed to spend to put something new on the property. It's sometimes a dollar amount, and it's sometimes a percent of the budget," he notes. "We're often asked if the board has authority within that [capital improvement limitation](#) to pay for a key fob system."

## **Who Gets How Many Fobs?**

Associations have various systems for determining the number of fobs they'll issue to any particular resident.

"It's across the board," says Kaman. "With some clients, you get one or two fobs per unit—period. Their thinking is, 'We don't care who you give them to, but you get two.'"

"More often, and this is often the case in high-rise buildings, they'll have a system to get in the front door," adds Kaman. "In those circumstances, boards will give a certain number of fobs automatically, and beyond those, residents simply have to pay for extras.

"Then, to ensure they still control proper use of the fobs, they'll do an audit maybe once a year," he explains. "If fobs haven't been used in the past year, they'll send a notice to owners saying, 'Hey, we noticed you haven't used this key fob in a year; do you still need it?' If the answer is no, they'll deactivate it."

Among Gilbert's clients, the policy also varies. "Most give the first fob for free and others cost money, and some will say there can be no more than two or three per unit.

"For example, some say, 'We'll give you one fob for free, and additional fobs are \$10 or \$25,' she says. "They all get registered to the same unit under the homeowner's name, so it doesn't matter who's using them. Others say, 'We'll give you one, the other is \$25, and there's a maximum of two per unit.' If owners try to get more fobs by saying they've lost their fob, the association will inactivate the first fob."

# Why Not Just Grant This HOA Owner's Request for Speed Humps?

An [HOAleader.com reader asks](#): "We're a very small Virginia gated-community HOA, 9 houses on an .8-of-a-mile road. Yes, .8 of a mile. For the past 10 years, we've discussed speeding at our members' meetings and requested homeowners respect the posted speed limit, which was lowered from 25 mph to 15 mph a few years ago, which was agreed to by our members.

"Recently, two homeowners with small children brought to the board's attention speeding by residents, their guests, and delivery service vehicles. They've requested the installation of speed bumps, which they'll buy, to be placed along the road within their property lines. Speed bumps aren't favored by our community but appear to be the only solution for slowing traffic in front of the two homeowners' property.

"A letter has been sent to those delivery service companies that frequent our community requesting their adherence to our posted speed limit. We're considering stenciling or relocating our signs to a be-in-your-face location directly on our gate rather than the column that houses the gate and adding 'Children Playing' signs. We'd appreciate advice and suggestions of things that have worked for your communities."

(You can read and respond to the [original post in the HOAleader.com discussion forum](#) here.)

Our question is this: Since the board is now on notice of the risk, and since the owners have offered to foot the bill, is it simply the best move for the HOA to grant this request?

## **This Board Doesn't Have to Cave**

Just to be clear, our experts need one important fact before they can say definitively what they advise.

"The first thing that came to mind was—unless I missed it—the question of whether the road is private or public," asks Zuly Maribona, LCAM, a vice president at KW Property Management who leads the company's Region 2 office headquartered in Bonita Springs, Fla. "Just because they're small doesn't necessarily mean they're responsible for the roads. In small communities, it would be unaffordable for the community to handle road maintenance. So these might be public roads, and they'd have to seek permission from the agency that governs them to make any changes."

If the roads are private, our legal experts don't necessarily think this board is bound to add speed humps. "I don't know if they have to allow this," asserts [Elina Gilbert](#), a shareholder at Altitude Community Law in Lakewood, Colo., who's specialized in community association law for 19 years. "Though it's not stated, it sounds like the roads are [common elements](#)—that the association owns the roads. If they're public, the association can't do this because it's not the association's road.

"In Colorado, the board has the sole discretion as to how common elements are [going to be maintained](#)," adds Gilbert. "If the board says, 'Yes, you're offering to pay; however we don't think they're in the best interest of the community because studies show they can cause damage to cars,' I think they have the discretion to make that decision."

"I've seen other, similar situations in which owners say, 'We really want this improvement, and we'll pay for it,' and the board says no," recalls Gilbert. "That usually gets upheld in court based on the [business judgment rule](#). Unless there's no reasonable explanation for the board's decision, courts defer to the board."

It also may be detrimental to add speed humps for another reason. "I'd also think about emergency vehicles and how this move would affect life safety of all the residents there," says Maribona. "Would we be impeding emergency vehicles getting in and out of the property? What's their opinion on the matter? I've seen emergency responders be against the installation of speed humps at other communities, or at least they didn't like it."

### **Does a Denial Raise the Risk?**

But isn't the board now on notice that there's a risk to children? Then, if a child is harmed by a speeder, could the board be held liable for not having done enough to prevent that? "That's going to really depend on the facts," predicts Gilbert. "Certainly, they could get sued, and there may or may not be liability exposure."

But the association's response would be, 'We didn't put the bumps in because we know for a fact that they can damage vehicles,'" she says. "And parents, you still have a duty to look after your children and not let them play in the street.'

"There have been court cases with respect to criminal activity in associations in which [owners wanted extra lighting](#) or safety bars installed," adds Gilbert. "The association said no, and there was later criminal activity, and those [associations were held liable](#) for that. If boards know there's criminal activity in the general vicinity and someone wants to take steps to protect themselves, that's something the court will look at differently, especially when it's bars on our windows or lights in their area."

"But a speed bump?" she asks. "The pushback I usually get is that those will damage vehicles. That's not something that's not going to hurt other residents or just be confined to one owner's property."

Jeffrey Kaman, a partner at Kaman & Cusimano, which represents condo and HOA associations throughout Ohio, also isn't convinced that the failure to install speed humps in this case will increase the association's risk. "That's not necessarily the case," he says.

"Maybe it would be the case if there's some sort of defective condition in the road," he says. "Because of that, driving on it a high speed is dangerous because it's not being maintained, since the association has an obligation to maintain and repair common elements. But most communities have no obligation to provide safety services."

That said, Kaman doesn't have a big problem with the board adding the speed humps if it chooses to do that. "I'd also ask in this circumstance: Why say no?" he states. "If

owners are willing to pay for it, and as long as it conforms to normal municipal speed hump standards and won't cause damage to vehicles, what's the harm?"

### **Beyond the Speed Humps**

Maribona has additional suggestions for breaking an impasse between humps and no humps.

"My first reaction was: Have they considered all options?" she wonders. "I'd contact the local municipality and ask for an assessment. I'd also invite officials to an [association meeting](#) so they could explain the process for getting approval for a change like this, if approvals are needed, and the officials' overall opinion on whether speed humps are effective.

"We've also added better signage and further decreased the speed limit," adds Maribona. "In some of our associations, we've added speed radar, where it tells you how fast you're going. That's worked well as an alternative. Some communities have even [asked the local police department to patrol more](#) as well. There are alternatives for those who don't want speed humps."

# 5 Tips for Handling Condo/HOA Owners' Cameras

Maybe it would be easier today to ask homeowners to raise their hand if they *don't* have a camera installed somewhere around their home. With the explosion of DIY home camera systems, our experts say you should develop a camera policy earlier, rather than later.

"It's a big deal," says Matt D. Ober, senior partner at Richardson Harman Ober, a Pasadena, Calif., law firm with a significant community association practice. "The Ring doorbell is pretty popular, and it's essentially a doorbell with a camera attached. It's really hard to tell owners they can't put that in. If it's installed in their separate interest or front door, as long as it doesn't violate your [community's architectural standards](#), you're going to have to allow it."

Todd J. Billy, an attorney at The Community Association Lawyers in St. Louis, who's a licensed attorney in Missouri and Illinois and has more than 1,000 active condo and HOA clients, believes it's wise to get in front of the issue. "It's unrealistic to think that some owners don't want to have access to [security systems](#)," he says. "But the aesthetics of making that work can be problematic. We encourage boards to be proactive about what they'd like to see."

## It Doesn't Get Any More Serious Than This

One of our experts recently had a case involving an owner's cameras. It went all the way to court, where the owner finally backed down. But there was plenty of tension before that resolution.

"My case took place in Howard County, Md.," recalls Matthew J. Youssef, a partner at Niles, Barton & Wilmer in Baltimore, who represents about 80 community associations at any given time. "It's a fully planned community with [master association](#) upon association and a much larger association for the whole county. Every association has at least two masters.

"A man started installing a series of exterior cameras," he explains. "At first, the cameras were hard to see. They were behind some firewood on the deck. The board said, 'People can't see them; they're fine.'"

The association then did deck renovations, requiring owners to remove everything on that limited common element; later, owners put their things back on the updated decks. "This is how an issue like this often comes up," says Youssef. "In this case, the owner put the cameras back, but in a different location. They were about 15-17 cameras around the exterior of his townhouse, and several members were uncomfortable."

That's because these weren't today's small, discreet cameras. "They were the big, 1970s cameras, the kind you see in Walmart on the ceiling," he explains. "They were obvious and a very [clear violation](#) in that he hadn't submitted a request to install them."

This was open and shut. The [bylaws](#) required that he submit a request before altering the exterior of the unit, and he didn't do that."

Youssef filed for an injunction on the association's behalf, receiving a temporary injunction until there could be a trial on whether the injunction could be permanent. "He took a principled stance," notes Youssef. "He said he was allowed because his safety came first. The board was willing to compromise a number of times throughout the case, and he wasn't. We offered him solutions and compromises. He refused to budge. It went all the way to trial, and at trial, he finally agreed to comply with the court order."

A seemingly innocent question, however, revealed how serious this issue truly was. The owner was retired, and the judge happened to ask the owner what he'd done for a living before retiring. "It turned out he was [commercial machine gun salesman](#)—they were military-style weapons," reports Youssef. "We then got a perspective of why he was so obsessed with safety."

"The issue got very emotional," he adds. "Other owners had kids and were uncomfortable with the cameras. It created a lot of distrust. There were also [recording devices](#), so you could hear sound as well as see video from the cameras."

Another issue that arose during the case is a common one: "Because the board had initially allowed the hidden cameras, did it waive its right to enforce the rules later?" he explains. "The court agreed that there was no waiver. That's important because as new boards get elected, things will change within associations."

## Fleshing Out Your Policy

How can you create a policy to help you deal with routine situations and more extreme ones like that Youssef's client encountered? Here are five tips:

1. **Require that owners seek permission before they alter the exterior of property, and require unobtrusiveness.** These are the two main requirements Youssef's clients typically implement. "If the camera is visible and on the exterior of the property, the installation falls within the [governing documents](#) requiring that the owner go to the [architectural review committee](#) before installation," he states.

This is also an issue for Joan Lewis-Heard, a senior associate at Swedelson Gottlieb in Los Angeles, who specializes in representing condos and HOAs. "It's about making sure they cameras aren't just eyesores or that people aren't just punching holes in the side of the building and putting up cameras where they feel like it."

2. **Prohibit owners' cameras from being installed beyond their living space.** "I've had two big issues reach my desk," says Billy. "One owner put cameras well outside his unit. Be sure to state that owners can't install them in places like that, and certainly not in the [common elements](#)."
3. **Require that cameras don't invade others' privacy.** The second issue for Billy was the scope of the cameras' reach. "We did have someone in a villa/townhouse community who had a 180-degree camera, and it was set up in such a way that the owner could see a lot in their neighbor's yard," says Billy. "We worked

with the owner to pare down the view of the camera so it would be roughly along their property lines. You can't expect that to be perfect, but we were able to nail the scope down. They got what they were looking for with security. Neighbors got what they needed, too."

Lewis-Heard has also had to handle this type of dispute among owners. "It's good to state that owners can't have a camera perched at their neighbor's bedroom window so if the neighbor just happens to not have the draperies all the way closed, you can snoop," she says. "Also they shouldn't be placed to allow owners to see everyone who's coming and going at their neighbor's house or to allow owners to see inside their neighbor's home when the door is open."

This is also important because associations can now be pulled into [neighbor-to-neighbor](#) disputes under [fair housing rules](#) adopted in 2016. "There are harassment laws now that say associations may be responsible for preventing neighbor-to-neighbor disputes or management-to-owner disputes," says Ober. "So if you have owners shining cameras on their neighbors, that may fall within those statutes. "California statues also really turned up the heat in terms of harassment between neighbors," he adds. "The association might have to do something if they sense one owner is harassing another."

4. **Reserve the right to inspect.** How would you even know what an owner is seeing on a personal camera? "Policing is something else, and that's the trickier part to it," says Billy. "In the case with the 180-degree view, we had an enforcement action, and we were able through discovery to see the scope of the camera.

"Associations need to be proactive in doing these rules so that owners are certifying that the camera placement is good enough and that the board can rely on that," he says. "The association has the right to request a view from the camera; we put that in the policies when the client wishes it.

It's also good to have the association be able to come in once a year to say, 'We want to know what your view is,'" contends Billy. "It doesn't mean the association has to do that."

5. **Set forth guidelines on access to any condo/HOA cameras.** Your association has probably also joined the party when it comes to cameras. If so, what will your policy be when owners want to see footage?

"We advise our clients to state that they'll turn over footage if law enforcement asks for it or it's subpoenaed," says Lewis-Heard. "If owners have a request, they can put it in writing, and it'll be considered.

"But a general request from neighbor probably won't be approved," she states. "If there's not some sort of legal or law enforcement action going on, and you're trying to snoop on people, there's no reason to turn over the footage."

# Are Racial Incidents Happening at Condos/HOAs More Often or Just Getting More Press?

First, there was the Summerville, S.C., incident in which a white resident was captured [on video](#) allegedly assaulting an African-American teen who was at his own community pool. Then in July, an African-American resident at Glenridge Homeowners Association in Winston-Salem, N.C., was [asked for ID](#) by a white man.

Most recently, a white woman [was videotaped](#) asking a black resident in a condo building whether he lived there as he entered his own building.

Are our experts seeing an increase in racially charged disputes? And what's their advice to boards to avoid having similar situations arise at their building?

## Sign of the Times?

The practice of ensuring the security of your property isn't bad, though it can go awry.

"These types of situations aren't necessarily on the radar of many of the communities I represent," reports [Christopher J. Shields](#), a partner at Pavese Law Firm in Ft. Myers, Fla., who's represented associations for decades. "We're living in times where people are somewhat living on the edge. They're sometimes super-sensitive when approached. And sometimes there are good reasons why they're approached.

"If you have beachfront or lakefront property or property next to a park and you see someone you've never seen before at the swimming pool or using the recreational facilities, you wonder, 'Did they just come off the park or the beach' or wherever?" explains Shields. "We also live in a time where people advise, 'If you see something, say something.' The question is how best you approach that."

That's the question some boards are asking [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, Ore., which manages about 50 condo, HOA, and townhome associations.

"It's interesting," she says. "Oregon isn't the most diverse environment, so I don't know that we've experienced any of the incidents like those described. But we are seeing the reaction to what's going on at the national level. Boards are concerned about trying to create an inclusive community."

## Providing Guidance to Residents

The first thing to note is that you may have a duty to investigate such incidents if they're reported to you. "We're not seeing claims of racial discrimination here among my clients," reports [David C. Swedelson](#), the principal at Swedelson & Gottlieb, a law firm that represents associations in the Los Angeles area. "I see more claims of gender

discrimination and particularly a lot of people claiming [familial discrimination against children](#).

“But I’d tell boards asking about how to deal with this that under U.S. Housing and Urban Development [regulations](#) issued in 2016, if they do get a complaint, they’re duty-bound to do an investigation at a minimum,” he explains.

What should boards tell owners? Shields’ advice to his clients would be for boards to ask residents not to take matters into their own hands. “The smart thing to do is to contact security or management and ask them to intervene,” he suggests.

Anderson also recommends that boards set forth policies and guidelines to help owners understand how to proceed. “When it comes to these types of situations, I believe the way the board protects itself and the association is by setting a standard on how vendors, employees, and residents will interact with people,” she says. “It should be clear as to the culture of the community.

“If boards are concerned about whether they have a responsibility to act or are seeking to reduce their liability, putting cameras up or trying to capture incidents on video—that’s only a reaction,” she asserts. “I think boards need to assess their community and implement a standard as to what they expect. You can’t take for granted that there’s a natural level of civility people will adhere to today. We’re seeing higher rates of agitation and confrontation from homeowners to owners and staff, and boards have to set standards.

“We develop [codes of conduct](#), for our boards mostly, that explain how they’ll interact with our management team or vendors and homeowners,” she explains. “We’re expanding those for boards to adopt the same standard for community members. Some are also adopting civility policies that say, ‘This is how you’re expected to act, and racial discrimination, abusive language—any of those things—aren’t tolerated.’ These types of incidents will continue to happen unless you have the leaders of that community lay those policies out. [Putting up cameras](#) isn’t going to solve this problem.”

Shields acknowledges that even with solutions, these situations are challenging. “I know people concerned about racial or ethnic profiling,” he states. “But what’s the duty neighbors have to each other to at least somewhat question who’s on the property? That’s a difficult question, and I don’t know if there are any easy answers.”

# Houston, Condos and HOAs Truly Do Have a Potential Problem with Bias

In December, [we reported](#) on the most recent incidents of alleged racial incidents at condos and HOAs and offered tips on what boards can do to avoid having their members throw them into a racial incident.

Then we received email responses that proved the point of the article—that you may not even realize that your association may be at risk for a claim of racial bias despite the good intentions of most (probably nearly all) of your board and members.

Without naming names, here we explain the emails we received and what our experts believe you should do if you see or hear similar comments being made in your community.

## We Wish We Were Making This Up

Our experts were blown away by the emails we received after we published our article. They weren't terribly surprised, but they were nonetheless stunned.

"Wow," says [James R. McCormick Jr.](#), CCAL, a partner at Delphi Law Group in Carlsbad, Calif., who represents associations. "It's amazing to me. I look very white, but my mother was born in Mexico, so I'm half Mexican. I've sat with older crowds at associations who were very racist and were bad-mouthing Mexicans. All I could think was, 'You have no idea who you're talking to.'"

When we touched base with [Bob Kmiecik](#), a partner at Kaman & Cusimano LLC, which represents associations throughout Ohio, he jokingly said he thought we were making stuff up.

## The Unedited Emails

Sadly, we aren't making stuff up. And we know these are legitimate emails from real people because the author of the most alarming of the responses signed the email and had no qualms including professional designations in the signature block. Here's that email in its entirety:

"A couple of thoughts on your most recent email regarding racial tensions. Perhaps African-Americans are being approached by white people because African-Americans don't volunteer. If the board had a black person to approach another black person (which is really sad that we are in a place that the color of your skin speaks for your right to politely ask) it would be better.

"Also, I'm surprised you didn't mention Latinos which tend to move in herds secretly after approving a single owner or tenant, and are extremely loud and disruptive and care very little about the look or feel of the total community. They are **entitled** [emphasis in original] to be there in their minds so we must all bow to what they want, documents be damned. And if a violation letter is sent, woe be to us, because they pull that tattered

race card out of the deck faster than you can blink an eye. It doesn't matter to them if they're the only ones who installed a floodlight without permission by a non-electrician and keep it on all night in a very subdued neighborhood disrupting others sleep patterns. Or as happened recently, one of their myriad guests (everyone is a "cousin") decided to scrub the bathroom floor and did so by intentionally blocking the toilet with a rag and overflowing the toilet onto the floor and that water ran into an adjoining unit. They don't seem to think it's illogical to have someone's dirty pubic hair toilet water in the next-door neighbors bedroom. And when you try to gain access to the unit via proper legal channels to remediate and seal the dividing wall, every type of resistance is met including the calling of police by at fault party and threats made to board's safety.

"I'm sick of being white by birth, a volunteer by calling, and being accused of being a racist for doing my job. The board and management correct all offenders- we care not what color they are. Only racists see color."

A second response, from another reader who was fully identified, confirmed the problem from another viewpoint:

"We're in our 70s, WASP born & raised in the deep south so we know the drill up front and personal. Our extended family is foster to adopt. This sort of abuse has been a serious problem long before it hit the news.

The reality is that all HOAs are but one election away for this type of abuse.

Our HOA Nazi called LEO [law enforcement officer] on our grand kids playing B-ball in our drive in front of our house (permitted by the city and approved by a previous HOA BOD). Those of color were sent packing by the officer. The officer, along with the HOA Nazi, knocked on my door to brag on how they had 'protected' our property values from 'those people.' The abusive citations started soon afterward."

## **Is Someone on Your Board Saying Similar Things?**

Our question to our experts was: What should board members do if they find out that one of their fellow board members has written or said bigoted comments?

They say you have an obligation to act.

"I'm inclined to jump in with both feet, especially if a board member is saying something that can appear to be racist or discriminatory in any [official communication from the board](#)," notes Kmiecik. "I'd also jump in if that person sends a communication like that in some other capacity because you now know someone on the board has communicated some of these racist mentalities.

"If I find out that one owner is using that language with another owner in some public settings or someone is accusing someone else of that, I think you at least have to look at it," says Kmiecik. "I've sent letters to owners that have said, essentially, 'Hey, it's been alleged that you made these comments, and we won't tolerate it under any circumstances.'

"Few associations will have a rule that you can't say racist things, but most have rules that you can't create a [nuisance](#)," he adds. "That may be pushing the edge of the

board's responsibility, but I want to be on record as acting. I do think that action invites liability, even if ultimately the board is found to have legitimately not gotten involved. And the attorney's fees alone for responding to a claim that you did something wrong can be very expensive.

"But if it's a board member making those comments and the rest of the board member can't convince that person it's inappropriate—if that person can't even recognize in themselves that what they're doing is racist—there has to be an education, and hopefully that will resolve the problem."

## **Show Them Their Exposure**

What would such an education look like?

First, call out racist comments. "Make sure you notify that board member that if they're going to be providing opinions on race, any and all comments they make must be as an individual and not as a board member and that any statements made on behalf of the association need to be approved by the entire board," contends [Alessandra Stivelman](#), a partner who specializes in community association law at Eisinger Brown Lewis Frankel & Chalet in Hollywood, Fla.

Should you censure a fellow board member? "Yes, absolutely," says Stivelman. "But not necessarily for racist comments, but for acting unilaterally and not conveying the sentiments of the board. I've written cease-and-desist letters demanding that people stop making these comments or the association will take action.

"If someone is acting unilaterally, I'd definitely say the association's board should speak to its attorney to put that person on notice so the association and board members are protected," she says. "It's too easy to be accused of discrimination today."

McCormick says board members who espouse racist comments also need to understand that they're likely to be [personally liable for their actions](#).

"We can't control people who are going to be racist," he says. "It's an unfortunate aspect of society today. That type of intolerance is being more permitted and encouraged, which is unfortunate.

"From an association's standpoint, the key is to avoid liability for the association," notes McCormick. "To do that, the board members have to ensure their actions or statements don't result in liability. They can be racist when they're not representing the association. But if it's when they're acting for the corporation, and if there is no what I'll call 'redeeming-quality' factor to their action, they might have not protection from an insurer. So they may be creating liability not just for the association but also for themselves.

"If a board member hears these types of comments, that board member should contact the association's lawyer," suggest McCormick. "The lawyer can tell the person saying racist things something along the lines of, 'As you're speaking for yourself and not your association, remember that you may be personally liable for your comments. If you think just because you're a volunteer, the [association's insurance](#) will cover you, that may not be the case here. For your own covering of your own assets, you might con-

sider knocking it off.' Generally speaking, people saying these things don't care unless it affects them personally."

## **Fall Back on Your Processes**

Another way to be sure you don't get hit with liability is to create [policies and procedures](#) to handle association business so that you can't be accused of treating anybody differently from another person.

"You can't control that some owners are racist or biased," notes Stivelman. "But the association can implement procedures for various aspects of its operations to prevent bias from interfering with them. If you're getting complaints from one board member that seem to be racist, make sure there are processes so there's a uniform procedure followed by all board members in investigating all complaints."

Stivelman says today's "if you see something, say something" mantra may be helpful, but it may also be contributing to today's problems. "I was just at a board meeting, and the board president said that at least three times," she explains. "Everyone is very concerned today, and I think people are tending to be alarmists and not using their better judgment."

"You need to remind owners of your procedures," she adds. "If you see something, call 911. Or take a photo and send it to us. I think people are freaking out as a result of what's going on in our country now and forgetting that there are procedures to follow. Associations should be reminding people of their procedures."

One more suggestion that can protect you as a board and association: Create a [code of ethics](#). "I recently had a situation at an association whose occupancy rules mirror those of the local community," explains McCormick. "Those rules state that no more than two people can stay in a bedroom. A real estate agent was showing a property in the association to a couple who had a child with them."

"The owner of the unit told the couple, 'We can't rent to you pursuant to the association rules because association rules say you can have only two people in that bedroom,'" he explains. "Next thing you know, the association is in a dispute."

"This type of issue is coming up more and more, and associations should be careful," advises McCormick. "The association should make sure it has a code of ethics, and you may need to revise it so it's race-agnostic or gender-agnostic."

# How to Prevent Theft in Your Condo, HOA's Common Areas

Is there much theft in HOA and condo associations' common areas and common property? Some, and you can often prevent it with a simple solution you're probably already envisioning.

## The Lawyers Don't See It Much

This isn't something seen that often by [Joe Wloszek](#), a member at Hirzel Law in Farmington, Mich., which represents more than 100 community associations; he lived in a condo for seven years and now lives in an HOA.

That's not to say it doesn't happen. "In one case where this came up, people were drinking, and someone took chairs from the common area pool to sit outside their unit to smoke and drink—and the cops were called," he recalls.

"We also have seen theft outside the [common areas](#)," adds Wloszek. "In one condo association I lived in, someone broke into a unit and stole all the copper pipes. The [unit was under foreclosure](#), and it turns out someone was monitoring the foreclosure notices and identifying which units didn't have residents in them. Over the course of a single night, they took all that copper piping. The only reason we knew about it was because that caused water damage."

## But a Manager Does

Oh, this sure does happen, says [Mary Arnold](#), CMCA®, AMS®, the Austin, Texas-based national director of training and community association management support at Real-Manage, an [association management firm](#) headquartered in Dallas, Texas, that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas.

"I've had contractors working in the building, and they took a lunch break and came back to their power drills being gone," she laments. "I've seen it in the lobby with furniture—I've seen benches disappear. We've had [association pools](#) where we've had to secure the furniture."

## Do What The Kids Do: Film Everything

The best solution, asserts Arnold, is installing cameras to record what's taking place in your common areas. "The only thing I'd suggest is a surveillance system, and it should be a good system where you can actually see the person on camera," she advises. "I've seen systems where you can see bodies on the screen but not be able to identify the person."

Even then, it can be hard to identify the perps, as the police call the ne'er-do-wells. "The difficult part is when you get an image and you have a hard time finding out who that person is," says Arnold. "But it's good to have the video because you can then turn it over to the authorities.

"The worst situation I ever had—and this was vandalism, not theft—was somebody pouring big, giant buckets of paint—you know the kind you get from Home Depot?—in the pool," recalls Arnold. "That association got a surveillance system pretty quick after that."

The key isn't only that you can identify the perp. It's also helpful because it can scare some would-be perps into not acting. "With a camera system, you can put up a sign saying, 'This area is under camera surveillance,'" notes Arnold. "But never, ever put up a sign if you don't have an actual, working system. People will rely on the system you say you have, and that could give them a false sense of security and increase your liability."

That's actually what an association Wloszek lived in did after a rash of auto thefts—including his own car. "We've seen theft on the common elements but not of association property," he says. "In my own previous condo, my car was stolen on the common elements right outside my unit. The police found it an hour-and-a-half north, right outside our capital, abandoned on the side of the road."

"That wasn't the first time our area had been hit," he recalls. "Our condo association was at the crossroads of major highways, so it was a quick get-off and quick get-back-on for people."

The association did what Arnold says it shouldn't do. "The association put up dummy security cameras," recalled Wloszek, who agrees with Arnold that such a move is risky. "There are problems, and there's potential liability, with doing that. For that condo, primarily the idea was to threaten people who did come in or to at least make someone concerned about coming into our common areas."

Don't get our experts wrong. You can also increase your liability if you install a real system instead of a dummy system. "If you start to do too much and get security measures involved, such as cameras and personnel, you now have a new set of issues," warns [Matthew A. Drewes](#), a shareholder at DeWitt Mackall Crouse & Moore S.C. in Minneapolis. "You could expose yourself to a contention down the road that owners were counting on those security measures for their own safety or for the safety of their property. That could be difficult for an association to deal with in the future."

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Some boards stop funding—or underfund—their homeowners association reserves as a way to ease the burden on homeowners during difficult economic times. Is this a smart move for your HOA? [Read more»](#)

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An HOAleader.com reader asks, "The CC&Rs say 51% for a quorum. If no quorum, quorum requirements drop to 25% for the adjourned annual meeting. My question is if a first adjourned meeting has to be called because the 25% quorum requirements were not met, and the second adjourned meeting also fails to meet the 25% quorum, what then? Does the sitting board just continue into the next term? When does the board declare failure to meet quorum requirements and end the torture?" [Read more»](#)

#### 28. **A Sex Offender Has Moved Into Your HOA ... What Now?**

If you're like most homeowners, your first thought when you learn that a sex offender has moved into your community is: What can we do to get the offender to leave? Here's what you must know about your association's—and the offender's—rights. [Read more»](#)

#### 29. **HOA Architectural Review: How to be Fair and Reasonable With Requests for Variances**

It's inevitable that at least one of your homeowners will approach your board and ask for a variance from the association's architectural review standards. Can your HOA grant a variance? If so, should it? Here are some answers. [Read more»](#)

#### 30. **HOA Communications: Dos and Don'ts for Responding to Owners' Letters to the Board**

Surely, you get letters from owners. The question is how your should HOA Board of Directors respond. Do all letters require a response? If not, which do, and which don't? And who should respond? Your board president, the property manager, or another person? Finally, what should and shouldn't you include in responses to owners' letters? Here we offer dos and don'ts. [Read more»](#)

#### 31. **Robert's Rules for HOAs: What You Need to Know**

Robert's Rules of Order is a more-than-100 year old guide that provides governing bodies procedural rules to keep their deliberations orderly. What are the pros and cons of following Robert's Rules? If your association decides to follow it, what are the most important rules everyone should know? Here's a summary. [Read more»](#)

### 32. **HOA Board: “We Don’t Follow Our Own Rules. Sue Us!”**

An HOAleader.com reader has a bone to pick with one of our experts, Nancy Polomis. [Read more»](#)

### 33. **Definition: Declaration of Covenants, Codes & Restrictions (CC&Rs)**

The declaration of covenants, conditions, and restrictions (CC&Rs) are recorded with the register of deeds in the initial phase of development of a townhome or planned community. [Read more»](#)

### 34. **HOA Financial Matters: What’s Receivership, and When Do Condo and Homeowner Associations Need It?**

Though it’s still rare in community associations, receivership has become more common in today’s economy. With any luck, your HOA will never experience receivership. But some unlucky associations will. So here are some basics on receivership, along with information about how it’s arising in condo and homeowner associations today. [Read more»](#)

### 35. **HOA Contracts: Can One Board Member Contractually Bind Your Homeowners Association?**

Can one board member, without the board’s knowledge, bind the association to a contract? The short answer is yes. However, our experts have suggested practices you can implement to prevent it from happening at your association. [Read more»](#)

### 36. **10 Traits of Successful HOA Board Members**

What qualities must you have to be a good homeowners association board member? Here, our experts reveal the top 10 traits of board members who serve their HOA well. [Read more»](#)

### 37. **HOA Governance: How to Change Your Homeowner Association’s CC&Rs**

Whatever the reason, at some point you’ll need to amend your HOA’s covenants, conditions and restrictions (CC&Rs). Here’s how to make the changes by the book and deal with the inevitable political tension that arises from taking such an action. [Read more»](#)

### 38. **HOA Management Fees: Beware These Questionable Fees; How Your Association Can Address Them**

Here, White and other attorneys who represent associations reveal fees they’ve seen slipped into their clients’ management contracts and invoices. They also offer tips for addressing them. [Read more»](#)

### 39. **HOA Elections: A Guide to Managing the Election Process at Condo and Homeowner Associations**

In this report you’ll discover tips from our editorial team and experts on HOA governance and management from across the country on how to plan, properly notice, and execute an HOA election. These are tips you can begin implementing immediately to make your elections run more smoothly and withstand challenges from disgruntled homeowners. [Read more»](#)

### 40. **Helping Owners Fund a Special Assessment**

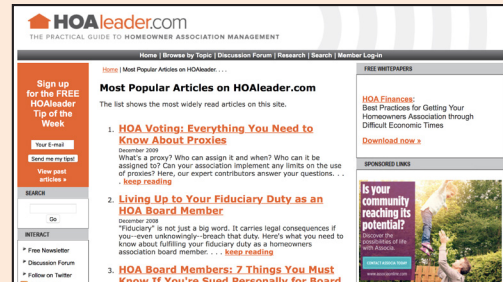
Here, we hear how condominium and homeowner association boards crafted creative financing that helped them pass a special assessments and offer tips for funding your own special assessment. [Read more»](#)

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