

COMMUNITY ASSETS

INFORMATION & RESOURCES FOR BUILDING BETTER COMMUNITIES

AN AWARD WINNING PUBLICATION

SEPTEMBER / OCTOBER 2012



**PROCEED WITH
CAUTION**

**COMMUNITY ASSOCIATION
SECURITY & NEIGHBORHOOD
WATCH PROGRAMS**

PAGE
18

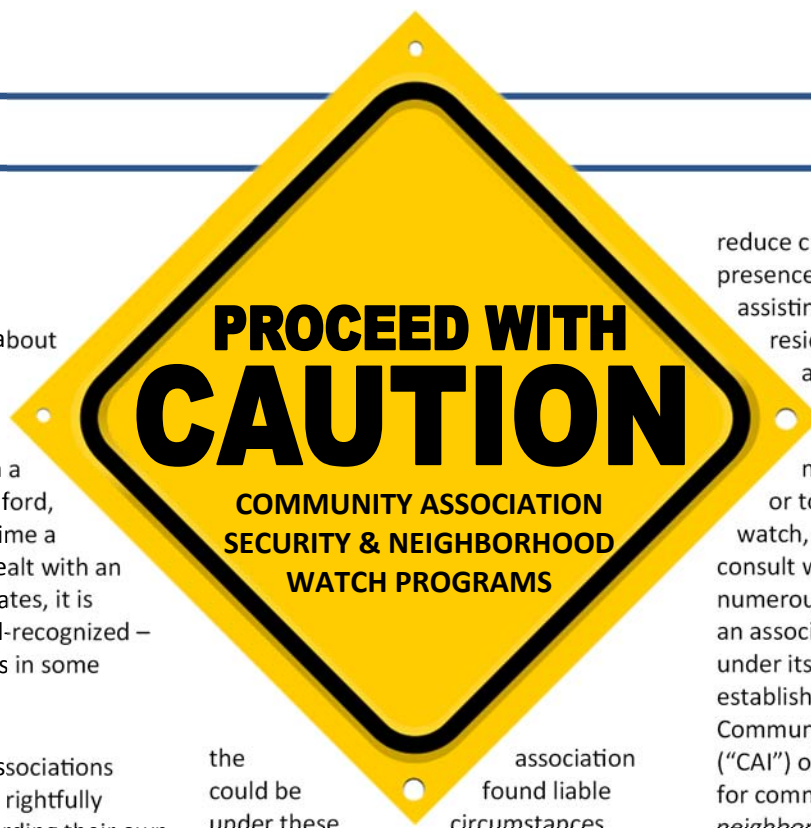
by: Jonathan H. Katz, Esq.

By now, everyone has heard about the tragic case of Trayvon Martin, who was killed by the head of a volunteer neighborhood watch group in a community association in Sanford, Florida². While not the first time a community association has dealt with an assault or murder within its gates, it is certainly one of the most well-recognized – and most talked about – cases in some time³.

In the wake of this tragedy, associations across the country have been rightfully asking difficult questions regarding their own obligations to provide or undertake security measures, such as “does the board owe a duty to provide security to its residents?” The answers to these important questions are complex and should be determined with the assistance of counsel, primarily through examination of the association’s governing documents and the interpretation of the applicable state law. In many cases, the starting point for the discussion of these issues is California Supreme Court’s 1986 decision in Frances T. v. Village Green Owners Ass’n, which is widely considered to be the seminal case involving community association security⁴.

In Frances T., the unit owner repeatedly requested permission from the association’s board to install additional lighting in the rear of her unit due to a rash of burglaries and thefts in the community. When the board did not respond to her requests, the unit owner installed the lighting on her own. This drew an immediate response from the board, which demanded that she remove the unauthorized lighting and, further, rejected her request to leave the lighting while the board could propose an alternative. The unit owner was subsequently robbed and raped⁵.

The Supreme Court of California determined that the question of whether



the association could be found liable under these circumstances turned on two fact specific questions: (1) whether the association breached a duty to the unit owner; and (2) whether the harm that befell the unit owner was foreseeable. The Court held that the facts alleged in Frances T., if proven, were sufficient to demonstrate the association’s awareness of the need for additional lighting and that the lighting could aid in deterring criminal conduct (thus demonstrating a duty and a potential breach of that duty). Regarding foreseeability, the Court found that the association was aware that the unit owner’s home had been recently burglarized, and that the association need not have foreseen the precise injury to the unit owner so long as the possibility of this type of harm (the burglary and rape) was foreseeable⁶.

While an examination of a specific association’s potential liability for failure to provide security is fact sensitive and, again, should not be undertaken without the assistance of counsel, another question brought to the forefront as a result of the Trayvon Martin case is the efficacy of

utilizing neighborhood watch programs in community associations as a method of providing security. While these watch groups have been shown to effectively

reduce crime by creating a visible presence in the community and assisting in easing the fears of residents, they may also pose additional liability risks⁷.

Prior to a community making a decision to allow or to initiate a neighborhood watch, association boards should consult with counsel to consider numerous issues, including whether an association has the authority under its governing documents to establish a community watch⁸. The Community Associations Institute (“CAI”) offers the following advice for communities considering a neighborhood watch:

- Contact the local police department for start-up support, guidance and training;
- Volunteers who skip this critical step can find themselves on the wrong side of the law – or worse;
- Seek the advice of an attorney with expertise in community association law;
- Create processes for recruiting only responsible volunteers who will follow all procedures;
- Develop methods, such as websites and e-mail, to keep volunteers and residents informed;
- Continuously reinforce all

*“Prevention is the most effective action against crime. Unfortunately, crime prevention usually becomes a hot topic in a community after someone is assaulted or robbed.”*¹

procedures – including do-not-engage rules for resident volunteers⁹.


If a determination is made that the community would like to implement a neighborhood watch, it is imperative that the board make sure the association has the authority to establish such a group pursuant to its governing documents. If the documents do not provide for such authority, the association may seek a vote of the membership to properly amend its documents. However, if the governing documents specifically require the association to provide security in some form, the association may be better served engaging a professional security service, which will provide certain contractual safeguards for the association.

Other factors that association boards must consider if neighborhood watch groups are permitted in a community include the overall mission and purpose of the watch as well as what members of the group should and should not be permitted to do. At the heart of any neighborhood watch's duty – not unlike a professional security service – is the phrase “observe and report.” When observing suspicious or criminal activity, a volunteer watch member should restrict his or her actions to making a proper observation and accurate and speedy reporting to the police and/or the proper authorities. Again, the purpose of the neighborhood watch is to provide a visible presence in the community and to create a “high level of awareness to the criminal element,” not to usurp the duties of the authorities ¹⁰.

Association boards should also establish clear guidelines, preferably through a formal resolution, defining the purpose of the neighborhood watch and requiring coordination with the local law enforcement authorities.

Such guidelines should instruct volunteers to report suspicious activity but make no attempt to follow, engage or apprehend. In no circumstance should volunteers be allowed to carry any weapons of any kind. And communication is also imperative; information about the


(Continued on page 20)



van note - harvey

associates, pc

ENGINEERS • ENVIRONMENTAL CONSULTANTS • SURVEYORS



- > SITE/CIVIL ENGINEERING
- > CAPITAL RESERVE STUDIES
- > STORMWATER MANAGEMENT
- > SITE DRAINAGE MANAGEMENT
- > PAVEMENT EVALUATIONS
- > ENVIRONMENTAL CONSULTING
- > COMMON AREA IMPROVEMENTS DESIGN

Engineering for a Better Environment

CORPORATE HEADQUARTERS:
 777 ALEXANDER ROAD, PRINCETON, NJ 08540
 609-987-2323 FAX 609-987-0005
WWW.VANNOTEHARVEY.COM

PENNSYLVANIA • NEW JERSEY • NEW YORK • NORTH CAROLINA

Community Association Loans

All the right tools for your next project.

How will you fund your next community project? Get the job done right with the **Community Association Loan toolkit**. You'll get custom financing that's perfect for your budget and your community.

Your Community Association Loan toolkit includes:

- Competitive interest rates
- Flexible payment plans
- Innovative loan structures
- Fixed rate loans
- Non-revolving lines of credit

Get the cash you need today.



Matthew Driscoll
 Regional Account Executive
 443.866.9076
 Toll Free 866.800.4656, ext. 7561
matt.driscoll@mutualofomahabank.com



Mutual of Omaha Bank

Community Association Banking

Member FDIC • Equal Housing Lender

National Corporate Member of
Community Associations Institute

AFN44765_0512

(Continued from page 19)

watch group and crime in the area should be disseminated to the community through open meetings and written communication. Further, volunteers should receive training, which again should be coordinated with the local authorities.

Due to the ongoing criminal and civil litigation, the overall impact of the Trayvon Martin case has yet to be fully realized. But associations should be mindful of the lessons that can be learned from this case and should be able, with the assistance of local law enforcement and counsel, to take affirmative actions to ensure that all of the residents feel safe in the community.

ABOUT THE AUTHOR

Jonathan H. Katz, Esq. is an attorney with CAI Member law firm Hill Wallack, LLP and a member of CAI's Communications Team. He can be contacted via e-mail at JKatz@HillWallack.com

FOOTNOTES

- 1 Foundation for Community Association Research, "Best Practices: Community Security," Community Associations Institute (2008) (hereafter "Best Practices"), pg. 3.
- 2 For those who may not be as familiar with the details of this tragedy, on February 26, 2012, police allege that George Zimmerman fatally shot Martin, a 17-year-old high-school junior, after Zimmerman observed Martin walking home from a convenience store. Zimmerman, the "captain" of the neighborhood watch for the Retreat at Twin Lakes Homeowners Association, had called 911 to complain about a suspicious person in the neighborhood. Shortly afterwards, Zimmerman left his vehicle, approached Martin, and there was a fight, which ended with Zimmerman fatally shooting Martin once in the chest at close range; Zimmerman claims the shooting was in self defense. CNN, "Zimmerman charged with second-degree murder," (April 11, 2012) at <http://news.blogs.cnn.com/2012/04/11/prosecutor-to-announce-decision-on-zimmerman/>
- 3 And for those who think a tragedy similar to what befell Trayvon Martin could never happen in our area, think again. In October 2009, Catherine McGowan was stabbed to death by her neighbor, Anthony Milano, both who resided in an over-55 condominium association in Linwood, New Jersey. Milano was found not guilty by reason of insanity in February of 2011, but a lawsuit brought by Ms. McGowan's Estate against the association and its property manager is still ongoing. Steven Lemongello, "Family of slain Linwood woman, 88, sues her condo association and manager" Press of Atlantic City, published March 10, 2010.
- 4 723 P.2d 573 (Cal. 1986).
- 5 Id. at 574-76.
- 6 Id. at 579.
- 7 Community Associations Institute, "CAI Urges Diligence on Neighborhood Watch Programs," (March 28, 2011) at <http://www.caionline.org/about/press/Pages/CAIUrgesDiligenceonNeighborhoodWatchPrograms.aspx>
- 8 Id.
- 9 Id.
- 10 See Best Practices at pg. 9.

Law Offices



CLEMONS RICHTER & REISS

A Professional Corporation

Terry W. Clemons • Stefan Richter
Peter L. Reiss • Scott A. MacNair • Daniel M. Keane
Diane Ramirez Clemons, CMCA, AMS, PCAM, Paralegal

Representing Condominium and Homeowner Associations since 1979

"From everyday practical advice to complex litigation, we serve all Condominium and Community Association needs. Our goal is to aid Boards and Management in the proper performance of their duties"

Phone 215 348 1776
FAX 215 348 9450
107 East Oakland Avenue
Doylestown, Pennsylvania 18901



Visit us at our website: www.clemonslaw.com

PA005647

BACHMAN'S ROOFING, BUILDING & REMODELING, INC.

Professional Service with Family Values



Meet Us!
Booth 127
Proud Event Sponsor



Property Management Solutions that are custom fit to your needs. We provide excellent service in a timely manner. From large scale remodeling projects to everyday emergency repairs. We are experienced, trained and certified with the top manufacturers in roofing, siding, skylights and more. We are fully insured and have been in business for over 40 years. Ask around, or ask us for references!

610-678-8004 or 800-922-5818
www.BachmansRoofing.com