

Minimizing Exposure at Apartment Complexes

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The following general considerations and tips were prepared by Roger H. Schmedlen, CPP, CFE, CII, MIPI, a security consultant at Loss Prevention Concepts, Ltd. who has frequently been employed as an expert witness in security/loss control negligence and premises liability matters.

If you have additional specific questions about your apartment complex, please Email him at: expert@LPOnline.com

There are many things that can be done to limit real risk to tenants at apartment complexes and significantly reduce exposure to the growing threat of premises liability and security negligence litigation.

In most cases, substantial reduction of both exposures can be attained at no cost whatsoever.

The following considerations are quite basic and are not intended to guarantee adequate security at all apartment complexes in all situations. Instead, they are good sense general security recommendations based on my 40 + years experience in the security field and my expert witness participation (both defense and plaintiff) in several premises liability actions involving adverse events at apartment complexes.

1. Always Immediately Respond to Tenants' Reports of Insecure Situations:

It should be obvious, but it cannot be overstated: Should a tenant report a defective lock, a window that is not latching or any other problem that could result in easy access by an intruder, handle the repair immediately and properly. Responding to such tenant reports should always be a higher priority than any other maintenance project.

The safety and security obligation here should be apparent and additionally the value of proper response in this area can pay off in the event of litigation. Two similar lawsuits in Oakland County, Michigan illustrate how liability exposure can be effected by failing to act responsibly in this area.

In both these cases, *Cohen v Whethersford Apartments* and *Glessner v Patrick Henry Apartments*, apartment tenants were attacked during home invasions. The situations were similar in many ways. In *Cohen*, the perpetrator gained entrance through a malfunctioning sliding glass door, while in *Glessner*, the perpetrator entered through a first floor window which could not be locked.

In *Cohen*, the tenant had never reported the deficiency which was known to her, but the police report made it clear she was aware of the problem. (While the door

could be locked it did not always catch.) In Glessner, the tenant had reported the deficiency three days prior to the event and was under the mistaken impression that the repair had occurred.

Cohen was awarded zero after an eight day trial and, because mediation recommendations had been rejected, was ordered to pay a sum to defense to offset the cost of defending the case. Glessner, on the other hand, settled for a reasonable figure just prior to going to court.

2. Never Conceal Knowledge of Serious Crimes or increased Risk:

Some misguided apartment managers have concealed their knowledge of assaults, break-ins or other serious crimes which occurred on their properties, rationalizing that this knowledge might negatively impact new occupancy and even cause other tenants to consider moving out.

Tenants, who for years had enjoyed risk-free use of a swimming pool would not expect management to conceal the fact that the pool had become infested with sharks. It's the same principle here. While the standard may simply require that knowledge of increased risk not be concealed, I personally feel that responsible apartment managers should make a reasonable good faith effort to inform tenants when serious risk of any type increases so that tenants can consider their options. Juries tend to agree with this sentiment.

In a previously crime-free apartment complex where a non-domestic home invasion occurs or a tenant is assaulted or sexually assaulted by an unknown intruder, the risk to other tenants may have changed.

Withholding this knowledge significantly increases the exposure to other tenants since they are now missing an essential fact for making evaluations concerning their personal vulnerability. For example, a female tenant arriving at the apartment complex late in the evening who was unaware of a recent series of sexual assaults in the complex might be unconcerned at the approach of a stranger. However, if reasonable efforts to alert her to the possible increased exposure had been made, her awareness could be heightened and she might remain in her locked car until the reason for the stranger's presence is clarified.

- A security manual published by BOMA (Business Owners & Managers Association) in 1995 states that tenant notification need not occur following an adverse event--but that a memo of the "better safe than sorry" variety might be appropriate. I strongly disagree with responding in this vague manner and highly recommend that a reasonable effort be made by management to communicate to tenants the specific nature of any adverse event which indicates increased risk.

Regrettably, however, there is no foolproof way of notifying tenants of increased risk. Obviously in many cases, other tenants will become aware

of adverse events through police presence or routine gossip. I feel, however, that management should additionally make a reasonable effort to inform tenants of such an event.

Reasonable is the keyword here and there are no standards regarding methodology. While it might appear that a written notification or warning placed under the door of each apartment--or placing notices in common areas such as laundry rooms--might be superior to attempts to verbally notify tenants, historically this has not necessarily proven to be the case.

In two separate Michigan cases where notices were placed under tenants' doors, tenants who were subsequently sexually assaulted and brought suit alleged they had been previously unaware of the increased risk. In one case, *Nightengale v Meadows Apartments*, the tenant claimed to never have received such notification of a prior sexual assault, while in the other, *Taylor v Charter Oaks*, the tenant acknowledged that she may have found a notice under her door which offered free security upgrading, but probably took it to be junk mail from management and threw it in the trash without reading it.

Obviously, the knowledge of increased risk may often encourage some tenants to become more security conscious. While they might have been quite cavalier in locking up in the past, they may begin double checking their doors and windows before retiring. Others may feel additional hardware is appropriate and, while it is not necessarily the duty of apartment management to provide this hardware at cost, management should certainly not prohibit the tenant from professionally hardening or upgrading at his or her expense. Some, of course, can be expected to ignore such a notification.

When an adverse event has occurred and management has made reasonable efforts to notify tenants, these actions should be documented in writing. Such documentation should include any steps taken, even if management simply advised tenants who were observed about the complex verbally. Such documentation can prove valuable in defending a lawsuit should a future adverse event occur.

It should be clearly stated that notification of tenants is recommended only in cases where events have occurred which indicate that risk has increased for other tenants. For instance, if a tenant is assaulted by an estranged spouse, this event would not necessarily signal that exposure has increased for anyone except for the victim of this assault.

Likewise mysterious disappearances from within individual apartments are no different than such incidents in single-family homes. Often missing items are simply mislaid and are subsequently found. In other cases, such

losses are the result of petty thefts by one of the residents of the specific apartment--a roommate or family member--or by a dishonest person whom the apartment dweller has previously provided with a key to the premises.

Additionally, reported events which lack credibility need not be considered as warnings of increased risk.

For instance, in one case an elderly tenant, who claimed she frequently found furniture rearranged in her apartment, solved this mystery when she established that mischievous aliens were coming out of her television set during certain programs. She resolved the issue by avoiding these shows. In another case, a young female, who had excessively imbibed of alcohol at a wedding reception, awoke in the early morning hours and found that a naked man was strolling about in her apartment. She called the police and when they arrived, she explained that the man had already left, exiting through the sliding glass door--after locking it from the inside on his way out. She then admitted she must have been dreaming. In another case, a female reported that someone had rifled through her underwear drawer and taken one of her more exotic pieces of lingerie and in still another, a tenant just had a "feeling" someone was in his apartment when he was out.

Obviously, reports such as these would not be taken as credible unforced intrusion events by reasonable persons and reporting them to other tenants would do nothing but make the reporting tenant the subject of mirth and scorn. In fact, reporting such incidents to other tenants could result in exposure to liable or slander litigation by the tenants who reported such bizarre events.

3. Advise Tenants of Countermeasures and Obtain Written Acknowledge

The responsibility of apartment management is to provide tenants with locking devices and hardware which is appropriate and adequate for the foreseeable exposure in the specific environment. However, management has no responsibility or means for ensuring that tenants will always properly use the security devices provided. The greatest exposure in apartment complexes is generally caused by the tenants themselves.

In low crime areas, many apartment dwellers, like many home owners, frequently forget to lock their doors and windows. In one case, for instance, immediately following a home invasion in an 88 unit apartment building, police found the back doors of 8 - 10 other units to be unlocked. Police entered these apartments to warn tenants who were asleep in their beds.

Often, too, tenants may assume closed doors are locked when they are not.

In other cases, tenants may lock basic low security door locks, but not bother to secure any higher security deadbolt locks provided. Likewise, tenants may regularly use the thumb latches on sliding glass doors and windows, but neglect to secure charley bars, secondary locks--or not bother to place rods or dowels provided by apartment management in the channel of the door frames.

In a Delaware case, *Kahn v Jupiter Western et al*, a home invader and sexual predator gained entrance to a town house unit by kicking in the door of the apartment. The tenant claimed this easy access was obtained because the deadbolt was improperly installed and there was less than a one inch throw, which is the minimum standard. While this allegation concerning installation deficiency was, in fact, accurate, it proved to be irrelevant because the police photos of the damaged door frame clearly indicated that the deadbolt was not engaged at the time of the forced entry.

In a Michigan case, *Neff v Harbor Towne Apartments*, an intruder gained entrance to an apartment via a sliding glass door and sexually assaulted a tenant. This plaintiff readily admitted she hadn't used the secondary lock on this door since it was inconvenient and she felt the thumb latch should have been sufficient. In many other cases, plaintiffs have admitted that they did not utilize the deadbolts provided, but claimed they thought that the spring locks or key-in-knob locks should have been sufficient to prevent the entry of intruders, since they had not been advised otherwise.

In addition to acknowledging that they understand the operation and necessity of utilizing all countermeasures provided, tenants should also confirm in writing that they understand that it is their responsibility to advise management should any of the locks or countermeasures cease to operate correctly.

By requiring that tenants sign a form confirming that they understand how all the locks in their apartments operate and they are responsible for reporting deficiencies--and specifically acknowledging that they understand that their apartments are vulnerable to intrusion unless all deadbolts are secured on all doors in addition to the basic door locks--and that any sliding glass doors and windows should be considered insecure even when locked unless charley bars, channel dowels, or other secondary devices provided are additionally locked--careless tenants who become victims of crime may be unable to prevail in a premises liability lawsuit.

Additionally, such a form might clearly state that the tenant has been advised that he or she may install additional security devices at the apartment, but that management must be informed prior to such installation and, if relevant, be provided with a key for any new locks.

The Underwriters Laboratory standard for key locks requires that locks provide ten minutes of protection from lock-picking, plug-drilling and rotary force. Thus, even high quality locks can be circumvented by intruders who possess burglary skills. For this reason, apartment management might consider providing deadbolts without exterior keyholes--or recommending that tenants consider adding such devices at their own expense. By installing these keyless deadbolts, the risk of having a lock picked or otherwise circumvented is virtually eliminated. Additionally this would prevent entry by an intruder using a lost or stolen key while tenants were present and eliminate claims that an intruder must have gained access by using a master key.

Obviously, due to fire safety concerns, deadbolts requiring a key to open from the inside should never be used. Locks of this type are illegal in most venues.

4. Consider a Risk Analysis/Security Survey

Security surveys are not normally conducted at apartment complexes and it is certainly not an industry standard that such inspections occur. However, security surveys can significantly limit risk to tenants and minimize exposure in the event of negligent security and premises liability litigation. There are four basic types of security surveys:

- Public Sector Security Surveys
- Security Surveys by Private Sector Security Consultants
- Security Surveys by Apartment Management

Gratis Security Surveys by Guard Services, Alarm Contractors and other Providers:

The follow describes these four types of surveys along with the pros and cons of each:

Public Sector Security Surveys:

Many police departments have community service units or crime prevention sections staffed by officers who are experienced and skilled in conducting basic security surveys of apartment complexes, as well as single-family residences and small businesses. There is normally no charge for this service.

Typically, these officers use checklist forms during their surveys and they usually

provide the apartment management with a brief written report of their conclusions. These reports are usually short, but to the point. They generally include reasonable recommendations to minimize any excessive risk noted and address applicable security standards and city codes.

Pros and Cons of Public Sector Security Surveys:

If this service is available, apartment management should unquestionably take advantage of it. There is usually no monetary outlay and no downside whatsoever; and the report provided will be beneficial in identifying any previously unrecognized risks while recommending appropriate and reasonable countermeasures in the event any upgrading is warranted. Obviously, following such an analysis, apartment management should implement any upgrading recommended in a timely manner.

Security Surveys by Private Sector Security Consultants:

Some apartment complexes have employed professional security consultants to conduct risk analyses/security surveys of their properties. In most cases, these surveys are commonly known as "walk throughs" and take only a few hours, if that. There is generally about three hours off-premises work for every hour spent at the apartment complex, but in most cases, the total time involved will only run between four and twenty hours.

Reports are usually fairly detailed, pointing out exposure, and containing recommendations as to how to limit these risks. Additionally, they often include statistical crime data, community standards comparisons, sources of supply, cost estimates and other information of interest.

Pros and Cons of Security Survey by Private Sector Security Consultant:

If a security survey by an independent consultant is being contemplated, only those certified as a Certified Protection Professional (CPP) should be considered. While others may be well-qualified, the CPP certification is the only designation that verifies credibility. Many services such as Loss Prevention Concepts, Ltd. offer this service and costs will typically run from about \$1,500 to \$5,000 for a small to mid sized complex.

If this option is selected over (or in addition to) the public sector survey, basically the bottom line of what you will get for your money is this: A fancier report.

On this type of basic project, there is really little real reason to pay for outside assistance if the service is available from the public sector. There are, of course, exceptions, and in some cases, it may be cost effective for several complexes (or an apartment management association) to employ a security consultant to survey all of the facilities as a single reasonably-priced project.

In the event of a lawsuit, the fact that apartment management spent the money to employ an outside specialist to conduct a professional risk analysis, shows it was doing more than would be expected to ensure the security of tenants and

invitees. In other words, it shows apartment management was acting exceptionally responsible and significantly exceeding industry standards. (This, assuming recommendations were followed.) Even this potential benefit, however, is marginal in most cases.

Security Surveys by Apartment Management:

In some cases, apartment managers have some degree of security training in their background, particularly those who have served in the armed forces, and feel comfortable preparing a brief formal security survey on their own. Others with no previous security experience have conducted fundamental research in local libraries, learned the basics and standards relating to their risk, and conducted a security survey of their facility with no formal training.

Pros and Cons of Security Surveys by Apartment Management:

Generally speaking, security surveys of apartment complexes are relatively uncomplicated and there is no reason an apartment manager with no security background whatsoever cannot do some basic research and handle the project in house, using forms and check lists available from qualified security sources. It is always a good idea to retain the name of the source of any forms used for increased long term credibility.

When public service assistance is unavailable, surveys conducted in this manner by conscientious apartment managers can significantly reduce risk to tenants and invitees. They can also prove valuable in defending premises liability and loss control negligence suits; but not to the same degree as a survey by an experienced outsider--either public or private sector. Plaintiff attorneys tend to stress economic considerations that might influence proprietary management's security related recommendations.

It should also be noted here that apartment managers who conduct such research and prepare a survey, tend to develop a higher level of ongoing security awareness and are more prone to identify deficiencies that may develop in the future. Often they will be able to spot exposures they would not have otherwise recognized.

Gratis Security Surveys by Guard Services and other Providers:

Many contract security services provide security surveys free of charge for their clients or prospects. Alarm contractors, patrol services and similar security service or product providers often provide this service at no cost.

Pros and Cons of Gratis Security Surveys by Contractors and other Providers:

Generally speaking, we recommend against taking advantage of these services which are often self-serving and, in some cases, can actually increase exposure. Typically, contract security services will use these "surveys" as sales tools, recommending that apartment management increase the services they are providing; or contract for the services they hope to sell. Alarm firms often tend to

recommend expanded alarms systems and the installation of access control systems--products they handle.

Utilizing this type of type of survey might be compared to asking an aluminum siding salesperson to provide advice as to whether your home needs siding.

Recommendations from these gratis surveys are usually prepared in some type of report form, often accompanied by a proposal. In the event of a premises liability suit, these free surveys could prove costly. Apartment managers who rejected the recommendations of these so-called surveys--no matter how absurd they might have been--could have a problem justifying this to a wily plaintiff attorney and a jury as in the following scenario:

Plaintiff's Attorney: "And what did they recommend in this security survey?"

Apartment Manager: "Well, they recommended five guards around the clock and that was ridiculous because we only have two hundred tenants and--"

Plaintiff's Attorney: "--Excuse me, but I didn't realize you're a security expert! Could you give the court a brief summary of your experience and training in the security industry?"

Apartment Manager: "I'm not a security expert and I've never worked in security, but any idiot could--"

Plaintiff's Attorney: "--I see, that's fine. I just wanted to get that clear in my mind. Thanks for setting me straight on that. . . . So after these experienced security professionals conducted their risk analyses and made their recommendations for increased manpower, did you comply?"

Apartment Manager: "Well, see this was an obvious sales--"

Plaintiff's Attorney: "--I thought my question was fairly simple. . . just needed a yes or no answer. Well, let me rephrase it, make it clear for you. Did you follow the recommendations of the security professionals who conducted a professional risk analysis and security survey at your apartment complex at your request--I just need a yes or no here."

Apartment Manager: "I wouldn't call them pro--"

Plaintiff's Attorney: "--I just need a yes or a no."

Apartment Manager: "Well, no, but--"

Plaintiff's Attorney: "--So if I understand this correctly then, you asked these security professionals for their recommendations, they conducted their professional risk analysis and then you totally ignored their recommendations and. . . ."

There are exceptions here of course. There are some contract security agencies that provide a variety of other services including professional consulting by a staff CPP. In most of these cases a fee would be charged for the survey, but in some cases, legitimate objective security surveys might be provided gratis for a regular client. In one unusual case, Loss Prevention Concepts, Ltd. was employed by an exceptionally conscientious contract guard service to conduct comprehensive and objective security surveys at several locations of one of its major clients. The

guard service paid for this service and their objective was to improve the overall security at their client's facilities and improve their relationship with the client. (No increase in security guard coverage was recommended.)

4. Obtain and Evaluate Crime Statistics and Maintain Records:

Maintaining a record of applicable statistics can assist in evaluating the need to upgrade security and can significantly minimize exposure in premises liability litigation since it shows the jury that apartment management was actively monitoring the changing crime climate on an ongoing basis.

The local library or police department should be able to provide a copy of the Uniform Crime Statistics prepared each year by the FBI. In Major cities, statistics are often available for areas or patrol car sectors.

It's a good idea to research these reports for the previous five years, or more, to determine whether risks in the community are increasing or decreasing--and to compare your community's statistics against other familiar cities.

Trends indicating increases in relevant categories might indicate the need for considering upgrading security. If this is the case, appropriate upgrading should occur.

In some areas, police departments are able to retrieve statistics by address or address sequence. In these cases, it is sometimes possible to determine how your apartment complex stacks up against the community as a whole.

To do this, you simply divide the number of crimes in the community as a whole into the population. Then, divide the number of crimes reported in your complex into the number of residents.

Example:

City Population 100,000, divided by 10,000 Total Modified Indexed Crimes reported in the city = Risk Factor 10.

Apartment Complex Population 1,000 divided by 50 Total Modified Indexed Crimes reported in the apartment complex = Risk Factor 20.

In this example, statistically, community residents have a one in ten chance of being a crime victim each year, while statistically the apartment residents have a one in twenty chance. In other words, statistically the residents of the apartment complex are only half as likely to be crime victims as residents of the community as a whole.

(I should note that the only difference in the Total Indexed Crimes and Total Modified Index Crimes is that the latter includes arson.)

5. Ensure Your Property Meets or Exceeds Community Standards:

Maintaining a record of community standards can assist in determining when security upgrading should be considered. Updating this record on a regular diaried basis (along with updating security, if so indicated) can prove invaluable in the event of a premises liability suit, since it shows the jury that apartment management was proactive--that it actively made an attempt to achieve superior--or at least adequate security on an ongoing basis.

Establishing the community standards relating to security just involves determining what countermeasures are in place at the nearby comparable apartment complexes. Compiling a community standards report should take less than an hour.

To prepare a community standards report, simply visit several comparable neighboring apartment complexes and determine what security related countermeasures are in place. Visual inspection is usually adequate, but it doesn't hurt to talk with your peers at these complexes.

You then simply determine whether your apartment complex has comparable or superior countermeasures in place to meet or exceed these community standards. For example, if there are seven comparable apartment complexes nearby and six are "gated communities" which employ security officers, all things being equal, if your facility had no access control, security would be below community standards and present increased exposure in the event of adverse litigation; and possibly in fact, as well.

It is recommended that these brief comparisons be made quarterly, or at least twice a year, and that the brief reports be retained in a file for at least seven years.

6. Create A Check List Security Maintenance Review Log:

In most cases, apartment management regularly makes rounds of the apartment complex checking for burned out lights, broken windows, problems with locks and other security related deficiencies or general irregularities. Often this is done on a casual basis, with a manager just taking a stroll around the complex in the evening.

These informal observations are often made on a nightly basis, but by all means should be made at least weekly.

Usually, apartment management does not document this type of activity in any manner. However, by taking an extra minute or two to log these rounds, a valuable defense tool is available in the event of adverse litigation.

The log does not have to be an elaborate form and need not be formal in

appearance. A spiral notebook would suffice in most cases with handwritten headings similar to those below:

Security Maintenance Review Log:

Date Time Initial Deficiencies Noted Action taken

In depositions and in court, I have seen many apartment managers explain how they, perhaps accompanied by their spouses, take a stroll around the apartment complex almost every night at different times to see if there are any problems.

Such testimony is not in the same league as production of a log initialed by an apartment manager or maintenance worker documenting specific dates and times of these brief informal inspections, and itemizing any deficiencies noted and the corrective actions taken.

7. Post Security Related Signs and Other Visible Countermeasures:

Signs posted at the property perimeter showing countermeasures in place at an apartment complex can prove to be a viable deterrent to would be intruders.

However, under no circumstances should there be anything posted or implied indicating that countermeasures are present--unless they are, in fact, present. Posting notices that security officers are on duty when no officers are present, for instance, can give tenants and invitees a false sense of security which increases risk to these people and increases liability exposure for the apartment complex.

The same risks would be involved by installing fake television cameras under the mistaken assumption that they will provide a deterrent.

QUESTIONS & ANSWERS

MINIMIZING EXPOSURE AT APARTMENT COMPLEXES

Q. On what basis would a plaintiff in a negligent security suit against an apartment complex, have the best chance of prevailing.

A. Generally speaking, this would probably be the contention that the adverse event was foreseeable and that management failed to take any action to reduce this predictable risk. Foreseeability, of course can cover a wide range of situations. The most damaging would probably be a situation that management had been made aware of by a tenant, but then did not take action to reduce the risk.

Q. What is the cause of the most common lawsuits against apartment buildings and how can I limit risk specifically in that area?

A. It certainly appears that the most frequent security related legal actions against apartment complexes relate to home invasion events where the perpetrator gained entrance to an apartment by way of a sliding glass door or a ground floor sliding glass window.

In many of these cases, there was no sign of forced entry and there was a question as to whether the thumb latch was engaged or whether the door was inadvertently left unlocked by the tenant. In other cases the lock was not working properly, and had not been reported, or the door had become worn to the point where it could simply be lifted off the track. In still others, the door was equipped with a second, more secure, anti-slide device, but it had not been used by the tenant. It appears that most everyone else in the world is aware of the lesser protection offered by these thumb latches and they place dowels, sawed-off broom handles and the like in the tracks. However, for some reason apartment-dwelling plaintiffs who failed to use available second locks, have often claimed they were unaware of this lesser degree of protection offered by the thumb latch.

Risk can best be minimized here by having apartment dwellers sign a form verifying they were advised of the lesser protection offered by these thumb latches and accepting the responsibility of informing management of locks which malfunction. Such forms can be prepared in an inoffensive low key informative manner. The second volume of the Business Security Practices Reference published by (and copyrighted by) the American Society for Industrial Security International in 1999 contains a section I prepared specifically addressing this issue. This manual should be available in most major libraries by now. (We have requested the permission of ASIS to post that material on this site and hope to add it in the near future.)

Q. Do plaintiffs suing apartment complexes always get something—even in frivolous cases?

A. No. Regrettably, in some cases insurance companies do settle cases of little or no merit for small sums to avoid the higher cost of defending and winning the cases. However, plaintiffs (and attorneys who take such cases) seldom profit when cases of no merit make it to court and the defense is handled professionally.

Q. On our apartment complex a landscape designer placed many flower banks, hedges and evergreens on the grounds. Although the grounds are beautiful and the complex is in a low crime area, a rapist or thief could always use these shrubs and such to hide behind. Should this be a concern?

A. Not really. Every situation is different, of course and the physical layout is never the sole concern in regard to security. In a high-crime area where muggings and rapes are frequent it might be a different story.

Security is not the only factor to be considered in the physical design of apartment complexes. Security is always balanced against other considerations and just needs to be reasonable for the risk.

Although there are plenty of so-called "security experts" that could be employed by a plaintiff attorney to claim these shrubs or evergreens created a foreseeable hazard, they would be incorrect and they would have little credibility with a jury.

In a similar case such an "expert" alleged that the two buildings in a small rural apartment complex (located in an exceptionally low crime venue) were deficient in design because they were situated so the tenants in one building couldn't see the rear doors and patios of the other building. Obviously, the buildings were situated as they were specifically to provide a reasonable amount of privacy to tenants. Their design did not present a security risk. (Interestingly enough, in this case the entry wasn't made through the patio door anyway.)

In another case, a woman was abducted by an assailant who had been concealed behind a tenant's vehicle in an apartment building's parking lot. The sole basis for this suit was that the apartment building was negligent for allowing a tenant to park a vehicle in the parking lot, since the vehicle provided a place of concealment for intruders. (This woman also parked her vehicle in the lot.) During the deposition of this plaintiff, the defense attorney asked her if it would be possible for an intruder to hide around the corner of the apartment building itself. She answered in the affirmative and the attorney followed up by asking if she would recommend that the building be removed in the interest of tenant safety. This plaintiff was awarded zero.

Q. Our apartment building is in a low crime suburban area. The main entrance to the lobby is not locked and we have never had a problem. Should we install a lock on this front door.

A. First I would suggest taking a look at similar apartment buildings in your area to see if they have this additional barrier. If they are unprotected, such as yours, you might then poll tenants to determine how they might feel about this. Often, tenants in these situations see no reason for the extra inconvenience and repeatedly disable the locks or keep the door propped open. In cases like this, increased liability exposure might be present if an adverse event occurred because there was a security device in place which did not function. Even if this had nothing to do with the event, a plaintiff expert might legitimately point out that the presence of a malfunctioning security device of any type implied a lack of concern in regard to security on management's part. Residences in low crime areas seldom have burglar bars on the windows because they would be excessive for the environment. This would appear to be the same in this case.

Q. All the apartments in our building have deadbolt locks on the doors. Is there anything special tenants should know about these locks.

A. Yes. While most tenants use the deadbolts when they are home, they almost never take the time to lock them when they go out. Upon their departure, the deadbolt is not engaged unless it is key locked. Most tenants don't neglect this because it's inconvenient; it's just that they never thought about it and don't realize this key locking is necessary.

Q. In a negligent security case, wouldn't most security expert witnesses come to the same conclusions based on the identical facts?

A. You would think so, but all so-called "security experts" are not necessarily qualified, ethical, honest or professional. In some cases, these "experts" simply say what they think their client wants them to say.

In one deposition such an "expert" claimed a manufacturing facility was negligent because it was not surrounded by a moat. (He apparently didn't see the need for stocking it with alligators, however.) In another, the "expert" claimed the area had exceptionally high statistics in regard to murder--after ten homicide-free years.

Many of these "experts" have been known to judge exterior illumination substandard--after viewing the premises in daylight. One "expert" claimed an apartment complex was vulnerable because of the high percentage of single female tenants--he arrived at this evaluation by strolling on the property one evening and seeing a few ladies about. (The total female tenant population there [married and single] was actually about 52%.)

Selectively using the volume of public service runs to an apartment complex, rather than legitimate crime statistics, is another tactic often used by questionable "experts." (These records include dog catcher runs, EMS, domestic problems, fire emergencies, folks locked out their autos, and other assistance calls unrelated to security risks.)

These "experts" are commonly known as prostitutes in the business and some basic research often shows they directly contradict their own testimony of previous cases. As long as the opposition has retained a competent expert who works with real facts, the testimony of these folks is of no value whatsoever and may actually hurt their client's case. Juries don't like liars.

However, assuming that two opposing security experts are both competent and ethical, they would, in fact, come to basically the same conclusion, but each would present the facts in the manner most beneficial to his or her client. When good defense experts recognize that significant negligence was present, they will point this out to their client and often recommend that a settlement be negotiated.

Q. Are there any standards for outdoor security lighting? If so, where can I find them.

A. Exterior security lighting standards do exist. They can be found in more detail in the Illuminating Engineers Society IES Lighting Handbook, 1987 Application Volume. The basics are as follows:

While there are two security lighting methods--standard and glare--the standard system would usually be the only choice at apartment complexes.

All areas of parking lots should have average illuminance throughout the space of a minimum of 2.0 Lux (0.2 footcandles) and an absolute minimum illuminance at any point or time of 0.5 Lux (0.05 footcandles).

The pedestrian entrance areas at the buildings, should have average illuminance throughout the space of a minimum of 10.0 Lux (1.0 footcandles) and an absolute minimum illuminance at any point or time of 2.5 Lux (0.25 footcandles).

To put this in perspective, 10 Lux, or 1 footcandles, is the amount of illumination provided by a single candle from a distance of one foot from the measurement. Holding a document a foot from your eyes and being able to read it provides a crude, but effective way of verifying an illuminance of 10 Lux or greater exists.

Q. We are considering contracting for security guard services at our large apartment complex. How can we be sure we get a dependable quality service.

A. There are many high quality contract security agencies providing dependable and competent officers to handle the security apartment complexes. The rates usually have a lot to do with the quality of service you can expect.

Actually, it's not so much the client rate as the wages paid to the officers that makes the difference. If the officers are paid at the rate of fast food employees, chances are pretty good they will perform at about that level. If they are working under some type of government subsidy program, they can bring new risks with them and increase exposure. When the officers are making a livable wage and have some basic fringe benefits, the client rates will obviously be higher. A significantly higher client rate is generally the easiest way to identify a service you would want to consider.

The author of this article has 40 years field experience as a security consultant & international investigator and has conducted conducted several security surveys and litigation consulting projects related to apartment facilities.

Questions on this subject? Write the author at expert@LPCOnline.com

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