

# Community Association Management *Insider*<sup>®</sup>

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## Dormant Development Gets Underway to Dismay of Nearby HOA

A long-dormant Planned Unit Development (PUD) in the Wildewood area of California, Md., is now moving forward. And the initial stages of the development of the Oak Crest Center have drawn criticism from some neighbors in the residential Wildewood HOA that sits directly across the street. That's because Oak Crest has no residential development planned, only commercial, industrial, and office space—a different use than originally contemplated when it was approved in 1990 by the St. Mary's County Commissioners. Oak Crest was planned to be 1.3 million square feet of buildings on the 139.5 acre property, including residential housing. That has since been reduced to about 900,000 square feet by St. John Properties, which bought the land and development rights to the project in 2007.

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## FEATURE

## Take Immediate Action After Serious Crime

How you handle the aftermath of a serious crime when it occurs at your community will determine how safe your members feel in the future, as well as answer questions it might raise, such as whether the association's insurance policy will cover related lawsuits, and the degree to which the association may be held responsible for the crime—as well as any future crimes.

Even if members perceived you as diligent about community safety before the crime occurred, handling such an incident poorly can overshadow your good security track record and cast doubt on whether you can handle similar situations in the future. Don't let a serious crime in your community scare your members or call your management skills into question. Take these steps within 48 hours of

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## REPAIRS & MAINTENANCE

## Prevent Renovations from Leading to Member Discontent

Members are usually supportive of common area renovation projects because they realize that updates make the community a better place to live and have the potential to make their units more valuable. But not every member will feel that way. For example, members may be disgruntled if construction causes inconveniences like having to use alternate entrances to amenities, like a clubhouse, while the main entrance is redone. Another common complaint from members may be disrupted traffic patterns due to road repairs for the community.

To be clear with members about what you'll be doing in the community, when it will be done, and how it could possibly affect them, follow these steps, and adapt our Model Letter: Head Off Members' Renovation Complaints, which you can send to members to keep them content during renovation projects.

## Notify Members of Projects

Unlike emergency repairs, renovations are typically planned well before they start, which allows you to give your members advance

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**Serious Crime** (continued from p. 1)

any serious crime—and consider adapting our Model Letter: Notify Members of Serious Crime at Community to inform members and other residents about what happened.

**Step #1: Immediately Fill Out Report**

One of the most important things for associations to do after a serious crime occurs is to fill out a detailed incident report, as soon as possible, while the facts are still fresh, says community association consultant and *Insider* board member Clifford J. Treese. An incident report is important for two reasons. First, if a crime victim sues the association for failing to adequately secure the community, it's always possible that in trying to put forth the strongest case possible, he might exaggerate his injuries or change his story. A detailed incident report can help contradict flaws, inaccuracies, and distortions in the victim's story. It can also help prove that the lighting, locks, surveillance cameras, and other security equipment were in proper working order when the crime occurred.

Second, an incident report might be able to protect the association from liability should any future crimes occur. As a general rule, an association has no legal duty to protect its members from the criminal acts of strangers. But that general rule doesn't apply if the association knows about a danger to members but does nothing to protect them, such as warn them. If the association knows about a danger to members, it can be held liable for a subsequent crime if the steps it took to protect them were unreasonable, considering the type of danger and likelihood of it recurring.

So when a crime victim sues an association for failing to secure the community, the association usually must prove that its security measures were reasonable under the circumstances. Incident reports can help show what the circumstances were, thereby helping justify the association's decisions. For example, if the only crimes that had previously occurred at the community were crimes against property, like vandalism, it might be reasonable that the association didn't take

**Dormant Development** (continued from p. 1)

The Wildwoode HOA's members have expressed concern that construction for Oak Crest Center and the nature of the businesses that will rent space there could create flooding on their properties, and they're asking for the developer to construct a berm as an added buffer. The HOA has also expressed concern that the development will create a potential conflict between traffic entering and exiting the residential development and traffic using the Oak Crest PUD. The HOA has requested that the St. Mary's County Commissioners look at the PUD since its approval was granted so long ago and circumstances have changed since then.

steps to protect members against violent crimes.

A good incident report should be highly detailed. It should include such things as:

- The date and time the crime occurred;
- Location of the crime and lighting conditions at the location;
- Weather conditions;
- Photographs and surveillance videotapes, if relevant;
- The victim's identity;
- The victim's comments at the time;
- Whether medical assistance was given and, if not, whether the victim refused assistance;
- All relevant details about the suspect;
- Extent of injuries and/or property loss;
- Descriptions of any vehicles involved;
- Names and contact information of any witnesses;
- Identity and badge numbers of any responding police;
- Police report number;
- Description of what happened; and
- The name and contact information of whoever investigated the incident and filled out the incident report.

### **Step #2: Designate One 'Go-To' Spokesperson**

In the hours and days after a crime occurs, members and the local media will likely have a lot of questions. If too many people, such as board members, management company employees, or maintenance staff, volunteer information, it could create big problems later for the association. Once a crime

has occurred, a lawsuit against the association is always possible. That's why it's crucial for you to control the flow of information.

You may do this by designating one person to act as spokesperson for the association and to answer questions from members and the local media. Whom you choose is up to you, although a senior executive in the management company typically fills this role well. Then tell everyone to refer questions to the spokesperson. If you don't do this, someone without all the facts might say things that could be used later in a lawsuit against the association.

The community's staff and other professionals can acknowledge that they're aware that something happened, but they should refer the people asking questions to the spokesperson who will answer specific questions. And they can say that a letter explaining the incident will be sent to all community members in the coming days.

### **Step #3: Repair Faulty Defects Contributing to Crime**

If a defect in a common area over which the association has maintenance responsibilities may have been a contributing factor to the crime, fix it immediately. Many associations don't do this because they mistakenly fear it might be tantamount to an admission of liability. The fact that an association subsequently fixed a defect in a common area usually isn't allowed to be used as evidence that the association was negligent. But if you don't repair the defect, you could be putting members at risk for future, similar crimes. And if

such a crime does recur, the association may well face liability.

### **Step #4: Notify Insurance Company**

Finally, notify the association's insurance company of the crime, advises Treese. "Many commercial general liability policies cover the association if it's sued for negligence based on a crime committed by a third party," he says. If you don't notify the insurance company, you might be giving it a reason under the terms of the policy to deny the claim. Also, ask the insurance company to send someone to conduct a walk-through of the community and to advise whether any potentially dangerous conditions exist. But if you do this, be prepared to fix any dangerous conditions the company finds. Keep in mind that being aware of a dangerous condition and ignoring it can be considered negligence should another crime occur.

### **Step #5: Send Members Informational Letter**

As soon as possible after the crime occurs, send all members a letter notifying them of the crime. Out of respect for the crime victim's privacy, don't identify him by name in the letter, however. Also, to comply with language that might exist in the association's insurance policy, the letter shouldn't contain any admission of fault.

Sending a letter is essential because associations owe their members as much communication as possible during such a difficult time. It's also essential because it can help protect the association from liability. Should another crime occur, you want to be able

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## Serious Crime

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to show that you notified your members about the first crime and urged them to be careful. Warning members of a potential danger is itself a security measure, just like fixing a faulty gate or having a security patrol, and could help to avoid future liability. But if you fail to notify members and another crime occurs, your silence could be regarded by a court as negligence.

Your letter, like our Model Letter, should:

- Notify members that a crime has occurred;
- Describe the type of crime and where it happened;
- Encourage members to be careful;
- Tell members to report any suspicious activity to the police first, and only afterward—if at all—to the association; and
- Tell members that, ultimately, it's up to them to ensure their own safety by taking precautions and using common-sense safety measures. Stress that guarding against crime can make your entire community safer.

### Don't Participate in Community Watch Program

In the aftermath of a serious crime, many communities are tempted to organize a community watch program in which members volunteer to patrol the neighborhood. While it's a wonderful idea for association members to organize a community watch, the association itself shouldn't participate. It's too difficult to control. If the association doesn't participate, it can't be held responsible for a

crime that occurs if the members fail to keep the program going.

But if the association assumes a duty for a community watch program, it could be held liable if it subsequently abandons it or if it fails to carry out its duties properly. Also, if the association is involved in the program and someone on the watch program causes harm or property damage, the association could be held liable for that.

For example, legal experts believe the gated Florida community of The Retreat at Twin Lakes could face liability for the shooting death of Trayvon Martin, an unarmed teenager who was visiting the community when he was shot by the community watch leader George Zimmerman, in

## MODEL LETTER

### Notify Members of Serious Crime at Community

This Model Letter is an example of one that you can use to notify association members that a crime has occurred at the community. The letter briefly describes the crime and where it happened, encourages members to take precautions to protect themselves, and tells members that if they notice any suspicious activity, they should report it to the local police. Show this letter to your attorney before adapting it for use at your community.

[Insert date]

Dear Members:

We would like to notify you of an unfortunate incident that recently occurred at the community. On [insert date], a community member was assaulted and robbed along the walk from the parking lot to the building. Although it's inappropriate under the Declaration for the Association to get involved in trying to ensure the safety of people or property within the community, the Board cares about its fellow neighbors and wants everyone to know what happened and to urge you to exercise caution with respect to your personal safety and the safety of your property. If you notice any kind of suspicious activity, please report it immediately to the police. It's okay to call the management office, too, but please call the police first. Time is of the essence.

Please feel free to contact the management office if you have any questions.

Yours truly,  
Jane Manager

February. That's because reports have alleged that the association officially listed Zimmerman as the neighborhood watch "captain" in association documents, indicating that it condoned the role he took on in the community (for more information, see [www.rawstory.com/r/2012/04/09/zimmermans-homeowners-association-could-owe-millions-in-martin-case/](http://www.rawstory.com/r/2012/04/09/zimmermans-homeowners-association-could-owe-millions-in-martin-case/)).

So while it's okay for the association to let members know that a community watch program exists, and even to encourage people to participate in the program, it shouldn't participate itself.

#### Insider Source

**Clifford J. Treese:** Association Information Services, Inc., 7724 Creekside Dr., Pleasanton, CA 94588.

## DOS & DON'TS

### ✓ **Get Members to Maintain Smoke Detectors**

Working smoke detectors can save lives and protect property in your community. But they're useful only if they're operable. To get members to maintain their smoke detectors, set a policy requiring them to do so and requiring them to certify that their smoke detectors are operable.

Before setting the policy, however, the association needs to check its governing documents to see whether it has the right to do so. There are a few ways your community's governing documents might give this right—for example, if they give the right for the association to set policies as needed to protect the health of members and the safety of the community; or if state law requires all homes to have operable smoke detectors, and the governing documents say that members must comply with all laws.

A good smoke detector policy should require members to keep all smoke detectors in their units

operable at all times and, for battery-operated detectors, to replace the batteries as needed. It should also bar members from disabling smoke detectors. The most important section of the policy would require members, upon moving into their units, then once a year afterward, to submit a signed certification confirming that all smoke detectors are operable and that they have not removed or disabled any smoke detectors that were in the unit when they bought it, except to replace the old smoke detector with a new one.

If an association's governing documents and state law allow it to fine members for violating association rules, then the policy should state that members who don't maintain their smoke detectors in operable condition or who don't submit an annual certification may be fined. But let members know that if they're fined for not maintaining their smoke detectors or for not submitting an annual certification, they will have the right to a hearing before the board to contest the fine.

## RECENT COURT RULINGS

### ➤ **Association Not Liable for Alligator Attack**

**Facts:** A guest of homeowners in a planned residential community was attacked and killed by an alligator. Before the community was developed, the land within and surrounding its boundaries was largely marsh, where indigenous alligators lived. In order to develop the property, the association installed a lagoon system that allowed enough drainage to create an area suitable for a residential development. After the project was completed in the 1970s, the indigenous alligators subsequently began to move in and out of the community through its lagoon systems.

No person had ever been attacked until this guest, when she went for a walk near one of the lagoons some time after 6 p.m. The following morning, her body was found floating in the lagoon. Her right foot and both forearms had been bitten off. Prior to the attack, the guest was aware that the property

was inhabited by alligators; she had been told about alligators by the owners and had seen an alligator on the side of the road in the community, at which time she indicated that she knew they were extremely dangerous.

The guest's estate sued the association in a "premises liability" lawsuit, claiming that it was liable for her death because it was negligent for not warning visitors about alligators. The association asked the trial court for a judgment in its favor without a trial. The court ruled in favor of the guest, and the association appealed.

**Decision:** The appeals court reversed the trial court's decision.

**Reasoning:** The appeals court noted that generally, for a plaintiff to win in a premises liability case, he or she must provide evidence that would enable the court to find that the defendant had "actual" or "con-

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## **Recent Court Rulings** (continued from p. 5)

structive” knowledge of the hazard. If that happens, the defendant then must produce evidence that the plaintiff’s injury was caused by his or her own voluntary negligence—that is, intentional disregard of a known risk—or causal negligence—that is, failure to exercise ordinary care for one’s personal safety.

The appeals court noted that, in this case, there was evidence that the guest was aware that wild alligators were present around the community and in the lagoons. Therefore, she had knowledge equal to the association about the presence of alligators in the community. In addition, the guest knew that the wild alligators were dangerous, according to the owners who had discussed the situation with her. Nonethe-

less, the guest chose to go for a walk at night near a lagoon in a community in which she knew wild alligators were present, the appeals court pointed out. “This act undisputably shows that [the guest] either knowingly assumed the risks of walking in areas inhabited by wild alligators or failed to exercise ordinary care by doing so,” it stated. “A capable adult like the one in this case assumes the risk of an alligator attack when, knowing that wild alligators are present in a community, walks near a lagoon in that community after dark,” it concluded. The appeals court determined that, under these circumstances, there was no question or issue in the case that required a jury trial, and the trial court should have granted the association’s request for a judgment in its favor without a trial.

■ The Landings Association, Inc. v. Williams, June 2012

## **Repairs & Maintenance** (continued from p. 1)

notice about your upcoming renovation project. The best way to do this is by sending them a letter about the planned work, says association manager and *Insider* board member Tammy McAdory.

For major renovation projects—such as repaving streets—McAdory typically gives her members at least 60 days’ advance notice. For small projects, she tries to give her members at least 30 days’ advance notice. And keep in mind that you can send the renovation announcement letter to your members by email or by regular, first-class mail, but you may also want to include it in your community’s newsletter, or post it on your community’s Web site.

Your letter, like our Model Letter, should describe the renovation project, explain why the work is being done and how it will improve the community, and say when the construction work will take place, how long you expect it to take, and

what inconveniences members can expect.

When stating the period of time members will have to deal with changes from a renovation, make sure to include some extra time to cover any unintended delays; members will be happier if the renovation project is done sooner than you indicated or on time, rather than later. Assuage members’ fears about losing control of their own community by giving them contact information they can use to ask questions about the project. Designate a person who’s knowledgeable about the renovation project to answer any questions and include his or her telephone number and email address.

However, it’s not enough to tell your members about the upcoming renovation project before the construction work begins. You’ll also need to update them on the project’s progress. You can do this by

sending members updates often—say, biweekly—telling them what construction work has been finished, what work is being done next, how long you expect that work to take, and the effect that work may have on members. It’s important to also let them know if you’ve made any changes to the renovation project or to the work schedule—and why you made those changes.

Consider holding a member meeting for major renovations, as well. If you’re planning a major renovation project—such as constructing an addition to a building, replacing elevators, or re-landscaping the community—you may want to hold a member meeting to explain the planned work, says McAdory. Use the meeting to explain the project’s details, the logistics and timing of the planned work, how it will benefit the community, and any expected interruptions of services. If possible,

display pictures, drawings, or diagrams of what the finished project will look like so members can see what they're getting. The architect or contractor should be able to provide these items for you. It'll help you to answer any questions members may have and head off any complaints.

If you choose to hold a member meeting, send members a letter announcing this and telling them when and where it will be held. If your community is large, you may need to hold more than one meeting to make sure everyone can attend. Additionally, if your planned renovation project will take place over a long period of time or in phases, consider meeting again with your members every few months or at the start of each construction phase.

### Alert Members to Utilities, Services Changes

There may be times when you need to temporarily shut down the community's or a specific building's utilities and other services, such as elevator service, so that contractors can carry out their construction work. For example, you may need to shut off the electricity while new wiring is being installed. Whenever possible, alert your members to any such changes in or interruptions of utilities or other services *before* they happen.

Some members may request that during your renovations you take steps to accommodate their special needs. For example, a member may ask you not to paint her front door and rip up the carpeting in front of her unit during the week that she's having visitors stay with her. Try to iron out

**MODEL LETTER**

## Head Off Members' Renovation Complaints

You can adapt and use this Model Letter to announce a planned renovation project to your community's members. The letter tells members about an upcoming renovation project, explains how the project will benefit them, notes when the work will take place and what inconveniences they can expect, and includes a telephone number and an email address for members if they have any questions about the project and how it will affect them. Show your letter to your attorney before sending it to your members.

*[Insert date]*

Dear Members:

As part of Shady Acres Community Association's maintenance program, work will soon begin to replace 100 linear feet of concrete curbing along the north side of First Street. This work is being done in advance of a planned resurfacing project of that road, and will help keep the community's road infrastructure in prime condition so that you can easily travel around the community.

The curb replacement work is scheduled to begin on *[insert date]* and is expected to run for approximately *[insert #, e.g., thirty (30)]* calendar days, weather permitting. To reduce delays on First Street, detours will be established using Second Street and Main Street. If a detour road isn't available, one lane of traffic on First Street will be kept open at all times, and flagmen will direct traffic flow. We will try to keep delays to a minimum, and we encourage you to allow adequate travel time as well. Please drive with care in the work zones.

If you have any questions about the curb replacement work or the planned resurfacing project, please feel free to call *[insert name of contact person]* at *[insert tel. #]*, or *[insert email address]*. Thank you in advance for your patience and cooperation.

Yours truly,  
Jane Manager

these special-request issues before the construction work starts and, when possible, accommodate such requests—if they're reasonable, says McAdory. Preparing members for changes and interruptions will allow them to plan accordingly, relieving frustration stemming from surprise interference with their plans.

**PRACTICAL POINTER:** Document the renovation with "before," "during," and "after" photos. It's a good idea to take photographs of the renovation project before the construction work starts, during the work, and after the work is done.

Post those photos on the community's Web site and include them in its newsletter. That way, members can view the photos and see how the project turned out and how their community's money was spent. It'll also give you an opportunity to show members that while interruptions aren't ideal, they're worth it in the end. Another bonus of taking pictures: They'll help to keep absentee members aware of the renovation project's progress.

### Insider Source

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