
SHOPPING CENTER SECURITY: THE CHALLENGE TO AVOID CIVIL LIABILITY

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Our courts and civil jury system have expanded the responsibility of the private landowner, including the shopping center owner/manager, for criminal acts on their property. Essentially, shopping center owners and managers are being asked to do that which municipal law enforcement admittedly cannot do: control crime on their property, or face civil liability for damages to crime victims.

The implementation of some type of security program in any shopping center or mall is essential. The objectives of the owner or manager in implementing a security program are to provide for the safety and protection of shoppers, tenants and property. Once a criminal event occurs, however, the potential for civil liability always exists, and the avoidance of liability is an unfortunate but omnipresent part of a manager's job in running a shopping center property, both before and after an incident. The dilemma of a shopping center owner or manager is to successfully strike a balance between creating a friendly, pleasing atmosphere for shoppers while maintaining adequate control over entry to the property by a criminal element.

Under the current state of the law in most jurisdictions, property owners and managers are not insurers or guarantors of the safety of their patrons or employees. Historically, the liability of a property owner or possessor for criminal acts of third parties was generally limited to situations in which the evidence showed an "assumed duty" on the part of the owner/manager. An example of this concept is the installation of a security system or equipment, such as closed-circuit TV, inside a mall or shopping center, or the installation of lighting in a parking area. Once the property owner assumed the duty of providing those security measures, he also assumed the obligation to maintain those systems. Where a security system fell into disrepair or the lighting was not properly maintained and became inoperable

or inadequate and those conditions led to the commission of a crime, the property owner was generally held liable to pay damages to the victim of the crime.

TAKING REASONABLE STEPS

As a result of court decisions handed down over the past 10 to 15 years, the question of whether owners or managers of shopping centers will be held liable for a criminal act on their property depends upon whether the criminal act could have been reasonably anticipated. The owner/manager must exercise reasonable care to minimize foreseeable dangers and is required to maintain sufficient security equipment and take reasonable security measures in the face of foreseeable criminal intrusion. Essentially, the courts have come to regard the occurrence of a crime on private property as a foreseeable event, rather than as an intervening event that would not reasonably be anticipated by the owner or manager. Where a history of criminal activity in a shopping center or mall or in the community surrounding the center is established, the owner or manager is charged with the legal obligation to take reasonable steps to minimize those dangers.

Questions concerning the reasonableness of steps taken by the owner/manager are generally decided on a case-by-case basis; ultimately, a jury decides in a civil action brought by the crime victim against the owner/manager. However, security directors and consultants generally agree that certain steps must be taken in order to successfully defend a claim for damages arising out of a criminal event on a shopping center property. A few of these recommendations follow.

Evaluate Needs

All shopping center properties should make a formal assessment of security measures and must implement some type of defined security program. The

assessment should come from either the local police department or from an independent security consultant. Once an assessment of required or recommended security measures is obtained, however, the owner/manager must be prepared to adopt that plan. The disclosure of an owner/manager's decision not to adopt a recommended security plan or to limit the extent of the security measures called for in the plan may later be used as evidence of a lack of reasonable care and will make a significant impact on a jury.

Work with the Police

Shopping center or mall security programs should be coordinated with local law enforcement departments. This partnership often arises in the context of patrolling open-air parking facilities and may lead to an agreement of shared responsibility with the local law enforcement department. Notwithstanding any arrangement with local law enforcement for shared responsibility, the owner/manager of a shopping center property will not be absolved of responsibility. However, the added security measures that arise from a shared responsibility arrangement will help to establish the reasonableness of the security measures implemented by the owner/manager on the property.

Maintain Equipment

Careful maintenance of all security equipment, such as door locks or closed-circuit TV, and maintenance of adequate lighting both inside and out is absolutely essential.

Keep Records

Record keeping is of critical importance, including the maintenance of security logs and incident reports for any criminal event. The logs should identify who is working at any given time, where they are deployed and what they are doing, so that the activities of the security personnel can be re-created if litigation arises. The inci-

dent report should be carefully prepared, preferably with the input of security supervisors, risk managers and perhaps legal counsel, as well. Security personnel should be trained in the preparation of a complete and detailed incident report. Incident reports should also be catalogued and cross-referenced so that data can be obtained to show those vulnerable places at a particular property and also be easily compiled to show types of occurrences at a given site. Records of past incidents may be damaging evidence to the owner/manager in a lawsuit; however, the failure to maintain these records may be even more damaging.

CONCLUSION

The legal obligations imposed upon a shopping center owner or manager to provide and maintain reasonable security measures, at the risk of potential liability to victims of crime in a mall or shopping center, pose an ongoing challenge to the shopping center industry. In light of the potential liability exposure that comes with litigation arising out of a criminal event, the best line of defense is a solid security program and the advice of security professionals. Prompt investigation of a criminal incident and prompt and detailed reporting and follow-up with local law enforcement are essential—as is the need to organize a team immediately after a criminal event, including security personnel and supervisors, local law enforcement personnel, general managers, investigators and legal counsel. By being aware of the risks and potential exposure to liability and scrupulously following an established security program, a shopping center owner or manager can limit the impact of and potential exposure from litigation arising out of these events.

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