 **ROEDER SMITH JADIN**  
PLLC  
*Integrity. Honesty. Tenacity.*

## Premises Liability Issues in Common Interest Communities

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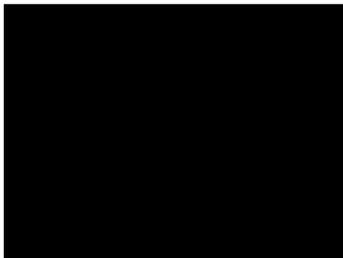
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### Security Cameras



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### The Case for Cameras:

- Reason 1: To deter trespassing, vandalism, property damage, and rules violations.
- Data is mixed, but surveillance cameras may reduce crime in areas where they have been installed.
  - WELSH BP, FARRINGTON DC. *Effects of Closed Circuit Television Surveillance on Crime*. Campbell Systematic Reviews 2008:17.



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### The Case for Cameras:

- Reason 2: To monitor potentially dangerous activities and areas (swimming pools, exercise facilities, etc.)
  - "The road to Hell is paved with good intentions."
    - CHARLOTTE BRONTË
    - LORD BYRON
    - SOREN KIERKEGAARD
    - KARL MARX
    - OZZY OSBOURNE.

(yes, Ozzy said that too.)



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### The Case for Cameras:

- Reason 3: To document events for later use.
  - Law enforcement
  - Insurance claims
  - Civil litigation



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### The Case Against Cameras:

- Privacy Concerns
  - Potential for both criminal and civil liability for unpermitted monitoring
- Perception
  - How will the community feel about being monitored?



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## Invasion of Privacy: Criminal Liability

- In Minnesota, it is a crime to surreptitiously install a video camera or other monitoring device in someone else's home without their permission.  
- Minn. Stat. § 609.746, subd. 1(b).
- Associations cannot install security cameras or other monitoring devices anywhere within individual units.
- Associations can install security cameras or other monitoring devices in the common elements.



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## Invasion of Privacy: Civil Liability

- In 1998, Minnesota recognized a claim for invasion of privacy. *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998).

*"[t]he right to privacy is an integral part of our humanity; one has a public persona, exposed and active, and a private persona, guarded and preserved. The heart of our liberty is choosing which parts of our lives shall become public and which parts we shall hold close."*

- Three types of invasion of privacy: (1) intrusion upon seclusion; (2) publicity given to private life; and (3) appropriation of name or likeness.



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## Invasion of Privacy: Civil Liability

- "Intrusion upon seclusion" - Intentionally intruding, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns if the intrusion would be highly offensive to a reasonable person.

- Judged by a reasonable person standard.
- Would a reasonable person within the community find the intrusion highly offensive?



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## Invasion of Privacy: Civil Liability

- Must have a reasonable expectation of privacy.
- No reasonable expectation of privacy within most common elements/limited common elements where homeowner activity is in full view (parking garage, deck, patio, swimming pool, exercise room, etc.)
- Reasonable expectation of privacy within condominium or townhome units.
- Reasonable expectation of privacy within those parts of common elements where one would expect not to be observed and recorded (community bathrooms, locker rooms, showers, etc.)

"Reasonable Expectation of Privacy"



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## So, Is It Legal?

- It is legal to install cameras in all areas except in those where homeowners have a reasonable expectation of privacy.
  - Shared entry doors
  - Recreational facilities
  - Laundry rooms
- It is not legal to install cameras in areas where homeowners have a reasonable expectation of privacy.
  - Locker rooms
  - Common area bathrooms
  - Areas where camera may record interior portions of their units.



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## So, Should Associations Do It?

- Property owners have a duty to protect persons from being injured by foreseeable dangerous conditions on the property, unless the risk of harm is obvious.
- Generally, an association has no duty to protect another from harm caused by a third party's conduct.
- EXCEPT when:
  - There is a "special relationship" between the association and the homeowner
  - The risk is reasonably foreseeable

- *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 673 (Minn. 2001)



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## A Special Relationship? Tell me more...

- A "special relationship" may exist if:
  - (1) the homeowner entrusted his/her safety to the association;
  - (2) the association accepted that entrustment; and
  - (3) the association was in a position to, and should have been expected to, protect the tenant from criminal attack.
- Most associations probably don't have a "special relationship" giving rise to a duty to protect.

- *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 673 (Minn. 2001)



These two clearly have a special relationship.



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## What is "Foreseeability"?

- "Foreseeability":
  - Whether a risk is foreseeable depends on "whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility."
  - If the connection between the danger and the defendant's conduct is too remote, then it is not foreseeable.
  - Whether a danger is foreseeable depends heavily on the facts and circumstances of the particular case.

- *Senogles v. Carlson*, No. A15-2039, 2017 WL 4273816, at \*4 (Minn. Sept. 27, 2017)

synonyms for foreseeable:  
predictable, likely, expected, foreseen, certain, anticipated, sure, predicted, calculable, probable



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## What is "Foreseeability"?

- What kind of things might make a risk foreseeable?
  - History of previous similar criminal activity
  - Problems with owner or invitee in the past

synonyms for foreseeable:  
predictable, likely, expected, foreseen, certain, anticipated, sure, predicted, calculable, probable



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## Can Homeowners Install Security Cameras?

• Look to the governing documents first.

- Most governing documents prevent homeowners from installing security cameras on common elements.
- Governing documents may also prevent homeowners from installing security cameras on their units without board or committee approval.



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## Can Homeowners Install Security Cameras?

• If permitted, look to the underlying rationale for the camera before approving.

- Will cameras violate someone's reasonable expectation of privacy?
- Will installation interfere with other homeowners' use and enjoyment of property?
- Homeowners who install security cameras (permitted or otherwise) may face potential criminal or civil liability if they use them improperly.



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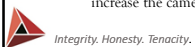
## Other Weird Random Stuff...

• "Dummy" Cameras

- Not recommended
- May provide false sense of security to homeowners who believe an area is being monitored for security.
- Not having a system may be better than having a fake system.

• Notification to Homeowners

- No law requiring associations to post signs informing homeowners that they are being videotaped with security cameras.
- BUT signs informing homeowners and others that area is under surveillance may increase the cameras' deterrent effects.



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## Premises Liability: An Overview

- Property owners have a duty to use reasonable care for the safety of all entrants upon the premises.
- This includes an ongoing duty to inspect and maintain the property to ensure that entrants are not exposed to unreasonable risks of harm.
- If a dangerous condition on the property is discoverable through reasonable efforts of the landowner, the landowner must either repair the conditions or provide entrants with adequate warnings.

- *Olmanson v. LeSueur County*, 693 N.W.2d 876, 880 (Minn. 2005)



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## Premises Liability: An Overview

- Property owners do not have a duty to warn invitees about dangerous conditions that are "known or obvious."
  - Known: person must be aware of condition and appreciate its danger.
  - Obvious: danger must be observable.
- Duty to warn extends only to latent or hidden dangers, not to inherent and known dangers.

- *Zimmer v. Carlton County Co-op. Power Ass'n*, 483 N.W.2d 511, 513 (Minn.App.1992), review denied (Minn. June 10, 1992)



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## Hypothetical #1: The Pothole



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## Hypothetical #2: The Exercise Room



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## Hypothetical #3: The Swimming Pool



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Questions?

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