

## Downsizing Security May Upsize Liability

Immediately following September 11, New York City's commercial real estate industry implemented stringent and expensive security measures. By nature, these precautions were put in place without advanced planning. However, the new security measures took effect almost immediately and largely without regard to effectiveness or cost. In many instances, commercial property owners and managers implemented heightened security at all of their properties, without consideration as to whether the building warranted such stringent and expensive security measures.

While they were meant to guard against potential terrorist acts, the new security precautions were mostly an overreaction and even in high-visibility trophy properties, they did little or nothing to combat terrorism concerns. As a result, many of the new measures were abandoned, without planning or documentation.

Wherever security is involved, it can often raise the question of a building ownership's or manager's liability if an incident were to occur. If, for example, property is stolen from a building, or an occupant is physically assaulted on the premises and the tenant

foreseeable on one property may not be foreseeable on another. Instead, foreseeability is based upon all of the facts available. Some of the points that may be considered are the current industry standards for security, a property's safety record and the owner's or manager's perceptions on security issues; which can be indicated in records, budget documents, incident reports and security logs.

The victim must also quantify and document any damages in order to recover them from the property owner or manager.

Rendering judgment in traditional liability always places tension on budgetary constraints vs. security concerns and expenditures that facilitate a safe environment for tenants. Recovery is significantly more likely, to the extent that a plaintiff or victim can demonstrate—through detailed review of the owner's or manager's records during a pre-trial discovery—that the standard of security being offered had been diminished before the injury.

There are two primary lessons that can be ascertained from the this experience. For starters, never implement heightened security without careful consideration and planning. Hiring more guards or installing high-tech equipment that is later abandoned can have disastrous consequences when it comes to protecting against security, personal injury or property damage.

And before cutting back on security, carefully prepare an analysis of the rationale and document the measures being taken to guard against ordinary liability concerns. Even when cutbacks have occurred, documenting the well-reasoned steps that have been taken will help when an owner's or manager's conduct and documentation are placed under a microscope.

One of most effective protections against legal liability resulting from breaches in security management is the Legal Liability Audit. The Legal Liability Audit is strategic, comprehensive and is headed by an attorney to maximize efficiency and confidentiality. It addresses security, safety, ADA and regulatory facilities management issues and is available as an indication of corporate responsibility and advance planning should a lawsuit ensue. ♦

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sues the ownership as a result, the following will be elements of the claim to consider.

First, does the property owner or manager owe a duty to the victim, such as the provision of a safe environment? Factors affecting the nature of the duty relate to where the damage was incurred. For example, was the physical assault in an area outside the building such as a passageway or portico?

Second, was the ownership's conduct a breach of the duty? It should be carefully considered whether or not the property owner or manager had adequate safeguards in place to prevent reasonably foreseeable dangers.

If a breach did occur, does it constitute the 'proximate cause' of the injury to the victim? Inadequate security is not enough to warrant a ruling in favor of the victim. The possibility exists that there may have been unpreventable intervening factors that caused the injury.

To determine if proximate cause exists, courts examine whether the crime was foreseeable and it is important to note that what is