

Perspectives “Application of New Section 768.0701, Florida Statutes, Regarding Multifamily Property Safety to Condominium Associations” - FCAP Managers Report

James Robert Caves, III | 07.07.2023

ArticlePublication | FCAP Managers Report

The new law, which became effective on March 24, 2023, is intended to limit the liability of the owner or principal operator of a “multifamily residential property” for criminal acts that occur on the premises which are committed by third parties who are neither employees nor agents of the owner or operator.

Section 768.0706, Florida Statutes, is titled “Multifamily residential property safety and security; presumption against liability” and includes protection from liability for the owner or principal operator of a multifamily residential property if certain listed security actions are taken. The term “multifamily residential property” is defined to include a group of residential buildings, such as apartments, townhouses, or condominiums, consisting of at least five dwelling units on a particular parcel. The term “parcel” is defined to mean real property for which a distinct parcel identification number is assigned to the property by the property appraiser for the county in which the property is located.

A condominium association is not specifically identified as an owner or operator in the statute, and it is not clear whether a condominium association would be considered the owner or operator of a multifamily residential property as that term is defined in the statute. The term “multifamily residential property” includes the term “condominiums,” and there must be at least five dwelling units on a particular “parcel.”

The term “parcel” requires a distinct parcel identification number assigned by the property appraiser. Therefore, if there is no parcel identification number for the condominium association, it appears that the protections provided for in the statute would not apply, even if the condominium association undertook to implement the security measures specified in the statute. While many county property appraisers have a separate and distinct parcel identification number for the condominium association, not all do. Therefore, if any condominium association is considering implementing the following security measures in order to take advantage of this new law, the association would need to first confirm that there is a separate parcel identification number for the condominium association as a threshold question.

Assuming that Section 768.0706, Florida Statutes, applies to a condominium association as an “owner or operator” of a multifamily residential property, if

the condominium association substantially implements the following security measures on the property, it would have a presumption against liability in connection with criminal acts committed by third parties (who are not employees or agents of the owner or operator) that occur on the premises:

- A security camera system at points of entry and exit which records, and maintains as retrievable for at least 30 days, video footage to assist in offender identification and apprehension.
- A lighted parking lot illuminated at an intensity of at least an average of 1.8 foot-candles per square foot at 18 inches above the surface from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn.
- Lighting in walkways, laundry rooms, common areas, and porches. Such lighting must be illuminated from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn.
- At least a one-inch deadbolt in each dwelling unit door.
- A locking device on each window, each exterior sliding door, and any other doors not used for community purposes.
- Locked gates with key or fob access along pool fence areas.
- A peephole or door viewer on each dwelling unit door that does not include a window or that does not have a window next to the door.
- A crime prevention through environmental design assessment, completed by January 1, 2025, and performed by a law enforcement agency or a designated Florida Crime Prevention Through Environmental Design Practitioner (designated by the Florida Crime Prevention Training Institute of the Department of Legal Affairs), where the owner or operator remains in substantial compliance with the assessment.
- Proper crime deterrence and safety training to current employees by January 1, 2025, and to an employee hired after that date within 60 days of his or her hire.

The term “proper crime deterrence and safety training” means training which trains and familiarizes employees with the security principles, devices, measures, and standards described above and which is reviewed at least every three years and updated as necessary. The owner or principal operator may request a law enforcement agency or the Florida Crime Prevention

Through Environmental Design Practitioner performing the assessment to review the training curriculum. The Florida Crime Prevention Training Institute of the Department of Legal Affairs shall develop a proposed curriculum or best practices for owners or principal operators to implement such training.

For purposes of establishing the presumption against liability, the burden of proof is on the owner or principal operator to demonstrate that the owner or principal operator has “substantially implemented” the security measures outlined in the statute, which begs the question as to what constitutes substantial compliance.

Further, for condominium associations, there are numerous other questions arising from the statute, including whether installing items such as security cameras, lights, and gates would be material alterations or substantial additions to the condominium property which could require membership approval; how a condominium association would install items like door bolts and peepholes when those doors may be part of the units and not common elements; and whether an association needs to train a vendor’s employees on security measures.

The current text of the statute does not address any of these concerns, and absent some future clarifying amendment to either Section 768.0706, Florida Statutes, or to the Condominium Act, Chapter 718, Florida Statutes, on these issues, any condominium association undertaking the implementation of some or all of the security measures specified in the statute in order to take advantage of the presumption against liability would be doing so without any assurance that the statute would be found to apply.

Accordingly, undertaking the implementation of the security measures outlined in the statute may be prudent actions for a condominium association to consider, particularly with respect to the implementation of security measures on the common property of the condominium, such as the installation of security cameras, gates, and lighting, subject to membership approval as applicable. However, any such condominium association should consult with its insurance and legal professionals prior to undertaking such actions and should consider the general benefits of undertaking the installation of such security measures even absent the application of Section 768.0706, Florida Statutes.

To read the original FCAP article, please [click here](#).

Rob Caves is a Shareholder in Becker's Community Association practice group. He is general counsel to condominium, cooperative, and homeowners associations, and maintains an additional focus on telecommunications issues.