

Condominium Safety – Navigating the Rapids

Whitewater rafting can be an exhilarating experience. Who needs roller coasters when you can hurtle down a raging river at breakneck speed? However, the danger of striking sharp rocks that are obscured by water and foam is ever-present. Rafters must keep a watchful eye on the river ahead and steer clear of problem areas. Managing the common areas of a condominium requires a similar vigilance.

Condominium associations have a legal duty to maintain their common areas in a safe condition.¹ Failure to comply with a statute, ordinance, or administrative rule may be considered by a trier of fact as evidence of negligence.² Individuals that are elected to serve on the boards of condominium associations are required to exercise ordinary and reasonable care in the performance of their duties, and the Washington Supreme Court has held that this standard at a minimum requires boards to adequately investigate the relevant circumstances before making decisions.³

If the boards of condominium associations are or should be aware of dangerous conditions in common areas and fail to take prompt action to remedy those conditions, those associations and the members of their boards could end up on the losing end of negligence lawsuits and be liable for significant damages. It is therefore important for condominium boards to always be on the lookout for potential dangers in the common areas of their condominiums.

Pools. Swimming pools are great fun on long summer days, but they also pose numerous hazards to the residents of a condominium. Powerful suction from drainage systems has caused a number of deaths and injuries in recent years. A federal law enacted in late 2007 to address this issue requires the installation of a certain type of cover over all pool drains.⁴ This law also requires the installation of a second anti-entrapment system if the pool has a single main drain that a human body can sufficiently block to create a suction entrapment hazard.⁵ If a condominium association's pool does not comply with this law, its board should close the pool until this situation is remedied.

Pools that are readily accessible to unsupervised children can lead to tragic results. The Washington Administrative Code therefore contains detailed descriptions of the type of barriers that are required to restrict access to pools. Barriers must be at least six feet high and must not contain open spaces that exceed specified limits.⁶ Barriers are also required to have self-closing and self-latching gates or doors that, among other protections, either require a key/code to enter or have latches more than five feet from the ground.⁷

¹ *Faulkner v. Raquetwood Village Condominium Association*, 106 Wn. App. 483, 486-87, 23 P.3d 1135 (2001).

² RCW 5.40.050.

³ RCW 64.34.308(1); *Riss v. Angel*, 131 Wn.2d 612, 632-33, 934 P.2d 669 (1997).

⁴ Virginia Graeme Pool and Spa Safety Act, 15 U.S.C. §8001 et. seq.

⁵ Id.

⁶ WAC 246-260-031(4), (5); WAC 246-260-131(2)(a).

⁷ Id.

Walkways adjacent to pools are a high risk area for slip and fall incidents. The Washington Administrative Code requires pool operators to ensure that water does not pond on such walking surfaces.⁸ The installation of drains in problem locations is often the simplest way to deal with this issue.

Ice. As Seattle residents collectively re-discovered a few months ago, snow and ice can make sidewalks and streets difficult to navigate safely. The Washington Supreme Court has repeatedly emphasized that landowners have a duty to remove snow and ice from common areas within a reasonable time.⁹ The Court held in 2001 that an apartment complex owner's failure to clear accumulated ice and snow at a side exit to a common area clubhouse within three days of a major snowfall could justify a finding that the landlord breached its duty to the tenants.¹⁰ The Court's reasoning would appear to apply in the condominium context as well. In the event of another significant snowfall this winter, condominium boards should take action to rapidly clear snow and ice from common area pathways within the condominium.

Lights. Crime is another threat to the well-being of the residents in a condominium. There is evidence that increased lighting in common areas is an effective way to reduce criminal activity.¹¹ Better illumination makes common areas less attractive to would-be criminals and permits residents to see suspicious people sooner and take evasive action. In at least one reported Washington case, the lack of lighting in the common areas of a condominium was the basis for one of the plaintiff's primary claims against her condominium association.¹² Strategically placed lighting can also reduce accidents by allowing residents to see upcoming slipping/tripping hazards, including steps, puddles of water, tree branches, and children's toys.

The three categories discussed above represent only a sample of the safety-related issues that condominium boards should take into consideration. Decaying wood in common area structures must be identified and replaced before it causes them to collapse and injure residents. Erecting fences, hiring security personal, and/or installing security cameras may be advisable to address a persistent crime problem. The installation and periodic inspection of fire sprinklers and smoke detectors is another obvious area of concern.

Condominium boards should make common area safety one of their top priorities. This involves taking owners' safety-related concerns seriously, seeking professional guidance regarding the laws that the association must follow, inspecting the common areas on a regular basis, and causing necessary maintenance, repair, and replacement of common areas to occur at the appropriate times. If condominium boards perform their duties in

⁸ WAC 246-260-131(2)(b).

⁹ *Geise v. Lee*, 84 Wn.2d 866, 529 P.2d 1054 (1975); *Iwai v. State*, 129 Wn.2d 84, 915 P.2d 1089 (1996); *Musci v. Graoch Associates*, 144 Wn.2d 847, 31 P.3d 684 (2001).

¹⁰ *Mucsi*, 144 Wn.2d at 862.

¹¹ John Philip Bachner, Case History: Using Lighting to its Fullest Extent, *Condo Management Magazine*, February 2000.

¹² *Faulkner*, 106 Wn. App at 485.

this manner, they will help their associations avoid some of the rocks that lurk downstream.

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