

# Changes in the wake of Lane Bryant: security factors for landlords to consider

By Marcia Owens and Susan Kim

In response to the tragic shooting deaths at the Lane Bryant store in Tinley Park earlier this year, and following similar acts of violence across the country, more and more communities are considering whether to require landlords to install security cameras to monitor their shopping centers. In Tinley Park, for example, village trustees are considering a proposal that would require owners of shopping centers larger than 100,000 square feet in size to install video cameras in their parking lots and along roadways.

This phenomenon, however, is not isolated to the Chicago area. Broward County, Florida, is considering a proposal that would require owners of shopping centers that are larger than 25,000 square feet or located on more than four acres to install video cameras in their parking lots. In some places, changes are already being implemented. In 2007, the city of El Cerrito, California, passed an ordinance requiring certain businesses, including banks and carry-out food establishments, as well as shopping centers that include such businesses, to install video surveillance systems which at least minimally cover the entrances and exits to the parking lot, loading dock areas, areas designated for customer or employee parking use, and entrances and exits to each business.

A critical but often ignored question is whether security cameras actually add more liability concerns than they solve. Landlords are not required to provide absolute protection against crime. Under Illinois law, the general rule is that there is no duty requiring a landlord to protect its tenants or the tenants' invitees from criminal activity by third persons on its property absent a "special relationship" between the parties. Illinois courts have consistently held that the relationship between a landlord and tenant, or the invitees of landlord and tenant, does not rise to the level of a "special relationship." However, that may not be the case in other jurisdictions. Owners of property in other states will need to research the law in each state in which their shopping centers are located in order to determine their duty with respect to third party crimes.

As always, there are exceptions to the general rule, including but not limited to the following:

If a landlord knows or should know of criminal activity taking place on the landlord's premises, the landlord has a duty to take reasonable security measures.

If a landlord voluntarily elects to



provide security services and is negligent in the performance of these services, and the landlord's negligence is the proximate cause of the injury to a party, the landlord may also be liable for the criminal acts of third parties.

If a landlord elects to install security cameras, the landlord's duty of care will be limited to the extent of the security services provided. The landlord will be required to properly maintain and repair the cameras, and to have sufficient staff to routinely monitor them. This staff may not be given additional duties that would hinder their primary responsibilities.

If a landlord decides to hire security personnel to patrol the shopping center, the landlord must not negligently select and hire such personnel. Furthermore, if a landlord provides security services at the commencement of the lease, the landlord may have a continuing obligation to provide such security measures, or at least the same relative degree of security, throughout the term of the lease. It is also important to note that a landlord may be required to post signs in the interior and exterior of the shopping center notifying the public of the presence of such cameras and that the cameras may be monitoring and taping activity to avoid privacy concerns. These signs should specifically state that by entering onto the premises or the shopping center, the parties consent to being videotaped and acknowledged that the recordings

may be used in the investigation and prosecution of criminal activity.

Of course the financial costs of enhancing security must be considered, including the cost of installing and maintaining the security cameras. Installation costs have been estimated to be \$1,500 to \$2,000 per camera. Depending on the size of the shopping center and the type of system installed, the initial installation costs could run in the tens of thousands of dollars. This does not include the personnel needed to monitor the cameras, as well as costs for the maintenance and storage of the actual recordings. The estimated cost in Broward County, Florida, was \$11,000 for a "small" shopping center and approximately \$17,000 for a "medium" shopping center. Sometimes a local government agency will help to defray the costs; the city of El Cerrito, California, offers loans of up to \$5,000 to small businesses that meet certain criteria to offset a portion of the cost of installing surveillance systems.

Before they can negotiate a pass-through of these expenses to tenants as operating expenses, landlords need to understand the requirements of a municipality, or the potential security issues at each particular location. Landlords should realize in advance, however, the likelihood that tenants will only agree to pay for the repair and monitoring of security cameras, and not for the actual purchase and installation of the systems. While the bene-

fits of surveillance cameras should outweigh any objections that the tenants may have, bear in mind that an increase in operating expenses reduces the profitability of tenants and can make a difference in the survival of a tenant with only marginal profitability.

If a tenant elects to install its own surveillance system, the lease should specifically state that the tenant will be responsible for the security of its premises and also address the allocation of risk between the parties. Since the security cameras will be under the tenant's exclusive use and control, the tenant should be liable for any risk as a result of criminal acts of third parties in the premises, not the landlord.

In order to reduce the landlord's risk of liability, each landlord will need to implement formal policies and procedures regarding the monitoring and maintenance of the security cameras, as well as the retention of the recordings made from such cameras, including in what manner and how long those recordings should be maintained. The policies and procedures should also address which parties should have access to the recordings and details related to the sharing of any recordings with law enforcement.

Finally, be aware that some of the ordinances that have been recently enacted require written approval from the municipality or the police department prior to the installation of a video surveillance system. Landlords should be alert to this additional requirement and determine whether there are any specific technical requirements imposed by a municipality prior to installing any security cameras in the shopping center. Also, developers of shopping centers should recognize that this additional step may require more time to be built in for the approval and permitting process, and may also add to the overall costs of a project.

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