

Florida's New Tort Reform Package: Property Owners Should Complete the Security "Checklists" for a Presumption Against Liability

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The Florida Legislature has passed and Governor Ron DeSantis has signed HB 837, which will significantly reform tort law in Florida. The proposed language covers a variety of topics and specifically addresses negligent security. HB 837 will protect apartment and other multifamily housing property owners from liability if an individual is injured while lawfully on the premises. Of significance, HB 837 provides a presumption *against* liability if the property owner follows and completes their checklist of precautionary measures and requirements.

A presumption is a rule of law that permits a court to presume a fact is true until the greater weight of evidence disproves or rebuts the presumption. Moreover, a presumption places the burden on the opposing party to establish the nonexistence of the assumed fact. For example, Florida courts currently recognize a presumption of negligence against the driver of a vehicle that rear-ends another vehicle. However, the driver of the vehicle that rear-ended the other may negate this presumption by presenting evidence to the contrary. Accordingly, a presumption against liability is a powerful tool in litigation.

Requirements for Presumption Against Negligence

For property owners to assume this presumption against negligence, HB 837 provides three requirements that a property owner must show they followed prior to the incident giving rise to the negligence action. The burden is on the property owner to demonstrate that they have satisfied all three requirements prior to assuming the presumption against negligence. These requirements are:

1. A list of physical property safety measures to be taken on the property
2. A crime prevention analysis
3. Crime prevention training for all employees.

Physical Property Safety Measures

The first requirement includes the implementation of the following safety measures on the property:

- A security camera system at points of entry and exit that records and maintains footage for at least 30 days. The goal of this precaution is to assist in offender identification and apprehension.
- A lighted parking lot that provides light from dusk until dawn.
- Lighting in walkways, laundry rooms, common areas and porches from dusk until dawn.
- A deadbolt measuring least one inch in each dwelling unit door.
- A locking device on each window and each exterior sliding door, and another on 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.

Crime Prevention Analysis

The second of HB 837's criteria includes a requirement that by January 1, 2025, the property owner has a "crime prevention through environmental design," that is no more than three years old, completed for the property. Such assessment must be performed by a law enforcement agency or a Florida Crime Prevention Through Environmental Design Practitioner (FCP). The property owner must remain in substantial compliance with this assessment. The final version of the signed law will detail what the assessments will entail.

Crime Prevention Training

HB 837's third and final requirement is that by January 1, 2025, the property owner must provide proper crime deterrence and safety training to its current employees. This training is to familiarize employees with security principles, devices, measures and standards set forth in the checklist of physical safety measures listed in requirement one.

Analysis

Looking ahead, the above-described presumption will be beneficial to property owners in managing litigation costs in negligent security cases, and security measures across the state will consequently improve.

Under the prior standard, negligent security cases usually result in a "battle of the experts" since each party retains a security expert to testify to the foreseeability of the criminal action that occurred, and the reasonableness of the steps the property owner took to maintain the property in a safe condition. The experts retained by the injured party usually argue that the property did not have sufficient lighting, security cameras or door locks. Under HB 837, property owners are incentivized to proactively implement these security measures and will be presumed not to be negligent if the above requirements are met. HB 837's checklists should be celebrated by property owners and tenants as welcome safety changes to Florida law.