DON’T IGNORE CRIMINAL ACTIVITY - INFORM RESIDENTS

Crime is an unfortunate reality. Many managers are torn about reporting crimes at their communities. Most managers want to inform their residents about crimes, but they are concerned for good reasons. Managers are concerned about the negative impact of publicizing onsite crimes. Residents might move out. Applications may decrease. Managers are also concerned about not reporting crimes. What happens if the same criminal commits another crime at the community? Are you liable for not informing your residents? Potentially, yes. If you fail to inform residents about serious crimes at your community, the resident may be able to successfully argue in court that you had a duty to warn them. Because the potential legal liability for not reporting criminal activities at the community outweighs perceived or real consequences, you should always inform your residents of serious crimes that occur on your property.

Failure to inform (warn) residents about crimes at your community creates potential significant legal liability. Residents have successfully sued, and won large verdicts when landlords failed to inform them about crimes. While no Colorado court has held a landlord liable for failing to warn residents about criminal activity, residents have won large verdicts in other state courts. Especially when residents are the victims of violent criminal assaults committed by the same perpetrator who has committed similar crimes at the same apartment community, and the community failed to advise its residents about the criminal activity.

Your duty to warn residents of criminal activities is separate and apart from your duty to protect residents from the criminal activities of third parties. As general rule, you have no duty to protect residents against the criminal acts of third parties. The duty to protect focuses on your ability to prevent the criminal activity. The duty to warn focuses on making the resident more aware of the heightened risk of potential criminal activity so that the resident can take appropriate safeguards. For example, three muggings have taken place in the community parking lot late at night. A fourth resident is mugged. You could not have stopped the mugging. But if the resident
would have known about the three previous muggings, the resident might not have decided to retrieve her ipod from her car in the parking lot at midnight.

If this sounds far fetched, it’s not. A court found the landlord liable based on very similar facts. The same perpetrator had committed a series of violent sexual assaults at a property. A resident who was assaulted sued and won because the community did not inform or warn the residents of the assaults. The court found that regardless of whether the resident’s unit was secure, knowledge of the suspect’s mode of operation and a view of the composite drawings of the suspect could have been useful to the resident. If she had known of the danger, she might not have rented an apartment in the complex in the first place, or she could have taken precautions based on knowledge of the suspect’s appearance and mode of operation.

Liability for failure to warn is based on negligence. In order to be negligent, you must have a duty to the resident. In any given case, judges are free to determine whether or not you had a legal duty to warn the resident. No one factor is controlling. The question of whether a duty should be imposed in a particular case is essentially one of fairness under contemporary standards. Would reasonable people believe you had a duty to warn residents about a particular crime? The answer to this question in most cases can’t be predicted. You will know the answer when the judge provides it.

Disclosing crimes won’t guarantee that you won’t get sued. However, by disclosing crimes, the community will be in a much stronger position to defend any lawsuit. If a judge holds that you had a duty, you will be able to forcibly argue that you carried out that duty by informing residents about crimes. You don’t have to inform residents of all crimes. You should inform residents about any violent crimes, or crimes that could potentially turn violent. For example, burglaries aren’t necessarily violent, but could easily turn violent if a resident unexpectedly walked in on the perpetrator. You should also report non-violent crime when there have been a large number of instances. For example, five car break-ins in the parking lot in the last couple of weeks.

When crime occurs, you should notify residents promptly that a crime was reported to the police or took place on the property. Never identify the victim or apartment unit involved in the crime. The notification should also make key points
about safety. No one can guarantee the residents’ safety. Regardless of recent crime, residents should always be careful and conscious of issues affecting their personal safety. Security is the residents’ responsibility. The courtesy patrol will assist if possible, but cannot ensure resident safety nor prevent crime. Law enforcement is responsible for responding to criminal activity. Report all suspicious activity or criminal activity to the police immediately, and then notify management.

When you notify residents about crime, you should also provide security tips. The National Apartment Association lease, and many other leases contain safety tips and advice. Remind residents about these security tips. If your lease does not contain security tips, you can quickly find practical resident safety tips and precautions on the internet. Finally, make sure to keep a file of all letters, memos, or other communications distributed to residents informing them about criminal activity. Make sure that this file clearly documents when and how such written advisements were distributed to the residents.

The negative consequences of reporting crimes may be less than you think. Most residents understand that crime is a reality of life. While publicizing crimes on your property is not desirable, liability for failure to report and warn residents of crime is less desirable. Reporting crimes may benefit the community. Residents might appreciate your efforts to help them guard against crime. If Residents are warned, they probably are more likely to be cautious and vigilant which may prevent an additional crime, and thus a lawsuit. If a resident is the victim of a crime and sues, you will be in a much stronger position to defend if you warned the residents about similar crimes committed.