

Homeowners' Associations Could Face Liability for Bear Attacks

*Gary M. Kaleita and Peter Simmons**

In this article, the authors discuss liability for animal attacks in homeowners' association communities.

It is sometimes said that law is what separates humans from wild animals. While humans have been developing laws since the Code of Hammurabi, they have also been developing land, so much so that both commercial and residential projects increasingly encroach into wild animal habitats. Since 1990, the Florida Fish and Wildlife Conservation Commission ("FWC") has received over 50,000 telephone calls reporting black bear sightings significant enough to prompt concerns. Since 2013, there have been several instances of bears attacking humans in Florida. As human populations grow and natural habitats shrink, it is increasingly likely that bears may injure people and/or damage their property.

Ordinary Care

Generally, an owner of land does not have an obligation to warn others about the dangers of animals in their natural habitat, or protect others from wild animal attacks. Yet the law is well settled that an owner or occupier of land must exercise ordinary care in the management of

their property, and the breach of this duty gives rise to a cause of action for negligence. While an owner's duty to exercise ordinary care is not expected to prevent all injury, an owner is expected to use reasonable care to discover dangerous conditions on their land and to protect permitted entrants from those conditions. Although the interpretation of this duty varies from court to court, prudent owners should regard every visitor (whether a guest or contractor) as a potential party deserving such protection. Indeed, a Georgia court case indicated that, when a visitor was injured running away from a snake in overgrown grass, negligence could be found if the owner should have foreseen that there were snakes in the area on account of the overgrown grass.

Homeowners' Association Liability

Similar to the duty of care an owner owes visitors, a landlord can be liable to tenants for injuries occurring in common areas resulting from hidden dangers about which the landlord fails to provide adequate warnings. Prevailing

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law views the relationship between a homeowners' association ("HOA") and a homeowner as analogous to the relationship between a landlord and tenant. In that respect, the law generally holds that an HOA could be liable for its failure to provide reasonable security against foreseeable criminal activity. For example, if an HOA knew (or should have known) about prior crimes in the area and failed to provide better lighting in its common area to deter the criminal activity, liability can ensue. Even if the crime occurs inside an owner's home, an HOA can be liable where the foreseeability of that harm stems from its failure to provide reasonable safety measures in the common area if criminal activity has been known to occur there.

Liability for Animal Attacks

It is not much of a stretch to analogize the attack of a bear, or any other wild animal, to a criminal attack. Indeed, a recent Florida court case implicitly provided the bridge connecting criminal and animal attacks. In a case involving a lawsuit against a city by someone who was bitten by a shark while swimming at a city beach, the swimmer alleged that the city was negligent for failing to warn swimmers about sharks in the area. The court expressed that, absent reasonable foreseeability of danger (there was not a single shark attack on record in the history of the beach in question), the city had no duty to warn of shark attacks. Implicit in that decision was the proposition that, if shark attacks had been occurring, the city could have owed a duty to warn swimmers about them. In that respect, if bears are known to enter residential subdivisions, damage property, and even attack people and pets in bear-prone areas due to the presence of attractants in the community (such as unsecured trash), an HOA that is aware of these issues and makes no effort to

reduce bear attractants in the community could face liability for damages, injury or death should that occur as a result of a bear incursion.

A Georgia case explicitly addressed the issue of whether an HOA failed to take reasonable steps to protect a victim from being attacked and killed by a wild animal (in this case an alligator) in a residential community. While it was ultimately determined that the HOA did not breach its duty, the reasoning is far more important than the result. The court exonerated the HOA because the victim had equal knowledge of the threat of alligators within the community on account of the HOA's widely publicized policy of removing any large or aggressive alligators and providing frequent warnings about the presence of alligators and the danger they pose to humans and pets. Had the HOA not adopted or followed this policy, the court could easily have found liability on the part of the HOA.

"Bear-wise" Community Policies

In light of all this, homeowners' associations in bear-prone areas should seriously consider adopting and enforcing "bear-wise" community policies to reduce bear attractants in their subdivisions and thereby reduce the likelihood of bears entering into or lingering in the community looking for food. Failure to do so could result in the HOA being found liable for an attack. Of course, if an HOA adopts such a policy, then the HOA will be expected to comply with and enforce that policy, and its failure to do so could result in liability on the part of the HOA should an attack occur.

Insurance

While homeowners and HOA's generally carry liability insurance, sometimes such a

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policy may not cover animal attacks, or may have an "animal liability exclusion endorsement" which caps the insurance coverage for them. If an HOA is found liable and does not have sufficient liability insurance, it can be required to levy a special assessment against its homeowners to pay any shortfall in insurance coverage. A homeowner's own liability insurance policy may not cover such an assessment unless the homeowner has a "loss assessment endorsement," and even those can cap the insurance coverage.

Resources

Resources are available from FWC for any

HOA that wants to consider becoming "bear-wise." There are a number of practices that FWC recommends in order to reduce the likelihood of bear incursions, the most significant being the securing of trash. FWC also encourages schools and businesses in bear-prone areas to enact similar practices. If you live or work in an area frequented by bears, there are steps you can take to limit the likelihood of bear incursions, as well your potential for liability should a bear cause property damage or personal injury.