Homeowners band together in associations to enjoy a variety of mutual benefits, as detailed in the association documents provided to all new homeowners for light, bedtime reading. Crime prevention in a community is indeed a mutual concern of residents, but recent, calamitous events have shown that this area should be carefully conducted for the good both of individuals and the association as a whole.

“Most of the time a community’s declaration will state that the association is not a guarantor of personal safety of anyone living there,” states Michael Ungerbuehler, attorney with The Association Law Firm. “Typically,
there’s not an affirmative obligation to protect the safety of any individual; although there usually is language—carried over from common law in England—stating that the association is to promote health, safety, and welfare, such language is geared more toward supporting the purpose of a system of restrictive covenants on the properties within the community.”

“Associations are not policing entities by nature, and most do not specifically or intentionally take on that role,” states Michael Chapnick, attorney with Chapnick Community Association Law, P.A. “When they have been held liable, it has been when they took on the role of providing for the protection of the community and became negligent in some way.” Ungerbuehler concurs, noting, “A lot depends on how an association behaves; if they’re putting themselves out there as ‘We’re going to guarantee your safety,’ then they’re assuming an obligation. Responsibility and liability really depend on both the declaration and the conduct of an association.”

Lisa Magill, attorney with Becker and Poliakoff, points out, “Recently, a jury awarded $20 million in damages to a woman who sued after she was raped in her apartment complex three years ago. The jury apparently agreed that management should have warned residents that there was a predator on the loose.”

Though this incident was at an apartment complex, Magill explains, “In Florida, many courts evaluate claims by community association residents with the same logic applied in a long line of landlord/tenant cases. Landlords can and are held responsible for criminal acts against their tenants, if these acts were reasonably foreseeable. In at least one case, an association was held liable for an assault on a resident at the condominium. The intruder used a ladder from the condominium’s unlocked storage room and entered the unit through a second-story window. The property outside the window was unlit and overgrown with foliage. The victim proved that the association knew about crimes committed in the parking lot, several burglaries, and a rape four years before she was attacked. The Court said that Florida law did not require the victim to prove that the prior crimes occurred at the same location or within a certain time frame to be relevant to determining liability.”

A safe community is a universal goal, regardless of the specifics of responsibility an association may legally have, and resident involvement can contribute greatly to that. Magill volunteers, “My community participates in the Broward Sheriff’s COPs ( Citizen Observer Patrol) program—that extra set of eyes and ears deters crime significantly. The casual thief or up-to-no-good teenager thinks twice about engaging in questionable activity, and the more professional criminal is likely to choose a different neighborhood when they realize residents notice unusual activity.”

To maintain the considerable benefits of a crime watch program, while avoiding the also-considerable risks, a number of parties should be involved. Ungerbuehler shares, “I observed one community that handled establishing a program very well. First, they talked to members and got input to find out if there was interest and if there would be participation. When they found there was enough interest, I attended a meeting and gave additional ideas, like background checks and talking to their insurer. They had a sheriff’s deputy come out and talk to the residents about what would be involved, and it was very clear that the neighborhood watch is to watch and report, not track people down or confront
them. There needs to be a lot of interaction with membership to make it very clear what duties the association is assuming or not assuming.”

Continual involvement with local law enforcement and specifically defining and following guidelines is fundamental to a safe, effective program. Magill advises, “The association should not only clearly define the goals of the program and specific tasks of volunteers, but it must outline the exact parameters of volunteer action. For example (as has been mentioned and cautioned against by law enforcement), volunteers should not carry firearms or other weapons. Volunteers should not attempt to apprehend or follow suspicious individuals.

“A SECURITY COMPANY IS NOT NECESSARILY THE ANSWER TO THE QUESTION OF LIABILITY,” ACCORDING TO MICHAEL CHAPNICK. “THERE’S ONLY SO MUCH LIABILITY YOU CAN DELEGATE AWAY. IF YOU’RE PUTTING PEOPLE IN PLACE, EVEN IF IT’S A MANAGEMENT COMPANY OR SECURITY COMPANY, IT DOESN’T KEEP AN ASSOCIATION FROM BEING LIABLE WHEN THINGS GO WRONG.”

The goal of these programs is not to expose community volunteers to harm or personal injury—therefore the volunteers should have no contact with suspicious individuals. Think about the typical scary movie: you know the actor shouldn’t go into that abandoned house, go into the dark basement, check out something that looks ‘funny’ in the woods; neither should your volunteers.” Volunteers are to contact law enforcement, not simulate law enforcement.

Both the attorney and insurer(s) for the association should be consulted. “A lot of times clients will do things without checking with us,” Ungerbuehler reports, “and we try to explain that they’re a corporation, so when they’re doing anything, they should get legal advice. Often they’re concerned about the budget, but the bigger they are, the more liability they’re exposed to. We’ll look at the declaration to see if it should be amended to make beneficial changes—sometimes they can’t step forward to take responsibility, or avoid liability, because of the existing documents. A lot of the time there’s apathy in the community so they can’t get enough people involved to make changes; it’s definitely a challenge.”

Chapnick recommends, “Before an association engages in providing any type of security, they need to consult with their insurance carriers and make sure that both the association and any security vendors have sufficient coverage and that it stays in place. There may be a need for a rider to be attached to directors and officers insurance or the general liability policy.”

Magill adds, “Volunteers selected for the program should be officially appointed to a committee. The board should confirm with its insurance agent or carrier that committee members are protected by applicable insurance policies (as long as they act within the constraints of the board guidelines).”

Ungerbuehler feels that—if an association is going to engage in promoting a neighborhood watch—background checks are advisable for those participating in the program, but Chapnick cautions, “I don’t know if I’d want to see associations screen volunteers, only because the more involved the association gets, the greater the liability.” Whatever the policy is, following national guidelines is essential. Guidelines for watch programs are available at usaonwatch.org, which has joined together various citizens’ crime prevention programs under one umbrella.

Dominick Scannavino, President of Management and Associates, is involved in managing around 50 communities, which participate in neighborhood watch programs. He comments, “My only suggestion is that if a community wants to have a crime watch program, they must get together with the sheriff’s department and have frequent meetings or it never works. It winds up with just a sign by the road, and that’s not neighborhood watch. We have minimal crime, but I don’t honestly know if it’s because of the watch programs. Criminal action is not spotted very often—it’s usually owners leaving a door open or light on. And, not all communities have patrols. In some cases, it’s just looking out the window and contacting the sheriff.

The hard part of the program is getting volunteers, and then keeping them is even more difficult!” Scannavino observes.

While contracting out security might seem like a
costly-but-safe way to promote security and avoid liability, there is no method to avoid the association’s responsibility. “A security company is not necessarily the answer to the question of liability,” according to Chapnick. “There’s only so much liability you can delegate away. If you’re putting people in place, even if it’s a management company or security company, it doesn’t keep an association from being liable when things go wrong.”

It is the board’s duty to protect the common areas, and this will protect residents also. Perimeter fencing, access controls, and security lighting should be considered and properly maintained. Local law enforcement can provide advice and crime statistics and often provide increased patrols or monitoring of vacant homes upon request. Residents should be notified of security concerns and procedures and be involved in a watch program or encouraged to report any suspicious activity within the community.

Magill stresses, “The Trayvon Martin tragedy shouldn’t cause associations to abandon their neighborhood watch or community watch programs, but community leaders need to examine what procedures, guidelines, and expectations they have in place to protect the association from liability and the volunteers from injury. Remember—while avoiding liability is important—it’s even more important for you as directors, residents, and managers to feel reasonably safe in your community.”