The Changing World for Commercial Landlords in Post-September 11th America –
Commercial Landlords’ Obligations to Prevent Terrorist Attacks

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I. INTRODUCTION

Commercial landlords have often striven to provide premises that are safe and secure from third party acts such as crimes. In the wake of the September 11, 2001 terrorist attacks on the Word Trade Center and Pentagon, however, commercial landlords are faced with issues regarding security provided by landlords against future terrorist attacks that are quite different from the type of issues that landlords faced before the attacks in providing security against more conventional crimes. While the courts have yet to speak, the landlord's duty to provide tenants with security against explosive, chemical, or biological attacks may well evolve from the landlord’s pre-September 11th duty to prevent foreseeable crimes such as robberies and assaults. This evolving duty may well be shaped by issues such as the foreseeability of a terrorist attack on a particular building, a landlord's assumption of liability by voluntarily taking on new responsibilities to provide security and applicable statutory requirements. This article considers the law on landlords' duties that developed pre-September 11th and how the legal principles which have been enunciated may provide the basis to determine the landlords’ new duties after September 11th.

1 All Rights Reserved.

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II. PRE-SEPTEMBER 11, 2001

A. The Evolution of Landlord’s Duty to Provide Security Against Third Party Acts

The law has evolved over the years from the concept that a landlord has no duty to provide any security against third party acts such as crimes (unless the landlord specifically assumed the duty or had that duty thrust upon it by statute or regulation) to its current state where that duty seems to clearly exist throughout much of the United States. In support of this evolution, various courts have relied upon theories such as the existence of a common law duty of a landlord to take reasonable steps to prevent foreseeable crimes to the assumption by the landlord of a duty to provide safe and secure premises.  

1. Common Law Duty of Landlord to Provide Safe Premises

Generally, a landlord owes its tenants a duty to protect its tenant and others from injuries in common areas over which the landlord maintains control and from injuries caused by common facilities which landlord controls. Common areas include stairways, entrances and lobbies, while common facilities include utility lines, heating, ventilation and air conditioning systems, plumbing, etc. Some portions of the common facilities such as heating and air conditioning duct work may be located totally within demised premises. When injuries result from improper maintenance of these common areas or common facilities, the landlord has

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4 Milton R. Friedman, Friedman on Leases § 10.103 (4th ed. 1997)

5 Id.
breached this duty and is liable for negligence.⁶ Although, in the past, distinctions were made between the landlord’s liability to different types of occupants, the lines of distinction between tenants, licensees, and invitees are becoming increasingly blurred.⁷ As a general, practical rule of thumb, a landlord's duty is to use reasonable care to prevent injury to anyone who may foreseeably occupy the landlord’s leased space.⁸

While landlords have typically owed a duty to provide their tenants and others with safe common areas, as a general rule landlords had traditionally not been obligated to prevent the criminal acts of third parties in those common areas.⁹ A modern legal trend, however, developed in many jurisdictions that has led to a common law duty imposed upon landlords to take measures that prevent foreseeable criminal acts of third parties within both common areas and demised premises.¹⁰ This ever-evolving body of law is complicated by the case-by-case manner in which duties are imposed by courts looking at the foreseeability of a crime in hindsight.

An indication of the speed at which this area of the law is evolving is that, as recently as thirty to forty years ago, courts recognized no duty of landlords to protect tenants from even foreseeable criminal acts of third parties. In an opinion reflective of the law in 1962, the New Jersey Supreme Court stated as follows:

> Everyone can foresee the commission of crime virtually anywhere and at any time. If foreseeability itself gave rise to a duty to

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⁶ See also Niman v. Plaza House, Inc., 471 S.W.2d 207 (Mo. 1971) (Landlord was liable for defective heating system.)

⁷ Id.

⁸ Id.

⁹ See Kline v. 1500 Massachusetts Avenue Apartment Co-operation, 939 F2d 477 (D.C. 1970).

¹⁰ See Friedman at § 10.103a.
provide "police" protection for others, every residential curtilage, every shop, every store, every manufacturing plant would have to be patrolled by the private arm of the owner... Of course, none of this is at all palatable.\textsuperscript{11}

This changed in the 1970. The D.C. Court of Appeals, in \textit{Kline v. 1500 Massachusetts Avenue Apartment Co-operation}, extended the Landlord's duty to provide common areas that are free of dangerous conditions to include a duty to protect tenants from foreseeable criminal acts of third persons.\textsuperscript{12} \textit{Kline} held that landlords of residential apartment buildings owed a common law duty of protection to their tenants in such circumstances.\textsuperscript{13} The court further held that the breach of the duty of protection must be determined in light of a standard of care – "reasonable care in all the circumstances."\textsuperscript{14} The issue of what is reasonable is a fact issue to be determined by the trier of facts depending on each case's facts and circumstances. The key factor in the \textit{Kline} holding was that the landlord had notice of several similar crimes in the common areas of the building but had ceased to consistently man the security desk and provide other security measures.\textsuperscript{15} In the Court's words, "the Landlord ha[d] notice of repeated criminal assaults and robberies, ha[d] notice that these crimes occurred in the portions of the premises exclusively within his control, ha[d] every reason to expect like crimes to happen again, and ha[d] the exclusive power to take preventative action."\textsuperscript{16} In other words, the risk of crime in the common

\textsuperscript{11} \textit{Goldberg v. Housing Authority of Newark}, 186 A.2d 291, 293 (N.J. 1962)

\textsuperscript{12} See \textit{Kline v. 1500 Massachusetts Avenue Apartment Co-operation}, 939 F2d 477 (D.C. 1970).

\textsuperscript{13} See Id.

\textsuperscript{14} See Id.

\textsuperscript{15} See Id.

\textsuperscript{16} See Id.
areas should have been foreseeable by the landlord. This concept of foreseeability winds its way throughout the cases as the law developed.

In the thirty years since the Kline decision, many jurisdictions around the country have also imposed upon landlords the common law duty of protection against foreseeable third party crimes. Further, Kline’s relatively narrow holding has been expanded to include both crimes committed in common areas and crimes committed wholly within demised premises. In addition, Kline imposed this duty upon residential landlords, but the duty has since been expanded to include commercial tenants as well.

The rationale by which courts impose the duty of protection varies by jurisdiction. Several jurisdictions base the duty of protection, like the Kline Court, upon the landlord’s exclusive control of the common areas or because the landlord has voluntarily assumed the duty (as describe more fully below). These courts apply the principles of the traditional “dangerous conditions” on the premises cases to the facts in cases involving third party criminal acts. Under the dangerous conditions class of cases, landlords were held liable for tenants’ injuries where tenants were injured because of defects in the common areas. Other jurisdictions, while acknowledging that the landlord/tenant relationship is not a “special relationship which creates a

17 See Friedman at § 10.103a.

18 Id.

19 Id.


21 Id.

22 Marsh v. Bliss Realty, Inc., 195 A.2d 331 (R.I. 1963) (where landlord’s liability was based upon a latent defect in common area that only the landlord knew about)
duty of protection on landlords, impose this duty if “special circumstances”, such as prior similar criminal acts, are present.\textsuperscript{23} Finally, still other courts look to statutory requirements and the failure of the landlord to comply with specific statutory measures as evidence of a landlord’s failure to adhere to a duty of protection.\textsuperscript{24} Regardless of the rationale, modern courts generally impose some duty of protection upon landlords.

In this connection, however, it is important to note that the courts have also found that landlords are not insurers against third party criminal acts. The extent of the landlord’s duty is only to take reasonable steps to protect its tenants against foreseeable third party criminal acts. If the landlord has taken such reasonable steps (and has complied with any statutory and assumed obligations to provide security), the landlord is not liable if a tenant suffers damages as a result of such a third party acts.\textsuperscript{25} In addition, it should be noted that exculpatory clauses in leases purporting to excuse the landlord from its negligent acts will not excuse a landlord who has violated its duty to provide protection – derived from the principle that an attempt of a party to excuse itself from the consequences of its own negligence is void as a violation of public policy.\textsuperscript{26}

Generally, foreseeability of the third party criminal act is the key element running through all of the cases for determining a landlord’s liability to a tenant for resulting injuries. In

\textsuperscript{23} Glesner at 689

\textsuperscript{24} \textit{Id.} see also \textit{Braitman v. Overlook Terrace Corp.}, 346 A.2d 76 (N.J. 1975) (Statute required deadbolt locks.)

\textsuperscript{25} \textit{Faheen v. City Parking Corporation}, 743 S.W.2d 270, 273 (Mo. 1987)

\textsuperscript{26} \textit{Cain v. Vontz}, 703 Fed 2d 1279, 1282 (11\textsuperscript{th} Cir. 1983), applying Georgia law.
New York, for example, a landlord’s duty extends to taking “minimal precautions” in order to protect its tenants from foreseeable harm.\textsuperscript{27}

In Georgia, on the other hand, foreseeability is not an element of a landlord’s duty to provide protection from third party criminal acts. Rather, foreseeability must be proven to establish that the landlord’s failure to provide protection is the proximate cause of the damages the tenant suffered – thus resulting in liability of the landlord to the tenant.\textsuperscript{28} In other words, in Georgia, when a tenant is injured by a third-party’s criminal act, absent any foreseeability of the crime by the landlord, the criminal act is the proximate cause of the tenant’s injury and the landlord is not liable for any injuries the tenant suffers. On the other hand, the landlord’s failure to provide adequate security will be held to be the proximate cause of an injury brought about by an “intervening criminal act[,] if by ordinary prudence the [landlord] could have foreseen that some injury or injurious consequence might have been anticipated from the act.”\textsuperscript{29} In such a case, the landlord is liable to the tenant. Although states that follow Georgia’s approach analyze foreseeability in terms of causation rather than duty, the results are nearly the same – the landlord is liable for foreseeable injuries which it could have prevented.

Whichever theory the courts in a particular jurisdiction utilize in determining a landlord’s liability resulting from a failure to provide protection, landlords must be aware that the definition of foreseeability continues to expand. In the past, courts would find foreseeability only from similar events at the same location. Today, however, courts often apply a “totality of the


\textsuperscript{29} Id.
circumstances” test.\(^{30}\) In New York, for example, to make a *prima facie* case of foreseeability a tenant is not limited to evidence of prior occurrences of the same type of crime in the same building. Rather, foreseeability is determined by the fact finder by weighing “the location, nature and extent of those previous criminal activities [against] their similarity, proximity or other relationship to the crime in question.”\(^{31}\)

**B. Landlord’s Assumption of a Duty to Provide Safe Premises**

Another approach used to impose a duty to protect tenants upon a landlord is the landlord’s voluntary assumption of such a duty. Many jurisdictions recognize a duty to protect a tenant if the owner has expressly or implicitly promised to provide security. Cases are decided on a case-by-case basis to ascertain whether, in a particular circumstance, the landlord has assumed this duty.\(^{32}\)

A Landlord may contractually undertake to provide security for its tenants, as in a lease provision. Typical express lease covenants to provide security may include provisions to “maintain premises” in a “safe and secure manner.”\(^{33}\)

Landlords may also be deemed to assume the duty to protect against third party criminal acts impliedly through promotional materials that tout the premises as secure from crime or through oral representations of the landlord’s leasing representative. Such a finding, however,


\(^{31}\) Jacqueline S. v. City of New York, 81 N.Y.2d 288, 294-95, 614 N.E.2d 723, 725-26 (1993). Note, however, Shea v. Preservation Chicago, Inc., 206 Ill. App. 3d 657, 666 565 N.E. 2d 20, 27 (1990) where an Illinois Appellate Court found that the requirement that the landlord keep the common areas in a “safe condition” did not encompass a contractually assumed obligation to provide safety from third party criminal attacks.

\(^{32}\) Shea v. Preservation Chicago, Inc., supra, at 663, 12.

\(^{33}\) Id.
runs up squarely against the parol evidence rule, especially if a lease purports to include all the terms governing the relationship of the landlord and tenant and supercedes all earlier discussions.\textsuperscript{34}

The implied duty to provide protection may arise through the landlord’s act of providing security measures in the first place, even if not contractually obligated to do so. The Restatement (Second) of Torts, on which many courts rely, states that:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to perform his undertaking, or (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other’s reliance upon the undertaking.\textsuperscript{35}

C. Statutory Duty of a Landlord to Provide Safe Premises

Statutes and regulations often impose duties upon landlords to provide protection against third party crimes. State and local Landlord-Tenant Acts, for example, often impose duties of safety upon landlords.\textsuperscript{36} In fact, the Uniform Landlord-Tenant Act requires that landlords provide safe and secure housing.\textsuperscript{37} Courts have used such statutory provisions to eliminate the foreseeability requirements. For example landlords have been liable for tenants’ injuries where the landlords have failed to comply with municipal codes requiring adequate locks even when the criminal act causing injury was not foreseeable.\textsuperscript{38}

\textsuperscript{34} Shea v. Preservation Chicago, Inc., supra, at 667, 21.
\textsuperscript{35} Restatement (Second) of Torts §323 (1977)
\textsuperscript{36} Howard A. Steindler, “The Purchase and Sale of Real Property Post-closing Issues,” National CLE Conference® Real Estate Law 2002
\textsuperscript{37} Uniform Residential Landlord Tenant Act § 2.104(a)(3)
\textsuperscript{38} Glesner at 701-702
III. POST SEPTEMBER 11, 2001

No matter the test applied by the court, if a landlord’s lapse in common area security causes a foreseeable injury to a tenant, the landlord will likely be liable today for the damages suffered by a tenant. However, most reported cases deal with common crimes such as burglaries, assaults, etc. Further, these cases are often relatively simple in that foreseeability is predicated on repetitious crimes in particular buildings or neighborhoods. The unknown question is how these tests will be applied to a landlord’s responsibility to provide protection to the tenants against terrorist acts – the ultimate criminal act. In order to try and prognosticate, a review of the factors considered by courts to date in connection with more standard crimes may provide some guidance.

A. What is Foreseeable?

The requirement of foreseeability of third party criminal acts is a common theme found throughout the cases which address commercial landlords’ common law duty to provide protection to the tenants against such acts. In the context of crimes committed by terrorists, however, the concept of foreseeability is more difficult. Are terrorist attacks now foreseeable in other parts of the United States based upon the attacks in New York and Washington? Certainly cities such as Chicago or Los Angeles with high profile buildings now become more likely targets for future attacks. For example, the Sears Tower ownership could hardly take the position that a crime committed against the World Trade Center, an office building in New York, does not make an attack on the Sears Tower in Chicago foreseeable, and therefore, the Sears Tower owes no duty to provide security measures for its tenants.
Prudent building owners of higher profile buildings in cities which are candidates as potential future targets must take a hard look at what is foreseeable given the recent terror attacks and act accordingly. David P. Bergsma, CEO of Chicago-based Levy Security Corp., whose security guards man posts at several buildings including the John Hancock Center in Chicago, cites the high-profile nature of a building as a major factor to be weighed in evaluating increased security measures. This follows the logical assumption that the more high profile a building is, the greater risk of a terrorist attack. Since there is little doubt that the World Trade Center’s prominence was a factor in it being targeted for the September 11 attacks, owners of other higher profile buildings in other cities must now take heed.

Is the high profile nature of a building the sole factor is dictating the foreseeability of a terrorist attack? Recent history teaches us that prominence is not the only factor in choosing terror targets. In this era of terror, the world has seen not only the attacks on the World Trade Center, but also of attacks on the Pentagon, the bombing of Federal Building in Oklahoma City, the embassies in Kenya and Tanzania, and the USS Cole in Yemen as well as mail contaminated with anthrax. Most, if not all of these targets, while not high profile like the World Trade Center, have some sort of symbolic value as a target. Given the modern media’s relentless coverage of such disasters, the Western World is on notice about these events. Building owners of all types and sizes must ask themselves if their building is a likely target.

If the pre-September 11th law can serve as a roadmap, the issue faced by landlords attempting to protect tenants from terrorist crimes is determining what is foreseeable. The old standards of prior similar crimes in the same building or in the same neighborhood are not applicable to the foreseeability of a terrorist attack. In the past, a pattern of armed robberies in a

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39 Patricia Richardson, “A downtown clampdown,” Cranes Chicago Business, October 29,
housing project in New York City would not have made such robberies foreseeable to a landlord in a high-rent apartment building in Minneapolis. After September 11th, however, owners of apartment buildings, shopping centers, office buildings and industrial sites must rethink whether their buildings now become foreseeable targets of terrorist crimes. The attack by religious extremists on an office building in lower Manhattan has put owners of all types of real estate on notice that terror can strike anywhere at any time.

Society has learned that what once was unthinkable is now not only imaginable but may be foreseeable. When one combines the willingness of religious extremists to commit suicide in carrying out missions of terror with the devastation in America’s Heartland brought about by a home-grown terrorist, Timothy McVeigh, it appears that anything is foreseeable anywhere. The threats to America’s buildings are in the United States as well as abroad. These targets have been chosen based upon their high profile nature and symbolic significance as well as their vulnerability to attacks. While high-profile buildings such as the Empire State Building and the Sears Tower have reason to foresee attacks, the people of Oklahoma City were witnesses to the once unthinkable truth that America’s Heartland is as much of a target as its major metropolitan areas. Although the issue is untested, juries may find that, given the events of September 11th, terrorist attacks on any United States building are foreseeable and that landlords have a common law duty to take reasonable steps to avoid terrorist attacks. While, as in the case of landlords’ pre-September 11th common law duty to protect against third party criminal acts, landlords are not insurers against such terrorist crimes occurring, landlords may well be now required to take all steps which are reasonable to provide protection against terrorist attacks since these attacks are now foreseeable.

B. Building Owner Responses Since September 11th

Since the attacks on the World Trade Center and the Pentagon, building owners and security professionals have been scrambling to increase building security in many urban centers throughout the United States. Chicago is a good example of what is happening outside of New York and Washington and of the different levels of security put in place by various landlords. At Chicago’s IBM Plaza, shortly after the September 11th attacks, patrons of the first floor coffee shop were required to sign in with security and present photo identification before being admitted to the building.\(^{40}\) On the other hand, at NBC Tower, tenant NBC has increased its own security by utilizing surveillance cameras and limited access, but building management has taken a less intrusive approach.\(^{41}\) Building security manpower has increased, but building management is attempting not to interfere with the way business is carried on in the Tower.\(^{42}\) Additional security measures undertaken at Chicago’s John Hancock Center include a 60% increase in security staff, checkpoints for the purpose of checking visitor’s photo ID’s and bags, restricted access to parking garages, and random searches of vehicle trunks.\(^{43}\) Other measures, including permanent turnstiles at elevator banks, limited entrances and X-ray machines, are also being considered at buildings such as Chicago’s Sears Tower.\(^{44}\) Chicago landlords are also exploring ways to secure building mail and ventilation systems to prevent bio-terrorist attacks.\(^{45}\)

\(^{40}\) Id.
\(^{41}\) Id.
\(^{42}\) Id.
\(^{43}\) Id.
\(^{44}\) Id.
\(^{45}\) Id.
C. Assumption of Duty Associated with Voluntary Security Measures

Under pre-September 11th law, landlords were found to be liable for failure to protect tenants against third party crimes if the landlords assumed the duty to provide this type of protection. In the post September 11th environment and in the hope of attracting and retaining tenants, owners of high profile and landmark buildings are implementing many of the security measures described above to prevent terrorist attacks. While increased security is both prudent and legally advisable, this situation raises the old issue of assumption of risk. These landlords should be aware that by using the increased security measures similar to those described above to attract and retain tenants, they are also encouraging tenants to rely on those measures in making their leasing decisions. If tenants lease space in a building because of the security measures in place at the time the lease is signed and a later event occurs because the landlord has either relaxed its security procedure or the people implementing the procedure failed to use reasonable care, the landlord will likely be liable under an assumption of duty theory. While a landlord is not likely to be found to be an insurer against a successful terrorist attack, if security procedures are put in place, they must be followed with all reasonable diligence in order the avoid liability where none might have been present had these particular measures not been in effect.

D. The New Era of Leasing Concerns

Existing leases will have to be analyzed in light of the events of September 11th. Will exculpatory provisions in leases excuse a landlord from any new common law duty to provide protection against foreseeable terrorist acts? Will the pre-September 11th judicial trend that such clauses do not excuse the landlord from its common law duty to provide protection against foreseeable third party criminal acts also apply to a common law duty to protect against foreseeable terrorist attacks? Can the landlord’s undertaking to provide security for tenants be found as a voluntary assumption of a duty to take reasonable steps to prevent terrorist attacks
beyond whatever common law duty exists to do so? Is it consistent with the provisions of the lease that insures the tenant free access to its premises to impose the type of restrictions now found in the Chicago examples outlined above? Can the increased expenses of providing these enhanced security measures be passed on to the tenants as increased operating costs? Only time will tell how these questions are resolved since most of these lease provisions were drafted without the risk of a terrorist attack in mind.

Leases entered into after September 11th will have to reflect the changed state of affairs created by the terrorist attacks. As tenants seek more security from landlords and landlords seek to make their buildings competitive, leases are likely to provide for important security measures. As these lease provisions develop, however, the traditional assumption of liability theory will mean that the landlord’s obligations to take all reasonable steps to provide the promised security measures will be the basis for the presence or absence of liability should a future terrorist attack occur.

While landlords may seek to limit liability by including exculpatory clauses that define the security measures that the landlord will be undertaking but that limit liability if the measures fail, this type of contractual attempt to limit liability seems to fly in the face of the pre-September 11th judicial disfavor with which courts look at these type of provisions – at least in the presence of the landlord’s negligence. Other strategies are available to possibly minimize landlord liability in the wake of the terror attacks. These other strategies can be summarized by three principles:

(1) Know the local laws regarding security and tenant safety and follow them (especially in light of the pre-September 11th judicial findings that a violation of statutory obligations is strong evidence of a violation of a duty to provide premises safe from third party
criminal acts – even if the acts are not foreseeable). Although the definition of foreseeability is expanding, a landlord-defendant has a much greater chance of prevailing when it has complied with the local laws. Once a landlord has failed to comply with the local laws, the landlord may be liable regardless of foreseeability.

(2) Avoid unwarranted express and implied promises to provide specific security measures and to protect from specific injuries in order to avoid having unwittingly assumed a greater duty than the law would otherwise dictate. Lease provisions as well as assertions in promotional materials that address security commitments may create contractual obligations that exceed the reasonableness standards that landlords must meet in order not to be negligent.46

(3) Act with all reasonable care in the fulfillment of the security measures which the landlord has promised to provide. Landlords will presumably, as in the case of the pre-September 11th law, not be deemed insurers against terrorist attacks, but only obligated to take reasonable steps to prevent these attacks by carrying out those measures which have been promised.

A number of steps can be taken by a landlord to evidence the fact that it has attempted to act reasonably. First, a reasonable landlord should have a written security plan.47 A jury is more likely to find a lack of reasonableness where the landlord did not even have a plan or did not take the time to commit the plan to paper. Next, follow the plan. A jury, which is presented a security plan that was not followed, is more likely to find that a landlord acted unreasonably since the landlord did not even follow its own security plan. The plan should consider the following:

47 Id.
(a) Employing a security staff (possibly 24 hour)  
(b) Conducting periodic reviews and repairs of electronic locks  
(c) Utilizing local law enforcement as consultants  
(d) Ensuring adequate lighting  
(e) Investigating potential problems  
(f) Employing central phone numbers for emergencies and suspicious activities  
(g) Requiring ID badges for office tenants  
(h) Limiting access to parking and monitoring parking area  
(i) Implementing an emergency evacuation plan.  

With security enhancements come increased security costs. Some experts estimate that the added security in some buildings will cost as much as $1.00 per square foot. Since leases often contain pass-through costs for maintenance of common areas, tenants may be hit with dramatic and unexpected increased costs associated with security enhancements. Operating costs pass-through provisions of leases must be carefully drafted to make clear the extent of the parties’ respective obligations to pay for these greater costs. Absent such a clear statement, landlords may have a difficult time requiring the tenants to pay for the enhanced security. The landlord’s obligations to provide security and which party will bear the costs associated with it will become more prominent factors in post September 11th lease negotiations.

In addition to added costs, increased security measures may lead to disputes with neighboring property owners. An example of a potential source of dispute is added lighting. A landlord may be vigilantly attempting to provide a security to its tenants by installing bright

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48 Id.  
lights in the building parking lot. Although the additional lighting may help evidence the landlord as “reasonable” in meeting the security needs of the tenants and others occupying the landlords’ building, the lighting may make the landlord subject to complaints and even potential nuisance actions from neighbors who are adversely effected by the lighting. Landlords, therefore, must carefully weigh the benefits of providing adequate protection to its tenants to tenants against not only the costs to the landlord of these measures but also the potential problems which may result with neighboring landowners.

IV. Conclusion

The world has changed since the September 11th terrorist attacks, including the world of commercial leasing. While the extent of a landlord’s duty to take steps to prevent future terrorist attacks on its building has yet to be defined, valuable guidance can be gleaned from the law which existed before September 11th on a landlord’s duty to take steps to protect its tenants against foreseeable third party criminal acts. Presumably, the courts will also look to this pre-September 11th law to derive the principles which govern the duties of the landlord in this new, changed world. In the meantime, landlords can best protect themselves by following that learning which is available to them.

50 Harris Ominsky, Real Estate Practice – Breaking New Ground 50 (Pennsylvania Bar Institute 2000)