



# RAINEY • KIZER • REVIERE & BELL PLC

ATTORNEYS AT LAW

105 SOUTH HIGHLAND AVENUE  
POST OFFICE BOX 1147  
JACKSON, TENNESSEE 38302-1147  
731.423.2414  
FAX: 731.426.8111

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## BUSINESS TRANSACTION NEWSLETTER

### PREMISES LIABILITY IS AN ISSUE FOR EVERYONE

Although this newsletter usually is focused on commercial transactions, premises liability is a factor everyone needs to consider, business owners, homeowners, homeowners associations, and even real estate management companies. The case of Weaver v. Four Maples Homeowners Association illustrates the point of the need for proper premises liability protection.

In the Weaver case, Mrs. Weaver was a resident of a condominium community in Nashville known as Four Maples. Four Maples was managed by Westwood Management Corporation ("Westwood"). Four Maples Community maintained a gate that controlled motor vehicle access to the Community's parking lot. The gate was damaged by a nonparty visitor who hit it and made it inoperable. The management company immediately notified a repair company to have the gate repaired. However, before those repairs could be made, the access gate was left open both day and night to allow vehicle ingress and egress.

Before the gate was repaired, Mrs. Weaver was asleep in her condominium when two people broke down the front door and shot Mrs. Weaver. Mrs. Weaver filed a lawsuit against Westwood and the Homeowners Association alleging negligence in that the assailants were able to enter Four Maples unimpeded because the security gate was inoperative and had been so for about a month prior to the incident. Mrs. Weaver claimed that it was reasonably foreseeable that the inoperative security gate would allow unauthorized persons to enter the complex. Mrs. Weaver asserted that the management company and the Homeowners Association had a duty to see that the gate was operable.

Although Westwood and the Homeowners Association won the case at the trial court level, the Court of Appeals reversed and remanded the case.

The Court of Appeals wrote that the issue was what liability, if any, a premises owner or operator has for criminal acts of third parties. The court indicated that the harm giving rise to the action must be reasonably foreseen or anticipated by a person of ordinary intelligence and prudence. The court further wrote that there is no duty on the owner or operator of property or a business generally whose mode of operation does not attract or provide a climate for crime to guard against the criminal acts of third parties unless that owner knows or has reason to know that acts are occurring or about to occur on the premises. The court pointed out the 1996 decision of the Tennessee Supreme Court that ruled that businesses must take reasonable measures to protect their customers from foreseeable criminal attacks. In remanding the case to the trial court, the Court of Appeals concluded that the facts and inferences to be drawn on the facts create a dispute as to whether the criminal assault on Mrs. Weaver was foreseeable.

**MY RECOMMENDATION:** Always be aware of issues related to premises liability. Make sure you have adequate liability insurance. Also, consider the circumstances where liability risk is greater. Because of the nature of the business, owners might consider doing business in a limited liability fashion such as a corporation or a limited liability company.

**RAINEY, KIZER, REVIERE & BELL, P.L.C.**

**William C. Bell, Jr., Attorney at Law**