



Riskboss Magazine

The Premier Source of Information on Organizational & Community Risk

Fall/Winter 2019/2020



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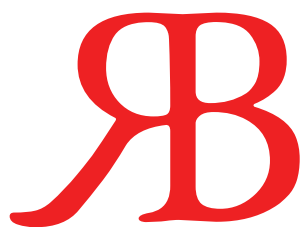
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Fall /Winter: Volume 1, Issue 2

IN THIS ISSUE

04 Editorial Commentary

By Samantha Wharton, Riskboss Magazine Editor

07 The Elephant in the Room

Access to Private Information and Private Property

By Quintin Johnstone, CEO Riskboss Inc.

12 Risky Business

Unauthorized Short Term Rentals

By Alex Zhvanetskiy, Vice President Samsonshield Inc.

17 Illegal Access Fob Copying

By Ken Shibasaki, Senior Analyst Riskboss Inc.

20 Manhattan History

The Five Points - Fact vs Fiction

By Manhattan Historian Joyce Gold

23 Worth Thinking About

The Magic Bank Account

23 Ask Riskboss

Q & A: Straight Answers to Hard Asked Questions

Riskboss Magazine

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NEXT ISSUE

The Legality and Prudence of
Audio Recording at Security Desks

Condominiums and Vacation Disasters

Workplace Bullying and Harassment
Obligations: Myth vs Fact

Turning Down The Volume
The New City of Toronto Noise By-Law

The History of the
Toronto Hockey Hall of Fame Building



Editorial Commentary

By Samantha Wharton, Riskboss Magazine Editor

What an overwhelming response to our inaugural issue of Riskboss Magazine. We thought that there was a real need such information but (WOW!) we never thought that the need was this big.

We are pleased to be able to fill the gap between other publications that just glance over critical issues and what you really need to know when dealing with difficulties that you face each and every day. Our goal is to ensure you get timely and content rich information from subject matter experts and industry leaders with real advice and tools that can help.

Again what we hope to achieve in creating this magazine is to become, *The Premier Source of Information on Organizational & Community Risk.*

This magazine will continue to be published twice a year in the spring and fall and focus on the latest trends in risk to organizations and communities.

We are fully interactive and want to hear from you regarding your questions, concerns and ideas for upcoming articles by subject matter authorities that can answer hard asked questions for you.

In short, we are here to help.

So let's get started!

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The Elephant in the Room

As described by Wikipedia, "Elephant in the room" is an American English metaphorical idiom for an obvious problem or risk that no one wants to discuss." Controversial yes; however, very necessary conversation(s) here at Riskboss Magazine. In every publication, Riskboss Magazine will address the latest Elephant in the Room to clearly answer hard asked questions.

Access to Private Information and Private Property

By Quintin Johnstone, CEO of Riskboss Inc.

The right for anyone (including police officers) to enter a private area or obtain private information is highly restricted in Canada and may only be permitted through due process or by authorization by law. While it is not the intent of this article to recommend unwarranted restrictions to anyone conducting legitimate and authorized business, it is intended to protect against unauthorized access to information and/or private areas in condominiums, commercial buildings and organizations. Consequences must be weighed very carefully before granting access or releasing information to anyone.

Albeit with the best intentions, people often request information and access without authorization as doing so is the least burdensome course of action. During my thirty years as a police officer with the Toronto Police Service nothing frustrated my peers and I more than barriers to evidence collection while solving cases but it is the law and it has to be respected.

Security and/or property management who provide authorization to enter private spaces or access private information without authorization can quickly find themselves involved in serious and unintended consequences. Such access may have dramatic and negative impacts to a criminal case or other quasi-judicial proceedings due to privacy legislation and the Canadian Charter of Rights and Freedoms unless done properly. For example, unless anyone is lawfully placed in a private area and/or has authorized access to information, a court may find evidence observed or collected to be prejudicial and therefore inadmissible thereby jeopardizing the case.

In most cases access to private information or access to a private/restricted area **must not be made**; however, there are exceptions to this rule:

- Anyone may enter a private area or obtain private information when they have been invited by a person with the legal authorization to do so (e.g. Property manager, live-in owner or tenant) for issues such as parking or noise complaints, reporting thefts, etc.)

For greater clarity, private / restricted areas include any area past the front entrance or security desk (e.g. lockers, hallways, elevators and underground parking are all private / restricted areas).

Private information includes client, trade, employee and resident lists, suite, parking and locker assignments, site governance, CCTV footage, security reports and all direct and indirect knowledge that an employee of a security or property management firm may acquire through their employment.

Property managers very often struggle with the question of when to volunteer information to the police and others without authorization. Simply answering a question verbally can have negative consequences.

The following may assist:

- When there is an internal issue between residents (e.g. Domestic violence or vehicle damage in the underground), then judicial authorization should be obtained, as there is a right and expectation of privacy for all residents.
- When fire or ambulance services attend at a building, it is automatically assumed and readily accepted that an emergency is taking place and full access must be allowed to restricted areas and information immediately.
- Police can enter a private area or obtain private information when they declare the situation to be an emergency (e.g. Child in need of immediate protection, assault in progress, medical emergency, etc.)
- Police may enter a private area or obtain private information by way of a judicial authorization (e.g. search warrant or arrest warrant)
- A judicial officer (e.g. Sherriff) may enter private property when authorized by law (e.g. Eviction by court order)
- Summons servers, private bailiffs repossessing cars, process servers, etc. do not have a right of entry into private property or access to private information. Until property management verifies access rights and authorization, access should be denied.
- For the purpose of the Residential Tenancies Act of Ontario with respect to access by an owner when a property is rented out to a tenant, an owner cannot have access to a unit without the permission of the tenant or by judicial authorization. Access to the unit by an owner who rents a suite may only be granted with authorized permission.
- When a stranger enters the property to trespass, break and enter into a locker, cause damage or assault a resident, they have no right or expectation of privacy and therefore, the voluntary release of information without judicial authorization is appropriate.

- Access to hallways is also legally allowed for the purposes of allowing authorized election representatives to canvass. Federal, provincial and municipal law allows access for the purposes of canvassing residents at their suite doors.

Limitations of times allowed for canvassing varies depending on the jurisdiction. It is recommended that property managers alert residents that such canvassing will be occurring in advance of elections. It is also recommended to ensure a clear policy is created for on site security on screening canvassers to ensure their authorization (e.g. Identification) and prohibitions against leaving canvassing materials in hallways.

- Albeit the front entrance and security desk is private property as well as the adjoining privately owned land area, there is an assumed right of reasonable initial access to nonresidents for legitimate inquiry purposes.

The *Elephant in the Room* is when and how property managers and security should provide access to private areas and information.

The bottom line for property managers, Boards, security and organizations leaders alike is to ensure that no unauthorized access to private information and/or access to private / restricted areas is allowed to occur.

Each condominium corporation and organization should have a clear policy on this matter that is clarified by legal counsel.





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Risky Business

Condominiums & Short Term Rentals

By Alex Zhvanetskiy, Vice President of Samsonshield Inc.



The short-term condominium rental market is not a new fad or phenomena. It has been around for decades in North America.

With the growth of condominiums particularly in the Greater Toronto Area (GTA), the demand and competition for such product is getting very aggressive and everyone has an opinion; good; bad; and sometimes ugly.

Background

Historically, short term rentals were arranged and managed through few sources such as realtors and specialized placement firms. Developers saw the growing trend especially in the GTA and capitalized by building, ‘specific use’ short term rental condominiums and mixed use condominium hotels. These developments are specifically designed, zoned and created for this purpose. The designated use is disclosed in advance to all buyers and outlined in condominium declarations. These sites are considered legitimate short term rental use properties.

Current State

The trend of short term use rentals has grown substantially worldwide as a natural alternative to hotels and licensed bed and breakfast establishments. Websites marketing condominium units, underground parking spaces and even lockers to the general public are now readily accessible.

Given the sustained growth in the population of the GTA of over 80,000 per year, the trend of short term rentals will only become even more prevalent. Affecting this trend even further are large scale events such as: the Toronto PanAm Games; and the popularity of Toronto events such as the Toronto International Film Festival, the Canadian National Exhibition, the Caribbean Carnival Parade, and the Pride Parade.

Needless to say, hotel and licensed B&B industries are not happy with the popularity of short term rentals edging into condominiums. Neither are condominium property managers and governing boards that have to deal with the complaints and aftermath of such rentals in buildings where prohibited. The rewards can be good and sometimes great but the risks can be very high.

The question begs, “Is this legal?” Gerry Miller is the managing partner of Gardiner, Miller, Arnold LLP and a subject matter authority on condominium law in Ontario. His firm manages a large portfolio of condominium corporations in the GTA. Mr. Miller states,

“We get this question a lot from our clients. It is not a question of whether short term rental companies are legal. Companies that engage in marketing short term rentals are legitimate businesses legally operating to capitalize on these growing markets.

However, a condominium board of directors have a duty and obligation to enforce the declaration, by-laws and rules of their condominium community. Part of the board’s duties and that of the corporation’s property manager is to analyze all risks and protect their communities from the negative impacts of those risks. That is why virtually all condominium corporations have rules as it relates to the leasing of units.

The problems arise when owners, and sometimes tenants without the knowledge of owners, rent out condominium units on a short term basis in buildings where there are specific prohibitions against short term rentals and/or do not register the tenants with property management.

Condominiums with time limitations on rentals have communities that expect stable, longer-term tenancies. It’s up to the boards and property managers to ensure compliance, meet the expectations of their communities and to manage risk.

In buildings with prohibitions on short term rentals, I recommend to our condominium owner clients that they avoid engaging in this type of activity and further I advise the boards and property managers to have zero tolerance if owner’s or tenants are breaching the corporation’s rules or declaration and to be aware of the consequences of allowing such activity to occur.”

What’s Next?

There is no doubt that this trend will not only continue, but will grow. In 2011, New York City implemented a ban on all short-term rentals (aka: the “*Illegal Hotel Law*”) in any residence less than thirty days. Quebec has also implemented similar measures. Heavy fines and other measures have not only been levied against the owners/tenants involved, but also condominium corporations as well for allowing it to occur.

It is highly likely and anticipated that GTA authorities from all levels of government will follow their counterparts in larger cities around the world and start clamping down on people who engage in such business enterprises in areas where it is prohibited.

The Impact of Short Term Rentals

The Good

Where allowed, and after full disclosure to all owners through the Declaration, by-laws and rules, short term rentals provide an environment that assists municipalities in accommodating travellers and visitors. It also engages individual unit owners as participants in the growing urban landscape. It also can provide snowbirds with income while they are away. Managed properly and professionally, the consensus is that this type of business adds a lot of value to municipalities and communities.

The Bad

In communities where prohibited, even uttering the words, ‘*Short Term Rental*’ to a property manager, a Board member or security provider can send shivers up their spines. Why? Frankly, it’s all about risk.

Negative consequences of illegal short term rentals can stigmatize communities, negatively affect the brand of a condominium, create ill feelings, even provoke lawsuits between residents with competing agendas, and leave frustrated neighbours with a sense of helplessness in dealing with the high frequency of transient neighbours.

Regardless of the trend towards anonymity in major urban communities worldwide, people feel more comfortable when there is a greater sense of safety and security. Short term rentals can create a, ‘hotel-like’/‘bed and breakfast’ atmosphere that is not consistent with the intended use, zoning or the expectation of the population of a condominium community. The anonymity and transient feel that can be associated with shorter term rentals is often unwelcome in these communities. High resident turnover and increased community anxiety is the unfortunate negative result of illegal short term rentals.

The Ugly

Unauthorized short term renters are often not prequalified by the property owner/ tenant, known to anyone in the community and almost always remain unregistered with property management and security. Unbeknownst to some property owners and property managers, some tenants have even re-rented units, parking spaces and even lockers to non-residents.

There are an alarming number of stories revealing a disturbing and ugly underbelly of this type of business especially in communities where such activity is strictly prohibited. Countless cases have been reported worldwide to police, municipalities, tax agencies, insurance companies, mortgagees, landlords, etc. where, albeit with the best intentions, things have gone very wrong.

Potential renters are in some cases, not what they appear to be. There are cases, albeit rarely publicized, where

condominiums are being rented by the hour and used as bawdy houses for prostitution. These are not in seedy areas but in some of the A+ buildings in the GTA.

Damage to property; amenities; and neighbouring properties, wild parties, shootings, voiding of insurance, neighbor complaints, police attendances, fights, domestic related violence, prostitution, short term rental refusals to leave units after lease end, noise complaints, disorderly activity, and criminal behavior are just some of the occurrences.

The question often asked is, “Does a deviation in the intended use of a condominium void my insurance?” According to Basel Kaskas, Insurance Specialist at The Paisley-Manor Insurance Group,

“I have seen a wide range of policies and claims related to short term rentals. Most insurance policies exclude the participation in short term rentals given the risks involved. If you ignore the exclusions in your policy and still proceed to be involved in the short term rentals you are choosing to operate without any insurance coverage as your insurance will become voided.

There are insurance providers for short term rentals; however, there are many risks associated with such activities. Be sure to do the research and know what is allowed and what is not allowed according to your policy in your property. The safest method is to always ask your insurance advisor if you are protected before proceeding with business venture such as short term rentals.”

Residential Tenancies Act

This is a provincial law that governs residential tenancies in Ontario. This law specifically prohibits current tenants from re-renting (subletting) a property without advising the property owner:

*97 (1) A tenant may sublet a rental unit to another person with the consent of the landlord.
2006, c. 17, s. 97 (1).*

A growing trend is forming where tenants re-rent (a form of subletting) condominium units on a short term basis without the knowledge or consent of the owner or notifying property management.

And what about the short term renters? What about their rights? In cases that occur more often than not, the people that rent out short term rental units report becoming unknowing victims themselves when arriving at condominiums communities that prohibit such activity and who have a plan in place to restrict access to the building. Trying to find accommodation after being barred entry to a pre-booked suite, particularly in a saturated market because of a major event, can ruin a vacation.

The hangover is often a very time consuming, costly and embarrassing affairs for everyone involved.

Other Considerations

The following are important factors to consider before engaging in short term rentals:

Mortgages

Lenders to condominium owners require the designated use of the property to be disclosed prior to funds being cleared and advanced. Any change of a designated use (e.g. single family residential to commercial) must be disclosed to the mortgagee. If engaging in short term rental in a single family unit zoned building, your mortgage may be voided.

Tax Compliance

There is an urban myth that engaging in short term rentals is tax exempt, reporting such an activity is unnecessary as the activity is more hobby than business, and no one is tracking these smaller businesses. Before anyone engages in such an activity, the best advice comes from legal and tax experts.

Such considerations include:

- ⇒ HST on rentals
- ⇒ HST on the purchase / sale of a unit
- ⇒ Income tax
- ⇒ Municipal tax increases
- ⇒ Capital gains

Insurance

Condominiums in Ontario have multi-layered insurance policies to protect the corporation, the owner and the tenant. In all cases, disclosures to the insurer must be made on the designated use of the property.

The primary use of a condominium unless, otherwise zoned and municipally approved, is strictly for single family use designation. If a change from residential to business is contemplated, insurance providers must be notified in advance.

Regulatory Compliance & Licensing (Hotels / B&Bs)

Short term rentals often are considered a, 'Bed-and-Breakfast' or 'Hotel-Like' style accommodation. The hotel/ B&B industry in Ontario is heavily regulated.

Health and safety compliance as well as licensing and the registering of guests feature prominently in the mandate of hotels and B&B's. Municipal licensing is also required to operate hotels and B&B businesses. Noncompliance with any of these municipal and provincial requirements can result in substantial consequences to the owner of a condominium unit and possibly the corporation.

Zoning

Municipalities designate or, 'zone' areas and specific properties before they are developed and built. Any change to the designated use of a property must be approved by the municipality. The consequences of short term rentals may impact the zoning of a individual unit and a community. Levies and fines may apply.

Conclusion

It is inevitable that the discussions and opinions regarding short term rentals will continue and that this type of business will grow. The question that has to be asked is, "What type of condominium community do you want?"

Board members and property managers should be ready for the likely circumstance of short term rentals occurring at their sites and reach out to lawyers and subject matter experts on this topic for advice.

Plans should be finalized well in advance to address this issue. The time to start preparing for and addressing short term and unregistered rentals in your community is not when it actually occurs.

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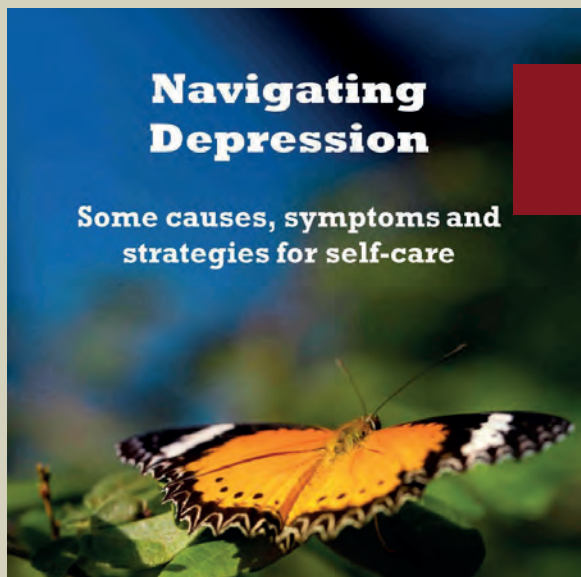


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RETHINKING URBAN CONCIERGE

Illegal Access Fob Copying

A Serious Security and Safety Concern in Residential Condominiums

By Ken Shibasaki, Senior Analyst Riskboss Inc.

Illegal Fob Copying Services

There has been a growing and disturbing security and safety trend in the residential condominium industry in the GTA: the illegal copying and counterfeiting of access fobs. This is nothing new as it is a worldwide phenomenon that has taken hold here in the GTA very quickly, with numerous websites and many services currently in operation. In a CBC report that was published on June 20, 2017, reporters went undercover and were able to duplicate borrowed fobs for two prominent residential condominium towers in seconds with no questions asked and no identification provided. The Internet is littered with GTA locations where you can get building and garage access fobs duplicated at a fraction of the cost that property management offices charge.

Safety and Security Risk

The emergence of so many companies illegally duplicating access fobs raises serious concerns of unregistered short-term renters, building technicians, tradespersons and would-be criminals gaining unauthorized access to residential condominium communities. Such access creates a security nightmare for condominium boards, property managers and security companies.



This safety concern is precisely the reason why the majority of residential condominium corporations in the GTA have Declarations and Building Rules prescribing that the corporation, through property management, is the only source for obtaining access fobs that is allowed as well as limiting the number of fobs that individual residents are allowed.

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Many residents complain that condominiums charge far too much for access fobs often in excess of \$75 and that is why they go to other sources for cheaper alternatives. Many clients of such establishment engage in unregistered short term rentals. Handing off an illegal fob to a short term rental client who may or may not return an illegal fob that costs virtually nothing may not seem like a big deal but from a community risk perspective, it is.

Bryan Jones who is an access technology expert that has years of experience in specializing in residential condominium access control systems in the GTA, explains the risks of using access fob copying services:

“Access fobs can be easily cloned and can be used in addition to authorized access fobs without leaving a separate trace or signature. Fobs are copied by way of cloning the parent fob access number into a blank fob copy. You cannot tell one fob from another when it is being used. I would be very reluctant as an owner to bring my access fob to be copied by such establishments.”

Expert condominium lawyer, Gerald Miller and managing partner of Gardiner Miller Arnold LLP discusses the legalities of copying access fobs:

“The use of counterfeit key fobs in condominiums creates a significant security risk for all owners and residents and is certainly in contravention of the condominium corporation’s Rules and operating procedures. Duplicating fobs is also likely in contravention of copyright and patent laws. What must be remembered is that buying fake fobs creates a crack in community security and compromises the safety of all residents. It is certainly ill-advised.”

Best Practices

Riskboss recommends the following action plan for dealing with this disturbing trend:

- Ensure your condominium community has an up-to-date Comprehensive Risk Assessment conducted by an industry accredited professional
- Streamline and simplify the access fob registration and activation process for all residents
- Institute an access fob registration process that assigns a resident’s picture to the access fob registered
- Make access fob costs reasonable
- Communicate to residents that access fob duplication is not permitted
- Communicate to residents that the condominium corporation, through property management, is the exclusive distributor of access fobs
- Implement regular, routine and ad hoc access fob audits
- Advise security to be vigilant that only recognized residents have access fobs and to challenge strangers
- When illegal access fobs are found, all fobs assigned to the offending resident(s) should immediately be deactivated
- Have management follow up with offending residents
- Trades that require access fobs must follow a registration process and must return all access fobs at the end of each day
- Deactivate all access fobs the day residents moves out
- Check illegal access fob copying websites that list residential condominium communities where fobs have been copied
- Have management contact offending fob copying services to cease and desist copying their access fobs when known

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Manhattan History

Gangs of the Infamous 19th Century New York Five Points

By Manhattan Historian and Tour Guide Joyce Gold

Martin Scorsese's movie *Gangs of New York* focuses on a once notorious mid-19th century part of New York City: the infamous Five Points in Manhattan's Lower East Side.

Named for a 5-point intersection (that no longer exists) it was the first slum in the city, filled with the poorest of the poor, particularly tens of thousands of immigrants who fled the Irish potato famine.

Five Points
Painted by George Catlin 1827
Metropolitan Museum of Art, New York



Residents joined into street gangs such as the Chichesters, Bowery B'hoys, Dead Rabbits, Plug Uglies, Kerrionians, and Shirttails. Some of these gangs were comprised of immigrants; others violently opposed to immigrants.

The Five Points is alleged to have had the highest murder rate of any slum at that time in the world.

The Five Points was a 19th century must-see tourist attraction.

American folk hero and, 'King of the Wild Frontier' Davy Crockett; was there. His reaction, "I would rather risk ... an Indian fight than venture among these creatures after night."

Novelist Charles Dickens wrote, "Squalid streets...leprous houses...reeking everywhere with dirt and filth.... All that is loathsome, drooping and decayed is here."

But presidential candidate Abraham Lincoln had a different view. About the Sunday school children he visited he commented, "They inspired me. I'll never forget this as long as I live."

Danish immigrant Jacob Riis helped improve the district, in part by getting the city to rip out some of the worst buildings and replace them with small parks which remain as lasting results that came out of the Five Points.

Highlights of my tour of the 5 Points neighbourhood includes the site of a brewery once converted into a miserable residency for 1,000 people where it is said that there was a murder every night for 15 years until it was demolished in 1852. Also a residence circa 1785 originally for a wealthy purveyor of meat and race horses, and the current identity of the neighborhood. Other tour highlights include the first Baptist congregation of New York and the twisting streets of old Chinatown.

We visit the 3rd oldest church in Manhattan, an excellent example of accommodating the changing city. The Church of the Transfiguration switched from Lutheran to Episcopalian. It converted to a Roman Catholics parish founded by a Cuban revolutionary, primarily for Irish Catholics then for Italian Catholics, and now has the largest Chinese Roman Catholic congregation in the US.

One of its priests is an Italian-American who leads the mass in Cantonese, having spent 15 years in Hong Kong. Most of the students in its parochial school are Buddhist.

In this low-rise district, on the site of a major early tavern and what was once the country's largest theatre, is a new high-rise hotel, suggesting the possible direction of the future neighborhood - unless more landmarks are preserved.

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Worth Thinking About



Imagine for a moment that you won a prize. Each morning \$86,400 is deposited into your bank.

BUT there are rules!

- You have to use all the \$\$ each day or lose it
- The \$\$ cannot be transferred to another person
- You are the only person that can spend it
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- If you close the account, you cannot get another one

What would you do if you had such an account?

The prize and bank account are real!

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- You have the gift of life
- Each day you get 86,400 seconds
- When you go to sleep your account is cleared
- You wake up again to a new 86,400 seconds
- What will you do now with you 86,400 seconds

What are you doing with you time?



Ask Riskboss

Q & A: Straight Answers to Hard Asked Questions

Question from a Toronto residential condominium property manager:

Q: I am a property manager in a newer condominium in Toronto. I have heard about people being able to access condominium sites through the use of preset codes in the Access Control Panel at the entrance. Can you please advise if this is true and if so, what can be done about it?

A: In August 2017, Riskboss distributed an alert to residential condominiums through the GTA regarding this very matter. Our investigation revealed that intruders can in fact, gain access by circumventing preset default codes in the access control panel at the front entrance of the buildings. Intruders can reprogram panels using basic access default administration codes that can be found on the Internet. There is an easy solution to this problem. Property managers should change the preset codes in all Access Control Panels as soon as possible replacing the preset cods with their own private codes.

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