

## Minimize Bear Incident Liability In Residential Areas

Article

*Lowndes*

09.15.2014

You may have seen news coverage of bear attacks that have occurred in the Orlando, Florida, area; specifically, in subdivisions around the Wekiva River Preserve in Seminole County. While that area is particularly prone to bear encounters, bear sightings have been reported all over Florida for years. If you are a developer of residential subdivisions, a homebuilder, or an operator or manager of homeowners associations, there are steps you can take to minimize the risk of bear incidents in your communities.

Bears typically enter residential subdivisions seeking food. Sometimes residents deliberately leave food out for bears, or for other animals (which then attracts bears). Sometimes, residents inadvertently attract bears by not securing potential food sources. Bears can smell food from miles away. While their normal diet in the wild can sustain them, it takes hours of feeding in the wild to yield the daily calories they need. Bears are smart enough to recognize and take advantage of other high-calorie food sources that are readily available, such as garbage, pet food, birdseed and drippings from barbecue grills.

When bears become accustomed to entering residential areas for food, they become “habituated” to human contact, and no longer fear humans. It is these circumstances that give rise to attacks when humans encounter them, typically by surprising them in places where they were not expected. Bears that have become habituated to human contact cannot typically be relocated successfully, since they will merely seek out human food sources again in other locations. As such, these bears generally have to be euthanized.

The best way to keep bears out of your subdivisions is to enact a program to make your communities “bear-wise.” This involves a number of steps that can be implemented in various ways, depending on the circumstances. If you are a developer, the most effective way to do this is to include bear-wise community requirements in your subdivision restrictions. This gives the homeowners association a mechanism to enforce them, including the imposition of fines for violations.

### Related Attorneys

[Gary M. Kaleita](#)

### Related Expertise

[Real Estate](#)

If you are a builder selling homes in a community that already has subdivision restrictions recorded by another developer, consider asking the developer or the homeowners association to amend them. If this is not feasible, it is a good idea to add an addendum to your sales contracts addressing some of these matters. If you operate or manage an existing homeowners association, investigate whether your subdivision restrictions grant the board of directors the authority to impose bear-wise community requirements, or whether it must be done with the approval of the homeowners, and proceed accordingly.

Regardless of the means or methods of adopting them, bear-wise community requirements should address the following types of issues:

**1. Educate Residents.** Residents should be aware of the possibility that bears will enter the subdivision. Inform homeowners (via the subdivision restrictions or sales contracts) that the community is located in an area that may contain various species of wild animals (such as bears) that may stray into the community, and which may pose a nuisance or hazard. This kind of disclosure can include a disclaimer that a resident buying a home in the community accepts all risks associated with wild animal encounters. This can limit potential liability that may be asserted against the developer, builder or homeowners association should a bear attack occur.

Residents should be conscious of the possibility of a bear encounter when they are in their yards, or walking around the subdivision, especially when walking dogs. When out at night, residents should be alert and carry a flashlight so they are not surprised by a bear. Some people recommend that persons walking in bear-prone areas also carry an air horn and/or bear spray.

Residents should know to report bear contact to the Florida Fish & Wildlife Conservation Commission. Bear encounters or intrusive bear activity should be reported to FWC's Ocala Regional Office. If your homeowners association has a manned gatehouse, ask residents to notify the gatehouse when bears are seen in the community so that a "Bear Alert" sign can be posted in the window at the entrance to the community, at least for a day or so. Have the gate attendants maintain a logbook of bear activity reported by residents.

**2. Erect Signage.** Consider erecting permanent signs at the entrances to the community, warning incoming residents, visitors and contractors that the community is in an area where bears may be encountered, and advising them to be alert and avoid contact. Although residents may know of this possibility, visitors and contractors may not. Such signs can also serve to limit the potential liability of a developer, builder or homeowners association should an attack occur.

**3. Secure Human Food Sources.** Inform all residents that they must not feed wild animals of any kind, nor engage in conduct that attracts wild animals into the community. This includes leaving food waste in containers or areas that are accessible by wild animals, and allowing wild animals to access food waste, pet food, barbecue grills, refrigerators or freezers in garages, or on porches or patios. Require barbecue grills to be cleaned after each use, or otherwise stored in closed garages (after detaching the propane tank, which should never be stored indoors), since grills on porches are bear attractants.

The Florida Fish & Wildlife Conservation Commission has advised that if potential food sources are properly controlled, bear intrusions go down to near zero unless bears are already habituated to seek these food sources in your subdivision.

**4. Reduce Natural Food Sources.** Some fruit and nut trees attract bears, as do some berry bushes (but bears are not generally attracted to citrus). Avoid planting landscaping that attracts bears near patios and entranceways. Fruits, nuts and berries should be picked when ripe, and not allowed to remain on the ground when they fall. Some types of vegetables (potatoes and root vegetables such as carrots and beets) are also bear attractants.

Even bird feeders attract bears, so they should be required to be brought in at night if not prohibited entirely, and the ground underneath bird feeders should be kept free from accumulations of birdseed.

Needless to say, beekeeping attracts bears, as do salt and mineral blocks that some people leave out for deer. Composting food waste can also attract bears. The housing of domestic animals outside the home (such as in bird cages, rabbit cages, dog houses, etc.) should be avoided. Your subdivision restrictions should contain language broad enough to address these kinds of activities in its bear-wise requirements.

**5. Secure Garages and Vehicles.** Bears have been known to enter garages looking for garbage and pet food. While they are there, they may open freezers and refrigerators looking for food, or even enter the house. A 2014 attack in Central Florida took place when a resident entered her garage (which had been left open) from the house, only to find it occupied by bears feeding on garbage kept in the garage pending pickup. Garage doors should be kept closed when not actually in use. Bears are known to break into vehicles, especially when they smell food in them. You should not leave pet food, groceries, garbage, coolers or food products of any type or other scented items (like lip balm) in vehicles.

**6. Mandate “Bear-Resistant” Trash Cans.** Consider mandating the use of so called “bear-resistant” trash cans for the disposition of food waste. This may require homeowners to place food waste in a bear-resistant trash can and other waste in a regular trash can. Bear-resistant cans are advertised as such, and contain special locking mechanisms of various types that are designed to withstand a bear’s attempts to open them, and they are strong enough to preclude the bear from damaging them.

However, they can be expensive, and must be capable of pickup by the trash hauler servicing your subdivision. The trash hauler may charge an annual fee to accept these cans, because they may require the use of tilting mechanisms on their trucks, and it may take a hauler 10-15 extra seconds to empty them. In a subdivision of 150 homes, that can add 30 or 40 minutes to the hauler’s pickup time.

These matters can be investigated by contacting the trash hauler servicing your subdivision. The hauler may be able to sell homeowners or their association acceptable bear-resistant cans at the hauler’s cost. The board of directors of the homeowners association may have authority under its governing documents to require residents to use these, but the documents may require a vote of the owners.

**7. Regulate Trash Pickup.** Bears are frequently attracted into a community by residents putting trash out for pickup the night before, instead of the morning of pickup. This should be precluded by your subdivision restrictions, especially if bear-resistant trash cans are not being used.

There is a plethora of information available about this subject on the Internet. The Florida Fish & Wildlife Conservation Commission has a Web page called “Living with Black Bears” that you can access by going to [myfwc.com](http://myfwc.com). The Get Bear Wise Society in Canada offers helpful information on how to become a bear-wise community on its website at <http://www.bearwise.com>.

These types of precautions will go a long way toward reducing or eliminating bear incidents in your communities, and thereby avoid habituating the local bear population. It is important that homeowners associations be vigilant in enforcing these requirements, like all subdivision restrictions. A successful bear-wise community can offer residents the benefits of Florida’s natural surroundings, while minimizing the risk of adverse interactions with wildlife. Such precautions will also offer a developer, builder or homeowners association a better chance of minimizing its potential liability should an incident actually occur.