

Florida Statute 768.0706 (HB 837)

# A Guide to Compliance for Multifamily Properties

Updated 30 May 2024



Critical Intervention Services

# Florida Statute 768.0706

In March 2023, the State of Florida passed a series of major tort reforms into law including Florida Statute 768.0706. This new law provides multi-family property owners with an unprecedented level of protection against frivolous lawsuits resulting from criminal activity.

As described in Fla. Stat. § 768.0706(2):

*“The owner or principal operator of a multifamily residential property which substantially implements the following security measures on that property has a presumption against liability in connection with criminal acts that occur on the premises which are committed by third parties who are not employees or agents of the owner or operator:”*

However, benefiting from this new law requires that the property complies with several essential conditions.

The following guide was prepared by Critical Intervention Services to assist property owners and management companies in assessing the opportunity presented by Fla. Stat. § 768.0706, achieving and maintaining compliance, and avoiding pitfalls that can undermine the protection offered by the new statute.





## Compliance Requirements of Florida Statute 768.0706

The principal requirements of Florida Statute 768.0706 are summarized as follows:

- Ensure the property "substantially implements" seven physical security conditions as defined in Section 768.0706(2)(a):
  - Security camera system at points of entry and exit which records, and maintains as retrievable for at least 30 days, video footage to assist in offender identification and apprehension
  - Lighted parking lot illuminated at an intensity of at least an average of 1.8 foot-candles per square foot at 18 inches above the surface from dusk until dawn or controlled by photocell, etc.
  - Lighting in walkways, laundry rooms, common areas, and porches. Such lighting must be illuminated from dusk until dawn or controlled by photocell, etc.
  - At least a 1-inch deadbolt in each dwelling unit door
  - Locking device on each window, each exterior sliding door, and any other doors not used for community purposes
  - Locked gates with key or fob access along pool fence areas
  - Peephole or door viewer on each dwelling unit door that does not include a window or that does not have a window next to the door
- By January 1, 2025, the property must have a crime prevention through environmental design (CPTED) assessment conducted by a Florida CPTED Practitioner or law enforcement agency that is no older than three years. Furthermore, the property must be in "substantial compliance" with the assessment.
- By January 1, 2025, all employees must receive "proper crime deterrence and safety training" encompassing a review of the seven issues required by Subsection A of the statute. After 1 January 2025, all newly hired employees must complete the same training within 60 days of hire.

[Click here to read Florida Statute 768.0706 in its entirety.](#)

# Cost Benefit Analysis and Florida Statute 768.0706

Although the powerful liability shield provided by Florida Statute 768.0706 (HB 837) is very enticing, we recommend first conducting a cost-benefit analysis to determine if the expected benefits are worth the investment often required to achieve compliance.

## Benefits of compliance with Florida Statute 768.0706

The most obvious benefit of compliance with Florida Statute 768.0706 (HB 837) is immunity from lawsuits resulting from criminal acts committed by third parties. Any property owner who has endured previous litigation resulting from violent crimes and the massive costs of settlement or jury verdict can appreciate the powerful level of protection provided by the statute. Likewise, property owners operating with persistent concern due to high levels of crime in surrounding neighborhoods can finally rest at ease about crime-related litigation.

Correspondingly, insurance companies also receive a major benefit from HB 837's liability shield. This will likely translate into savings in insurance rates for compliant property owners. For many, this may be the most enticing benefit of Florida Statute 768.0706. As an example, several current CIS clients have fully committed to achieving compliance for their entire Florida portfolio primarily in anticipation of reduced insurance rates.

As another benefit, it is also likely that real estate values will increase as insurance premiums favorably adjust and the disposition of future lawsuits distinguishes a consequential difference between compliant and non-compliant properties.

## Potential Costs of compliance with Florida Statute 768.0706

As a starting point, property owners should budget \$10,000-15,000 for legal services and an experienced security consultancy to conduct the CPTED assessment as required under Florida Statute 768.0706(2)(b).

As discussed later in this guide, we recommend contracting the necessary CPTED assessment through legal counsel as a 'work product in preparation for litigation'. Although it may be tempting to save money by contracting the CPTED assessment directly and thus bypassing legal counsel, this course of action can inadvertently result in new legal exposure if the property is unprepared to make immediate improvements or the owner decides not pursue compliance after the assessment is completed. Likewise, using the local police department or hiring an inexperienced practitioner to conduct the CPTED assessment can result in significant problems if the findings impose unrealistic expectations for improvement or the assessment report is unprepared for rigorous court challenge.

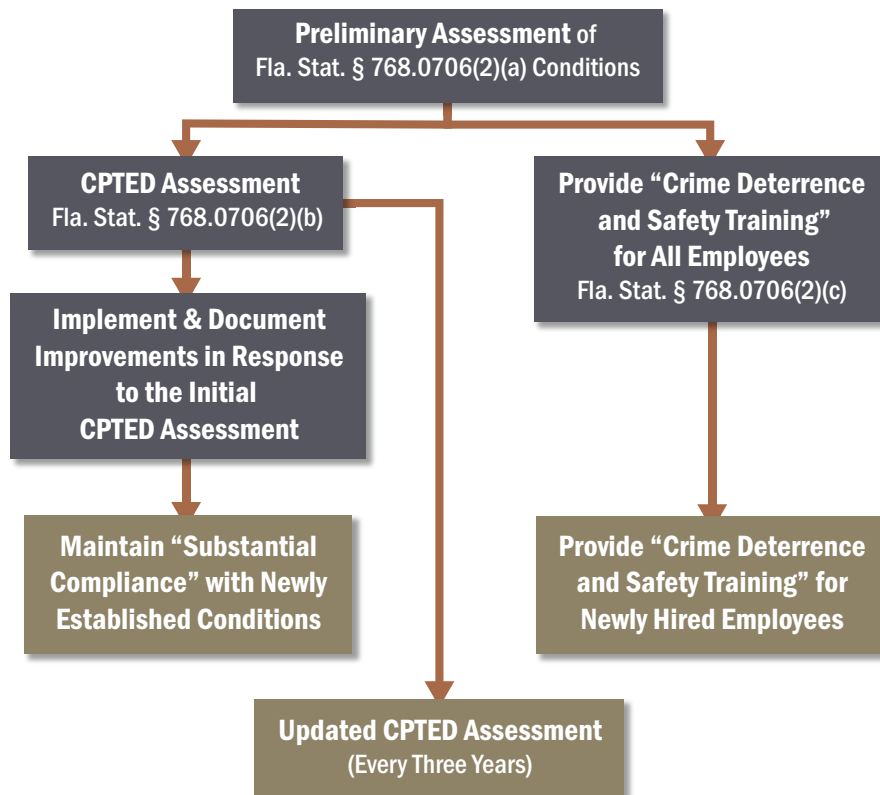
After the aforementioned expenses, expect there will be costs associated with property improvement to ensure "substantial compliance" with the conditions required by Florida Statute 768.0706(2)(a) and the findings of the CPTED assessment. Based on our experience conducting assessments for over 100 properties, the most common problems requiring address include absence of necessary surveillance cameras, inadequate lighting, problematic landscaping, and absence of access controls for pool areas.

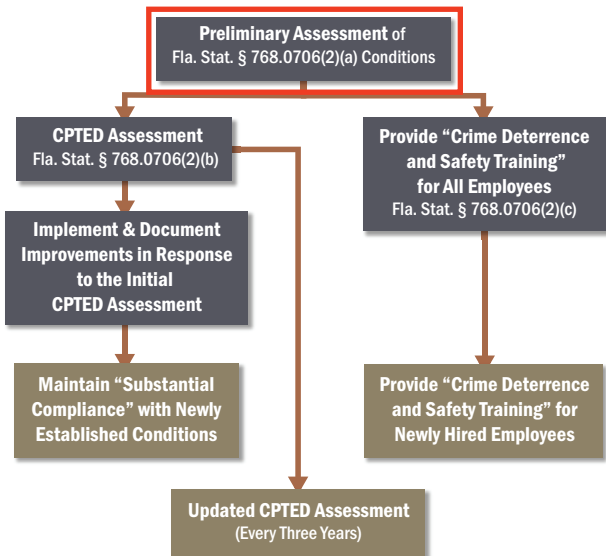
The potential cost of improvements largely depends on the size of the property and its present conditions. If lighting is substandard in parking lots and sidewalks, upgrade costs typically range between \$20,000 and \$100,000 depending on the extent of problems and property size. Camera upgrades can range between \$2,000 and \$50,000 depending on the number of new cameras required to monitor “*points of entry and exit*” and complexities of installation. Prices for access controls for pool areas often vary between \$7,000 and \$25,000 depending on hardware and software needs. And the cost of landscaping improvements usually ranges between \$1,000 and \$7,000 according to the extent of problems and decisions about shrubbery replacement.

If the anticipated costs of compliance are high and the property’s risk level is low, it may be prudent to investigate the insurance benefits before committing to a course of action. For others, the capital investment of compliance may be a pittance when compared to a potential multi-million dollar jury verdict.

## Roadmap to Compliance with Florida Statute 768.0706

Once a decision is made to proceed, there are a number of activities involved in achieving and maintaining compliance with Florida Statute 768.0706 as illustrated in the diagram below.



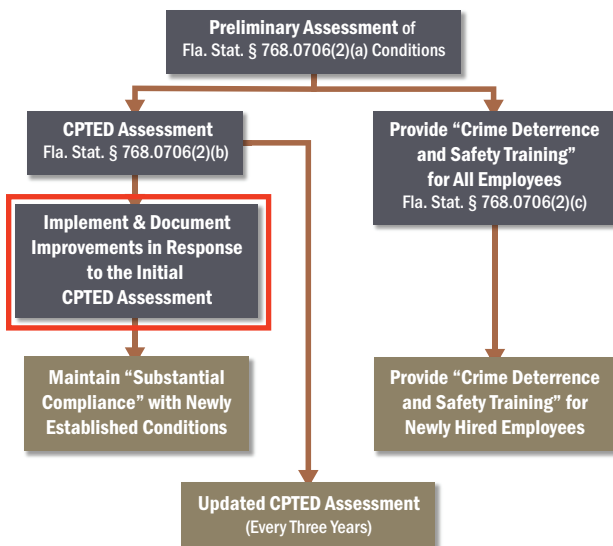
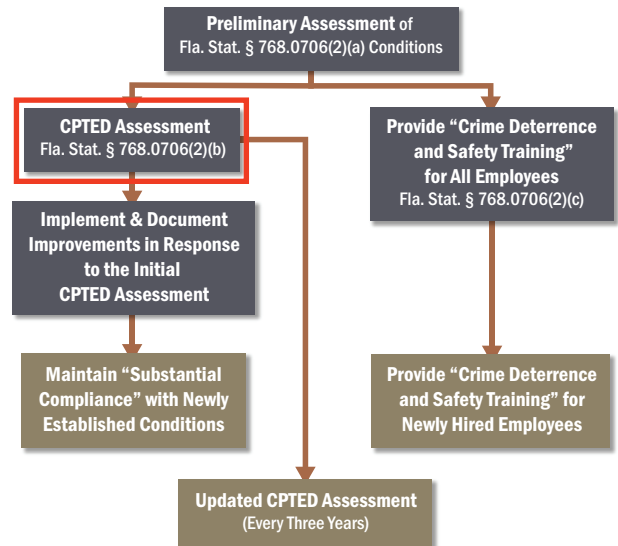


### CPTED Assessment

After the preliminary assessment, a CPTED assessment is conducted by a Florida CPTED Practitioner for compliance with Florida Statute 768.0706(2)(b). During this assessment, the Florida CPTED Practitioner should also assist in verifying compliance with issues related to 768.0706(2)(a) beyond the technical capabilities of employees (e.g., average parking lot illumination level, CCTV camera coverage, etc.). When completed, the Florida CPTED Practitioner submits a report of findings with proposed measures for improvement.

### Preliminary Assessment

As a first step, we recommend conducting an internal assessment of conditions specified in Florida Statute 768.0706(2)(a). The objective of this assessment is to determine if the property meets most of the basic requirements of Section A and if there are issues that require remedy before progressing to a documented compliance verification and CPTED assessment by a third party.

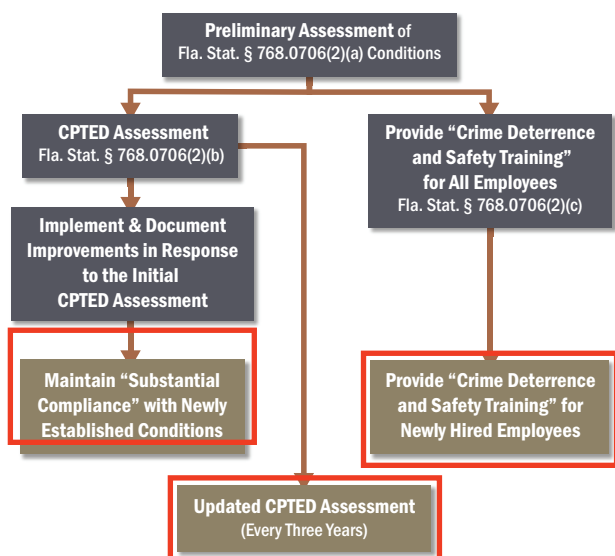
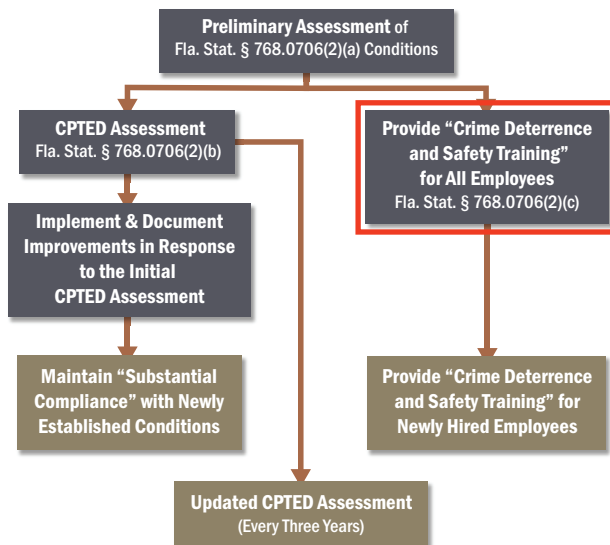


### Implement & Document Improvements

After the CPTED assessment is complete, the owner/management company initiates corrective actions as necessary to demonstrate "substantial compliance" with the CPTED assessment and the requirements of Section 768.0706(2)(a). As this process is underway, records of all completed improvements should be maintained for discovery purposes if a court challenge arises.

## Provide "Crime Deterrence and Safety Training" to Employees

By January 2025, all employees working on the property complete "proper crime deterrence and safety training" encompassing the items described in Section 768.0706(2)(a) of the statute.



## Maintain Ongoing Compliance

After the property has complied with all essential requirements defined by Florida Statute 768.0706, physical conditions must be sustained to ensure the property remains in "substantial compliance," new employees need to be trained in accordance with Section 768.0706(2)(c), and an updated CPTED assessment needs to be completed within three years.

# Conducting a Preliminary Assessment for Compliance with Fla. Stat. § 768.0706(2)(a)

Once a decision is made to proceed with HB 837 compliance, it is recommended that employees of the multifamily property conduct a preliminary survey of conditions specified in Fla. Stat. § 768.0706(2)(a). There is no sense in initiating a comprehensive CPTED assessment if the property isn't compliant with basic requirements defined in Section A of the statute.

As described further in this guide, verifying compliance with camera coverage and lighting conditions described in 768.0706(2)(a) may require professional assistance by a Florida CPTED Practitioner. However, many requirements defined in Section A are simple in nature and can be easily verified by property managers or maintenance personnel.

Following is a guide for conducting an internal assessment of compliance conditions and a survey of topics that may require outside assistance.

## Internal Assessment of Compliance Conditions

### Residential Unit Inspections

Begin by inspecting several residential units for compliance with Fla. Stat. § 768.0706(2)(a).

- Using a tape measure, is the length of the deadbolt on all door locks 1-inch as required by Fla. Stat. § 768.0706(2)(a)(4)?

If YES, verify with the maintenance manager that door hardware on all units is standardized. In most properties our consultants have assessed for compliance, locking hardware on door units has been consistent. However, our consultants have encountered situations (particularly on older properties) where maintenance had used different models when replacing locks over time. If this is the case, a more thorough inspection should be conducted to ensure all door locks have 1-inch deadbolts.



- Do all residential unit doors feature a peephole or door viewer as required by Fla. Stat. § 768.0706(2)(a)(7)?

If YES, verify with the maintenance manager that peepholes are standard on all units. Additionally, visually inspect the peephole to ensure it's clear. Although our consultants rarely encounter properties where peepholes are absent, we do often find situations where peepholes are obstructed by accumulated dirt or paint. If that situation is observed, arrange for maintenance to clean all peepholes on property.



- Do all windows in units feature locking devices as required by Fla. Stat. § 768.0706(2)(a)(5)?** If there are sliding glass doors or swinging patio doors, are they also equipped with locking devices?

If YES, verify with the maintenance manager that window and sliding glass door hardware is standard on all units. While inspecting windows, also verify that the locking devices are working correctly and there are no problems resulting from misalignment.

### Pool Inspection

Inspect the fencing and gates enclosing the pool area.

- Is the pool locked at all times and accessed by residents using access control fobs/cards or resident-issued keys as required by Fla. Stat. § 768.0706(2)(a)(7)?**

The primary issue of concern is if the pool area is unsecured during any periods. If some gates are equipped with access control hardware for resident access and others are normally locked by mechanical means (for exclusive use by maintenance), the situation is most likely compliant.

### Lighting of Common Areas

Inspect the lighting in all laundry rooms, fitness rooms, community restrooms, and all other indoor common areas.

- Are there lights present in all common areas and are the lights illuminated from “dusk until dawn” using a photocell, timer, or secured switch that is inaccessible to residents for compliance with Fla. Stat. § 768.0706(2)(a)(3)?**

If the lights are operated by unsecured wall switches or motion-sensing switches (as commonly used in these types of rooms in multifamily properties), assume that they may be regarded as non-compliant. Wall switches can be turned off by residents and motion-sensing switches only operate the lights when the room is in use, thus an opportunity exists for a plaintiff to argue that the room is not “illuminated from dusk until dawn.”

## Professional Assessment of Compliance Conditions

Verification of compliance with the aforementioned topics does not require specialized expertise and can be easily conducted by a competent employee. However, there are several additional compliance matters associated with Fla. Stat. § 768.0706 that often require assistance by a professional.

### CCTV Camera Coverage and System Design

Fla. Stat. § 768.0706(2)(a)(1) requires that the property has a *“security camera system at points of entry and exit which records, and maintains as retrievable for at least 30 days, video footage to assist in offender identification and apprehension.”*

One of the ambiguities with the manner in which the statute is written is the question about what exactly constitutes *“points of entry and exit.”* It is expected that the court will eventually establish a clear definition through case precedent. In the meantime, our consultants employ the following guideline for purposes of interpretation.

#### **“Points of Entry and Exit”**

Fla. Stat. § 768.0706(2)(a)(1)

For purposes of definition, CIS currently interprets the term *“points of entry and exit”* as **all designed entrances through the legal boundary separating exterior public space and the private property.** In horizontal properties and multi-building apartment complexes, *“points of entry and exit”* are defined by design as vehicle entrance drives connecting exterior roadways to inner parking lots and any sidewalks specifically designed to provide pedestrian access into the private property from the exterior public space.

In the case of apartment buildings (vertical properties) located directly adjacent to public streets and sidewalks, *“points of entry and exit”* encompass all exterior entrance and exit doors adjacent to public spaces, drive entrances into underground garages, and any sidewalks or gates specifically designed to facilitate pedestrian access into outdoor grounds of the private property from exterior public spaces (e.g., courtyard gates or entry paths, etc.).

If a property is completely enclosed by walls or fencing or located in an isolated area with limited entrances, identifying all *“points of entry and exit”* subject to camera coverage is often simple. However, in other cases, it may require a careful examination of the property’s boundaries as indicated by the property appraiser’s map and identification of all vehicle entry drives and pedestrian walkways providing passage from exterior public areas and the inner grounds of the private property. And in situations such as urban apartment buildings with a large number of exits and entrances and horizontal properties with walkways between public sidewalks and breezeways, identifying all possible *“points of entry and exit”* may require a systematic and careful analysis as illustrated in the following example.

## Identifying Required CCTV Coverage for Compliance with Fla. Stat. § 768.0706(2)(a)(1) Example of an Atypical Situation

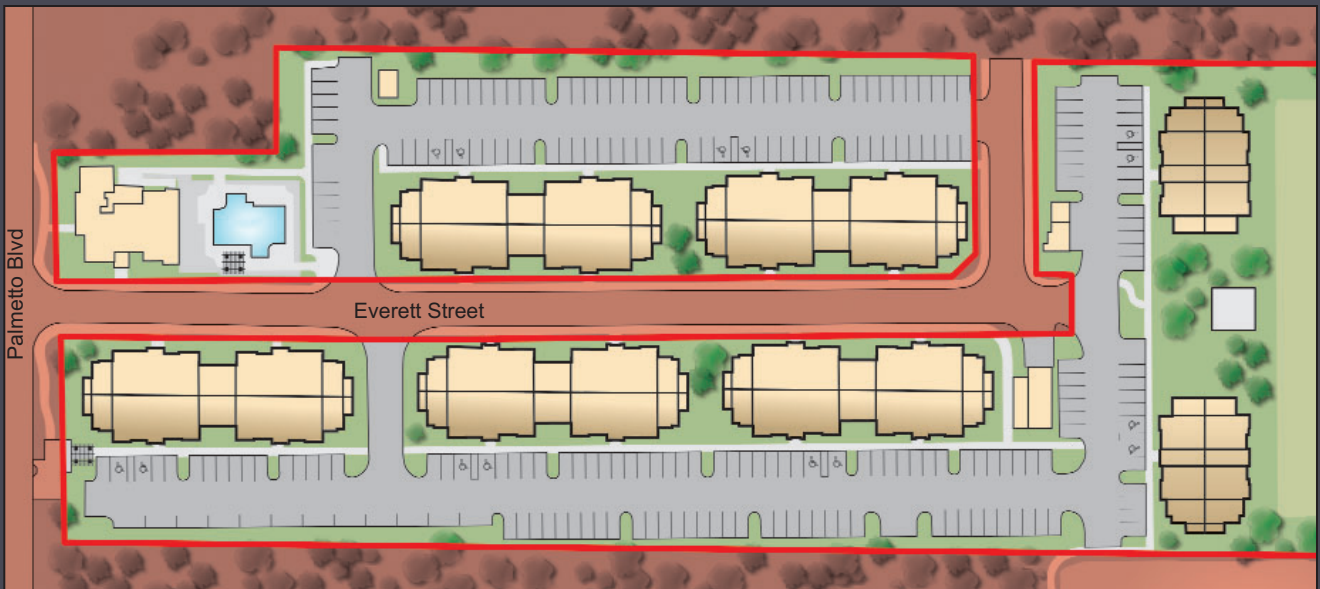
Following is an example of a situation where careful analysis using the property appraiser's map is essential for identifying all possible "points of entry and exit."



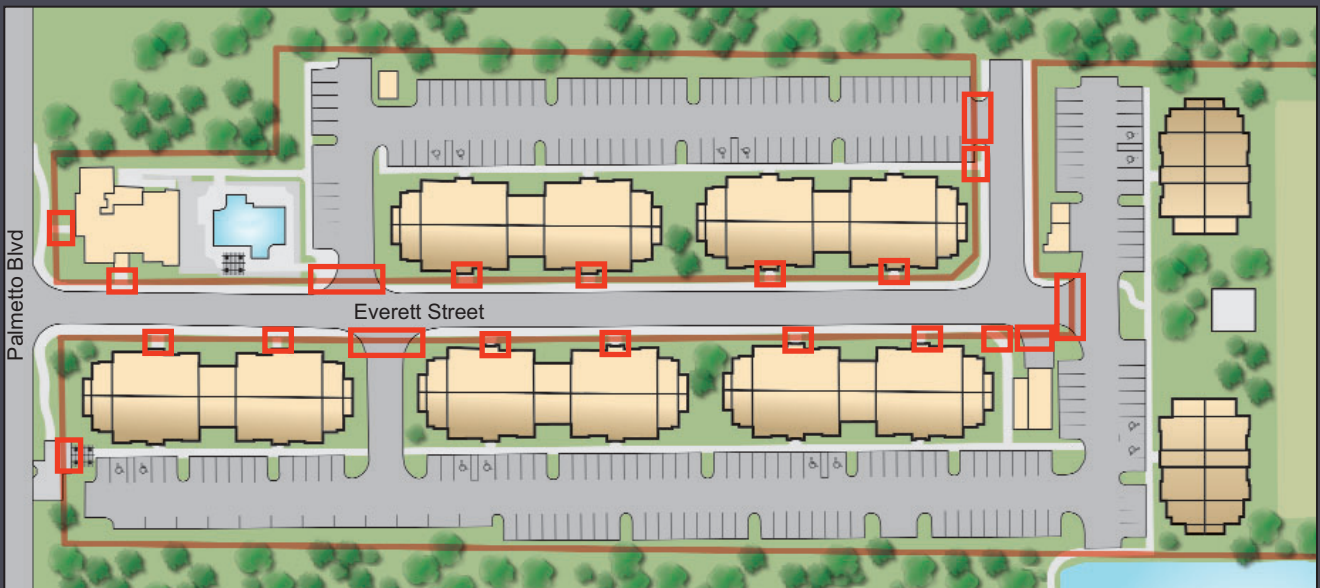
At first glance, there appears to be only three "points of entry and exit" between public spaces and the private space of the property, including two sidewalks entering the property from Palmetto Blvd and one entry road (Everett Street) with adjacent sidewalks.



However, examination of the property appraiser's map indicates that Everett Street is a public road that divides the property into two separate sections (north and south). As an additional consideration, all sidewalks along Everett Street are also public space.



Considering the location of the property's boundaries, each vehicle entrance entering from Everett Street and all sidewalks approaching the breezeways of buildings along Everett Street may also be interpreted as possible "points of entry and exit." When all designed points of passage between exterior public space and private space are taken into account, the result is 20 possible "points of entry and exit" that would require camera coverage.



Bear in mind, this case is very unusual. Most properties our consultants assess have between one and seven "points of entry and exit" that qualify under our guidelines for interpretation of the statute. However, this example does demonstrate the types of complexities that can arise when identifying "points of entry and exit" that may require careful analysis or professional assistance.

After all “points of entry and exit” are identified, camera imaging should be assessed to ensure that each point of entry and exit is completely visible by surveillance cameras and imaging is of sufficient quality for purposes of “offender identification and apprehension.” For this purpose, it is often best to evaluate camera imaging at night time to identify problems associated with low light functioning, illumination, glare, and contrast.

In addition to inspecting camera coverage, the assessment should encompass a review of stored footage to ensure that recordings are “retrievable for at least 30 days.” If the property’s DVR’s or NVR’s are programmed for retention based on a defined time period, ensuring there is at least 30 days of stored footage is usually sufficient. However, if retention time is determined by data storage limits, it is recommended that there is at least 45 days or more of retained footage to ensure that data storage isn’t a problem if additional cameras are added to the system in the future.

### **Parking Lot Illumination**

Fla. Stat. § 768.0706(2)(a)(2) requires that the property has a *“lighted parking lot illuminated at an intensity of at least an average of 1.8 foot-candles per square foot at 18 inches above the surface from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn.”*

Determining if the property is compliant with Fla. Stat. § 768.0706(2)(a)(2) requires systematically measuring all parking spaces at 18-inches horizontal from ground using a NIST-calibrated light meter for accuracy. As a result, this part of the compliance assessment is best reserved for the Florida CPTED Practitioner during the CPTED assessment.

### **Walkway Illumination**

In addition to illumination in laundry rooms and common areas, Fla. Stat. § 768.0706(2)(a)(3) requires that all walkways are illuminated from *“dusk until dawn.”*

However, the statute does not provide guidance for determining how far a light source must be located in proximity to *“walkways, laundry rooms, common areas, and porches”* to be considered as illuminated by *“lighting”* and it is expected this issue will be clarified through future court proceedings. In the meantime, our consultants employ the following guideline for purposes of interpretation.

#### **“Lighting”**

Fla. Stat. § 768.0706(2)(a)(3)

For purposes of verifying compliance with F.S. 768.0706(2)(a)(3), CIS interprets the presence of *“Lighting in walkways, laundry rooms, common areas, and porches”* to mean that an illuminated light source must be visible within/from the *“walkway, laundry room, common area, and porch”* and the level of illumination is 0.1 fc or greater.

Determining if the property is compliant with this guideline requires systematically measuring all side-walks at ground-level using a NIST-calibrated light meter. And similar to the subject of parking lot illumination, this compliance verification activity is best reserved for the Florida CPTED Practitioner during the CPTED assessment.

## CPTED Assessment and Florida Statute 768.0706(2)(b)

By the time the crime prevention through environmental design assessment (CPTED) assessment is scheduled, the owner/management company should have completed a preliminary assessment to determine if the property is compliant with most provisions required by Fla. Stat. § 768.0706(2)(a).

As discussed earlier in this guide, there are several requirements that employees may not be able to properly assess related to CCTV camera coverage and illumination. However, the property owner should be aware of the property's status regarding all other matters in Section A and ideally completed any necessary improvements before initiating the documented CPTED assessment.

### The CPTED Assessment Process and Fla. Stat. § 768.0706(2)(b)

*NOTE: The following section describes the approach used by Critical Intervention Services for conducting CPTED assessments and verification of compliance with Florida Statute 768.0706(2)(a). Although all Florida CPTED Practitioners should conduct assessments according to guidelines established by the Florida Crime Prevention Training Institute (FCPTI), assessment methodology, detail, and foresight regarding liability implications often varies among practitioners.*

Once the CPTED assessment is scheduled, our Florida CPTED Practitioner will retrieve and evaluate crime data for the property and surrounding area to identify any problems for special focus, "hotspots" (problematic areas nearby), and trends over the past five years that may indicate a momentum of improvement or deterioration in the crime situation. If the property's boundaries are unclear, a property appraiser's map is also obtained to assist in pinpointing all relevant "points of entry and exit" as related to Florida Statute 768.0706(2)(a)(1).

On the day of the on-site assessment, we prefer to begin by meeting with the property manager to review details about the property, community characteristics, historical problems, management practices, and details about the property's infrastructure (e.g., access control system, CCTV system, etc.).

This meeting is then typically followed by a short tour of the property to identify all possible "points of entry and exit" and inspection of several residential units for compliance with conditions stated in Florida Statute 768.0706(2)(a). After all "points of entry and exit" have been confirmed, an inspection is conducted of the CCTV system for compliance with 768.0706(2)(a)(1).

#### What is Crime Prevention Through Environmental Design (CPTED)?

Crime Prevention Through Environmental Design (CPTED) is a crime prevention doctrine that uses architectural and natural design measures to reduce opportunity for crime and offender confidence, while simultaneously reinforcing a sense of community among inhabitants and reducing fear of victimization.

CPTED focuses on four key principles:

**Natural Surveillance** – Measures employed to maximize the visibility of persons and encourage positive social interaction.

**Natural Access Control** – Measures employed to attract, channel, or restrict the movement of people, and in turn, minimize opportunities for crime.

**Territorial Reinforcement** – Measures employed to define public, semi-public and private spaces and engender a sense of shared ownership of community space.

**Maintenance** – Measure employed to reduce the appearance of social disorder and enhance a sense of community pride and ownership.

In addition to the four CPTED principles, additional issues encompassed during CPTED assessments include traffic calming, "connectability," positive and negative activity generators, and social management measures.

After all activities with the manager are concluded, a daytime inspection of the property is conducted to evaluate CPTED conditions and compliance with other requirements defined in Fla. Stat. § 768.0706(2)(a). During the daytime assessment, our Florida CPTED Practitioners primarily focus on landscaping, building design, signage, and maintenance conditions.

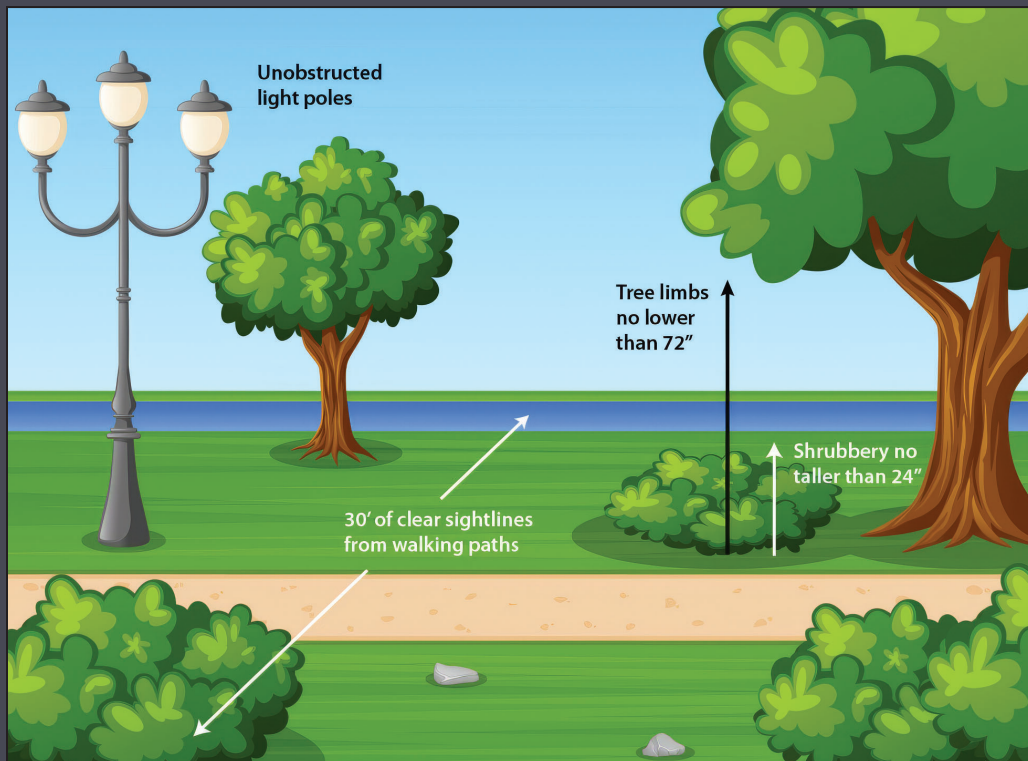
## CPTED Principles and Multifamily Properties

Following are some of the issues of focus during our daytime CPTED assessments in multifamily properties.

### Natural Surveillance

A major focus of CPTED surveys in multifamily properties is landscaping design and its influence on “natural surveillance”—ensuring unobstructed sightlines throughout the property to reduce offender concealment opportunities and facilitate observation of criminal activity. For this purpose, FCPTI promotes the ‘2ft-6ft rule’ whereby all hedges and bushes should be no taller than 24” in height and tree limbs should be no lower than 72” from the ground. As a property owner, expect that any shrubbery and trees that deviate from this guide will appear in the report.

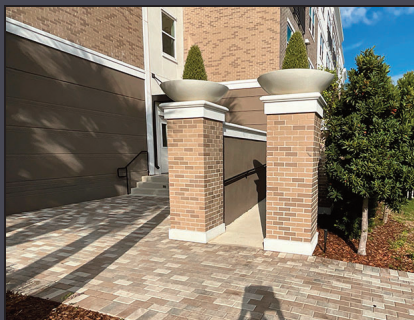
In addition to the 2ft-6ft rule, CPTED guidelines promoted by FCPTI also include the 30-ft sightline rule. Under the 30-ft sightline rule, there should be 30 feet of unobstructed sightlines along the sides of all sidewalks and walking paths.



Following are some examples of trees and shrubs that would be documented unfavorably in a CPTED assessment report.



In addition to landscaping issues, structural features and buildings are examined for possible offender concealment opportunities with special focus on common areas and pedestrian walkways. Below are some examples of offender concealment opportunities that would likely be documented in a CPTED assessment report.





The location and design of playgrounds, benches, pavilions, dog parks, and similar locations are also evaluated to determine their benefit as “focal points” and “positive activity generators,” thus providing opportunity for observation of criminal activity.

### **Natural Access Control**

Site design and the use of environmental terrain features (e.g., landscaping, water retention ponds, etc.) are evaluated to determine their benefit in channeling entry to designated entrances and discouraging trespass. “Mechanical access controls” (e.g., fencing, walls, gates, access control hardware, etc.) are also assessed to determine their effectiveness.

### **Territorial Reinforcement**

The entrance to the property is inspected to determine its effectiveness as a “celebrated entryway” and how well it effectively establishes a sense of community ownership.

Signage is another issue of focus during the daytime assessment. The presence of identifying signage at entrances, private property signs, and signage warning against trespass all contribute to territorial reinforcement.

Use of “transition zones” between public and private space are also assessed to evaluate their contribution to defining the property boundaries and discouraging trespass.

### **Maintenance**

During the daytime CPTED assessment, our Florida CPTED Practitioner also focuses on maintenance issues that contribute to a disordered environmental appearance. This includes conditions such as broken and bent fencing, building decay, faded signs and faded paint, and ground litter.

Once nightfall arrives, the assessment continues with an inspection of lighting and illumination conditions.

To verify compliance with Fla. Stat. § 768.0706(2)(a)(2), our Florida CPTED Practitioner measures illumination levels in each parking space at 18-inches from the surface using a NIST-calibrated light meter. The measurements recorded during this stage of the lighting assessment are then output as a spreadsheet and used to calculate the average illumination level.

The second stage of the lighting assessment continues with focus on sidewalks, building entrances, breezeways, mailboxes, and outdoor activity areas. Illumination levels during this stage of the assessment are measured according to guidelines established by the Illuminating Engineering Society (IES) and recorded. During this activity, our Florida CPTED Practitioner also verifies the presence of lighting in walkways, laundry rooms, common areas, and “porches” as required by Fla. Stat. § 768.0706(2)(a)(3).



Throughout the both stages of the lighting assessment, our Florida CPTED Practitioner also observes for problems regarding lights obstructed by trees, high contrast ratio, glare, light trespass, and maintenance issues such as degraded and burned out lights.

## Examples of Lighting Concerns

### Inadequate Illumination



In the example above, the average illumination level for the mailboxes is 4.3 fc, below the IES standard of 10.0 fc for "multifamily properties where security is an issue." In this instance, lighting would be regarded as compliant with Fla. Stat. § 768.0706(2)(a)(3), but deficient in accordance with CPTED guidelines.



According to IES guidelines, entrances to residential units (and breezeways, by extension) should be illuminated at a level of 3.0 fc or greater. In the example above, other breezeways on property were compliant with the IES standard, but this one was not. That's generally an indication that aged/degraded bulbs are the problem--not design of the lighting system.



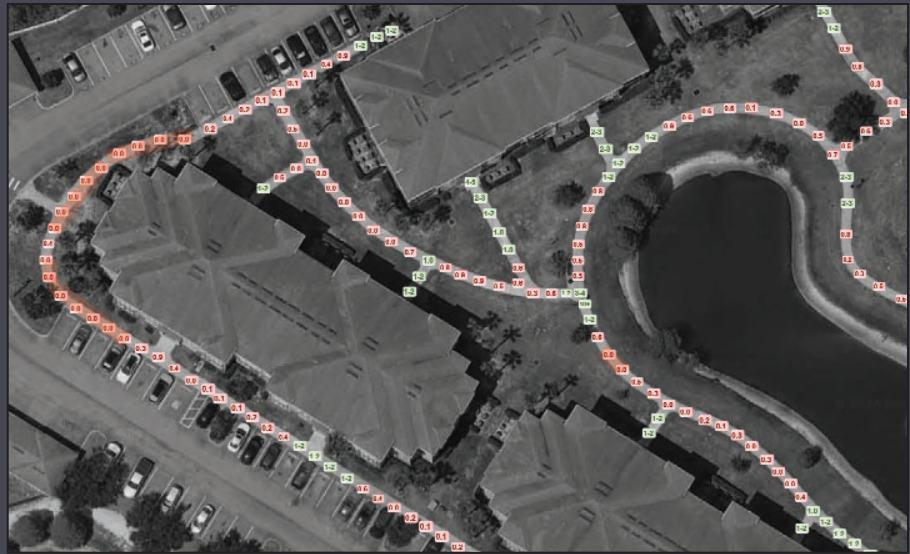
In this example, illumination levels in many areas around the trash compactor were metered at 0.0 fc, thus most likely interpreted as "not illuminated by lighting" as required by Fla. Stat. § 768.0706(2)(a)(3).



Example of a sidewalk that meets our interpretation guidelines for compliance with Fla. Stat. § 768.0706(2)(a)(3), but is below the IES guidelines of 1.0 fc for sidewalks in "multifamily properties where security is an issue."

Right is an example of a sidewalk map identifying locations with substandard illumination levels. All red-colored measurements indicate areas illuminated below the IES guidelines for "multifamily properties where security is an issue." Green measurements indicate areas where illumination levels were compliant with the IES guideline of 1.0 fc or greater.

Sections of sidewalk highlighted in red were metered at 0.0 fc, and thus are most likely interpreted as "not illuminated" in accordance with Fla. Stat. § 768.0706(2)(a)(3).



## Light Obstructions



## Glare



After the assessment is completed, our Florida CPTED Practitioner prepares a written report of findings detailing our observations about Fla. Stat. § 768.0706(2)(a) and CPTED conditions, proposed measures for improvement, and detailed appendixes including photos, diagrams, lighting maps, spreadsheets, description of our methodology, and standards/guidelines used as the basis for our observations.

## Legal Defensibility and CPTED Assessments for Compliance with Fla. Stat. § 768.0706(2)(b)

It should be expected that determined plaintiff attorneys will attempt to undermine the liability protections of Fla. Stat. § 768.0706 by claiming that the defendant's property was non-compliant with the statute. And one possible approach for establishing an argument for non-compliance is discrediting the assessment performed by the Florida CPTED Practitioner and methods used for verifying compliance with Fla. Stat. § 768.0706(2)(a).

As a starting point, property owners should ensure that the consultant hired for this purpose possesses proper up-to-date designation as a Florida CPTED Practitioner. We are aware of at least one property owner who hired a security consulting firm to conduct a CPTED assessment for compliance with Fla. Stat. § 768.0706(2)(b) only to discover afterward that the consultant did not have the proper credentials.

Likewise, ensure that the Florida CPTED Practitioner is conducting the assessment and making observations in close alignment with guidelines and practices promoted by the Florida Crime Prevention Training Institute (FCPTI). Although FCPTI is not specifically directed under the statute to establish standards for assessments, the Florida Crime Prevention Training Institute is named twice in the statute and will certainly be cited as an authority in future litigation.

Due to the manner in which Fla. Stat. § 768.0706 is written, it is expected that future lawsuits challenging a defendant's status will depend on a totality of circumstances and even the smallest details matter in aggregate. In this situation, it should be assumed that the Florida CPTED Practitioner's report will be carefully scrutinized by a plaintiff expert for any inaccuracies, inconsistencies, omissions, or deviations from FCPTI's guidelines.

To ensure that the Florida CPTED Practitioner's report is ready for the rigors of challenge, it is highly recommended that property owners view an example of the consultant's written work product to examine the practitioner's attention to defensibility in court.

## Due Diligence Checklist

### Advice for vetting Florida CPTED Practitioners

- ☑ **Does the Florida CPTED Practitioner have experience with premises liability cases?** Better yet, do they have courtroom experience as an expert witness? Assume that the practitioner's CPTED report will be challenged and if so, it's very likely the consultant will be called to testify.
- ☑ **Is the light meter used by the Florida CPTED Practitioner calibrated and NIST-certified for accuracy?** If not, this creates an easy opportunity for discredit by an opposing plaintiff's expert.
- ☑ **Is the report accompanied by appendixes or footnotes defining the CPTED standards and authoritative sources as basis for the practitioner's observations?** Plaintiff attorneys examining a report when seeking an opportunity for challenge are far less likely to proceed if the consultant's observations are thoroughly backstopped with citation to authority.
- ☑ **How does the Florida CPTED Practitioner address property features that cannot be changed without major redesign of the site or reconstruction of buildings?** Be aware that some measures encompassed under CPTED doctrine relate to the original property design and cannot be reasonably addressed without very major expense. However, omitting the presence of these types of conditions in a CPTED report provides an angle of opportunity for an opposing expert examining the report for weaknesses. How does the consultant address this type of situation in their reports to ensure comprehensiveness while also avoiding any implied expectation for remedy?
- ☑ Not all CPTED concerns are equally important, nor are all proposed measures equally valuable when examined from a cost-benefit perspective. How does the consultant address this matter? Fla. Stat. § 768.0706 states that the property must be in "substantial compliance" with the assessment—not that the property must comply with all recommendations made by the Florida CPTED Practitioner. **Does the consultant present proposed improvements in a manner that provides a defensible basis for decision-making and establishing "substantial compliance" without placing unrealistic expectations on the property owner?**
- ☑ **What is the "quality" of the report documentation?** Although they say "Justice is blind," appearance does matter in the eyes of judges and juries. Issues such as format & organization, detail, clarity, articulation with attention to potential court interpretation, grammar, and even aesthetic design all matter under the microscope of litigation.

## Implementing & Documenting Improvements

Once the CPTED and compliance verification assessment is complete, corrective actions related to Florida Statute 768.0706(2)(a) should be initiated and decisions should be made about how to substantially comply with the measures proposed during the CPTED assessment.

### “Substantial Compliance” and Florida Statute 768.0706

Section 768.0706(2) states: *“The owner or principal operator of a multifamily residential property which **substantially implements** the following security measures on that property has a presumption against liability in connection with criminal acts that occur on the premises which are committed by third parties who are not employees or agents of the owner or operator:...”*

Section 768.0706(2)(b) also uses similar language specifically regarding the CPTED assessment: *“...The owner or principal operator must remain in **substantial compliance** with the assessment for purposes of this paragraph.”*

The good news in this situation is that property owners are not expected to be in perfect compliance with all conditions in Section 768.0706(2)(a), nor are owners required to implement every recommendation proposed during the CPTED assessment. The law expects a diligent effort to implement Subsection A’s physical security requirements and measures recommended in the CPTED assessment, but there is a margin for error or possibly even rejection of some ideas that may be proposed by the Florida CPTED Practitioner.

With regard to the conditions defined in Florida Statute 768.0706(2)(a), we advise clients to approach these seven measures as mandatory compliance requirements. As specific items clearly listed in the statute, we expect they will be viewed by courts as necessary conditions. If there is any latitude provided by the phrase “substantially implement,” it should be reserved for nullifying arguments over minute details or ambiguities in the statute (e.g., exact location of “points of entry and exit,” illumination in “porches” located inside leased private residences, etc.).

Regarding the CPTED assessment, there may be more flexibility for rejection decisions.

Although there are standards and guidelines promoted by FCPTI for crime prevention through environmental design, the practical application of CPTED principles often varies between practitioners. One practitioner may recommend trimming or removing a particular shrub because it exceeds 24-inches. Another practitioner may ignore the same shrub because it doesn’t interfere with sightlines or provide a reasonable opportunity for offender concealment. In short, the way in which CPTED principles are applied often depends on how the practitioner subjectively views a situation as beneficial to criminals.

Likewise, not all measures proposed in a CPTED assessment may make sense from a cost-benefit perspective. Take for example, a parking lot with an average illumination level of 2.5 fc measured at 18-inches. In this situation, the parking lot complies with the 1.8 fc requirement defined in 768.0706(2)(a)(2). However, 2.5 fc is below the IES guideline for parking lot illumination in multifamily properties “when security is an issue” (the guideline endorsed for CPTED purposes by FCPTI), and the true level would be even lower if measured horizontally at ground-level according to the IES guideline.

From a practical perspective, most people would subjectively judge a parking lot illuminated at 2.5 fc as “well lit.” There would be little crime deterrence benefit in increasing the average parking lot illumination level from 2.5 fc to 3.0 fc. And when compared with \$30,000-\$50,000 of investment for additional light poles, it would be quite reasonable for a property owner to reject that idea if proposed in a CPTED assessment.

Although the way the statute is written allows a degree of latitude for discretion, any decisions made to reject implementation of specific measures should be well justified. And there should be a diligent effort to implement most of the practitioner’s suggestions to clearly demonstrate that the property has “substantially complied” with the assessment.

For this purpose, experienced security consultants often present measures using a prioritization rank or cost-benefit scale to assist decision-making. This type of approach also assists property owners who are challenged during deposition about rejecting specific measures by providing a defensible basis for the decision.

## Documenting Corrective Actions to Demonstrate “Substantial Compliance”

A system should be implemented for documenting all corrective actions related to Section 768.0706(2)(a) and the CPTED assessment.

For this purpose, the organization’s existing work order management system is the logical choice for cataloguing physical property improvements. Each measure required for compliance with Section 768.0706(2)(a) and the CPTED assessment should be entered as a work order with a cross-reference to the assessment. If the work order management system allows the creation of custom subcategories, a category should be created to denote HB 837 compliance matters and aid in retrieving documentation quickly if a records request appears.

It is also recommended that a centralized file system (compliance archive) is established for maintaining copies of invoices and receipts, vendor documents related to improvements (e.g., new camera plans, photometric drawings, etc.), written policy documents, and any other documentation related to implementation of measures related to Section 768.0706(2)(a) and the CPTED assessment.

As new measures are implemented, it is also recommended that photos are taken and added to the compliance archive to visually illustrate the new improvements.

If lighting improvements are made without the production of a photometric plan (such as installing a few new wall packs or increasing the wattage of bulbs in existing fixtures), the improvements should ideally be documented in the form of an updated lighting assessment with a record of the new light meter measurements. If the improvements are limited to specific locations (such as entrances or mailbox areas), this can be done using digital photos annotated with the improved illumination level.

## Proper Crime Deterrence and Safety Training for Employees

While necessary property improvements are underway, a plan should be designed to ensure employees receive necessary training as dictated by Florida Statute 768.0706(2)(c):

*(1) By January 1, 2025, the owner or principal operator of a multifamily residential property provides proper crime deterrence and safety training to its current employees. After January 1, 2025, the owner or principal operator must provide such training to an employee within 60 days after his or her hire date for purposes of this paragraph.*

*(2) For purposes of this paragraph, "proper crime deterrence and safety training" means training which trains and familiarizes employees with the security principles, devices, measures, and standards set forth under paragraph (a), and which is reviewed at least every 3 years and updated as necessary. The owner or principal operator may request a law enforcement agency or the Florida Crime Prevention Through Environmental Design Practitioner performing the assessment under paragraph (b) to review the training curriculum.*

*(3) For purposes of establishing the presumption against liability under subsection (2), the burden of proof is on the owner or principal operator to demonstrate that the owner or principal operator has substantially implemented the security measures specified in subsection (2).*

*(4) The Florida Crime Prevention Training Institute of the Department of Legal Affairs shall develop a proposed curriculum or best practices for owners or principal operators to implement such training. The state has no liability in connection with providing a proposed training curriculum under this subsection.*

### Training Topics

To assist property owners in establishing a proper crime deterrence and safety curriculum that "familiarizes employees with the security principles, devices, measures, and standards set forth under paragraph (a)", the Florida Crime Prevention Training Institute (FCPTI) has released a model curriculum in the form of an MS PowerPoint slide deck (and alternative PDF file) and a basic guide for customizing the PowerPoint file for presentation.

[https://www.fcpti.com/fcpti.nsf/pics/0D5C1BF89EA7B1C685258B1E004EEAFF/\\$file/Employee+Training+Guidance+Florida+State+Statute+768.0706+-+KIOSK+Version.pdf](https://www.fcpti.com/fcpti.nsf/pics/0D5C1BF89EA7B1C685258B1E004EEAFF/$file/Employee+Training+Guidance+Florida+State+Statute+768.0706+-+KIOSK+Version.pdf)

FCPTI's sample PowerPoint file is composed of 42 slides beginning with an overview of the statute, followed by a sequence of slides examining the seven physical security topics encompassed in Florida Statute 768.0706(2)(a).

To ensure that any training provided to employees satisfactorily complies with Florida Statute 768.0706(2)(c), we recommend using the model curriculum developed by FCPTI as a foundation. However, we also recommend using this opportunity to briefly review additional practices for maintaining "substantial compliance" with the CPTED assessment including landscaping standards, maintenance inspections, and similar topics.



## Training approaches for compliance with Florida Statute 768.0706(2)(c)

Neither the statute nor FCTPI specify how “proper crime deterrence and safety training” should be conducted. This provides for several options. Property management companies that conduct monthly group orientation sessions may wish to incorporate the training into the orientation program for Florida employees. Other companies may wish to conduct the training as independently scheduled sessions with an instructor.

As a more practical alternative to live instruction, we recommend using an online, on-demand training platform such as HB837training.com, which is currently under development as of May 2024. HB837training.com was designed specifically with Florida Statute 768.0706(c)(1) in mind:

- ☑ HB837training.com is an on-demand, pay-as-you-go training solution using video-based instruction. With this approach, there is no need to schedule group classes with a live instructor. As a new employee is hired, set him/her at a computer in the leasing office and train them as part of the initial onboarding process. This approach (online, video-based instruction) also greatly reduces cost due to no need for a live instructor.
- ☑ HB837training.com facilitates bilingual instruction using Spanish subtitles.
- ☑ HB837training.com’s unique user management system allows property owners and management companies to create organizational and property-level administrators to facilitate compliance auditing and retrieval of employee training records.
- ☑ The instructor for HB837training.com’s video module is a Florida CPTED Practitioner with over 25 years of experience as a trainer.
- ☑ For purposes of achieving initial compliance on a company-wide scale, HB837training.com has discounted pricing and a system for simple group enrollment.

Regardless of the approach chosen for fulfilling the training requirements of Florida Statute 768.0706(2)(c), the key issues to ensure include:

- ☑ In accordance with Florida Statute 768.0706(2)(c)(1), the training should encompass *“the security principles, devices, measures, and standards set forth under paragraph (a)”* of the statute. The best way to ensure compliance with this requirement is to employ FCPTI’s training curriculum as a foundation.
- ☑ In accordance with Florida Statute 768.0706(2)(c)(2), the training should be reviewed every three years by a *“law enforcement agency or the Florida Crime Prevention Through Environmental Design Practitioner performing the assessment.”*
- ☑ Records of training should be maintained for all employees.

## Maintaining Ongoing Compliance

While working as security consultants the past few decades, we've witnessed a number of unfortunate situations where organizations committed significant energy and investment on protective initiatives and then once all objectives were achieved, allowed those risk controls to slowly decay back to their original state. And the same can also happen with compliance in multifamily properties if owners and managers are not diligent about maintaining their status.

As discussed in earlier sections of this guide, achieving initial compliance with Florida Statute 768.0706 is rather straight forward as summarized in the following steps:

1. Ensure the property meets all conditions defined in 768.0706(2)(a) (e.g., secured pool access, 1-inch deadbolts, peepholes in all units, etc.).
2. Have a documented CPTED assessment conducted by a Florida CPTED Practitioner.
3. Implement necessary property improvements to ensure "substantial compliance" with the CPTED assessment.
4. Ensure all employees receive "proper crime deterrence and safety training" covering the topics in Section A.

Once those four conditions are met, the property is "compliant" with Florida Statute 768.0706 moving forward past 1 January, 2025. However, this status is not a permanent situation. Maintaining the property's compliance status requires continued attention to several matters.

### **An updated CPTED assessment needs to be completed every three years.**

As a requirement defined by Florida Statute 768.0706(2)(b): *"By January 1, 2025, the owner or principal operator of a multifamily residential property has a crime prevention through environmental design assessment that is no more than 3 years old completed for the property."*

Thus the current CPTED assessment should be regarded as valid for three years and a new assessment should be completed and documented before the expiration of the following three year period. Due to the high number of assessments in progress in the year 2024, we recommend setting a calendar reminder at 12-15 months in advance of the expiration date of the current assessment. Better yet, CIS offers current clients the option of an extended services agreement with discounted pricing and reserved dates for reassessment.

### **Conditions defined in Florida Statute 768.0706(2)(a) and measures adopted in response to the CPTED assessment must be maintained.**

In our current experience conducting over 100 CPTED assessments for compliance purposes, it is very rare that properties initially comply with all conditions defined in 768.0706(2)(a) and CPTED guidelines. It is expected that some improvements will be necessary. As discussed earlier in this guide, common corrective actions include landscaping changes to comply with FCPTI's 2-foot/6-foot and 30-foot sight-line rules, trimming or removal of trees near light poles, lighting improvements, new surveillance cameras, and other similar measures.

Once necessary improvements are implemented, conditions must be maintained. Following are some measures we advise all our clients to ensure their newly compliant properties remain in “*substantial compliance.*”

### Landscaping

- ☑ Provide landscapers with oral and written instructions for trimming shrubbery and hedges according to specifications defined in the CPTED assessment report. Ideally, these instructions should also be integrated into the scope of work for the landscaper’s contract.
- ☑ Direct landscapers to trim any trees near light poles and wall packs regularly to avoid obstruction. Likewise, any trees with limbs falling below 6-feet should be trimmed to maintain clear sightlines. To address this proactively, we recommend routine trimming at least once every spring/summer season.

### Monthly Maintenance Inspections

- ☑ Establish a policy requiring that maintenance managers conduct documented monthly daytime and nighttime inspections for the following matters:
  - ☑ Degraded or burned out light bulbs - To identify degraded bulbs, maintenance personnel should ideally use a light meter to determine when illumination levels begin to drop below IES guidelines.
  - ☑ Serviceability of access control hardware on pool gates - If any problems are observed, the pool should be locked by chain and padlock and faulty access control hardware should be promptly repaired.
  - ☑ CCTV Cameras - Any inoperative or faulty CCTV cameras providing essential coverage of designated “points of entry and exit” should be promptly replaced or repaired.
  - ☑ Property Damage - A thorough inspection should be conducted for property damage including damage in breezeways, unit windows missing screens, bent or damaged fencing, and similar issues.
  - ☑ Ground Litter - During the grounds inspection, maintenance managers should also be observant for litter in outdoor areas and breezeways.

### Residential Unit Cleaning & Maintenance

- ☑ Establish a policy requiring that only door locks with 1-inch deadbolts are used whenever units require replacement.
- ☑ Establish a standard practice that peepholes are inspected and wiped whenever empty units are cleaned and remodeled in preparation for new rental.

## All new employees need to receive “proper crime deterrence and safety training” as defined in Florida Statute 768.0706(2)(c) within 60-days of hire.

As required by Florida Statute 768.0706(2)(c)(1): *“By January 1, 2025, the owner or principal operator of a multifamily residential property provides proper crime deterrence and safety training to its current employees. After January 1, 2025, the owner or principal operator must provide such training to an employee within 60 days after his or her hire date for purposes of this paragraph.”*

Once all current employees have completed the required “proper crime deterrence and safety training,” it is recommended that a human resources policy is adopted requiring that all new employees receive the same training as a standard part of the onboarding process. Likewise, records of training should be maintained in a centralized filing system or easily retrievable manner to facilitate auditing of training records if/when a situation of litigation appears.

For this purpose, we recommend using an online, on-demand training platform such as HB837training.com which is currently under development as of May 2024. HB837training.com was designed specifically with Florida Statute 768.0706(c)(1) in mind.

## Managing Long Term Compliance with Florida Statute 768.0706

Although most aforementioned activities largely fall under the responsibility of property-level employees, we recommend that a system is established at the company-level for supervising compliance, including:

- Records keeping and documenting improvements implemented in response to CPTED assessments. As discussed in Part 4 of this guide, maintaining an accurate and complete record of property improvements is an important step in compliance. There’s no greater deterrent to a plaintiff attorney during discovery in an HB 837 case than to receive a CPTED assessment report and file full of meticulous documentation attesting that the property is in “substantial compliance” with the assessment.
- Monitoring the calendar for upcoming expiration of the three year CPTED assessment period and scheduling updated assessments.
- Receiving and auditing monthly inspection and corrective action reports from maintenance managers.
- Receiving and auditing employee training records related to Florida Statute 768.0706(2)(c)(1).
- Collecting and producing all records related to Florida Statute 768.0706 when needed for insurance or litigation purposes.

In organizations with small portfolios, these responsibilities can often be handled by one management-level employee without excessive work burden. In other situations, it may be best to delegate these compliance tracking tasks to different management personnel based on their core responsibilities.

For example, corporate or regional-level maintenance managers may be assigned to overseeing and documenting property improvements, maintenance and landscaping inspections, and corrective actions. Scheduling updated assessments, records-keeping, and records production may be the responsibility of the organization's Risk Management Department. And regional managers or a corporate human resources manager may be delegated responsibility for periodic auditing of training records and ensuring that property managers are implementing HB 837 training policies properly.

Regardless of how these management tasks are delegated, maintaining ongoing compliance should employ a systematic and policy-driven approach with accountability to senior leadership.

## Contact us for further assistance.



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Over the past three decades, Critical Intervention Services has earned a nationwide reputation for assisting of communities in reducing crime and premises liability conditions. And since the passage of HB 837, our team of Florida CPTED Practitioners have assisted over 100 multifamily properties in achieving compliance with Florida Statute 768.0706.

Let us assist you in maximizing the benefits of Florida Statute 768.0706 for your portfolio.

Call us at **(800) 247-6055** to schedule a free consultation.

For more information about CIS and our services for multifamily properties, visit us at:

[www.cisworldservices.org](http://www.cisworldservices.org)