

## Aging America

Many of today's seniors believe they can forego assisted-living centers and age in place instead. That's something community associations can't ignore.

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Roughly 40 million Americans, or 13 percent of the population, are 65 or older. By 2030, the U.S. Census Bureau projects that number will rise to 72 million, or 20 percent of the population.

Community association leaders need to take note of these numbers because seniors increasingly are choosing to remain in their homes rather than move to adult-care or assisted-living facilities. In addition, the supply of family caregivers, who provide the majority of long-term services and support, is unlikely to keep pace with future demand, according to AARP. As people live well into their 80s and 90s, that will put increased pressures, obligations and potential liabilities on associations.

The following articles contain information and perspectives from community association stakeholders who have handled aging-in-place concerns professionally and personally. If your association hasn't started talking about how it will handle its aging residents, it's time.

## Drawing the Line

By Matt D. Ober, Esq.

Aging residents have specialized needs and present unique challenges that board members and community managers aren't trained or necessarily skilled to handle. Association governing documents are being tested by the aging population too.

Hoarding, disorientation and physical limitations that prevent access to common areas are just some of the problems association leaders increasingly will face. These issues pose a threat to the safety and welfare of the individual resident, but they also present risks for the community and its other residents.

Managers and board members must be mindful of how to recognize and respond to these issues without unnecessarily assuming liability or invading an individual's privacy. The human impulse is to go to the aid of one in need. Clearly, when a resident is struggling in the common area, we have a duty to assist. But are community leaders also obligated to assist an individual in need in the privacy of his or her home? It isn't easy to balance an elderly resident's right to privacy and quiet enjoyment with the rights of other residents to live peaceably without unreasonable interference or threat to personal safety and welfare. How can we help without exposing ourselves to liability? Where does the line get drawn?

**Setting boundaries.** Associations must set boundaries and residents must be educated on the differences between assisted living and common-interest communities. Assisted-living is a specialized care facility intended to provide a range of personal services, including medical care and supervision. Common-interest communities are designed to meet the needs of all residents equally and regulate the conduct of residents in relation to one another. In associations, the needs of the individual are generally subordinate to those of the community.

**Addressing needs.** Is it reasonable for associations to increase assessments to cover the legal and financial burden of providing specialized care to the elderly? Is it appropriate to use resources dedicated for the entire community to assist an individual resident in need? Is it reasonable for all residents to pay to modify or redesign common areas to accommodate a few? Perhaps not.

An association should be proactive in addressing its needs. This may include the duty of ordinary care in community governance; treating residents fairly and equitably; exercising discretion reasonably and in good faith; and disclosing pertinent information about the association, the common area, and the rights and obligations of residents. Associations also must address known conditions that present unreasonable risk of injury or damage that can involve an individual resident or the broader community. With an aging population, what ordinarily would be a neighbor-to-neighbor issue for residents to resolve can become an unreasonably dangerous situation requiring some type of association action. For example, consider the resident with vision problems who wanders into another unit while walking home at dusk or the resident with dementia who falls asleep with the stove on or the bathtub running. Doing nothing may not be an option for the association manager or board member.

Although contacting next of kin is a practical option, in the event the next of kin doesn't respond, is too far away to act or doesn't exist, board members and the manager may be faced with the unenviable task of becoming an on-site caregiver. Clearly, this role isn't within a manager's or board member's job description. But does the duty of reasonable care to maintain the safety of the common areas give rise to a duty to act to prevent harm to the elderly resident or another?

In some cases, helping a disoriented elderly resident may pose a risk to a manager or board member. While not providing aid could jeopardize a person's life, providing it may create an expectation that the association will always be available to assist. Rendering aid also could make that person liable if an injury occurs while providing aid.

**Avoiding liability.** Common areas, for example, are potential legal minefields, especially when it comes to trip hazards due to design flaws, poor lighting or uneven sidewalks. Boards and managers should regularly survey their properties to determine areas of potential liability. Areas of deferred maintenance or disrepair that could cause injuries should be addressed.

In addition, the Fair Housing Act may require an association to permit common area modifications if the health or safety of a resident is involved or to allow the resident the full use and enjoyment of his or her property. The act protects individuals with physical or mental impairments that substantially limit one or more major life activity. While the act doesn't require associations to make fundamental alterations, take on undue financial burdens or provide residents with counseling or medical services, it may require the association to reasonably accommodate a resident's request to modify the property.

**Practical steps.** Community leaders have an opportunity to take practical steps for the benefit of all residents while still remaining within the mandates of governing documents and staying true

to the principles behind common-interest living. Associations can create a framework for caring communities by providing residents with the information they need to care for themselves.

The obligation to preserve one's health and safety should rest with each individual resident, not with the association. State and local agencies and hospitals may be able to offer on-site programs on independent-living services for those in need. Community leaders should make these resources available to residents while making it clear that these third-party programs are not a product of or representation from the association.

Written material also can be provided, including contact information, websites and links where residents can go to learn more. By doing this, the association can provide residents with the help they need without directly stepping in and compromising safety or increasing liability. Fortunately, there are many resources available to community associations and their residents. Some of these include:

- Administration on Aging: [www.aoa.gov/](http://www.aoa.gov/)
- Alzheimer's Association: [www.alz.org/](http://www.alz.org/)
- National Association of Area Agencies on Aging: [www.n4a.org/](http://www.n4a.org/)
- National Council on the Aging: [www.ncoa.org/](http://www.ncoa.org/)
- National Institute on Aging: [www.nih.gov/nia](http://www.nih.gov/nia)
- National Aging in Place Council: [www.ageinplace.org/](http://www.ageinplace.org/)
- Senior Resource: [www.seniorresource.com/ageinpl.htm](http://www.seniorresource.com/ageinpl.htm)

Finally, associations also should establish procedures to address specific needs of senior residents, including methods for logging complaints or incident reports, ways to recognize signs of problems with elderly residents and appropriate methods of communication that will allow residents to preserve their privacy and personal dignity. Communities should maintain and update a list on a yearly basis that includes emergency contact or next of kin information for all residents. Identifying common areas that can be modified to reduce risk of injury or harm without significant cost or inconvenience will help make the community safer overall, while at the same time protecting the association from potential lawsuits should injuries occur.

Aging residents are a reality in our communities, but they need not be a cause for concern or undue anxiety. By allowing residents to make prudent choices and providing them access to the resources they need to make informed decisions about their own well-being, an environment can be created that supports independence without burdening the community or placing the association at risk.

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*Matt D. Ober is a senior partner at Richardson Harman Ober in Pasadena, Calif., and a member of CAI's College of Community Association Lawyers (CCAL).*

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