

Aging Communities: Concern for the Health and Safety of Aging Residents in Community Associations

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Common Interest Developments (or community associations as they are affectionately called) combine community living with amenities, while still allowing homeowners their own separate interest or "space." The tradeoff is that property within a community association is subject to covenants or "CC&Rs" that contain the rights and responsibilities of the owners and the Association. This is the paradigm of community living, where individuals enjoy their privacy within a legal framework designed to meet the needs of all residents of every shape and size. But the community association's governance structure is often tested when boards or association managers are presented with scenarios that are not addressed in the governing documents, circumstances the developers of our community associations did not anticipate. Our aging population is one such circumstance, presenting issues from hoarding to disorientation. And with an aging population in our communities we must be mindful of how to recognize and respond to the individual unique needs without assuming liability.

By all accounts, we are living longer, healthier more productive lives. Our adult population is more active and in large measure able to live independently for much longer. So many senior residents of community associations choose to remain in their homes rather than move to adult care or assisted living facilities. It is here where the governing documents and community governance structure are tested by the needs of aging residents. This raises several questions: How can community associations address the wellbeing of elderly residents while avoiding liability? What risks are present for property managers helping an elderly neighbor in distress? What resources are available to managers and boards of directors to assist communities with aging residents?

Defining the Community

Assisted living communities are specialized care facilities intended to provide a wide range of personal services, including medical care and supervision. Community associations and their governing documents, on the other hand, are designed to meet the needs of all residents equally, and to regulate conduct of residents in relation to one another. In a Common Interest Development, the needs of the individual are secondary to the best interests of the community as a whole. Common areas may not be designed to accommodate those with mobility or vision problems, and managers are unlikely to possess the training necessary to provide special care to those in need. This creates an area of significant potential liability for property managers or community association directors faced with elderly residents in need who may cause injury to themselves or to others.

Specialized Needs of Aging Residents

The question then becomes is it reasonable to require our community associations to assume the legal and financial burden of providing specialized senior care? Is it fair to require all owners to pay higher assessments to provide care for residents with specialized needs, or to pay to modify or redesign the common areas to accommodate a few members? Perhaps not. But it is reasonable to require property managers to provide community association residents with the information they need to take care of themselves.

Aside from addressing a resident's specific needs, a community association does have an obligation to address conditions in the common areas that present an unreasonable risk of injury or damage to residents, particularly senior residents with physical limitations or health conditions.

Providing aid to a resident in need in the privacy of his or her own residence presents additional concerns. In such cases, the association must balance the resident's right to privacy with the rights of residents to live peacefully without unreasonable interference. Not providing aid could jeopardize a person's life, while providing it may create an expectation that the association will always be available to assist. In this way, community associations risk blurring the line between community association governance and assisted living.

Avoiding Liability for Common Area Conditions

Community association common areas are potential legal minefields, especially when it comes to such trip hazards due to design flaws, poor lighting and uneven sidewalks. Property owners or managers should survey their properties to determine areas of potential liability. Areas of deferred maintenance or disrepair may give rise to injury, damage or claims. Modifications to common areas that should be made to eliminate liability should be addressed. Additionally, the Fair Housing Act may require the association or property owner to consider an elderly resident's request to modify the property as a reasonable accommodation. This means that the community association may need to permit certain physical changes to the property if the health or safety of a resident is involved, or, if necessary, to allow the resident the full use and enjoyment of their property. However, it does not require management to make fundamental alterations, take on undue financial burdens or provide residents with counseling or medical services.

What, then, are some of the proactive steps that a community association can take to protect all residents without overstepping the bounds of their own legal obligation? To begin, they should establish procedures for management and staff to address specific needs of senior residents, including methods for logging complaints or incident reports, ways to recognize signs of a problem with elderly residents and appropriate methods of communication that will allow residents to preserve their privacy and personal dignity. A list should be maintained and updated on a yearly basis including emergency contact/next of kin information for all residents, which allows the association to get in touch with residents' family members if the need should

arise. Identifying common areas that can be modified to reduce risk of injury or harm without significant cost or inconvenience may also help make the community safer overall, while at the same time protecting the association from potential lawsuits should an injury occur.

Finally, as the saying goes, “knowledge is power”, and the power to preserve one’s health and safety should rest with each individual resident, not with the association. To that end, managers can provide the service of letting residents know where they can find the information they need to keep themselves safe or call for help. State departments, local hospitals and agencies may all be able to offer on-site programs on independent living and services available to those who may be in need of such assistance, as long as it is clear that these third-party programs are not a product of, or representation, from the community association. Written material can also be provided, including contact information, websites and links where residents can go to learn more. In this way, a community association can provide residents with the help they need without directly stepping in and compromising their safety or increasing the liability of the association itself.

Aging residents with unique needs 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 giving them access to the resources they need to make informed decisions about their own wellbeing, an environment can be created which supports independence without burdening the community or placing the community association at risk.

Resources

Department of Mental Health: ACCESS Center (800) 854-7771

Information and referral to local mental health system of care, 24 hours a day, 7 days a week

Adult Protective Services (877) 477-3646

Investigation and crisis intervention for elder and dependent adult abuse including self-neglect, 24 hours a day, 7 days a week

Infoline (800) 339-6993; TDD (800) 660-4026

24-hour information and referral to human service agencies

Self-Help and Recovery (310) 305-8878

Referrals to hoarding and other self-help support groups. May be recorded messages.