

Community Associations Must “Accommodate” Emotionally Troubled Residents

Every profession has its war stories. For community associations, these stories increasingly involve owners who, because of age, emotional problems, or both, pose a threat to themselves and to others in the community.

Like the woman with Alzheimer’s, who wandered regularly from her complex when her son, with whom she lived, was traveling on business. Or the elderly owner whose toilet overflowed, creating a mess in his unit and a stench unbearable to everyone else in the building, but unnoticed by him. Or the disabled and emotionally unstable veteran, who liked to sit naked in his wheelchair and insisted on leaving his front door open when awaiting pizza or other deliveries, revealing far more than most of his neighbors wanted to see.

These situations are real. They are also painful, complicated, often hazardous, and almost always difficult to resolve. An aging population, scattered families, and public policies that have torn gaping holes in the traditional safety nets for the aged and mentally ill, explain in part why so many people who would have been living with relatives or in institutions a decade ago are living on their own today. And a significant number of them are living in common interest ownership communities, where they are creating new challenges and raising new questions for community association boards, managers, and the attorneys who advise them.

A recent case handled by a colleague at another law firm illustrates this trend and the challenges it poses. A manager responding to reports of a woman screaming in her apartment, found the tenant standing naked in the middle of a room, holding burning dollar bills in her hands. All of the stove burners were on; a hair dryer (plugged in) rested near a shower in which the water was running, and one of the tenant’s pillows was on fire. This was not the first time the manager had responded to a complaint about this resident, nor the first time that he had found dangerous conditions in her unit. In a previous incident, the stove burners had been on for so long that the wooden cabinets in the kitchen were smoking.

Reasonable Accommodations

While the potential risks this owner’s behavior creates for herself and others are obvious, the required response is somewhat less apparent. The 1989 amendments to the Fair Housing Act require landlords and community associations to offer “reasonable accommodations” in their rules, policies, practices, or services, when necessary to provide residents with disabilities “an equal opportunity to use and enjoy a dwelling.” As a practical matter, association managers and boards confronting these situations must find a way to balance an emotionally troubled resident’s interest in remaining in his/her home, against the obligation to ensure the health and safety of other residents and to protect their right to the “quiet enjoyment” of their residences.

The law contemplates an interactive process, in which the manager, the association's board, and the resident discuss the problem and arrive at a mutually acceptable solution. Residents must document that they have a disability (defined as "a physical or mental impairment that substantially limits one or more major life activities") and must show that the accommodation requested is reasonably related to their disability. For example, a blind owner who needs a seeing-eye-dog could reasonably ask the association to waive its no-pet rule, but probably could not demand an additional parking space for the convenience of his visitors. The dog is related to the disability; the parking space is not.

If the accommodation requested is relevant and reasonable and will allow the owner to remain in and enjoy full use of his/her home, the association must approve the request, as long as the required changes do not create an undue financial or administrative burden for the community.

Although you can wait for the resident to propose a solution, a proactive response is usually best. The owner may reject your idea, but it is important to be able to demonstrate to a judge (the next step if you can't work out an agreement) that you have tried to accommodate the resident's needs. A judge will almost certainly order you to offer an accommodation, so it makes a lot more sense to do that at the beginning of the process, before you've spent thousands of dollars in legal fees, only to have a judge order you to go back and offer the accommodation you should have proposed in the first place.

Some Creative Responses

This interactive process in a community association setting usually comes down to lawyers, managers, and boards trying to find creative solutions to seemingly intractable problems. And these efforts succeed more often than not. A classic example is a case about 20 years ago in which an apartment tenant was banging incessantly on the walls with a bat and yelling politically incorrect obscenities through an open window in what was a racially diverse neighborhood. The solution, approved by the court, was to seal the window and give the tenant a nerf baseball bat, accommodating the tenant's need to express rage without subjecting other tenants to the accompanying noise or to the risk of a violent response from neighborhood residents offended by the tenant's epithets.

In several years of dealing with these problems, I've seen many other success stories. A recent one involved an elderly resident in a high-rise community, who indiscriminately buzzed in anyone who rang his bell. Prostitutes, drug dealers, and a neighborhood pimp knew that if they wanted access, all they had to do was ring this guy's bell. We proposed as an accommodation disconnecting the buzzer in his unit. He could still see visitors through the lobby camera and talk to them through the intercom, but he could not buzz them in.

In dealing with owners who have emotional challenges, associations must often walk a narrow and ill-defined line —providing help individuals arguably need but don't want, without violating their privacy rights and their desire to live independently. In these shadowy circumstances, it is almost always best to err on the side of intervening in the interests of protecting the impaired

owners, other residents, or both. If you're going to be sued (and the odds of being sued by someone for something are reasonably good these days), it is usually better to be sued for trying to help someone than for failing to do so.

Court Intervention

The first line of defense, almost always, is to contact the family members of troublesome or troubled owners. If family assistance isn't an option, local social service agencies, religious institutions, or hospitals may provide some support. Although court intervention is usually a last resort, it may actually be the best initial response in situations where competing interests seem equal and are difficult to resolve – for example, a dispute between a mentally ill tenant, who says he must smoke to control anxiety, and an asthmatic tenant in the adjacent unit, who says the smoke is threatening her health. Given that kind of conflict, the best approach might be to seek a declaratory judgment, essentially asking the court to tell the association what to do.

The court was extremely helpful in a case we handled several years ago involving an elderly couple living in a very expensive condominium. Although self-sufficient in many respects, they were forgetful and would regularly leave pots or pans on the stove or in the oven for hours, triggering fire and smoke alarms and creating a serious risk that they might set their unit – and the rest of the building – on fire.

Unable to locate any family members, the association manager sought help from local social service agencies, also to no avail. So we filed a complaint against the couple, which turned out to be exactly the right thing to do. The judge who heard the case ordered locks installed on the oven and stove and directed the couple to hire a caretaker who would be responsible for preparing their meals – and who would have the only copy of the key.

The standard procedure in dealing with a disturbed resident, to the extent that there is a standard procedure, is to draft an agreement describing the accommodation offered and outlining the actions required on both sides. In an apartment setting, if a tenant violates the terms of the agreement, the next step would be to seek an eviction. The remedy in a community association is more complicated, because you can't simply "evict" someone from a unit the individual owns. However, it is possible to obtain a court order prohibiting a resident from occupying his/her unit. The legal basis for this is language in most condominium documents that makes a unit owner's right to possession subject to compliance with the condominium by-laws, which typically bar noxious or offensive behavior by residents.

A Midget in the Walls

We have used that mechanism a few times in the past, but only in extreme cases. One involved an owner who was convinced that a Chinese midget was living in the walls of the unit above his and who became infuriated because the association manager was refusing to feed this unauthorized (and invisible) occupant.

This situation was more serious than it sounds, because the resident actually threatened to kill the manager for mistreating the midget. Based on those threats, the court issued an injunction

barring the owner temporarily from his unit. He eventually obtained a note from his doctor explaining his disability and the association allowed him to return, but under an agreement that barred him from the common areas and essentially required him to remain in his unit. The resident subsequently violated the agreement, had continued encounters with the manager and other owners, and, as a result, had to sell his unit.

The Fair Housing law generally requires a reasonable accommodation, and we certainly tried to find one in this case. But the statute includes an important exception for situations in which the resident poses a threat to others. These situations are not always clear cut, but the courts have provided some guidance, making it clear that the threat must be real and based on objective evidence – medical testimony, the resident’s behavior, or both – rather than on an assumption that the resident might pose a threat in the future. The existence of a disability is not, in itself, sufficient to prove that a resident poses a potential threat. You don’t actually have to wait for a disturbed resident to hurt others or damage their property, but you do need a basis for the fear that they might.

A Clear Threat

A California court had no trouble perceiving a clear and direct threat in the behavior of a tenant, who fought consistently with other residents, chased children through the halls with a knife, listened to loud, vulgar music, and made inappropriate sexual comments to anyone in hearing distance. Another court found a tenant’s repeated failure to close the building’s security doors, verbal attacks on other tenants, and display of “I hate you signs” equally threatening.

But a Massachusetts court blocked the eviction of a tenant who “spat, kicked walls, threw trash in common areas, posted threatening signs, made throat-slitting gestures, and threatened to attack tenants and security guards.” The court accepted the explanation of the tenant (who was deaf) that his inability to communicate with others triggered his outbursts, and ordered the landlord to develop accommodations that would allow the individual to remain in the unit.

As that case illustrates, you may have to offer accommodations even to residents who pose a potential threat, unless you can show that there are no reasonable measures you could implement that would eliminate or “acceptably minimize” the threat to other residents.

Fortunately, these extreme situations are more the exception than the rule, but the special problems created by residents with special needs are invariably complicated and there are no blueprints for resolving them. The best guides for managers and boards are compassion, common sense, and a desire to try to do the right thing, whatever “the right thing” turns out to be. It is also helpful for association boards and managers to remember that these troubled residents are also neighbors, and in most cases, they will probably continue to be neighbors, however you decide to address the problems they pose.