

How Should Associations Handle Hoarders? Very Carefully.

A fire in a community association is always upsetting and often destructive, but, it is hardly a rare occurrence anymore. This one, however, made the national news. The fire, in an Arizona condominium, started in a carport crammed with debris and then spread to the owner's equally cluttered residence. The owner survived, but was burned severely, because debris covering virtually every surface and stacked several feet high in every room, blocked her escape.

The elderly occupant of a Seattle, Washington community was less fortunate; she died when a cigarette ignited a fire ignited the papers, plastic bags and assorted trash covering the floors almost floor to ceiling in some areas, in her unit.

These two incidents are extreme, but they illustrate a problem with which many community associations have to contend: Owners who "hoard" books, trash, knick-knacks, furniture, scrap metal, animals, rotting food, and everything in between. The problem is not only common (the term "hoarding" will produce half-a-million hits on Google); it has also been identified as a serious mental illness, afflicting the elderly, primarily, but found in younger people as well. The victims are usually isolated and suffering from a variety of other psychological problems that produce the clinical definition of hoarding: Retaining items of no value in quantities that interfere with their ability to function.

More than a Mess

These are not just teenagers with messy rooms; these are people whose messes impair their own lives and, potentially, the lives of those around them. Writing on an Internet discussion site, a condominium owner sought advice on dealing with a hoarder whose residence contained "a solid layer of trash – clothing, rotting food, books, old, broken knick-knacks and papers [covers] the apartment, reaching six feet high in some places. The owner has to squeeze through the door, climb the pile and crawl around on hands and knees. The toilet is broken and the stove is crammed with clothing and paper. If that thing is ever turned on, the rest of us are toast."

Many homeowner associations would doubtless recognize that scene, along with this writer's description of her association's frustrating and largely futile efforts to deal with the problem. For while hoarding now has an official diagnosis, it does not have an easy solution, as one California community association discovered when it ended up on the losing end of a legal battle with an elderly hoarder in its community.

In a 1998 case (*Fountain Valley Chateau Blanc Home Owners' Association vs. Robert Cunningham*) the association first claimed that the debris in the owner's residence constituted a fire hazard for the community as a whole, but the local fire

department disagreed. So the board claimed the clutter violated the community's nuisance provision and ordered the owner to clean it up. Specifically, the letters from the association's attorney ordered the owner to discard his "outdated" clothing, remove all papers, cardboard boxes from areas around his bed and dresser," but told him he could retain "standard" reading material.

The owner, who also suffered from Hodgkin's disease, sued the association, claiming the order violated his privacy and exceeded the board's authority. An angry California Superior Court firmly took his side. The association by-laws requiring owners to maintain their residences in clean and sanitary condition "cannot reasonably be read to allow the association to dictate the amount of clutter in which a person chooses to live," the court fumed, noting, "one man's old piece of junk is another man's *objet d'art*."

Going too Far

The court found "particularly galling the presumptuous attempt to lecture Cunningham about getting rid of his 'old' clothes and the way he kept his own bedroom, and the kind of reading material he could have. To obtain some perspective here," the court continued, "we have the spectacle of a home owners' association telling a senior citizen suffering from Hodgkin's disease, that, in effect, he could not read in his own bed. If it is indeed true that a community association can function as a second municipal government," the court concluded, "then we have a clear-cut case of a 'nanny state – nanny in almost the literal sense — going too far.'"

This is a good illustration of what lawyers mean when they say, 'Bad facts make bad law.'" It also underscores the need for homeowner associations to proceed cautiously and prudently in dealing with hoarding situations. Here are a few general guidelines:

- Start with the least intrusive, least costly, and least heavy-handed measures and work up from there. Try talking to the owner first and even offering some volunteer help with the clean-up, if possible. This won't usually work with clinical hoarders, but it's worth a try. Also try to get family members involved, if possible. Often, relatives either aren't available or aren't interested; but sometimes they are simply unaware.
- Contact the Department of Health. If the clutter constitutes a potential health code violation, the department may send an inspector, issue a citation to the owner ordering a clean-up, and take further action if the owner doesn't comply. See if other social service agencies can help. From the association's perspective, it is far better to have a third party handle the enforcement.

Enforce association documents. The provisions most likely to come into play in hoarding actions are those prohibiting "nuisances" and requiring owners to, essentially, maintain clean and sanitary conditions in their

residences. But the board must have a tangible basis for acting. That means the clutter in the owner's property must be visible from the exterior or from a neighboring residence, or it must pose a potential danger to the health or safety of other residents. Noxious odors or a rodent infestation that spreads to common areas or other residences would qualify. A fire hazard, if you can persuade local fire authorities that one exists, also would work. But as the court's diatribe in *Chateau Blanc* illustrates, an interior mess – even a horrific mess – won't necessarily justify the association's intervention.

- Go to court. This is likely to be the most expensive option and, absent evidence that the hoarding situation poses an imminent threat, the most time-consuming one. Courts are reluctant to intervene, making the outcome uncertain; and the judicial process moves slowly, making a speedy resolution unlikely.
- Whatever actions the board takes, try to remember that hoarding is an illness first and a violation of the community's rules second. Focusing on the owner's need for help as well as on the need to enforce the community's rules may produce a faster and more long-lasting solution to the problem.