



SWEDELSON GOTTLIEB

Community Association Attorneys

“Aging Owner Situations: Violations and Accommodations”

by Sandra L. Gottlieb, Esq., CCAL and Kevin F. McNiff, Esq.

*originally published by CACM in 2017

With an ever-aging baby boomer population, there is a growing need for community associations to recognize and prepare for difficult issues that may accompany aging residents in the community. Increasingly, retirees of all socio-economic backgrounds are choosing to “age in place,” which can present a number of challenges as well as potential risks and liabilities for associations as residents become both less independent and less mobile.

There are several legal-related issues that, if not unique to, are certainly more prevalent among aging and elderly residents. Of greatest concern are residents who are unable to take care of themselves and their homes, or have difficulty doing so, but continue to live alone—especially when considering that elderly residents can injure themselves in their units and be unable to call for help. However, it is more than just risks of injury and lack of help that should concern associations. If owners are unable to maintain their units properly, such limitations can impact other owners in the community as well, or perhaps even the association’s building(s) as a whole. For example, the inability of particular owners to keep their units clean (which may sometimes involve hoarding), or to properly take care of themselves can result in malodors which disturb neighboring residents, or perhaps result in pests, water intrusion, or mold that affect not just those elderly owners’ units, but the surrounding units and the building as a whole. There are also other potential safety concerns—for example, what happens when you have residents suffering from dementia cooking on a gas stove, who may forget to turn the appliance off or leave the gas running? (Yes, we have seen this happen.)

Another issue, tied to the concerns above, is the consideration of accommodation and reasonable modification requests that an association may receive from aging residents who have disabilities making it difficult for them to get the full use and enjoyment from their homes. Federal and State fair housing laws and regulations and the Americans with Disabilities Act (ADA), as applicable, make clear that associations are required to make reasonable accommodations of association rules and restrictions or otherwise prohibited modifications where such requests are



SWEDELSON GOTTLIEB

Community Association Attorneys

reasonably related to the requesting resident's disability. In fact, failure to do so may be deemed a discriminatory action against a disabled resident and subject an association to significant liability.

Each such request must be taken seriously, and should be discussed with legal counsel to ensure that the association properly handles the request. However, be aware that just because a request is made, that does not mean the association is obligated to accommodate—for example, would an association be required to install an elevator for a resident that could no longer take the stairs? Probably not, but there are still legal procedures to follow and documentation that should be kept to make sure an association does not run afoul of the law

How then should an association deal with these potential issues as they arise? The most important thing to remember, from a disciplinary standpoint, is to address issues based on a resident's *conduct*, rather than based on the *person*. The association should specifically address violations of the governing documents, whether they are nuisances, failures to maintain, or other violations, and not target specific persons who may be more prone to such violations, as that would be disparate treatment, and could land the association in legal trouble. Associations should enforce the governing documents against *all* owners, and treat aging or elderly residents neither more strictly nor more leniently than others in the community. In terms of accommodations and modifications, such requests should always be taken seriously and discussed with legal counsel. These requests cannot be ignored, and require appropriate legal responses to avoid potential liability. In addition, it may be necessary to have additional legal documents drafted as part of the approval of an accommodation or modification, to protect the association's rights and interests with regard to the grant—for example, does the responsibility for the modification transfer with the property or must it be removed when the property is transferred?

Of course, these are just a few of the many issues that may come up while addressing aging owner dilemmas. In these situations, always remember to enforce the association's governing documents fairly and evenly, and to seek legal advice when taking action or considering accommodations and modification



**SWEDELSON
GOTTLIEB**
Community Association Attorneys

requests to ensure the association, the board, and the management agent are avoiding potential liability.