



Preparing your Community Association for Owners Who Are Aging in Place

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According to AARP, by the year 2030, one in five Americans will be over age 65 and our nation will face a senior housing crisis for persons who need accommodations to meet their physical and emotional needs. With this growing trend, the number of seniors wishing to stay in their own home, to age in place, is also growing. A recent AARP survey showed that 90% of robust seniors want to age in place.¹

As we age, our senses diminish, we lose eye sight, hearing, smell and mobility, which can result in issues that may impact not just ourselves, but the neighbors around us, resulting from simple actions such as turning up the volume on TVs, failing to take the trash out as often as needed, an accumulation of clutter, or worse yet, hoarding. While what goes on behind closed doors is every person's own private life, when a resident's conduct starts to impact the neighbors or cause damage to other unit and / or common areas, the association will need to get involved.

For example, we have had association clients who have had to call the fire department to break down owners' doors because of water intrusion—having an emergency contact could help prevent access issues like this (and would apply to other issues as well). On one such occasion, the senior was actually at home and didn't have their hearing aids in. You can imagine the impact on that person when the fire department came crashing through their front door. After this and the rather significant invoice from the Association for damage to common area, including the repaired front door, the resident obtained a blinking doorbell that would light up in the home when someone was at the door.

The association may also look to reach out to local organizations that help with elder-related issues. In associations that have a significant number of aging residents where potential concerns are foreseeable, developing a relationship with neighborhood resources can be beneficial to the entire community. SwedelsonGottlieb recommends that an association reach out to the local office of the

¹ <https://www.aarp.org/livable-communities/about/info-2018/aarp-livable-communities-preparing-for-an-aging-nation.html>

public guardian, or at least have such information on hand in case the need for conservatorship arises for a resident who is unable to care for him or herself. If there is a community area that contains resources for residents, it may be helpful to share senior care resources in this location. For resources in your neighborhood, you can visit eldercare.acl.gov or n4a.com for governmental assistance programs.

Perhaps one of the best (and easiest) ways to address the concerns with aging residents is to request and keep emergency contact information for residents. Sometimes these contacts live far away and aren't even aware that age related issues are becoming a problem for their loved one. If that is the case, a gentle conversation over the health or safety of the resident, or concerns over failed maintenance, might help address the problem and get the senior the assistance they need. This only works, however, when a senior's family members are available and where such family members did not park their senior relative in a unit in an association presuming that the association will pick up the slack. Under both situations, family conduct and lack of action makes the senior's problem's association issues.

If a resident has a known caregiver, having contact information for that person could be especially useful if there are concerns over a homeowner (for example—they haven't been seen for a while, or a neighbor heard a loud crash like someone falling but no one is responding to the door and the unit is locked).

Community associations that are prepared for the increase in aging in place residents will be in the best position to help their residents and maintain the standards of the community. An association can get itself prepared by ensuring that it has a procedure for handling architectural modification requests and a policy for addressing accommodation requests. In addition, Managers and Boards can educate themselves on what fair housing and ADA regulations, apply to their associations.

A “**reasonable accommodation**” is a change or exception to a rule, policy or restriction in the association's governing documents, including the CC&Rs and Rules & Regulations, that is needed because of such resident's disability.

A “**reasonable modification**” is a structural change/alteration made to the physical premises, whether to the unit or to association common area, in order to afford an owner or resident with a disability full use and enjoyment of such owner or resident's home and yes; residents must be offered the same accommodations and modifications as owners.

Fair Housing vs. ADA

Generally ADA guidelines do not apply to associations because they are private property and do not hold themselves out as being open to the public. The exception is, of course, an association that is open to the public, has mixed use, invites the local high school swim team to practice in the association's pool, etc. So make sure you discuss your specific situation with your legal counsel.

Fair Housing laws (state and federal) prohibit housing providers—which includes HOAs—from discriminating in housing. This applies to community associations when the fair housing laws dictate how community associations treat people with disabilities. Pursuant to fair housing laws, the US Department of Justice (DOJ) and the Federal Department of Housing and Urban Development (HUD), it is considered discriminatory if an association fails to make certain reasonable accommodations or to allow certain reasonable modifications for persons with disabilities.

Developing Policies

Standard policy considerations that an association should consider before it is required to address a reasonable accommodation or modification request are:

- In order for a requested accommodation or modification to be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation or modification and the disability. An association can have its attorney prepare a request form to ensure that the association only asks what are permitted questions to under the laws and regulations.
- A request for a *reasonable accommodation* may be denied by the association only if there is no disability-related need for the accommodation, or if the accommodation is not reasonable.
- A request for a reasonable modification may be denied only if there is no disability-related need for the modification.

Common requests that we see are:

- Parking accommodations (change parking spaces to park closer to unit or elevator); remember is an association has control over the parking space, the accommodation should follow
- Requests to install hand rails to help owner / resident with stairs, or install ramps for wheelchair access to buildings, sidewalks, parking areas
- Lifts for handicapped access to swimming pools
- Not all accommodations are to accommodate ambulatory issues. Accommodations for deaf residents or blind residents must also be taken into account (think Board and membership meetings!). No! an association does not have to provide a sign language interpreter at association expense, but yes, an association must allow the member's sign language interpreter to attend the board meeting with the member, even though the interpreter is not a member.

TIP: Make it part of your policy to always talk to legal counsel regarding fair housing requests. Violation investigations by HUD and the DFEH are cumbersome, lengthy and costly for associations.

Costs of Aging in Place for Association

There will be costs associated with preparing an association for the increased needs of the aging demographic. Some of the changes requested to help seniors stay in their homes may boost home values and will certainly improve the standard of living and sense of security for the aging in place resident, by staying in their home where they know their surroundings, for the senior making the request, the result is priceless.

Assuming we are not talking about a 55 and better community, operational costs to adopt these policies and procedures, address requests as they are received, and preparing the community for the aging population will be moderate and gradual. Boards can plan for making and implementing these changes / improvements by including allocations in the association's annual budget.

That said, associations are not required to pay for physical modifications requested by its residents. In fact, owners must pay for the modifications to their separate interest and bear the financial responsibility for paying for modifications to the common areas which includes the cost for architectural and engineering plans, the cost of permits, if applicable, and construction costs. An association may want to consider the benefit for the community of the proposed modification to determine if the association should or could pay for the modification. If the modification is something the entire community would use, such as a pool chair, the association could choose to pay for the modification as a reserve expense or capital improvement from the operating account or by special assessment. If the modification is something that the association would remove when the resident is no longer living onsite because it only serves the one owner, such as a ramp, the owner / resident is responsible for paying for the improvement and the removal of said improvement upon their departure. SwedelsonGottlieb recommends that associations confer with legal counsel regarding the removal costs as there are competing statutes on the appropriateness of doing so under the law.

When Rules Violations Occur

As with any governing document enforcement issue, it is important to avoid DISPARATE TREATMENT. This means you need to treat all owners / residents on a level playing field and address violations in the same manner as you would for other people. You cannot be more harsh on a particular aging resident who's conduct may be a particular hassle for the board/management. Neither should you fail to enforce the governing documents on an elderly person because you feel bad for them or because they remind you of your grandmother or grandfather. The board / association has a duty to enforce the governing documents equally and to act in the best interests of the Association as a whole.

Rather than focusing on WHO is causing the issue, you need to focus on the CONDUCT causing the rule violation. First, determine if the conduct a violation. If so, it needs to be treated the same way as other violations, whether that means sending out a

violation warning letter, holding a disciplinary hearing, or further legal action. Is there a noise or other nuisance complaint that has been investigated? Is there an issue with improper or irregular maintenance? If so, address the violation without regard for the person committing the violation. While it may seem heartless, remember that all owners have obligations under the governing documents. If an owner cannot meet those obligations him or herself, they have an obligation to employ or seek help to meet those obligations or request an accommodation.

Preparation

While 2035 seems like a long way away, it's really not. Time flies. You don't want to get there and look back and think, I wish we thought about this issue when we were resurfacing the pool. If you have a pool resurfacing project coming up, maybe that is the time to add a pool chair and you can start budgeting for that now. Take the time now to think about what your community is going to need, evaluate who resides there now and the demographic that you have. Like snowflakes, your residents and community are unique. Take this time to consult with your reserve consultant to develop a financial plan to put projects in place when they arise in the future.

It is always a good time to have your policies and procedures updated and ensure that you are ready for the future. It is coming, ready or not.

Sandra L. Gottlieb, Esq., CCAL is a founding and senior partner in the law firm of SwedelsonGottlieb that limits its practice and specializes in the representation of community associations throughout California.