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FLORIDA COMMUNITY ASSOCIATION PROFESSIONALS

The Most Common Element: Aging

By Kathy Danforth / Published Nov 2015

The passage of time moves us toward our prime when we are young, but, unfortunately, it doesn't stop there. Advanced aging in a community setting may involve other residents if the aging resident's physical or mental condition significantly declines, both because of neighborly concern for the resident and also due to potential hazards that their declining abilities may create. Since condominiums and HOAs are intended for independent living, if families do not assist the elderly resident, boards are often left to navigate on a case-by-case basis between issues of independence, safety, liability, property rights, compassion, privacy, and prudence.

"We see situations where you have elderly people who bought their unit when they were in their 40s or 50s, but now they're in their 70s, 80s, or 90s, and they're really not capable of living alone anymore," relates Donna Berger, Esquire, with Becker and Poliakoff. "Perhaps most of their family members are out of state, and they are experiencing physical and mental decline. It does become a huge problem because there's a sensitivity to it; it's not as if these people want to be violating the rules or posing a risk to themselves or the community, but it happens. In one community, a fire was started by an elderly woman burning a candle. We've had situations where an elderly resident was setting fires on a catwalk and walking around without clothes. Accidents can happen at any age, but with physical and cognitive decline, there tends to be more of an issue."

Jeffrey Rembaum, attorney with Kaye Bender Rembaum, observes, "I encounter these situations a few times a year. When community associations were created, living quarters were put very close together. When everyone is following the rules, it can be a wonderful and harmonious place to be. Yet, as we age, there can be significant, unexpected problems with no clear-cut remedy."

"The starting point for every community is to have regularly updated, emergency family contact information," Berger states. "I can't tell you how many communities don't have that information, either because they never asked for it or the resident moved in 30 years ago and it was never updated. If you're considering any legal or DHS intervention, it behooves the manager to speak to the family. Sometimes the family still doesn't want to get involved, but that's another issue."

Vidya Hogan with Elder Options, the Mid-Florida Area Agency on Aging, notes, "Many people find that when they retire, mental stimulation decreases, and it's easy to just sit on the couch. Physical activity, proper diet, mental engagement, and socialization all help prevent decline. Sitting in front of a television all day is probably not a good idea if you want to hold on to your faculties.

"Another tack an association can take is providing educational programs about the resources available to older people," Hogan shares. "Bring in care providers to do blood pressure and other screenings and presentations to get people engaged and connected. However, you may not be able to get those in need to come to a presentation. They may know they are declining but don't want to leave home so others won't know what their deficits are.

"If someone ages in place, they may have lost touch with friends," Hogan observes. "A lot depends on the community and how active and cohesive it is. But you can have someone come in to talk about the most cost-effective ways to retrofit your house if you're in a wheelchair as a means to get the conversation started."

"An emergency plan is crucial to identify vulnerable people," stresses Berger. "If you need to evacuate the building and a resident on oxygen needs a generator or a resident on the 17th floor is in a wheelchair, you need to address these contingencies." Even if a resident is not forthcoming, emergency plans and evacuation require communication with all residents.

If a resident in the community may be declining to a questionable safety point and family is not stepping in to assist, what are the options? "For physical needs, you can get a walker, help with housekeeping, or other assistance to compensate for deficits," Hogan points out. "I think cognitive decline is probably more dangerous—you can set up online banking and a call system to check in every day, but do you know if they're eating and drinking enough, going to the doctor, and taking their medications?

"Most of us hide our deficits as long as we can. Many people suffering from dementia know how to smile and be polite, and they rely on their learned social skills to get through situations," says Hogan. "People can function with memory problems for a long time, but it's most successful with help in putting the tools together. Maybe now he needs to write down when he took medicine and go back to that booklet every time to check. The key is having someone to stop by to check the refrigerator and cupboards and make sure he's able to bathe and take care of personal needs."

For an individual needing assistance, resources from the state and federal government have been centralized in the Area Agency on Aging in conjunction with the Aging and Disability Resource Center. "Calling 1-800-96ELDER statewide will route a caller to their local resources and screening for state and federal in-home services programs," advises Hogan. "Many of these are resource dependent and based on medical need, but once an individual is screened, they are placed on a waiting list for help with services such as bathing, cooking, home delivery of meals, housekeeping, an emergency alert response system, etc. The case manager checks up on the client and is a key component."

A neighbor can call to request care for another individual, but Hogan cautions, "We will initiate contact, but often the individual turns us down flat if they are caught off guard. Another option for those who can afford it is a geriatric care manager," says Hogan. "They will arrange for services and check on the clients—often family who are out of state will use that service.

"Talking to a senior about assistance is something that's done gingerly," Hogan remarks. "'I don't want to see you have a crisis and have to go to a facility' can be a starting point, but you also have to take advantage of any crisis or juncture where there's a decision to be made in order to establish a safer situation. If someone has been snookered for thousands of dollars, that's the time to go to the doctor and make a change."

If it is evident that an individual is a danger to himself or others, then evidence should be organized and adult protective services (1-800-96ABUSE) can be called in. Hogan explains, "It's called an abuse hotline, but it's also a protection for frail, vulnerable people who may be suffering from self-neglect, whether from cognitive issues, mental health, or frailty. If the call center determines that an investigation is warranted, an investigator will be sent within 24 hours. It is the state's responsibility to determine whether they're safe, and the person can't refuse the visit. Sometimes the person really can't live alone, and sometimes it's a matter of prioritizing them for services that will keep them home safe." However, Hogan warns, "Adult Protective Services has a standard that may be quite different from what you or I might have for determining the risk of further harm. Removing someone from their home would be a last resort in an extreme situation. Someone's personal civil rights are more important than their lifestyle."

Rembaum points out, "Under the Baker Act, there can be short-term involuntary treatment. For example, a person just about burns his unit down by putting Tupperware in the microwave. The firemen and police show up, the family isn't taking responsibility, and there's no one here to help this man, so the police can take him away for short-term crisis stabilization. But, then he's back out again. There are no tools in the associations' arsenal to deal with an ever-aging population."

Berger advises, "The documents may play a big role in how an association proceeds, depending on what their documents require. Also, has the board addressed these issues or taken any responsibility on themselves so they have set up certain expectations?" Berger cautions, "You may not want to amend the documents to place an affirmative burden on the board to address issues with the elderly because then you may be accused of turning your community into an assisted care living facility, and many communities may not want to do that."

Though reaching out to state or other agencies is an option, Berger notes, "There's the human factor here too, as well as the legal, of wanting to do the right thing by your neighbor. If someone's acting in a strange way, first an association needs to find out what's going on." Berger relates an incident where an elderly woman was sleeping on the couch in the clubhouse and the association wanted to send a demand letter. "I suggested they hold off while we found out why she was doing that, and we found that she was a hoarder, and her husband was upset about it and was being abusive. In this case, an adult daughter got them into counseling and helped clean the unit, and the behavior stopped. A demand letter at the initial point would have accomplished nothing."

Rembaum notes, "I have not read governing documents that set out additional criteria for health care, even in 55+ communities. The board is not in the role of a medical professional; they are there to exercise their reasonable business judgment in running the association. There are nuisance provisions that can be enforced. I like the idea of concerned neighbors calling social services such as Jewish Children and Family Services. There is no fast fix.

"My advice is that this needs to be tackled in legislation," Rembaum states. "Associations need the lawful right under certain criteria, when enough alarms are raised, to contact the requisite medical professional to intervene without fear of retribution by the owner. We have a real hole with no guidance in the legislation and no readily available tools."

Both Rembaum and Berger state the importance of not ignoring a situation even if the course of action is not clear. Berger advises, "The association could be exposed to some liability in terms of safeguarding residents if you know someone is experiencing decline, the board turns a blind eye, and someone is hurt as a result—including the elderly person."

Rembaum suggests, "When a board is confronted with a resident with dementia, who may be making accusations or setting fires, the association should at least consult with a lawyer to create a record that they tried to exercise reasonable business judgment, even if they could not accomplish a 'fix' to the problem. However, if that owner really causes harm, at least they won't be able to say the board knew but didn't do anything." Perhaps, one day, there will be a unique, creative solution.