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Disruptive Residents And The Law

Senior living communities of all types frequently experience problems with residents and family members whose conduct is disruptive to normal operations. This can include physical or verbal aggression toward residents or staff, unmet or excessive care or supervision needs, refusal to accept needed care, harassment, unfounded complaints, threats, destruction of property, nonpayment and failure to comply with rules.

This Brief will discuss various strategies for dealing with these circumstances, taking into consideration contractual and regulatory responsibilities, the rights of staff and other residents to a peaceable and safe residential and work environment, disability discrimination issues, a resident’s right to voice legitimate grievances, and the appropriate procedures for deterring and preventing the recurrence of disruptive conduct.

CONDUCT AFFECTING OTHER RESIDENTS

Aggression directed by one resident toward one or more other residents is intolerable in a retirement community where residents frequently interact with each other in the course of dining, recreational and other programs. Such conduct often takes the form of insults, yelling, obscenities, or harassment and may include unwanted physical or sexual contact.

A property manager should determine whether the conduct constitutes reportable elder abuse and file a report in accordance with the applicable law. Usually a reporter of elder abuse is immune from liability for filing such a report.

Such conduct may also be ground for contract termination and eviction, but note that disability discrimination issues may warrant a more measured approach if the conduct is due to a psychiatric, psychological, or personality disorder. Rather than immediately giving a termination notice, it may be prudent to require the resident to undergo a program of counseling and medication management designed to solve the problem, as a reasonable accommodation under the Fair Housing Act. If a resident refuses to cooperate or the program is unsuccessful in eliminating the behavior, then the manager...
can move toward contract termination and eviction. This more measured course of action is particularly suitable for a community that offers a care program, which permits the resident’s lawyers to argue that the managers have failed to provide or refer the resident to an appropriate care intervention.

Although residents have the right to discuss grievances amongst themselves and to lobby their neighbors for support for a particular position, those who harass other residents by relentlessly approaching them with unwanted petitions, mailbox inserts, and the like can be curbed through the adoption and application of reasonable grievance procedures.

CONDUCT AFFECTING STAFF

Staff has a right to a non-hostile work environment and should not have to tolerate harassment, insults, racial epithets, threats or other unacceptable conduct from residents or their family members. Obviously, the degree to which a manager responds to such conduct will vary depending upon whether the resident is acting intentionally, maliciously, or due to a cognitive impairment, and whether the community has a contractual or regulatory obligation to provide care for a health or mental condition that gives rise to the unwanted behavior.

Also, the manager must take into consideration the fact that residents, and their family members, have the right to voice legitimate concerns and grievances that they may have with the property or its operations. These may be contained in licensing regulations, if any, or may simply be characterized as constitutional free speech rights. There is a fine line between vigorous advocacy by a resident for or against a policy or procedure and harassment of staff. It is helpful to have a detailed policy directing residents to refer concerns to specific management personnel, or to a resident council, rather than to dining, housekeeping, or other front-line staff, or others such as prospective residents. In addition, false statements, personal disparagement, unwanted lobbying of other residents, and harassment may be actionable as libel, slander, interference with business relationships, or other conduct that is not protected as a free speech right.
DANGER TO SELF

It is often easier to take action against a resident whose conduct creates a danger to others, whether staff or other residents, or that interferes with other residents’ ability to quietly enjoy the premises or with staff’s ability to perform their duties, than it is to address conduct that endangers only the resident himself or herself. Sometimes, disability rights advocates will claim that a property manager has no legitimate interest in protecting a person from self-endangerment.

In a case of self-endangerment, a licensed care setting will have more options than an unlicensed independent living operation. With a licensed property, the operator likely will have contractual and regulatory obligations to respond to a resident’s care needs, and with that responsibility comes the right to manage how care will be delivered on the premises. A resident’s refusal to cooperate with the delivery of care can be grounds for contract termination and eviction. In an unlicensed environment, it is important for the manager to make clear in the residence agreement that it does not provide care, that the resident is expected to provide or arrange for all necessary care, and that failure to provide such care is ground for contract termination or eviction when it causes a danger to the resident or others. Courts have determined that operators of unlicensed retirement communities have a reasonable business justification for enforcing such criteria.

If a resident is refusing to cooperate with the delivery of care, or to transfer to a higher level of care when appropriate, it is helpful to have a contractual provision requiring that the resident pay for private duty assistance until the dispute can be resolved in the courts or through the appropriate regulatory agency.

RESPONDING TO UNACCEPTABLE CONDUCT

Conduct that leads to a desire to evict a resident often accumulates over time through a series of incidents that tend to escalate to the point of becoming completely intolerable. Sometimes, the series of events can spread over several months or years. It is important to have a good, clear record of all such incidents with dates, the names of witnesses and involved staff, and copies of warnings to the resident, complaints from other residents or staff, and all other relevant documentation.
In most cases, it is advisable to give a resident a firm written warning describing the conduct, specifying that it will not be tolerated, and citing to any applicable contract provision or regulation that supports contract termination or eviction. The warning should include any conditions imposed upon continuing occupancy (in addition to refraining from the unwanted conduct), such as successful completion of an anger management program.

It may also be helpful to work with the resident’s family members, outside agencies such as Adult Protective Services, the police or the community’s licensing agency, to get the attention of the resident, or the appropriate family member, regarding the seriousness of the matter. Note that when dealing with one or more family members it may become apparent that they are not acting in the best interests of your resident. Sometimes, an outside agency can take decisive action such as petitioning for conservatorship, pursuing elder abuse charges, or imposing an involuntary psychiatric detention. An operator may also seek relief in the courts through an injunction, restraining order, or suit for monetary damages. These alternatives to eviction usually engender less antipathy against the seniors housing operator.

If an eviction action is pursued, it is important to involve a lawyer in the drafting of all notices. Notices must comply with applicable civil procedure rules, as well as contract terms, and often licensing regulations. If a notice is determined to have been improperly drafted or served, the property owner may be required by the court to start over even after months or possibly years of litigation.

It is never acceptable to use “self-help,” such as changing locks or moving furnishings, without court process, even if a resident has temporarily moved off site, such as by temporarily transferring to a hospital or nursing facility. Only a sheriff or similar officer, acting pursuant to a court order, may physically remove a resident from the premises.

Also, it is important not to accept payment pending an eviction, because that can be construed as a waiver of the right to go forward with the eviction.
PREVENTIVE MEASURES

A number of measures can be taken that may help to deter disruptive resident conduct, including:

1. Create realistic expectations in your marketing materials and clearly define the limits of services provided and excluded in your contracts;

2. Implement a policy of transparency in your communications and interactions with residents and family members;

3. Do not accept prospective residents whose conduct during initial interviews indicates that they obviously are not suited toward cooperative living in a managed services environment, being careful that the decision is not based on race, disability, or other protected status;

4. Adopt and enforce rules of conduct and courtesy for residents;

5. Adopt a procedure for lodging grievances with specific staff or resident association liaisons;

6. Work closely with the resident association or council regarding ways to deal with issues raised by disgruntled individual residents;

7. Conduct periodic resident and family satisfaction surveys and be responsive to concerns raised;

8. Maintain and enforce private duty caregiver rules;

9. Have residents and family members review and sign off on service plans before an incident occurs; and

10. Respond promptly and decisively whenever misconduct is observed.

While it is impossible to prevent one or two percent of any resident population from disrupting operations or their neighbors’ quiet enjoyment of the community, the strategies discussed above can minimize the incidence and severity of troublesome conduct from residents and their family members.
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