

“An Association’s Response to Owners Requiring Additional Care,” SFPMA

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By: Robyn M. Severs



Some older individuals choose to live out their final years in their personal residences, alone, rather than in nursing homes or assisted-living facilities. Additionally, there are times that other individuals may experience certain mental health issues that make them unable to adequately care for themselves. Associations are often at a loss with how to assist these individuals. Plus, associations are not healthcare or mental health providers, so they are not equipped to address such matters. Instead, associations will need to request help from family, friends, or governmental entities.

Depending on the severity and facts of a particular situation, the association should attempt to contact known relatives to determine if there is someone available to assist, as it is best that the association allow the family to intervene. Associations should consider having owners complete a form that would list relatives, friends, emergency contacts, to assist in such situations. However, there are many cases where the resident does not want their family to help, where the family is unwilling or unable to help, or where the association does not know of any relative or friend of the owner. In those instances, the association may need to see if there is any governmental assistance.

The association can contact Code Enforcement if the property is in so disrepair that it is a code violation. Some counties also have Elder Helplines that could be contacted. The Florida Department of Elder Affairs has an Elder Helpline at 1-800-963-5337.

For issues regarding self-neglect, the Adult Protective Services, Division of the Department of Children and Family Services (DCF) Abuse Hotline can be called at (800-962-2873). They should send out an investigator to investigate and perform assessments pursuant to Chapter 415 of the Florida Statutes, which allows the state to intervene in the instance that “senior neglect” is suspected. “Neglect” is defined in Section 415.102(16), Florida Statutes as follows:

“Neglect” means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term “neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

Finally, local law enforcement should be contacted if the association is concerned for an owner’s safety. They can perform a “welfare check” to check on the safety or well-being of a person. Such a check could lead to involuntary commitment pursuant to the Florida Mental Health Act, also known as the Baker Act. This is occasionally a viable option when a person’s inability to care for themselves presents a danger to themselves or others.

If the resident refuses to accept the assistance offered by family or applicable agencies and, instead, continues to cause problems for other residents, or create hazardous conditions, the association could theoretically attempt to enforce the relevant provisions of the association’s governing documents, usually through a nuisance provision.

As you might imagine, the travails of the elderly or those with mental health issues are rarely optimal cases to take before a judge or an arbitrator. However, at least in some cases, it may be worth taking the initial steps necessary to proceed with legal action including a “cease and desist” or “opportunity to cure” letter. The association could also use the legal action as a way to get a legal guardian appointed for the owner. Perhaps the association could seek a determination from a court as to whether the association could cure the violations themselves. While this may not be an attractive option for the association, it may be the only available option.

Unfortunately, dealing with residents that need help is a difficult situation for associations with no clear answer as to how to resolve the problem. Hopefully, the above options will be able to provide some guidance and assistance.