

SEARCHING WITH MY GOOD EYE CLOSED: Addressing Mental Illness in Community Associations

By Jonathan H. Katz, Esq.



***“I don’t remember
half the time if I’m
hiding or I’m lost...”***

– Chris Cornell¹



On December 19, 2022, a 73-year-old resident of a condominium in Toronto, Canada shot and killed five people — including three members of the association board — allegedly over a long-running dispute with the association. According to the police reports and court documents, the resident had for a significant time claimed that vibrations and emissions from the condominium’s electrical room were making him sick and that the board members were to blame. The board sought a restraining order against the resident in 2018, alleging that he was exhibiting “threatening, abusive, intimidating and harassing behavior” toward the board, management, and other residents. The resident’s lawsuit against the board was dismissed during the summer of 2022, with the court calling it “frivolous” and “vexatious.” On the days leading up to the attack, the resident posted rambling videos on Facebook discussing his legal dispute with the association board and indicating that the board had requested he move out.

While there is no specific discussion in the news reports or the court documents that this resident suffered from a mental illness, one neighbor and former board member made his

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feelings clear: "This is tragic because in my opinion he was failed by the courts. He was failed by the lawyers and he was failed by the condominium corporation because if you go off his social media clearly you'll see that this man required professional help."

Wait, read that again. He was failed by the condominium corporation? Does a community association have a legal duty to assist a resident who may be exhibiting evidence of mental illness? And what can (or should) an association do when confronted with a resident who may be suffering from a mental illness?

Before we get to those questions, we should discuss what is meant by both mental health and mental illness. Although the terms are often used interchangeably, the two are not the same. According to the Centers for Disease Control and Prevention ("CDC"), mental health includes our emotional, psychological, and social well-being; it affects how we think, feel, and act, as well as how we handle

stress, relate to others, and make healthy choices. A person can experience poor mental health and not be diagnosed with a mental illness. Likewise, a person diagnosed with a mental illness can experience periods of physical, social, and mental well-being.

People can experience different types of mental illnesses or disorders (there are more than 200 types of mental illness), and they can often occur at the same time. Mental illnesses can occur over a short period of time or be episodic, which means that the mental illness comes and goes with discrete beginnings and ends. Mental illness can also be ongoing or long-lasting. There is no single cause for mental illness; however, a number of factors can contribute to risk for mental illness, including adverse life experiences/trauma, ongoing physical/medical conditions, biological factors, and/or use of alcohol or drugs.

For some time now, mental illness has been one of the most common health conditions in the United States, and the statistics from the CDC are staggering:

- One in five people live with a mental health condition of some kind;

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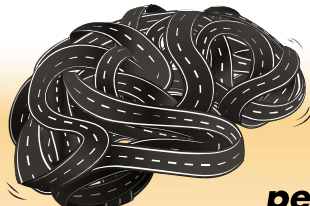


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- One in twenty-five people live with a serious mental illness such as major depression, bipolar disorder, or schizophrenia; and
- Over fifty percent of people will be diagnosed with a mental illness or disorder at some point in their life.

With that backdrop, it is almost a statistical certainty that at least one (or more likely many) residents in a community association will at some point have to deal with a men-



“Over fifty percent of people will be diagnosed with a mental illness or disorder at some point in their life.”

tal illness. These mental illnesses can manifest in various forms, including residents who are experiencing dementia, Alzheimer’s, or other significant mental declines due to age or residents of any age experiencing a serious mental illness named above such as bipolar disorder or schizophrenia.

So let us revisit the first question posed above — does a community association have a legal duty to assist an owner or resident who may be exhibiting evidence of mental illness? Mental illness can impact a community association in various ways, including giving rise to issues involving enforcement of rules and regulations, Fair Housing Act/discrimination, and potential liability for negligence should an association allow an unreasonably dangerous condition in the community to go unaddressed or a potentially dangerous resident to remain unchecked.

Generally, community associations have a legal obligation to their members pursuant to both statute and law, including the duty to act in the best interests of the community and to maintain the common property. The New Jersey Condominium Act (the “Act”) provides that the association is responsible for the administration of and management



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of the condominium property, including the conduct of all activities of common interest to the owners. In addition, the Act provides that the association shall exercise its powers in a manner that “protects and furthers or is not inconsistent with the health, safety and general welfare of the residents of the community [emphasis added].” A similar provision can be found in the Planned Real Estate Development Full Disclosure Act (“PREDFDA”).

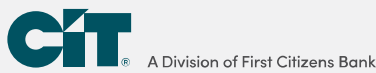
While it is most definitely not an association’s duty or obligation to diagnose mental illness, it is the association’s responsibility to preserve peace and harmony in a community. Whether an association has a legal duty to assist an owner or resident who may be exhibiting symptoms of mental illness depends on the specific circumstances involved. If a resident is engaging in behavior that is disruptive or potentially dangerous to themselves or others, the association may have a duty to take reasonable efforts to address the situation. Yet, if the resident’s behavior is not causing any harm or disruption to the community, there may be no duty to take any specific action, although, in some cases, it may be appropriate for the association to provide

resources or referrals to mental health professionals or other support services.

There are also laws at the federal, state, and local levels that may apply to situations involving mental illness in community associations. For example, the Fair Housing Act and the New Jersey Law Against Discrimination both prohibit discrimination on the basis of disability, which includes mental illness. This means that associations may need to provide reasonable accommodations to residents with mental illness, such as allowing emotional support animals or making other reasonable modification to policies or procedures.

Now that we know more about an association’s legal responsibilities, what can (or should) an association do when confronted with a resident who may be suffering from a mental illness? Associations need to balance the duties discussed above while respecting the association’s obligations to the community and its membership. What follows are some suggestions when challenged with a resident dealing with a potential mental illness:

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1. Get Educated

Again, boards and management need to understand that their roles are not to diagnose a resident with a mental illness or to provide mental health services. While there may be an instinct to attempt to help a resident who may be suffering from a mental illness, the board and management must understand that taking certain actions that could create a duty that could lead to liability if the resident causes damage to property or injury to themselves or others. Understanding the need to seek assistance, either from mental health professionals or the authorities, is an important first step in this process.

2. Document, Document, Document...

At the outset, keeping up-to-date records for all residents, including emergency contact information, will go a long way. That way if an incident occurs, management may be able to contact a relative, if warranted, or provide relevant information

to the authorities. Boards and management should be reminded to document any incident with an individual who may be suffering from a mental illness. Keep detailed records, obtain statements from neighbors, and note all complaints. If an issue is persistent or potentially dangerous, consider involving the association's counsel to provide guidance.

3. Seek Out Governmental/Community Assistance

Be aware of state and local agencies as well as non-governmental agencies that provide assistance to persons who may be experiencing mental illness. Many counties or municipalities have a host of community resources, including social workers, case managers, and inpatient/outpatient programs that may be available to deal with a variety of circumstances. Whether it is depression, anxiety, hoarding, or dementia, chances are there are some governmental or other community programs in your area that can help. Those agencies have the knowledge, skill, and authority — if needed — to take action to provide care for a mentally ill resident.

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