

Aging Community Issues From The 2019 CAI Annual Conference And EXPO: Community Now

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In May of this year, I was fortunate to attend the 2019 CAI Annual Conference and Expo in Orlando, Florida. The event, bills itself as “the only event tailor-made for community association leaders and professionals,” where attendees from across the country “discover worldwide trends and issues shaping today’s community associations, managers, and management companies right now and learn how to apply new ideas and strategies as soon as [they] get home.”

The Conference offered an illuminating and engaging opportunity to hear from managers and board members from around the nation as to how they deal with the types of issues, many of which my clients face each day. The sense of commonality in the joys and challenges we all experience as community association members, managers, or professionals is particularly fulfilling for me – and the hope that we can all share perspectives and wisdom to improve upon the interactions of others is an ideal to which our firm holds fast.

In the spirit of sharing insight, I wish to offer some of my notes and thoughts from the lecture that I co-presented with Attorney Ellen Shapiro (of Goodman, Shapiro & Lombardi, LLC). The program, entitled “*Navigating Unique Challenges Facing an Aging Resident Population*” highlighted the unique considerations and challenges facing residents, board members, and managers of aging communities (particularly 55+ and other age-restricted communities). It was a pleasure to speak before managers, board members and other professionals, and to participate in an interactive dialogue about these important issues.

We spoke, for example, about the “Boomerang Child” and how policing age restrictions can be an uncomfortable (but important) task for board members. We also lamented the “Failing Fire Risk” and the many sad incidents of “warehousing” where individuals who are not well suited to independent living can create a nuisance (or worse, danger) for their neighbors. The audience participation element of the presentation was particularly rewarding for me, as it was both affirming and edifying



to hear how others, throughout the country, have handled some of the same problems that my clients deal with on a regular basis.

What follows is a brief summary of the lecture component of our presentation. Should any of our readers be interested in our *PowerPoint* or outline handout from the conference session, we would be happy to provide them to you.

The United States Population is Aging... and Community Associations are Too!

According to U.S. Census data, by 2030, all Baby Boomers will be older than age 65. This will expand the size of the older population so that *1 in every 5 residents* will be retirement age, by 2030.¹ Aging Boomers means that within just a couple of decades, older people are projected to outnumber children for the first time in U.S. history according to the U.S. Census Bureau.

People aren't the only ones getting older, their properties are too! The median age of owner-occupied homes is 37 years.² We also discovered that while newer homes are more likely to be owned by younger generations, homes built before 1980 are mostly owned by Baby Boomers (age 55 or older). Now, for individuals, age may just be a number, but for community associations, aging populations and aging infrastructure can lead to some really unique challenges.

HOPA and the Establishment of Aging Communities

The Housing for Older Persons Act of 1995 ("HOPA") went into effect on December 28, 1995. As many of you may already know, HOPA amends the federal Fair Housing Act to effectively permit community associations to discriminate on the basis of familial status in housing, by requiring that residents be of a certain age (typically 62+ or 55+). An association's "age-restricted" status may be a considerable draw for those looking to retire in a community of similarly situated individuals, but there are important considerations for board members and managers of these communities to remember.

Among these considerations, is the requirement that communities conduct age verification surveys. Under HOPA, 55 and over communities must, at least every other year, determine the occupancy statistics of each unit, and identify that at least one occupant of each unit is 55 years of age or older. Copies of the reliable documentation evidencing that the requirement has been met must be retained by the association. The failure to properly enforce and confirm the age-restrictions can lead

¹ See <https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html>.

² The following data and information is from the NAHB. <http://eyeonhousing.org/2018/08/half-of-us-homes-built-before-1980>.

to a loss in the protections under HOPA, and thus jeopardize the association's status as an "age-restricted" community.

Boards should also be aware of local restrictions or covenants in the condominium documents that impose more stringent requirements than HOPA. These requirements may be stricter in terms of who can and cannot lawfully own or reside at condominium units.

Health and Safety Concerns at Aging Communities

As alluded to above, combining aging residents with aging properties can create unique and challenging health and safety concerns. One of the issues we discussed was "warehousing" – which is the term commonly used to describe the act of leaving an aging resident in a community or nursing facility without any family support. Warehousing is an issue that we as community association attorneys see all too often. Warehousing can be uncomfortable, difficult and costly to address.

The fact is, most condominium communities are not established as "assisted living" and thus do not have the appropriate support and infrastructure to meet daily needs of failing individuals. Despite this, many of our association clients have faced challenges arising from aging residents who pose a health and safety threat to themselves, other residents or the association. When a board or management learns that an individual is in danger (or a danger), it will likely become necessary to take some action in order to guard against liability. Boards and management should tailor their approach to these situations on a case-by-case basis, and should explore all means of resolution. We often contact family members, seek help from various governmental agencies, and if all else fails we file an action in Court where we request the appointment of guardian to ensure compliance with the association's governing documents.

Budgeting, Physical Repairs and Other Considerations at Aging Communities

Health and safety issues aren't the only concerns facing aging communities. Humor columnist Erma Bombeck wrote of the perils of aging in October 1983: "We had an expression for it, 'Don't buy any green bananas.'" It turns out this mindset, and the fact that many 65+ individuals live on fixed incomes, can be a real challenge to effective and necessary budgeting and financial planning. Since aging residents may have limited financial means, increasing condominium fees to address infrastructure

repairs or replacements can be difficult. On the flip side, however, deferred, delayed or avoided maintenance can increase the risk of liability (and thus, lead to yet more cost). A triage approach to financial and infrastructure planning may be necessary, but boards and management should not put off important physical plant maintenance and should build an adequate reserve as well.

Another topic that often comes up in the context of aging communities relates to the association's obligation to grant reasonable modifications under federal or state law. In a nutshell, a "reasonable modification" is a physical or structural change made in order to afford a handicapped person full enjoyment of his or her home. "Reasonable modifications" can include alterations to interiors and exteriors of dwellings, and also to common areas. Depending on the location, cost, nature of the facilities and other factors, the process for dealing with these requests can be a complicated analysis. Generally speaking, federal law makes it unlawful for any person to refuse *"to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises..."* 42 U.S.C. § 3604(f)(3)(A) [Emphasis added]. Note, however, state law may be different – the applicable Massachusetts statute (M.G.L. c. 151B) requires the *association* to pay for modifications under certain circumstances.

Conclusion

In summary, there is usually no shortage of issues to consider at *any* community association, but those communities where aging residents mix with an aging physical plant can present a host of heightened or unique challenges for boards and managers. For those readers who live at or serve one of these communities, it may be worthwhile to consider the materials from my presentation.
