

Mental Health Issues in a Community Association Context

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Over the years, I've met thousands of people living in shared ownership communities and without fail, at least one person in every community questions the mental health of someone in their community. Sometimes the suspect serves on the board, other times it is the person living next door, and other times it is simply a resident who behaves in an unusual or offensive manner.

The National Alliance on Mental Illness (NAMI) confirms that approximately 1 in 5 adults in the U.S. (43.8 million or 18.5%) experiences mental illness in any given year. NAMI further confirms that approximately 1 in 25 adults in the U.S. (9.8 million or 4.0%) experiences a serious mental illness in any given year that substantially interferes with or limits one or more major life activities. In light of the current national discussion about mental health and its potential impact on public safety, it is worth examining how mental illness can impact the operations of your association and the quality of life of the residents of your community.

Dealing with mental illness is one of the most difficult issues confronting boards and managers in a shared ownership community. Mental illness in community associations can manifest in varying forms, including elderly owners who are experiencing dementia, Alzheimer's or other significant mental decline, as well as residents of all ages who have illnesses such as bipolar disorder, manic depression and schizophrenia. The overarching concern for boards is to prevent these residents from injuring themselves or others while dealing with the problem humanely. Some residents suffering from mental illness present only a risk to themselves in the form of engaging in inappropriate behavior-in one of my communities it was an elderly man who forgot to wear clothing from time to time in the common areas. Other residents grappling with mental issues present real danger to their neighbors including threatening to assault others and creating dangerous conditions in the common areas. One board met with me to discuss an owner who was setting small fires on the catwalks.

Clients are often disheartened to learn that the legal intervention which can often successfully resolve parking, pets and other violations is limited in its ability to quickly resolve issues related to an association member's mental illness. While it is possible to fine, suspend use rights or pursue alternative dispute resolution or litigation every time a violation is committed, those measures do not solve the underlying problem as the person committing the violations may not be able to stop his or her behavior.

The Florida Mental Health Act, commonly known as the Baker Act enacted in 1971, has not been terribly useful in combating the problem of mental health risks in shared ownership communities because the law is predicated on a very narrow definition of what constitutes imminent danger to one's self or to others. It is a challenge to balance due process and liberty considerations with the need to protect the health and safety of the public. In a shared ownership community, the often delicate threads of civility can unravel more quickly due to the pressures of living in close proximity to others. The layers of government red tape offer little assistance and family members may be unavailable or unwilling to get involved. Some family members assume, wrongfully of course, that the association will provide some level of assistance to their family member and even view that as a less expensive alternative to proper assisted care or nursing facilities. No association is licensed or otherwise qualified to provide such care and should not endeavor to do so.

There are a few things that can assist your attorney when dealing with the issue of mental illness in your community.

1. Have up to date records for all residents which includes an emergency contact list.
2. Discuss with association counsel whom you should contact on that list when a resident's decline becomes a serious concern.
3. If monitoring a situation involving suspected mental illness, document any incidents by taking witness testimony as soon after an incident as possible.
4. Contact local authorities if you suspect any possibility that the person experiencing mental issues poses a risk to himself or herself or others.
5. Be aware of all state and local government and non-governmental agencies that provide assistance to persons who are experiencing mental illness and can no longer care for themselves.

The Florida Bar has created a 13-member special committee which has been tasked with examining existing mental health laws and civil commitment standards. This committee is scheduled to conclude its work with a report and a proposed set of recommendations to present to the Florida Bar of Governors at its May, 2019 meeting. In the interim, mental health problems will continue to pose challenges for volunteer board members and managers in residential communities.