

# Kimball, Tiley & St. John LLP

## What Happens When Elderly Residents Can No Longer Care for Themselves?

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What are a housing provider's duties and rights when it becomes apparent that an elderly resident can no longer care for him or herself? This is a frequently asked question and, unfortunately, one that has no simple answers.

Often, management becomes aware of the situation because a maintenance person goes into the unit to do a repair and comes back with a report regarding the condition of the unit and/or the resident. For example, the elderly resident may not be maintaining the apartment in a healthful, safe and sanitary condition or may not appear to be bathing, there is a strong smell of urine or the apartment is cluttered with food containers and trash. Other times, the situation can be brought to management's attention by other residents. Perhaps the resident in question has repeatedly been asking his neighbors to help him with daily living tasks that he can no longer perform or the neighbors have been in the resident's unit and noticed that she has no food in her kitchen. Still other times, it may be the resident's behavior that puts management on notice that something isn't right. Management may become aware that the resident is wandering around the community unable to find her unit, repeatedly falling asleep with food cooking on the stove or tripping in her apartment or in the common areas and asking management to assist her in getting up.

The above scenarios are just some examples of indications that a resident may no longer be able to care for him or herself. Management may be tempted to deal with such situations by telling the resident (or the resident's family members) that the resident needs to move to assisted living or a nursing home. Clients should be aware that such a response could subject management, the property and the company to potential fair housing liability. A resident who is unable to properly care for him or herself likely qualifies as a disabled person. California law defines a disability as any impairment that limits one or more of life's major activities. The impairment can be physical or mental/psychological. Certain medical conditions also qualify as disabilities.

Under both federal and California fair housing laws, disability is a protected class. This means that a disabled person has an equal opportunity to live in the housing of his or her choosing. A disabled person cannot legally be forced by a housing provider to move from an apartment setting into assisted living, a group home or a nursing home – even in situations where it seems clear that the resident would be better off in such an environment.

So what can (or should) management do? If there are health and safety issues – either for the resident herself or for other residents and/or the asset – it is recommended that management contact the county's Adult Protective Services office and make a report. Be prepared to give specifics on why you feel the resident constitutes a health and safety threat to him or herself or the property. You should document the date and time of the conversation and the name of the person who took the report. After receiving such a report, the agency will usually send a team out to talk with the resident. Follow up with the agency to find out what the result of this visit

was (and document the conversation). Don't be surprised if you are told that the resident would not open the door or would not agree to get help. (These types of agencies are very limited in their ability to force their services on a person. Additionally, it is not uncommon for the resident to be lucid at the time of the visit and therefore able to convince the APS team that he is not a risk to himself or others.)

Another potential avenue for resolution of the problem would be to contact the resident's family members (or other emergency contact person) to see if there is something they can do to help. When doing so, be careful to guard the resident's privacy. Rather than telling the family members that, for instance, their mother's apartment is filthy and she is not bathing and seems to be unable to care for herself, a better approach would be to say that you are concerned about their mother's welfare and wondered if the family members could check on her and possibly be of assistance to her. If there are issues that constitute a lease violation – such as acting out towards other residents or failing to maintain the unit in a healthful, safe and sanitary condition, you might also add that you are trying to see if there is a way for the resident to retain the tenancy. Be sure to document all such conversations.

The bottom line is that if there are no lease violations and the resident is not a direct threat to the health and safety of others or the property, there may be nothing that management can do, particularly if social service agencies, family members and/or friends cannot help. If you are faced with this type of situation, we recommend that you seek legal advice before attempting to address the issues with the resident and/or take legal action so that you do not accidentally say or do something that could create potential fair housing liability.

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