



SENIOR LIVING

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The Resident Involuntary Move Out Process: *Reasons and Defenses*

As inflationary issues mount, senior living operators are finding more pressure being placed on their resident accounts receivable. Because of the difficulties in engaging in such a conversation, many communities are slow to act on these mounting receivables. After repeated requests for the payment and warnings under the lease, the community must consider *an involuntary move out notice*. (eviction) As an owner once told me, “We cannot provide room, board and services for free, we have expenses to meet. We must manage our accounts receivables better and act on those that are not responding to our requests for payment of their rent.”

While often a difficult action to take, moving to an involuntary eviction may sometimes be necessary. The process is an administrative proceeding and must be done carefully in compliance with each state’s regulations. For Independent Living Communities the process is typically managed under the respective locale’s Landlord Tenant law. Failure to comply with these regulations and laws will likely require the process to be started over, resulting in additional time and expense.

In most jurisdictions the regulations require ample and documented notice to the resident citing the ***specific reason*** for the involuntary move-out proceeding, along with a date the lease will end. Often, timely notifying the regulator of the eviction process is required as well, and in some states, approval to proceed.

Clear documentation is critical and evidence of any efforts to work with and accommodate with the resident (or their authorized representative) is helpful to demonstrate that every effort was made to obtain their cooperation and payment.

The regulations in most states will allow the resident to appeal the eviction process to an administrative hearing which involves an Administrative Law Judge. In an independent living eviction, the resident or tenant will have the full opportunity to go to trial on the matter and appeal the same to a higher court. While these rights can extend the process and cost a bit more, it should not dissuade operators from engaging in the process.

This same process will apply when communities move to an involuntary move-out process because the operator has presented good cause - *other than non-payment of rent*. A good cause definition is set forth in most state regulations. These regulations should also be spelled out in the resident’s lease agreement as reasons for termination of the lease. Good cause may exist for not only non-payment of rent, but for aggressive behaviors that threaten the resident, staff or other residents, or where the care for resident’s physical or mental conditions exceeds your licensure to care for them. Documented evidence of your efforts to work with a resident, family or their doctor is always a best practice in these proceedings as well. I also recommend the community document evidence of their recommendations for an alternative living accommodation. It has been my experience in these

matters that the resident or family often refuse the recommendations suggested by the community. That refusal can be helpful in the formal eviction process.

One of the defenses often made in these eviction proceedings for cause is the demand by the resident (or their advocate) for *reasonable accommodations* under the ADA or FHA. It is always wise for operators to think about this in advance and evaluate whether there are any such accommodations. Certainly, if confronted with such a demand communities need to genuinely engage internally and with the resident in an “*interactive dialogue*” process to evaluate if there are accommodations that could be reasonably made. There is no requirement that you must agree to an accommodation, but you will need to show:

1. Any options presented were carefully evaluated.
2. If not enacted, be able to defend why you could not do so. Economic burdens, risk of harm to others or property, or that the request alters or changes your business operations are the primary reasons you might not accept a proposed accommodation.

Examples of requests in the face of good cause evictions in the ALF setting that were denied include:

- A resident requesting a Chinese speaking interpreter on a regular basis.
- The use of marijuana in a form that required staff to prepare it each time.
- The use of a 2–3-person transfer 24/7 requiring additional FTE.

Requests that were found to be reasonable:

- The waiver of a pet policy regarding animal weight.
- Parking of a motorized scooter in an out of the way area outside of an entrance.

In summary, timely use of the involuntary move out process for non-payment of rent, or other lease requirements, may be appropriate. Act sooner than later, and show you tried to collaborate on resolving the problem without success. Follow the regulatory process for ALFs or SNFs and the Landlord Tenant laws for Independent Living in your respective jurisdictions. Added language in your lease agreements that failure to make timely rental payments will result in a report to the appropriate *credit collection and reporting agencies* may also stir people to pay. This latter notice at least puts a resident or tenant on notice that their credit may be impacted. Our team at CAC Specialty also works with a national health care legal firm which specializes in collection matters for health care entities nationwide whom we have found to be effective in offering sound advice and direction.



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