



WHAT TO DO WHEN A RESIDENT REFUSES TRANSFER OR DISCHARGE

by: Andrea R. Sitar

In the last issue of The Advisor we discussed the regulations governing transfers and discharges from skilled nursing facilities in the article [“The Ins & Outs of Resident Transfer and Discharge”](#). This in-depth article addressed the circumstances under which a resident may be transferred or discharged from a facility, and the steps the facility is required to take before effectuating a transfer or discharge. But what if, after the facility follows all regulations to the letter, a resident simply refuses to be transferred or discharged? At this point the resident is unlawfully remaining on the premises without the consent of the facility. Other than simply waiting for the resident to eventually leave on her own, the only avenue available to the facility is to institute an unlawful detainer action against the resident to effectuate the resident’s eviction from the facility.

The idea of bringing a lawsuit against a resident for eviction is understandably nerve-wracking, and many facilities avoid the process hoping a resident will eventually just move on. After all, no facility wants to evict a resident- the goal of skilled nursing and assisted living facilities is to provide care and services for as long and as safely as possible to those in need. However, every once in a while a facility may find itself with a resident who does not require the level of care the facility provides, or who is otherwise abusing the system. In extreme cases, this resident may pose a risk to the facility staff or other residents.

It is imperative that the facility follows the appropriate regulations governing transfers and discharges, and speaks with the resident regarding the need to move out of the facility. Family members should be enlisted to help reason with the unreasonable resident who refuses to leave, and the ombudsperson should also be tapped as a resource to help explain to the resident why he or she can no longer reside at the facility. Even if the facility has followed the transfer and discharge regulations perfectly, the resident who refuses to vacate can only be evicted after a judicial ruling following an unlawful detainer complaint is filed in Superior Court.

A residential care facility for the elderly may evict a resident only if one of the following criteria are met and documented:

- Nonpayment of rate for basic services within ten days of their due date;
- Failure of the resident to abide by state or local law;
- Failure of the resident to follow facility policies;
- Needs of the resident are no longer met; or
- Facility has changed its purpose.

Similar regulations govern skilled nursing facilities. Eviction proceedings can be instituted against a resident only if one of the following criteria are met and documented:

- Nonpayment of rent;
- Resident's health has improved and she no longer needs nursing care;
- Resident's needs have increased and cannot be met in the facility;
- Resident is endangering others' safety;
- Resident is endangering others' health;
- The facility is going out of business.

Both types of facilities require thirty-day notices to the resident of the termination of the residency. The transfer and discharge notice regulations governing skilled nursing facilities as described in our earlier article satisfy this notice. A thirty-day notice for a residential care facility for the elderly must state the following:

- The reasons relied upon for the eviction, with specific facts to permit determination of the date, place, witness, and circumstances concerning those reasons,
- The effective date of the eviction,
- Information about resources available to assist the resident in identifying alternative housing and care options,
- Information about the resident's right to file a complaint with the California Department of Social Services regarding the eviction with the contact information for the nearest community care licensing office and State Ombudsman,
- The following statement: "In order to evict a resident who remains in the facility after the effective date of the eviction, the residential care facility for the elderly must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. If the facility pursues the unlawful detainer action, you must be served with a summons and complaint. You have the right to contest the eviction in writing and through a hearing."

This notice must also be provided to the resident's responsible party, if applicable. It is important to document when and how both the resident and responsible party were contacted. Facilities are also encouraged to submit the notice to the licensing agency at time the resident and responsible party are notified.

After the thirty-day period expires, if the resident does not move from the facility, the facility can then file a complaint for unlawful detainer in Superior Court. Only after there has been a judicial ruling in favor of the facility can the resident be lawfully evicted from the facility.

This is a complicated process and any errors in the notice procedure are construed against the facility seeking the eviction. While resident evictions are rare, it is essential that a facility be aware of all necessary steps before beginning the process.

About the Author:

Andrea Sitar joined Wroten & Associates in 2013. Ms. Sitar obtained her Juris Doctor degree from Loyola Law School in downtown Los Angeles. She graduated with honors in the International and Comparative Law concentration, with a focus in international business. While at Loyola she was a case worker for their International Human Rights Clinic, which prepared and filed four cases against the state of Jamaica before the Inter-American Court of Human Rights. She also worked as a Clinical Extern for the Loyola Law School Conflict Resolution Center, an alternative dispute resolution center for the underserved communities of Los Angeles county. Ms. Sitar was involved with the Judge Stephen O'Neil Young Lawyers Mentoring Program where she served as a mentor.

Prior to law school Ms. Sitar received her Associate of Arts degree from Franklin College in Lugano, Switzerland, where she studied International Communications and Italian. She received her Bachelor of Arts degree from Temple University in Philadelphia, Pennsylvania, where she graduated summa cum laude with a major in Anthropology and a minor in Political Science.

Underlying Ms. Sitar's diverse educational background is strong foundation in advanced research techniques and technologies. Ms. Sitar is a member of the Defense Research Institute (DRI).

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