

Legal Lines

by Tamara Cross



Threatening and violent residents: Keeping the workplace safe from violence

With April 2007 being a landmark month for violence in the workplace¹, I thought an appropriate topic to address in an article would be resident threats or abusive behavior towards management and other community employees. Unfortunately this is far too common of an occurrence in our industry. With the employer having a legal requirement to provide a safe working environment for employees and the increasing liability for failing to protect employees from known or foreseeable dangers, community owners as employers cannot take any threat of violence or aggressive behavior by a resident towards an employee lightly.

This article is intended to assist owners in minimizing threatening situations towards employees as well as providing options to handle a threatening or abusive resident. Please keep in mind as you read this article that every situation has a unique set of facts and which measures, if any, are appropriate, depends on the severity of the threat and the particular facts of that situation. Please consult your legal counsel with the facts of your particular situation to determine which of these options, if any, are appropriate. With that said, here are some suggestions on ways to minimize threatening situations before they occur:

Zero tolerance policy: for threatening/harassing behavior towards management/employees of community stated in rules and regulations

Most communities already have a conduct or behavior provision in their rules and regulations prohibiting certain behavior by residents, including substantially annoying behavior. This conduct rule typically does not specifically address harassing, abusive, threatening behavior towards community management or employees. I recommend placing a separate provision in your rules and regulations

in addition to the more general “conduct” rule. This provision should state that any type of harassing, abusive, threatening or violent behavior towards management or other employees is prohibited, the community has a *zero tolerance policy* for violence against its employees and this type of behavior constitutes a substantial annoyance. This more specific provision in the rules is helpful if the community decides to serve the abusive resident with a 7-day notice for a rule violation or if/when the community terminates the resident’s tenancy based upon this behavior.

Written complaint policy

Another policy I have found helpful in minimizing resident aggression towards management or onsite employees is to require all non-emergency resident complaints to be in writing, placed in a complaint drop box and forwarded to the owner, management company or the attorney for appropriate handling.

This policy does several things: First, a written resident complaint policy with a drop box reduces managers or onsite employees from having to receive face to face complaints from residents that can often lead to escalating tempers and aggressive behavior by the resident towards the employee. The face-to-face encounter typically places the manager in a defensive position, which can be uncomfortable and problematic.

Second, this policy takes (or appears to take) the decision-making regarding the handling of resident complaints out of the manager or onsite employee’s control. Therefore the manager can “pass the buck” that the owner and/or attorney makes the deci-

¹ April 2, 2007- Woman killed by boyfriend at work at CNN Center in Atlanta, GA
April 2, 2007- University of Washington researcher shot dead by boyfriend at work
April 9, 2007- Troy, Michigan- accountant kills two co-employees at work
April 16, 2007- Virginia Tech- 28 students and 4 faculty members killed
April 21, 2007- NASA contractor kills supervisor and then himself at Johnson Space Center in Houston, TX

sion on how a particular complaint is handled and can appear to be only a messenger of the complaints. Whether or not the manager actually makes the decision on how to handle the complaint is irrelevant, it is the appearance that the manager is not making the decision that is important. This may help alleviate resident backlash against the manager or on-site employee. Furthermore, the statement that all complaints will be handled “appropriately” depending on the circumstance, means that each complaint will be reviewed and a determination will be made as to which actions, if any, will be taken. It does not promise that every complaint will receive a response nor will every complaint receive action.

Finally, requiring that all resident complaints be in writing, signed and dated can help reduce notice issues where the resident claims they gave verbal notice of the problem or complaint to the management.

Procedures & training regarding the handling of difficult residents

There are several seminars or guidelines instructing managers/employees on how to handle difficult residents. If your manager or onsite employee hasn't already taken a course regarding this, send them. Document their training, who went and when, and keep the information in your files. The information they receive may be invaluable both in recognizing a potential problem situation before it occurs and defusing it, but also in appropriately handling a volatile situation when it occurs.

Use the materials received or contact your legal counsel to create your own guidelines or policy regarding violence in the workplace. Train your employees on this policy. Some basic suggestions to have in your policy:

A. Have a buddy system for dealing with angry residents so that the manager or employee is not alone or they have someone to call to as-

sist them when/if an angry resident confronts them. Just having another person in the room may help diffuse the situation.

B. Have a separate room with a lock on the door and a phone for the manager or employee to go to if needed.

C. Ensure the employee knows when it is appropriate to contact the police for help. Emergency situations must be addressed promptly.

D. Have signals or code words to alert other employees when a manager or employee needs help.

Contact your legal counsel to assist you in creating a policy that is appropriate for your office and employees.

Procedures after aggressive/violent behavior by a resident has occurred

If there has been behavior by a resident towards an employee that has been threatening or harassing, you want to make sure to address it immediately. Examples of abusive or threatening behavior can vary from minor to extreme, but all should be addressed. An example of harassing or abusive behavior would be a resident stalking, yelling at and/or using profanities toward the employee. An example of a threat of violence by a resident would be the resident telling the employee: “you’re going to get it,” “you’ll be sorry,” or “I’m going to kill you.” Acts of aggression toward the employee could be damaging an employee’s property. More serious acts of violence toward the employee could be a resident pushing, striking or physically harming the employee. These are just a few examples and even though the severities of each differ, all of these examples warrant attention and should be stopped.

If aggressive/violent behavior occurs, have the employee make a written account of what happened, the date, time and any witnesses. Make

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sure that the employee is specific as to details. Write down exactly what was said (“he yelled at me that he was going to hurt me”), what actions were taken (“he waived his fist inches from my face.”) Have the employee sign and date the statement. Talk to any witnesses, have the witnesses prepare a written account of the event and have them sign and date the statement. Forward these statements to your attorney.

Again, workplace violence incidents will differ substantially and the specifics of each situation will dictate which response should be taken, if any, and in which order. Some responses are as follows:

Call the police, make a report

The most obvious action an employee can and should take if the resident displayed threatening or violent behavior towards them is to call the police to come out and make a police report. Again, whether this option is appropriate, depends on the facts of the situation. If the police are called, get the officer’s name, the incident report number and a copy of the report for your file.

Serve a 7-Day Notice for Rule Violation

Upon an incident of a resident’s behavior becoming abusive or threatening, have your attorney send a 7-day notice to the resident notifying them that the behavior toward the management will not be tolerated and it constitutes a substantial annoyance and is a violation of the rules and regulations. Cite the specific rule prohibiting abusive, threatening behavior toward the employee in the 7-day notice. Again be specific in the notice as to exactly what was said by the resident, what actions were displayed, dates and witnesses.

Service of a 7-day notice for rule violation not only protects the threatened employee and sets up the resident’s file for an eviction, but it also protects the owner who is now taking reasonable steps to address a

potentially dangerous situation.

Obtain a restraining order for the employee against the resident

If the behavior by the resident is physically threatening or violent, a restraining order prohibiting the resident from having contact with the employee may be the best solution. A restraining order is actually a stay away order prohibiting the resident from harassing, threatening, assaulting and contacting the employee and requiring the resident to stay a certain amount of feet away from the employee.

A restraining order consists of the employee (or attorney of employee) filling out temporary restraining order forms and filing them with the appropriate court. These forms can be obtained on the Internet and downloaded. Most court websites provide these forms along with simple instructions on how to fill them out.

After the papers are filed with the court, a judge typically reviews the paperwork and takes testimony of the employees seeking the restraining order to determine if there is an imminent threat to the employee posed by the resident. Employees seeking restraining orders should make sure they have any police reports or witness statements with them prior to seeing the judge. The initial court appearance for a restraining order is to seek a temporary order at which a hearing for a permanent order will be set within a few weeks. At the hearing for the permanent injunction, the resident will be requested to appear and will have an opportunity to present evidence and defend him or herself. If at the hearing, the judge believes the restraining order is necessary to protect the employee, the order will stay in effect for three years.

Since the resident resides in the community where the manager/employee works and lives, the judge may modify the order to address this, such as by reducing the number of feet the resident must stay away from the

employee or by requiring the resident drop his rent in the drop box after hours to avoid resident contact with the manager/onsite employee. The restraining order should include the employee’s family members or others living onsite with the employee.

Evict the resident for rule violation or substantial annoyance

As you are aware, a resident can be evicted for threatening and aggressive behavior either under violation of a reasonable rule and regulation (798.56(d)) and/or a substantial annoyance eviction (798.56(b)). By indicating in your rules that this type of behavior is prohibited and constitutes a substantial annoyance, and by serving the appropriate notices and obtaining substantial documentation supporting this (written witness statements, restraining orders, police reports etc.), a 60-day notice for termination of tenancy can be a very effective way to protect the employee against an abusive, violent resident.

Conclusion

As employers, manufactured housing community owners need to ensure that employees are being placed in a safe work environment and that all reasonable steps are taken to minimize and avoid known or foreseeable risks of violent and abusive residents. By taking these appropriate steps, employers not only reduce their potential liability, they help ensure the employees are placed in a less-stressful, safer environment. **m**

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