



FAHA Technical Assistance Bulletin

Disaster Preparedness

Florida Association of Homes for the Aging
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TO: FAHA Members
FROM: Carol Berkowitz, Esq., Sr. Director of Regulations and Compliance
DATE: May 18, 2006
SUBJECT: Procedures to Follow When Residents Refuse to Evacuate

During the 2004 and 2005 hurricane seasons, some residents refused to comply with a facility's evacuation plan or a mandatory evacuation order. In spite of warnings from staff and local officials, they remained adamant about their right to stay in their home. In a couple of instances, staff risked their own lives to remain with residents who would not relocate to a place of safety. The below information and release form was provided by attorney, Member Martin L. Khoury, who is a member of one of FAHA's Preferred Attorney firms -- Quintairos, Prieto, Wood & Boyer, P.A., The contact information for Mr. Khoury is as follows: One East Broward Blvd., Ste 1400, Fort Lauderdale, FL 33301 (ph. 954-523-7008; fax 954-523-7009; www.QPWBLaw.com). We hope this Technical Assistance Bulletin will assist you in preparing your staff and residents for future evacuations.

Disaster Strikes: And Further Disaster When Residents Refuse to Evacuate

Did you know that failing to evacuate, when informed to do so, is a violation of state statute? Some residents may demand that they have EVERY right to remain in their home; however, they should be informed that it is a violation of law and second degree misdemeanor penalties could apply. Penalties could be as much as 60 days' imprisonment.

- The law provides that Section 252.34 (3), F.S., define "Emergency" as "any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."
- Section 252.36 (6) F.S., further states that "The Governor shall take such action and give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of sections 252.31-252.91 and with the orders and rules made pursuant thereto."
- Section 252.47, F.S., describes the enforcement as "the law enforcement authorities of the state and the political subdivisions thereof shall enforce the orders and rules issued pursuant to sections 252.31-252.91."
- Section 252.50, F.S., establishes penalties as "Any person violating any provision of sections 252.31-252.91 or any rule or order made pursuant to sections 252.31-252.91 is guilty of a misdemeanor of the second degree, punishable as provided in section 775.082 or section 775.083."
- Finally, section 755.082 (4) (b), F.S., sets forth the penalty for a second degree misdemeanors as "a definite term of imprisonment not exceeding 60 days."

In the event that a resident refuses to evacuate during a disaster, it is recommended that they sign a release of liability. Attached is a suggested release of liability that you may find useful in the event a long term care resident refuses to leave the premises after ordered to do so during an emergency. Hurricanes come to mind, but this can be used in case of facility or forest fire, flood, riot, influenza outbreak, loss of power for cooling and refrigeration or any number of other emergencies or disasters.

It is also recommended that the facility have a durable method of identification available like a plastic wristband where the resident's name, date of birth and social security number can be written in indelible ink and attached to the resident. It is our hope that simply presenting this release to a resident will be enough to change their mind about staying, but if not, this may help reduce facility liability. Be sure the release of liability form is explained to and signed by each resident who refuses to evacuate. A new form should be signed for every hurricane or event that could result in an evacuation.

The information contained in this correspondence is not intended as a substitute for legal advice. Please discuss any information gathered from this or any other FAHA publications with your legal counsel in the context of your particular situation before implementing new policies or procedures.

**RELEASE OF LIABILITY FOR REFUSAL TO
EVACUATE LONG-TERM CARE FACILITY**

On the date below, I _____, do hereby make the following declaration and release
of liability as follows:
[print resident's name]

1. I am currently a resident of _____;
[print facility name]
2. I am of sound mind and make this declaration and release of my own free will. I have not been influenced by any representative of the facility where I reside to sign this document;
3. I have been advised to evacuate this facility pursuant to an order from the civil authorities due to an emergency situation that has rendered remaining on the premises unsafe;
4. I wish to disregard this order to evacuate and remain on the premises;
5. I understand that my decision could result in loss of all my possessions within this facility and permanent injuries to my person, including great bodily harm and death;
6. By executing this document, I release the management and staff of this facility, including all officers, directors, administrators, parent companies, subsidiaries and insurers from liability for any losses, injuries or death that may result from my decision to remain on the premises;
7. I am aware that staff will not be available to assist me after residents are evacuated;
8. I have been offered and have refused free transportation to a place of safety. I understand I have the option to obtain private transportation of my choice;
9. I have been offered and been advised to use an identification device such as a wristband to be affixed to my body to help the authorities identify me in case of my death or incapacity from injury;
10. I acknowledge that refusal to comply with an evacuation order is a second degree misdemeanor punishable by a term of imprisonment not exceeding sixty (60) days pursuant to Florida Statutes §252.50 and §755.082.

Date

Resident

Witness/Title

Witness/Title