



## **LOCKDOWN VS HUMAN DIGNITY**

The current pandemic wreaking havoc across the world, brought more challenges without adequate answers. It has become clearer as the chaos increases that positive attitudes and a better understanding of the crises and required responsibilities must be implemented for the survival and a better life for older persons. Older persons and those in responsible positions and taking care of them and their families, need to understand that all older persons in South Africa are covered by two main pieces of legislation; the Constitution of South Africa, which includes the Bill of Rights (Act 108/1996) and the Older Person's Act No 13 of 2006. It must be clearly understood that applying any statutory rules which may include different other pieces of legislation must be applied in such a manner that older persons may be free from abuse and victimization. Furthermore, to ensure compliance to the above the SA Human Rights Commission has set up a specialist Committee No 11 in place to oversee that the rights and dignity of all older persons in SA are protected.

Many Body Corporates and governing bodies/Associations do not always thoroughly understand or wish to understand and respect these important pieces of legislation. It appears as if the pandemic rules combined with other rules have overwhelmed some leaders of facilities to believe all other laws are no longer valid! To compound this, the manner the lockdown rules were designed also possibly created a breeding ground for wielding personal power. At the same time, it must be acknowledged that neither in South Africa and abroad, people were prepared for this devastating and fear driven pandemic.

Following a recent discussions with the Department of Social Development at the highest level and a specialist human rights advocate where the current situation was discussed in-depth, the purpose of this communication is to advise you of the directives below and to spell out to what extent your own rules should comply. There must not be any misunderstanding that the rules laid down by Government and how it is applied, can wipe out or displace the references that will be discussed below.

The concerns expressed over the past months are many and extremely diverse. Let us unpack a few telling ones:

1. The viewpoint that “all residents as homogenic, thus all are the same”, were frequently found. This is far from the truth. The health and risk status of residents differs immensely. Very few facilities have a ‘health baseline’, whereby every resident’s health, social status and risks are professionally assessed, and understood. Subsequently, obeying the rules has become the only norm driven by fear and autocratic leadership and nothing else. This attitude displays little respect to human values and realities and may well be a form of elder abuse.
2. Social isolation to older persons, as well as younger generations, is basically inhuman and brutal. The way in which the whole situation and the risks were communicated to residents is a major concern and borders on army-like rules. In many facilities it was communicated as a law and management had no discretion. This meant “your rights have been replaced”. Successful facilities went out of their way to recruit the buy-in of residents and their families using a variety of methods. Others just published their rules without any consultation as if residents are “too stupid to understand”, as one facility used these words. On the flipside of the coin there are facilities who continually communicate with residents and family members and they seem to experience little conflict.
3. Family involvement is society’s cornerstone. Many facilities never thought it necessary to involve family members. Those who tried to communicate in a constructive manner, hardly had conflict situations to resolve, while others even when as far as to call on the police to arrest family members who wanted to assist their parents!
4. Personal circumstances and needs of older persons seem to be thrown out of the window. Already occurring events such as suicides and heartbreaking incidents where the unique needs of older persons were ignored, were reported. The answer was “rules are rules”.
5. Power games seem to flourish in facilities where Trustees made the rules and residents were treated as victims and bullied. Residents called their places of living concentration camps. Weekly disciplinary hearings were at the order of the day. To forbid residents to practice their professions is unthinkable and deplorable.
6. A regular occurrence was that residents were not allowed to state or raise any questions. Some facilities even had rules that no questions may be posed.
7. Clear and friendly communication is the success of how many facilities are managing the pandemic.

**In conclusion:** At the heart of the Covid-19 pandemic are measures to combat the entry and spreading of the virus. The rules made was never meant to strip persons of their human dignity. The question to be asked is: why were many facilities able to do the one thing and not neglect the other, which is to respect people? Research undertaken so far only resulted in the finding that good person-centered leadership, the ability to make wise risk-free decisions and collaboration with residents and their families, seems to be the answer.

No wonder in some facilities residents have left to stay somewhere else and reports were received that in some retirement villages housing units were given up for sale.

It is understandable that some of facilities that residents have moved out to go and live with family and friends. Some residential facilities are experiencing increased empty beds, some due to families removing family members. That the entire industry will experience a backlash, economically and socially, is a fact.

There is no doubt that facilities accommodating older persons are mostly the ones that experienced the most situations of conflict. Luckily, there are several facilities where residents, family members, management and staff work together as a team.

Let us unpack the important pieces of legislation:

## **THE CONSTITUTION OF SOUTH AFRICA ACT 108 OF 1996**

Please take note of the following:

- (i) **Clause 8 Application.** Paragraph (2) The Bill of Rights binds any natural or juristic person and any limitations must always respect human rights, equality, and freedom.
- (ii) **Clause 9 Equality.** Paragraph (3) is very clear and specific, that no form of discrimination, directly or indirectly will be allowed, based on race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. All South African are equal and there is no allowance to deviate from this fundamental principle.
- (iii) **Clause 10 Human Dignity.** Paragraph 10 is such a fundamental cornerstone that spells out everyone has the inherent dignity and the right to have their dignity respected and protected. It is one of the clauses that is totally non-negotiable and here is no place to make any exceptions.
- (iv) **Clause 22 Freedom of trade, occupation, and profession.** This means that within in certain limitations properly legislated, a citizen may choose and practice his or her

occupation, taking also into account Clause 24 which requires that the environment in which you may trade or conduct your work is not harmful to the health or well-being of others.

- (v) **Clause 32 Access to information.** It is important to remember that all citizens have the right to ask questions concerning their well-being and living from who by law is responsible to provide such information. Such request for information may not be denied. A separate Act regarding Access to Information cements this clause together with Clause 33 which refers to administrative action. This clearly means clearly that all questions posed provided it is lawful and reasonable, must be replied to.

**In conclusion, all leaders in facilities must ensure that they always operate within the parameters and directives of the Constitution of South Africa, especially the Bill of Rights.**

#### **THE OLDER PERSON'S ACT NO 13 OF 2006**

Please note the following:

This Act is the overriding/principal legal framework in respect to all persons over the age of 60 years.

The following are the most important clauses that must be always adhered to:

- (i) **Clause 2 Objects of the Act** - please note the following: all older persons can expect to be treated with dignity and their status, well-being, safety and security maintained and promoted. Of importance is to protect their rights and to prevent and combat any form of abuse, intimidation, and exploitation. The Bill of Rights is an unmovable cornerstone.
- (ii) **Clause 4 Application of the Act** clearly states that the Act binds both natural and juristic persons and it can be expected that the Act is applied consistently.
- (iii) **Clause 5 General Principles.** A wide range of principles must guide the implementation of the Act. Of importance is to always ensure that older persons are treated fairly and equitably and that any form of conflict must be avoided and if when it should happen that a reconciliatory approach be followed. This clause holds the risk that should Management promote conflict are not willing to resolve such conflict that they may be held liable and be charged under Chapter 5 Protection of Older Persons.
- (iv) **Clauses 6 to 9 forms part of Chapter 2 Creating an enabling and supportive environment for older persons.** Of importance is Clause 7 that inter alia states that older persons must be allowed to participate in community life
  - (a) Participate in activities that enhances his or her income-generating capacity (d) and access to opportunities that promote his or her optimal level of social, physical, mental, and emotional well-being (f).

- (v) **Chapter 5 deals specifically with Protection for older persons.** This chapter provides a wide variety of measures to protect older persons against any social, psychological, or economic abuse. Clause 30 (d) spells out that any person who “unreasonably deprive an older person from economic and financial resources which an older person requires out of necessity” may be brought before court and if found guilty and convicted that “such finding may be regarded as aggravating circumstances for sentencing purposes”

**The above information must always be understood and applied in respect to other pieces of legislation, like the Domestic Violence Act, Consumer Protection Act, Promotion of the Access to Information Act, the Protection from Harassment Act and Protection of Personal Information Act.**

The present gazetted lockdown rules may cause confusion as to how the information above may be interpreted. It is our experience in numerous similar situations that the focus of the lockdown rules should be understood and applied exclusively to contain the Covid-19 virus. Residents must be protected, that is a given fact, but the way the rules are applied can never strip residents from being human beings.

Therefore, the lockdown rules must be applied with respect to human dignity and existence and should always be consistent, fair and reasonable.

In order to achieve the above, the following actions are needed:

1. Determine the risk areas in your facility:
  - a. Establish the health baseline of your residents, i.e. who are the residents with a higher risk vs those with a lower risk. All residents cannot be treated equally. The information to determine the different levels of risks must be proved.
  - b. The movement of workers and care personnel in and out of the facilities are to be carefully managed.
  - c. People who have had contact with those who were in hospital, a clinic or even been in hospital and /or visited a doctor's rooms, could be at risk. Isolate residents who were in hospitals for the minimum period of 10 days.
2. Strict and consistent entrance control: The actions of sanitizing, the wearing of face masks, reading of temperatures, completing health questionnaires filling out trace-records, etc are advised.

3. Consider appointing a Compliance Officer who deals exclusively with the containment of the virus. This person must be able to give answers to questions raised and able to communicate clearly and in a friendly manner.
4. Communication is a key factor and must always be clear and transparent. Regular newsletters and or bulletins are advised. All communication must be handled through one single source.

It is imperative that residents have trust in their leaderships to such an extent that leadership can encourage and trust residents to act responsibly. Residents must be able to behave responsibly and remember that the virus is real and dangerous.

You are welcome to contact us if you have doubts and need more information.

Guideline drafted by Syd Eckley, Exco member of the Association of Retirement Facilities and endorsed by senior human right advocates

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