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WMCCAI'S MAGAZINE FOR COMMUNITY VOLUNTEER LEADERS, PROFESSIONAL MANAGERS, AND BUSINESS PARTNERS



Fair Housing and Community Associations

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The Fair Housing Act and Parking Accommodations

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As most of our fellow industry professionals who govern, manage, or represent community associations know, federal, state, and even local fair housing laws are relevant to the everyday governance and operations of community associations. And in community associations, perhaps no fair housing issues arise more frequently than those concerning parking rights.

In 1988, Congress extended the protections under the Fair Housing Act to persons with physical and mental disabilities. Under the fair housing laws, a housing provider that fails to make either “reasonable accommodations” or allow “reason-

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able modifications” for a disabled resident may be found to have discriminated against said resident. Housing providers are required to make “reasonable accommodations” to the provider’s normal rules, policies, practices, or services when such accommodations may be necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling. Similarly, housing providers must allow for reasonable “modifications” to units or common areas when necessary to afford the disabled person an equal right to use and enjoy a dwelling.

Assignment of Non-Deeded Parking Spaces

Perhaps the most common accommodation request by disabled residents is for the assignment or re-assignment of a parking space to a location which will better suit the disabled individual’s needs. The requested parking space may be nearer to the resident’s dwelling, provide an easier access route, be open on one side, etc.

Generally, where the board of an association is granted the right to assign/reassign parking or is *not* precluded from assigning or re-assigning parking, it is clear under fair housing laws that such assignment or re-assignment of parking would be deemed a required “reasonable accommodation.” (See the May 17, 2004 Joint Statement of the Department of Housing and Urban Development and the Department of Justice: “Reasonable Accommodations Under the Fair Housing Act.”)

Most boards and their advisors understand this basic obligation and the association’s need to provide for the accommodation regardless of the fact that the parking space may have been assigned by the board to another unit for years.

Re-Assignment of Limited Common Element or Deeded Parking

Unlike the situation involving general common parking spaces that have been assigned by the board, developers will often “sell”, “license” or otherwise commit specific parking spaces to specific units. These are often loosely referred to as “deeded” parking spaces or “limited common elements” since the individual owner’s deed to his/her unit or lot will often reference the specific parking space assigned to that unit.

In most cases, a board has no right or obligation to try and force the re-assignment of a deeded parking space to accommodate a disabled resident. While exchanges of parking spaces by willing owners may be brokered, there is nothing in the fair housing laws that purports to permit the taking of private property interests (i.e., the “exclusive” possessory and user rights) of one owner for use by another.¹

However, it should be noted that developers have begun to insert language in the original governing documents of newer community associations to allow (and even require) the board to re-assign deeded spaces where “necessary” to accommodate parking/access needs of disabled residents. Since this language is included in the original documents, all owners are deemed to be on notice of the potential for re-assignment of “their” deeded space. Thus, it is important to review (as with everything else) your association’s governing documents before announcing to a disabled resident that the board has no right to re-assign a deeded space.

Curb Cuts, Ramps, Paint, and Signage

Often, as part of a request for a parking space assignment, a disabled resident will also request a sign, ramp, or curb cut. The Department of Housing and Urban Development (HUD) has taken the position that such requests would be considered reasonable accommodations. (see Paragraph 12 of the March 5, 2008 Joint Statement of HUD and Department of Justice, Reasonable Modifications Under the Fair Housing Act).


Accommodation Costs

Associations must also understand that HUD clearly takes the position that when granting an accommodation the association may need to absorb the associated costs. Further, the accommodation request is not “unreasonable” simply because there will be some cost to the housing provider.

HUD has taken the position that ancillary costs associated with a reasonable accommodation are costs that the provider must bear unless the accommodation would impose an undue financial and administrative burden or fundamentally alter the nature of the housing provider’s operations (see 5/04 Joint Statement).

HUD has also taken the position that despite the fact certain actions (e.g., curb cuts) involve an alteration of the common areas; the provider may still be required to absorb the costs. HUD takes this position notwithstanding language in the Fair Housing Act stating that the disabled resident is responsible for the costs associated with “reasonable modifications” of the common areas. While this expansive interpretation may or may not be supported by the courts, often it is easier for the association to simply accept fiscal responsibility for the modification rather than chance a fair housing dispute.

Associations should be mindful that they are required to respond to requests for reasonable accommodations promptly. A failure to do so in timely fashion can be deemed a denial of the owner’s request for a reasonable accommodation and discrimination by itself. Furthermore, while an association may request that the resident provide reliable disability-related information that is necessary to discern that the resident meets the statutory definition of disability, an association may not ordinarily inquire as to the nature and severity of an individual’s disability (especially if it is obvious, i.e., a person who requires the use of a wheelchair, etc.).

Whenever your community receives correspondence from a resident that looks like it triggers fair housing issues, immediately forward the correspondence to your community’s legal counsel for advice on compliance. Boards should also check with the association’s insurance professional to verify that the association’s directors’ and officers’ liability insurance provides defense and coverage for fair housing act violation claims. 

¹ In Maryland, §11-109 (d) of the Maryland Condominium Act, provides that the council/association of a condominium shall have the power to “(22) designate parking for individuals with disabilities, notwithstanding any provision in the declaration, bylaws, or rules and regulations.” We have heard the argument that this provision empowers the association (acting through its board) with the right to force the exchange of deeded parking spaces if necessary to accommodate the disabled. We do not believe that it should be read in such a extreme or expansive way and certainly would raise property and constitutional questions if applied in that fashion.



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