

Hopkins • Tschetter • Sulzer  
Attorneys and Counselors at Law



# Landlord News

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## Exceptions to Services, Policies, or Practices – Uncommon Requests for Reasonable Accommodations

You are familiar with common reasonable accommodation requests. Everyone knows that a blind resident can have a guide dog. However, the multi-family industry still struggles with reasonable accommodation requests that are less common. This month we analyze an uncommon reasonable accommodation request made by a prospective resident.

The prospective resident is deaf. During the application process, the deaf prospect indicated that he was having difficulty understanding the lease. The prospect had questions about the lease documents, and wanted certain provisions of the lease explained. The prospect requested that the community obtain and pay for a sign interpreter to assist with his ability to understand the lease, and to answer his questions.

We advised the client to grant the request if not prohibitively expensive. We instructed the client to contact the applicant to determine if the applicant had a specific interpreter in mind. If the applicant wasn't requesting a specific interpreter, we instructed the client to locate an interpreter. We were able to find a host of potential interpreters on the internet in less than five minutes, and provided this information to the client. Because a sign interpreter would charge two hundred dollars or less to perform this service, we advised the client to grant the request.

Some may have fallen into the trap that the applicant was not entitled to an interpreter because the request was made during the application process, or because the request had nothing to do with the applicant's residency. Fair Housing laws are clear. An applicant can make a

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## LEGISLATURE HIKES COURT FILING FEES

Once again our lawmakers have raised fees. Something which would be better identified as a "hidden tax" on the multi-family housing industry rather than a fee. **On July 1st 2008 Senate Bill 206 will become law.** This legislation was introduced and passed by the legislature to create a fund to build a new Judicial Center and Colorado History Museum Complex. Unfortunately this new law will increase the fees our clients are now required to pay to County Court for landlord tenant issues. This law provides for an escalating incremental increase in court fees over the next three year period on July 1st 2008, 2009 and 2010.

Because of this new law and the increase in fees charged by the County Court, the Firm has no alternative other than to increase our Standard Residential Eviction Fee for first returns in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson and Larimer/Loveland Counties.



We regret that this increase occurs on short notice but those of us in the legal community who represent multi-family housing clients had very little ability to head-off this legislation because it had almost total bipartisan support of both the Senate and House. The law will become effective July 1, 2008.

A comparison with any firm in Denver demonstrates that we offer not only the highest quality service but the most cost-effective service as well. Our primary goals are to limit your lost rental days, to be available when you need us for legal advice, and to provide the highest level of client service. Hopkins Tschetter Sulzer is dedicated to serving the needs of the multi-family and rental industries.

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reasonable accommodation request during the application process. A reasonable accommodation is a request for an exception to a rule, policy, practice, or service because the disabled individual needs an exception to have an equal opportunity to use and enjoy the apartment. If a deaf applicant can't ask questions about a lease, the deaf applicant is denied the same opportunity non-disabled individuals have during the leasing process, and thus the same opportunity to use an apartment.

The courts have decided countless cases involving reasonable accommodations. Unfortunately, no court has ever published an opinion on this issue. A search of the HUD Fair Housing Administrative Law Database (HUD fair housing decisions) revealed that HUD had never issued a fair housing administrative decision directly on point. Thus, the outcome of the applicant's request turned entirely on the legal requirements set forth in the Fair Housing statute.

The legal requirements for granting any request for a reasonable accommodation can never be discussed too much. One, is the resident disabled as defined by Fair Housing laws. Two, is the accommodation necessary (is there a relationship between the request and the resident's disability). Three, is the request reasonable (practical and feasible). Four, does the request create an undue financial or administrative burden on the housing provider? Five, does the request require the housing provider to provide services that the provider does not normally provide?

The applicant met the first legal requirement of being disabled as defined by Fair Housing laws. The applicant's ability to communicate about the lease was impeded by his disability. Without a sign interpreter, the resident was unable to understand the lease on the same basis as non-disabled applicants. Some research indicates that it is often difficult for deaf applicants to read applications because eighty percent of all deaf applicants cannot read English above the fifth grade level. The applicant needed the accommodation and the accommodation was directly related to the applicant's disability.

Remember, a reasonable accommodation request can ask for an exception to a "service". At issue in this request was whether the community regularly provides the service of assisting prospective residents in understanding the lease. Because it is standard industry practice for leasing agents or other onsite personnel to assist residents in the leasing process by reviewing and explaining leases, the

answer to this question is YES. Because the industry regularly explains leases to applicants, the deaf applicant was not asking for the community to provide a service not normally provided to other applicants.

An argument could be made that communities do not normally provide "sign interpreter" services, but this begs the question. The policy and practice is to explain leases and to answer questions. Normally, this is done verbally, or by reading lease provisions. Because the applicant is deaf, this didn't work. For this reason the applicant asked for an interpreter or an "exception" to this policy, practice, or service of explaining leases to prospective residents. An exception to a policy, practice, or service is the definition of a request for a reasonable accommodation.



Our analysis then concentrated on the reasonableness of the request, including but not limited to, whether the request would cause an undue financial or administrative burden. HUD regulations don't define with any precision when a request is reasonable or not. HUD regulations do define requests as reasonable when a request is both "feasible" and "practical". Feasible meaning possible. The request to provide a sign interpreter was feasible because it was possible to get an interpreter. The issue of practicality frequently centers on monetary concerns, but not exclusively.

To determine whether fair housing laws require a proposed accommodation, courts generally balance the burdens the contemplated accommodation imposes on the community against the benefits to the applicant or resident. As a balancing test suggests, courts typically find



an accommodation reasonable when it imposes no undue financial or administrative hardships on the community, and when it does not undermine the basic purpose of the requirement. When passing the Fair Housing Act, Congress made it clear that

landlords may be required to incur reasonable costs to accommodate a disabled applicant or resident.

Neither the law nor courts have established a clear dollar figure that landlords may be required to shoulder in connection with granting reasonable accommodation requests. Courts determine undue financial and admin

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istrative burdens on a case by case basis using various factors including: cost of the requested accommodation; the financial resources of the housing provider; the benefits that the accommodation would provide to the requester; and the availability of alternative accommodations that would effectively meet the requester’s disability related needs. Because this particular client was a large national company with significant financial resources, the community could not reasonably argue that the reasonable accommodation request created an undue financial burden.

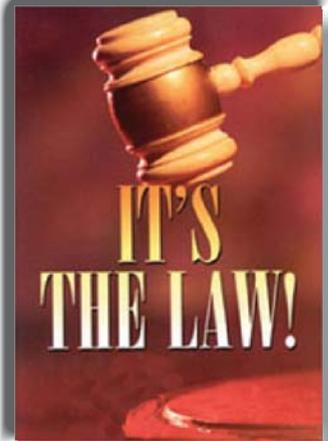


In addition to the legal requirements, litigation risk analysis also dictated that this particular request should be granted. The average cost to defend a Colorado Civil Rights Division housing discrimination charge runs from \$2800 to \$5000. The community was able to obtain an interpreter for a fraction of this amount. Further, given the somewhat unique and unusual nature of this request, it was possible that the applicant was a Fair Housing tester. Fair housing testers sole purpose is to try to set you up for a state or federal Fair Housing lawsuit. You will pay a minimum of \$15,000 in attorneys fees to defend a Fair Housing lawsuit in state or federal court.

Finally, as with all reasonable accommodation requests, granting this specific request did not bind this community in the future with respect to any future requests made by this applicant (if and when he became a resident), or any other applicant or resident. Too frequently, communities deny requests for reasonable accommodations because they are under the false impression that if they grant a request they will have to grant all future requests (if we give it to them, we have to give it to everyone). This is flawed reasoning. Requests for reasonable accommodations are highly fact specific and should be evaluated on a case by case basis. If the applicant became a resident, and requests that the community provide an interpreter in the future for other reasons, those requests should be dealt with at that time. Future requests may be more likely to involve “services” that the community does not regularly provide, or may be more likely to cause a “financial burden”, and thus may be declined. For example, communities do not regularly provide the service of sign interpreters for the community annual swimming party. But again, all requests have to be evaluated on a case-by-case basis at the time they are made.

# HTS SCHEDULES TRAINING WARRANTY OF HABITABILITY LAW

The passage of HB 1356 The Landlord Tenant Warranty of Habitability Legislation will create new issues with which multi-family housing owners and managers will have to become familiar. There are few who are more familiar with all of the nuances of this new law than HTS Senior Managing Partner Mark Tschetter who has been a key industry player in dealing with this legislation from the beginning. With the provisions of this law due to take effect on September 1, 2008 it is important to familiarize yourself with the requirements of this new law.



In order to provide our clients with the most informed perspective on this law HTS has scheduled a Legislative Briefing for our clients on the Warranty of Habitability Law on Tuesday, July 8. The briefing will be held at the Doubletree Hotel at I-225 and Iliff and will start at 9:00 a.m and is expected to be two-one-half hours in duration. We are holding this meeting off-site in order to accommodate a larger group. As always, this training event is FREE.

You can register to attend either by e-mail eve@htspc.com or by calling Eve at 303-699-3484. Even though this is a larger venue space is limited and we encourage early registration for this event.



**IMPORTANT JUNE DATES**

**JUNE 10** - Basic Eviction Workshop  
8:30 a.m. - noon

**June 18th** - Warranty of Habitability Briefing  
CAA Fort Collins Lincoln Center  
10:30 a.m. - 1:00 p.m.

**June 20th** - South Client Lunch  
Piccolo's  
11:30 a.m - 1:00 p.m.

# HTS AAMD TRADESHOW BOOTH A BIG SUCCESS

It was easy for HTS to get on board with the 2008 AAMD Tradeshow Theme of "Get Your Head In the Game" because our Firm Team always has their 'head in the game'



when it comes to representing our clients best interests.

Taking a page from John Elway's storied career as someone who always had his 'head in the game' we piggy-backed on his legend as

the theme of our booth. Our multi-media production and booth décor featured the accomplishments of the Bronco's under Elway and presented the all-pro performance of the Firm's dedicated legal team players.

A great time was had by all as our many clients and friends dropped by the booth to say hello and enter the drawing for our Tradeshow Prize.



**Diana Dammen, Sandpiper; Mark and Robbin Troutman check out the HTS Booth**



**Lynn McCarty, Holland Residential; Mark, Nancy Howland, Courtney Downs and Vic chat about the large turnout for the tradeshow**

# AND THE WINNER IS

Angela Vander Meyden of Holland Residential was the lucky winner of the Garmin nuvi 660 Personal Travel Assistant GPS that HTS gave away at the recent AAMD Tradeshow.



Angela is the Property Manager at Canterwood Apartments in Boulder. She started in the multi-family housing industry as a leasing agent ten years ago right out of high school. She loves the financial aspects of working at her property and

**Attorney Lindsay Jasper presents prize to Angela Vander Meyden**

enjoys the challenge to "beat her budget". Angela believes that one of the best things about her profession is the relationships she has with her residents. Her enthusiasm for her work is evident because her company also sends her to help out at properties in other states.

Husband Shane is also in the business and they are the parents of two little girls, Cynthia age 4 and Ella age 2. Good at multi-tasking and organization she makes it very clear that her very first priority will always be her family. An enthusiastic gardener, Angela is planning to re-landscape her yard this summer as well as keeping busy with her recently adopted baby Yorkie.



**Vic, Lynn Blue, Garden Center; and Mark visit about HTS services**

