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Landlord News

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THE ONLY RULE IS THAT EACH CASE IS UNIQUE

Clients call us all the time about reasonable accommodation requests made by their residents and prospective residents. Two recent reasonable accommodation requests illustrate the most important points about evaluating and handling reasonable accommodation requests. First, general rules don't apply. Second, evaluate each request on a case-by-case basis based on the specific facts of the request, and not based on prior or similar cases.

The first of the reasonable accommodation requests involved a husband and wife. At the time of their application, both requested close-up reserved parking spaces based on each of their disabilities. The community

needed to avoid the temptation to automatically limit the couple to a single close-up reserved space. We advised the community to evaluate the parking accommodation requests separately. The community needs to consider the wife and husband separately in deciding if reasonable accommodations should be granted. If the wife meets the definition of disability, needs the parking

accommodation, and the granting of the parking accommodation is reasonable, the wife should be granted a parking accommodation. Likewise for the husband.

If both the husband and wife are entitled to a parking accommodation (meet disability and need tests), the request for two spaces would likely have to be granted if the request is also reasonable. However, if based on the facts it is not reasonable, the community may not have to grant two separate parking accommodations for a single household. For example, while both husband and wife requested a close-up reserved spot, it may be unreasonable to grant each of them a close-up reserved spot if they only own one vehicle. Similarly, if parking is limited at

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AMBER APARTMENT ALERTS PROGRAM SUCCESSFUL

The AMBER Apartment Alerts Program that was started by Jim White, Regional Manager of Elkco Properties, is becoming a great success both in size of participating communities and in results. The AMBER Apartment Alerts is a program that distributes AMBER Alerts and other reports of missing or exploited children issued by our national and state law enforcement agencies. The alerts go directly to apartment communities in the areas where the reported missing or exploited children may be found, or in any areas where authorities believe such children may be enroute to.

The goal of the Program is to reunite missing children with their parent/guardian by assisting law enforcement with a directed search in apartment communities around the nation. AMBER Apartment Alerts is a registered and copyright protected trade name and all rights are reserved.

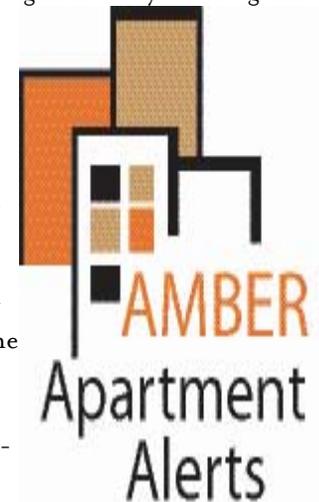
AMBER Apartment Alerts is different than many other alerts you may see in the news or from other groups such as news feeds, or subscription notification organizations that may or may not be legitimate AMBER Alerts.

The difference in the AMBER Apartment Alerts Program is that they will never send an alert that has not been generated by or has not been verified with:

- 1.** The National Center for Missing and Exploited Children (NCMEC)
- 2.** Individual State AMBER Alert Coordinators
- 3.** Local Law Enforcement

Many of Colorado's Apartment Associations are supporting the program and encouraging their members to participate in this valuable community service. Jim

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THE ONLY RULE IS THAT EACH CASE IS UNIQUE
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the community the community might conclude that providing two spots for a single household may be unreasonable. Remember, gather the facts, apply the test and keep options open for a continuing dialog.

The second recent reasonable accommodation request also involved a prospect and a request for a close-up reserved parking spot. An obviously mobility-impaired prospect requested that a parking space close to her desired unit be reserved exclusively for her use. The



prospect also requested an additional spot next to her reserved spot to be used as an access aisle. The community has a reserved parking policy. Specifically,

because parking is limited at the community, each unit has a corresponding reserved parking space.

Based on these facts, the community would negatively affect the rights of other residents if the community granted this request. Since all spots are reserved, the community could only give the prospect her desired space by forcing another resident to give up their space. Because the prospect also needed an access aisle, the community would also be forced to require an additional resident to give up their space by granting the request. The resident's request for an access aisle also prevented the alternative of residents trading parking spaces. If the prospect only needed one space, a proposed alternative would be to have another resident trade spots with the prospect. Because the prospect needed two spots, the trade was not feasible (you can't trade two spots for one).

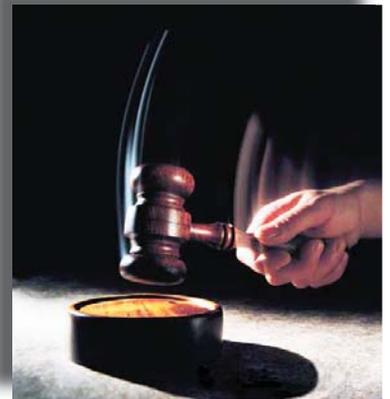
Are you allowed to negatively impact the rights and privileges of other residents by granting a reasonable accommodation to a disabled resident? Probably not. However, the legal answer is not clear. The Federal Fair Housing Act Amendments of 1988 made disability a protected class. A federal court decided one of the most



significant parking cases to date in 1995. In that case, the court commented that the court had never determined whether a disabled resident's request for a reasonable accommodation is allowed to negatively affect the rights and privileges of other residents. The court presented the issue and then failed to address the issue. In the fourteen years that have passed no court has directly answered this question.

Many courts have stated in general terms that disabled residents shouldn't be given preference over non-disabled residents. "An accommodation should not extend a preference to handicapped residents relative to other residents, as opposed to affording them equal opportunity. In other words, accommodations that go beyond affording a handicapped tenant an equal opportunity to use and enjoy a dwelling are not required by the act." Based on the facts of these cases, the courts' general statements are of little use. No case has specifically addressed under what circumstances a landlord must grant an accommodation if it negatively affects other residents' rights.

Moreover, the courts' statements that disabled residents shouldn't be given preference seem to conflict with the very nature of an accommodation. A reasonable accommodation is by definition an exception to a rule that



applies to all other residents. Thus, granting an accommodation frequently involves a disabled resident receiving something (a preference) that non-disabled residents aren't entitled to. Specific examples of such preferences are endless. One such example is that non-disabled residents are not entitled to pets or animals at a non-pet community. Disabled residents (if they meet the test) are entitled to assistive animals at non-pet communities.

Based on the facts, that all parking spots in the community are reserved and that two other residents would be negatively impacted by allowing the reasonable accommodation for one disabled resident, we advised the client in this second example that they could deny the resident's request because it was unreasonable. Regardless of the lack of clear legal precedent, requiring two residents to sacrifice their parking rights to grant an accommodation is not reasonable. While each request must be evaluated individually, our position is that accommodation requests cannot negatively affect the rights of other residents.

However, we caution against quickly and wrongly concluding that accommodation requests

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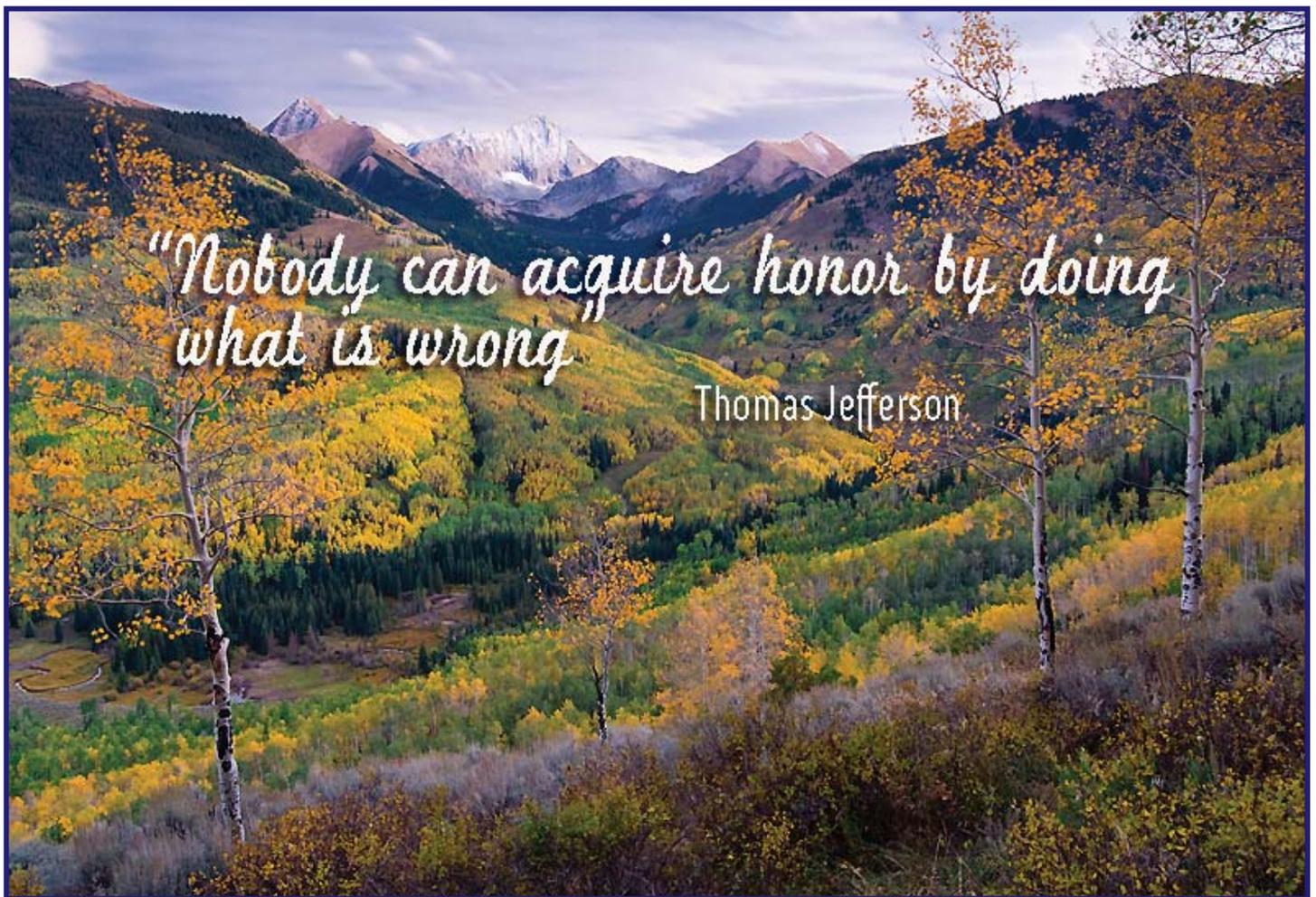
THE ONLY RULE IS THAT EACH CASE IS UNIQUE Continued From Page 2

automatically negatively impact the rights and privileges of other residents. Again, while most requests involve giving a preference to a disabled resident, most requests do not require sacrifices by other residents. For example, on a property with a first-come first-served parking policy, granting a disabled resident a close-up reserved parking space does give the disabled resident a preference over other non-disabled residents. However, the other residents' rights are not negatively affected. The other residents did have the possibility of parking in the close-up reserved parking space (before it was exclusively reserved for the disabled resident). However, the other residents had no guarantee that the parking space would be available for them to park their car on any given occasion.

Because reasonable accommodation requests are always determined by the facts on a case-by-case basis, the facts in each case are critical. Unless you know all of the facts, you cannot properly evaluate reasonable accommodation requests. Never respond to a resident's (prospect's) reasonable accommodation request without knowing all the facts, and evaluating those facts against the legal requirements. Changing one fact may totally change the outcome of a request. In the second example, if the prospect had requested two parking spaces (one to park and one for an access aisle) at a community with a first-come first-served parking policy, the request should have been granted. For these same reasons, you should also never respond to a resident's reasonable accommodation requests based on "general rules", what you have done in the past for other residents, or the community's decision on a past request even if the request sounds the same as the previous request.

Important Notice:

The Courts require that we notify them if residents are members of the military when a new case is filed. Please notify HTS staff of military status when your notice is faxed to our office. Note that there is a place on our new eviction fax cover where you can indicate military status. The cover sheet is available on the HTS website htspc.com.



THINGS MY MOTHER TAUGHT ME

My mother taught me TO APPRECIATE A JOB WELL DONE -

"If you're going to kill each other, do it outside - I just finished cleaning!"

My mother taught me RELIGION -

"You better pray that will come out of the carpet."

My mother taught me about TIME TRAVEL -

"If you don't straighten up, I'm going to knock you into the middle of next week!"

My mother taught me LOGIC:

"Because I said so, that's why."

My mother taught me FORESIGHT -

"Make sure you wear clean underwear, in case you're in an accident."

My mother taught me IRONY -

*"Keep laughing and I'll *give* you something to cry about."*

My mother taught me about the science of OSMOSIS -

"Shut your mouth and eat your supper!"

My mother taught me about CONTORTIONISM -

*"Will you *look* at the dirt on the back of your neck!"*

My mother taught me about STAMINA -

"You'll sit there 'til all that spinach is finished."

My mother taught me about WEATHER -

"It looks as if a tornado swept through your room."

My mother taught me how to solve PHYSICS PROBLEMS -

"If I yelled because I saw a meteor coming toward you; would you listen then?"

My mother taught me about HYPOCRISY -

"If I've told you once, I've told you a million times - Don't Exaggerate!!!"

My mother taught me THE CIRCLE OF LIFE -

"I brought you into this world, and I can take you out."

My mother taught me about BEHAVIOR MODIFICATION -

"Stop acting like your father!"

My mother taught me about ENVY -

"There are millions of less fortunate children in this world who don't have wonderful parents like you do!"

THANKS, MOM

AMBER APARTMENT ALERTS PROGRAM SUCCESSFUL **Continued From Page 1**

White exemplifies the "One Person Can Make A Difference" motto of the organization that he founded. Starting with just an idea, AMBER Apartment Alerts now covers 27 states and 190 Industry Associations with an outreach capacity of approximately 7 million apartment units. Recently the Aurora Police Department and the Colorado Bureau of Investigation have sought assistance from the AMBER Apartment Alerts Program. With new apartment communities signing up daily we commend Jim on his success and encourage all of our clients to look into becoming a part of this vital program. You can reach the organization at amberapartmentalerts.web.officelive.com.



IMPORTANT HTS SEPTEMBER DATES

- September 7th - **All Courts Closed
HTS Closed
Labor Day Holiday**
- September 9th - Evictions Bootcamp
Subsidized Housing
8:30 a.m. - Noon
HTS Lower Level
Conference Center
- September 10th - Basic Evictions
Colorado Springs
AASC Call for Information
9:00 a.m. - 11:30 p.m.
- September 10th - Colorado Springs
Client Lunch
Ritz Grill
15 S. Tejon Street
11:30 a.m. - 100 p.m.
- September 15th - Basic Fair Housing
8:30 a.m. - Noon
HTS Lower Level
Conference Center
- September 18th - North Client Luncheon
Dave & Busters
Westminster
11:30 a.m. - 1:00 p.m.