

# CAREGIVER PARKING REQUESTS - Yet Another Twist

Disabled residents who need parking accommodations are entitled to them. Period! However, similar to other reasonable accommodation requests, parking requests are not always straightforward. An accommodation request involves a highly specific factual inquiry. The law requires accommodation requests to be evaluated on a case-by-case basis. As a result, reasonable accommodation possibilities are literally endless. One scenario is the **caregiver parking request**. Firm clients report that accommodation requests for caregiver parking are becoming more common.

When does a caregiver parking accommodation request occur? Caregiver parking requests occur when the resident doesn't have a car and doesn't even drive for that matter. *The resident doesn't drive!* Why in the world would the resident need a handicapped parking space or a close-up reserved space? Even though the resident doesn't drive or have a car, the resident may need and be entitled to a parking accommodation because the caregiver drives the resident. This does not automatically mean the caregiver is entitled to a parking space. However, because the resident is disabled, the resident may need either a close-up reserved parking space or maybe just a convenient and safe loading area. A caregiver parking request occurs when a disabled non-driving resident requests a parking accommodation to facilitate their transport.

Based on the nature of this request, many managers may tend to jump the gun and immediately deny the request. Managers may jump the gun and improperly deny the request because they mistakenly conclude that the parking accommodation is for the caregiver. After all, you must only accommodate disabled residents, not their caregivers. The resident doesn't have a car and doesn't drive, and therefore does not need a parking accommodation. The community is under no obligation to provide the caregiver with a convenient close-up space. This line of reasoning is flawed and may lead to a discrimination charge against the community. Even though the caregiver will park in the space, the space is ultimately for the use and benefit of the disabled resident.

When you receive a caregiver parking accommodation request, you should always

remember the key principles in handling all accommodation requests. First, and always, proceed cautiously. An ounce of caution is always worth a pound of cure. **Never, repeat never,** immediately or arbitrarily deny a reasonable accommodation request without careful and thoughtful analysis. Even if you justifiably believe that the disabled resident wants the parking spot for no other reason than to give the resident's friends, family, and visitors a permanent close-up reserved spot for when they visit.

You have done the right thing. You have told the resident that your community is committed to following all Fair Housing laws. Of course, the community considers all requests for reasonable accommodations. So where do you begin? As always, the first issue is whether or not the resident is disabled within the meaning of the Fair Housing Laws. The resident's disability may not be apparent because they do not have handicapped parking credentials. As in all cases, if the resident's disability is not obvious, you may ask for further information (documentation) on this issue. If the resident's disability is obvious, you cannot ask for further information on this issue. If the resident is not disabled, you may safely deny the request.

For the rest of the discussion, we will assume the following facts. Resident is disabled (meets definition of disability under the Fair Housing Laws), does not have a driver's license or a car, and has told you that they do not drive. Resident has a caretaker or other person(s) that assist in the driving and transportation of resident. Remember, a driver doesn't necessarily have to be a "caregiver." Any person, especially friends and family, can assist in the transportation of a disabled resident. The caretaker, from time to time, drives disabled resident on errands and transports the resident to other destinations. The disabled resident has asked for a parking accommodation to facilitate the disabled resident being transported.

Based on these facts, do you have to grant the resident's request for a parking accommodation? Maybe. Because it is assumed that the resident is disabled, the primary issues are now whether or not the parking accommodation is necessary and reasonable under the circumstances. Does the resident need the parking accommodation (a close-up reserved spot for the caretaker) in order to be able to use and enjoy the community on the same basis as a non-disabled resident? Maybe, maybe

not.

For the resident to need the parking spot for the caregiver, there must be a relationship between the resident's disability and the requested accommodation. If there is no relationship between the resident's disability and need for the spot, then you do not have to grant the accommodation. The key is whether the resident needs the spot independent of the caregiver's need for the spot. To determine the resident's independent need, you should look at a host of factors, including the key and feasible alternative of an existing loading zone.

Remember, the key issue is safe and convenient transport, and not parking because the resident doesn't drive or even own a car. Does a convenient and safe loading area or zone (pull-up area) already exist? If so, the resident should be asked in writing why the resident cannot load for transport from this area. If no pull-up area exists, is it possible to create one? Or, is the only alternative to dedicate a close up reserved parking space for the resident that will only be used when the caretaker transports the resident? If it is possible to create a pull-up area, would the creation of a pull-up area be satisfactory to the resident? If not, why not? If the resident lives far from the front and the pull-up is in front, but resident is wheelchair bound and has to go to the front to use elevators, then these logical facts should be discussed with the resident. In other words, based on these facts, why won't the pull-up area in the front work for the resident because that is where the resident has to exit the building?

How mobile is the disabled resident? The resident needs to be driven, but does the resident also need assistance getting to the vehicle? If the caregiver has to assist the resident getting to the vehicle, the caregiver can't go get and pull up the car because they are already assisting the resident.

What is the physical layout of the building and the community? Is there a place for the caretaker to pull the car up? Is the place to pull up the car close to where a non-disabled resident would exit the building to go to his car if he lived in the disabled resident's unit? Can the disabled resident use this same route? Or does the disabled resident have to travel an extra or lengthy distance to a safe and convenient pull-up area? Is it possible to put in a pull-up area or reserve a parking space where it is most

convenient and safe for the disabled resident to be get in and out of the vehicle?

Remember, if an accommodation is not practical or feasible, it is not reasonable under the Fair Housing regulations and the request does not have to be granted.

If the answers to any of the questions discussed above is not known, then you should respond to the resident in writing stating that the resident's disability is not at issue (remember for our discussion the resident is presumed to be disabled), that you are not denying the request, but you need more information on the resident's need for the accommodation. Any response other than granting the request needs to be carefully crafted. If you are going to ask for further information, you should carefully evaluate whether you already have that information.

Don't ask for information you already have or should know. For example, if you have seen the caregiver assist the resident to the car, don't ask if the caregiver needs to assist. If it's obvious that there is no convenient and safe pull-up area, don't ask or inquire. You should start by carefully examining and analyzing the community layout as it relates to where the space would be (is asked for), the existence and location of any safe pull-up areas, where the ideal pull-up area or space would be, and how the resident would get to either a reserved space or pull-up area.

Assuming that critical facts are not obvious or known, you should request more information from the resident in writing. Make sure to detail your understanding of the situation, the facts upon which your understanding is based, and encourage the resident to clarify his request or correct erroneous facts, and to inform you of any additional facts that support the resident's need for the accommodation. By giving the resident the opportunity to respond and clarify the record, you are committed to promoting the legally required continuing dialog with the resident. You should include all facts that you know either based on obvious observation or based upon what the resident has told you.

Here is an example of such language. You have asked for a close-up reserved parking space. If this is not your exact request, please let us know your exact request. Regarding your request, we are aware of the following facts. You told us that you don't drive and don't have a car. A caregiver drives you. If you're not aware, the community

has a designated safe loading zone in front of your building. Based upon our observation, you do not have any apparent difficulty in walking, and have not needed assistance in getting to the car. If our understanding is incorrect for any reason, please advise us and feel free to provide any additional facts that you would like us to consider. We are not denying your request, but are requesting further information regarding your need for this accommodation. We will promptly evaluate all further information upon receipt. We are committed to maintaining a continuing dialog with you until your request has been satisfactorily addressed.

If the answers to critical questions are known or obvious, and the facts do not support the granting of the request, then the request can be denied. However, the request should only be denied if, you know that the resident does not require any assistance to get to the car, the resident doesn't have to travel very far to get to the car, and there is convenient and safe pull-up area close to where the resident would logically exit the building to meet the driver. Even if you are confident in your denial, you should always inform the resident of the facts upon which your decision is based, that you would always reconsider upon the receipt of any additional or new facts, and that you are always open to discussing the resident's request further (maintaining a dialog).

If you conclude that it is impossible to locate either a reserved space or a pull-up area either where the resident has asked or where one would ideally be located, you should inform the resident and offer alternatives. Specifically, you should explain to the resident in writing why the requested accommodation is not feasible or practical, that you are not denying the request, but rather want to continue discussing the matter with the resident so that the resident can be satisfactorily accommodated.

Finally, if the answers to critical questions are obvious, the resident needs the accommodation, and the accommodation is possible, just grant the request. Depending on what they asked for and the facts, either give them a close up reserved space or install a safe pull-up area. If you're not sure what works for them, ask them what would be satisfactory. In many cases, a safe pull-up area would be preferable because other similarly disabled residents could utilize the pull-up area for the same purposes.

Remember, a caregiver doesn't have to be a nurse or a medical provider. In considering a caregiver parking request, a caregiver is any person who assists in transporting the disabled resident, especially including any friends or family.