Volume 9 • Issue 2 FEBRUARY 2007

Hopkins • Tschetter • Sulzer
Attorneys and Counselors at Law

Landlord News

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DISABILITY MODIFICATIONS - WHO FOOTS THE BILL?

Firm clients have endless fair housing issues. These issues arise in a variety of contexts. Sometimes clients contact us to answer fair housing questions or to advise them on how to properly handle a fair housing situation. Unfortunately, too many fair housing issues arise when clients engage the Firm to defend them against discrimination complaints filed with the Colorado Civil Rights Division or HUD. Because we are dedicated to educating our clients and the property management industry on fair housing issues, we continually write about our fair housing experiences. Fair housing issues involving disabled residents continue to rise. Frequently, fair housing questions involve reasonable modifications. Specifically, assuming that a resident is entitled to a reasonable modification, and the resident is both disabled and needs the modification, who has to pay for the modification? Does the resident have to pay? Or do you have to pay?

Civil Rights Division

Prior to discussing payment responsibility, you should be aware of the differences between "reasonable modifications" and "reasonable accommodations." When disabled residents ask for modifications, they are asking for something different than an accommodation. A reasonable accommodation request occurs when a disabled resident asks for an exception to one of your policies, practices, rules or procedures (e.g. a lease provision). A reasonable modification occurs when a disabled residents ask for a physical change to the property that will allow the resident to equally enjoy the property on the same basis as non-disabled residents. The distinction between modification and accommodation requests is an important one because it determines who has to bear the financial costs associated with the request.

Under federal and state fair housing laws, housing providers are expected to shoulder some costs associated with accommodation requests. The costs must be reasonable. Reasonableness is determined on a case by case basis. Generally, costs cannot cause an undue financial burden. Additionally, as a general rule, you do not have to incur costs in association with accommodation requests if the costs would be incurred as a result of fundamentally altering the services that the property normally provides. Accommodation cost related issues can be very complex. For this reason, we will address them in much greater detail in a future article.

Who has to pay for physical modifications is generally much more straightforward. If a property receives no federal funds, then the Fair

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The HTS Lions Never Sleep

The Apartment Association of Colorado Springs recognizes the fact that the multi-family industry can sometimes be a perilous environment in which to operate. That is why the theme of its 2007 Education Conference and Expo is "It's a Jungle Out There." As a primary sponsor, the Firm is pleased that we have been designated 'The King of the Jungle' by the AACS. In the eviction jungle, Hopkins Tschetter Sulzer is king! Come hear us "ROOOAAARRR" and visit our Pride of Legal Lions at the AACS's Education Conference and Expo.

The tradeshow/expo will be held at the Sheraton Hotel in Colorado Springs from 8 am to 5 pm on the 16th of February. This is a wonderful opportunity for property managers to network with their peers in the industry and talk with our attorneys. Be sure to stop by our booth to catch up on what's new in the industry and register to win a 4gb iPod. The entry that comes closest to guessing in our game will win the prize. Entrants will also be eligible for two other fun prizes. For more information about the event, contact Carlene the AACS at 719-264-9195. We look forward to seeing you there!

DISABILITY MODIFICATIONS - WHO FOOTS THE BILL?

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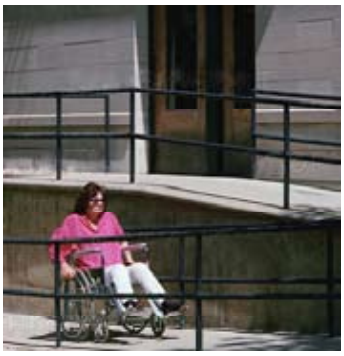
Housing Act applies. Under the Fair Housing Act, the housing provider can make the resident pay for the modification. If however, the property receives some sort of federal funding, then the Rehabilitation Act of 1973 applies. What is known as Section 504 of this federal law and the accompanying federal regulations state that housing providers must pay for the cost of modifications if they are the recipient of federal assistance. Most housing providers who receive some sort of federal funding are aware that they may have to pay for modifications when it is reasonable to do so.

Client questions about payment for modifications frequently involve the Section 8 program. If you have Section 8 residents, does that make you a recipient of federal funds and, thus, obligating you to pay for modifications for disabled residents? A Section 8 resident has qualified for federal housing assistance and receives a "housing voucher." These vouchers are a form of documentation that prove that the individual receives housing assistance through housing authority programs. Many properties do accept applicants with Section 8 vouchers. Under governing federal regulations, if you do accept Section 8 residents, this does not mean that you are a "recipient of federal assistance" for modication purposes. Applicable regulations specifically provide that "an entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or sub-recipient merely by virtue of receipt of such payments." 24 C.F.R. §8.24.

If a housing provider is a recipient of federal assistance and has to pay for a reasonable modification, then there is always an issue as to whether it is reasonable for the provider to do so. This issue usually comes down to the actual cost of the modification and the financial resources of the housing provider. Whether the expense of a modification is reasonable depends on many factors such as the revenue that the housing provider generates, its annual budget, and whether the modification would violate some local ordinance or endanger others. Because these issues can be involved, we recommend for Firm clients to discuss these issues with us.



Fair housing advocates are constantly developing new legal tactics. We have recently encountered the "it's not a request for a modification, but rather a request for a reasonable accommodation" argument. Some disability advocates have recently tried to argue that modification requests are actually accommodation requests. If a request is not a modification request, but rather an accommodation request, then you have to pay the cost. Disability advocates make this argument to shift the cost burden from the resident to you. When we confronted attorneys and disability advocates on this argument, they were not able to provide any legal justification for this argument. Any request for physical alterations (hammer and nails items) is a request for a reasonable modification. You do not have to pay the cost for a modification request simply because someone has labeled it as a request for a "reasonable accommodation."

Finally, while not required to pay for reasonable modifications, many Firm clients pay for minor modifications. Management pays for modifications for various reasons including convenience and to promote resident goodwill. Typical examples of modifications frequently paid for by property managers include the installation of grab bars, doorknobs, and door bells. Make sure that all employees are aware of your policy. Consistency is essential in fair housing. If your policy is to pay for minor modifications and you have done so in the past, an employee should not tell a disabled resident that they have to pay for a modification covered by your policy.

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FIRM LUNCHEONS FEATURE TIMELY INDUSTRY NEWS

The first Firm Lunch of the Year held at the Rock Bottom Brewery enjoyed a large turnout. Senior Managing Partner Mark Tschetter discussed the issue of Bedbugs and other initiatives that might impact our clients. He also fielded a number of questions on current problems experienced by some of the attendees. The lunches continue to provide an excellent forum for our clients to ask the attorneys questions and also exchange information with other peers in the apartment management community.

The February Firm lunch is scheduled for Friday February 23rd at Piccolos. If you need directions, go to our website, visit the events page, and click on the date and it will provide you with the address and a map. To make reservations, visit the events calendar on our website (www.htspc.com) or contact Rebecca at 303-699-3484 or rebecca@htspc.com.

A.R.E.-- AGREEMENT REGARDING EVICTION PAYMENTS

As a rule, the Firm does not recommend A.R.E.'s or payment agreements prior to the filing of an eviction case for the following reasons:

Some judges will not enforce payment agreements. We want to make sure that if you use a payment agreement, you are aware of this fact. Specifically, a substantial body of Colorado law supports the conclusion that if you are evicting a tenant based upon a three day demand for rent or possession, any acceptance of rent after the three day demand period but prior to the entry of judgment results in Landlord having waived his or her right to evict based upon current three day notice, and thus requires Landlord to repost for remaining balance.

However, some judges will hold that your payment agreement overrides this, and these judges will state that your payment agreement is OK and will enforce the agreement.

The majority of judges (and the better-reasoned legal position, in our opinion, based on the law) hold that payment agreements may not be structured or written as to change the law. If there is no payment agreement, the law is clear. If you accept money after posting a three day demand for rent, then you must repost. Based on this, the majority of judges hold that this rule of law may not be altered or changed by a payment agreement. The judges rule this way because of the case law and because the eviction statute states that no lease provision can override tenant's right to at least three day demand for rent or possession on any outstanding balance. C.R.S., § 13-40-104(d).

Many clients think that a payment agreement has nothing to do with the resident's lease. But when you really think about it, a payment agreement is nothing more than an amendment or addendum to the resident's lease, (i.e. you were supposed to pay $X on the first, but now we are agreeing to the following payment terms). For the foregoing reasons, use of payment agreements can be problematic. If a tenant challenges it, you may have to start over. Worst case scenario, tenants could attempt to sue based on agreement, (i.e. you evicted them per agreement, agreement is not enforceable, and thus you wrongfully evicted them).

With all of the foregoing said, many clients still are willing to take the various risks associated with payment agreements, and thus use them. Not all payment agreements are created equally. If you are going to insist on using a payment agreement, then we have made various improvements and changes to payment agreement forms that we have seen. One of the biggest potential pitfalls of using a payment agreement is the payment issue. Specifically, the resident agrees to make payments, they don't pay, and you move them out pursuant to your rights under the payment agreement. However, the resident later argues that they made the payment and you evicted them anyway.

The fact of the matter is that the resident never made the payment. For this reason, any payment agreement should specifically address the method of payment to avoid the resident arguing that they made the payment when they never did. Our payment agreement addresses this issue. A copy of the payment agreement we would use if we did use one is on our website as noted above.

For the reasons discussed, we recommend using an A.R.E. after a three day notice has expired and the court case is filed. The A.R.E. is both a stipulation and a court order in your existing case. After you have worked out the payment terms with your resident, fill in all of the blank lines on the A.R.E. This includes the case information (you can get this information from our office), the resident's address, and payment dates and amounts. After the information is filled in, allow the resident(s) to read the A.R.E. and then sign the A.R.E. You will also need to sign the agreement. Send the A.R.E. to our office via fax and we will file the A.R.E. with the court. If the resident defaults on any payment, let us know and we will take over from there. We are required to notice the resident into court upon a default. If the resident makes all payments as agreed, let us know and we will dismiss the case. The A.R.E. form can be found on our website www.htspc.com, under Documents – General Forms. If you have any further questions regarding the agreement, or any other questions or needs, please do not hesitate to contact the Firm.

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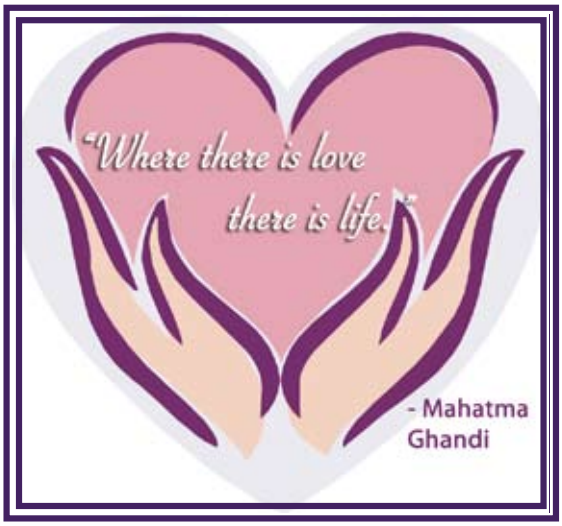


IMPORTANT FEBRUARY DATES

February 13th - Non-Monetary Evictions Workshop

February 16th - AACS Educational Conference and Expo

February 19th - President's Day Courts Closed

February 20th - Advanced Fair Housing Workshop

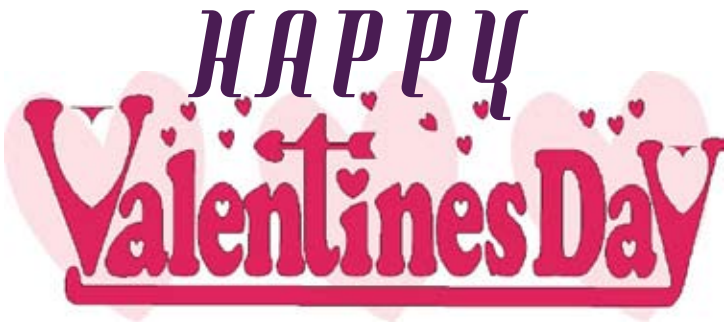
February 23rd - Client Luncheon

Advanced Education Workshops

Think you know all about the basics of Fair Housing and the Evictions Process? Then do we have the workshops for you! This February, our workshops are for those who wish to probe a little deeper into these property management issues and have their more complex questions answered.

Continue your education with the Advanced Non-Monetary Evictions seminar on February 13th and the Advanced Fair Housing class on February 20th. As always, these workshops are held from 8:30 am until noon at our office's neighboring building, Pavilion Tower I, off Parker Road. It always helps to learn all you can in order to prevent legal issues in your company as the interpretations of Fair Housing Law and Eviction Law are always evolving.

And remember, space is limited, so register today by visiting the events calendar on our website (www.htspc.com) or contacting Rebecca at rebecca@htspc.com or 303-699-3484.



Confused???

Is it bad if a vacuum really sucks?

Why is the third hand on the watch called the second hand?

If a word is misspelled in the dictionary, how would we ever know?

If Webster wrote the first dictionary, where did he find the words?

Why do we say something is out of whack? What is a whack?

Why do "slow down" and "slow up" mean the same thing?

Why do "fat chance" and "slim chance" mean the same thing?

Why do "tug" boats push their barges?

Why do we sing "Take me out to the ball game" when we are already there?

Why are they called "stands" when they are made for sitting?

Why is it called "after dark" when it really is "after light"?

Doesn't "expecting the unexpected" make the unexpected expected?

Why are a "wise man" and a "wise guy" opposites?

Why do "overlook" and "oversee" mean opposite things?

Why is "phonics" not spelled the way it sounds?

If work is so terrific, why do they have to pay you to do it?

If all the world is a stage, where is the audience sitting?

Why is bra singular and panties plural?

Why do you press harder on the buttons of a remote control when you know the batteries are dead?

Why do we put suits in garment bags and garments in a suitcase?

Why is "abbreviated" such a long word?

Why doesn't glue stick to the inside of the bottle?

Why do they call it a TV set when you only have one?

Christmas - What other time of the year do you sit in front of a dead tree and eat candy out of your socks?