

# Landlord News

2821 South Parker Road, Pavilion Tower II Suite 228, Aurora, Colorado 80014

htsnews@htspc.com

www.htspc.com

Denver Phone 303.766.8004

FAX Completed Eviction Forms To: 303.766.1181 or 303.766.1819

Colorado Springs Phone 719.550.8004

FAX Completed Eviction Forms To: 719.227.1181

## MEDICAL MARIJUANA: A Fair Housing Accommodation??

Disabled residents are entitled to make reasonable accommodation requests. The Firm sees the full gambit of requests. Just when we think we have seen them all, residents make new and different requests. One request made with increasing frequency is the request to smoke marijuana. Specifically, a disabled resident informs the property that he has a Colorado pot card and thus is legally allowed to smoke pot, and therefore wants



an exception to the community's drug free policy. Is a resident's request to smoke marijuana a valid reasonable accommodation request? In the final analysis, no. However, because Colorado law conflicts with

Federal law, the answer is not a simple one.

Under both Colorado and Federal law, disabled applicants and residents are entitled to make reasonable accommodation requests. The Colorado Fair Housing Act ("CFHA") makes it unlawful for a landlord to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. The Federal Fair Housing Act ("FFHA") contains nearly duplicate language.

In evaluating reasonable accommodation requests both under Colorado and Federal law, the same analysis applies. First and always, is the resident disabled within the meaning of the fair housing laws? Second, is the requested accommodation necessary for the disabled resident to use and enjoy the community on an equal basis as a non-disabled resident? Third, is the requested accommodation reasonable? Fourth, does the requested accommodation result in an undue financial or administrative burden on the community, or will the request result in a fundamental alteration of the community's services or programs?

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## HTS Knights Prove Triumphant at AAMD Tradeshow

On Thursday, May 10th, the valiant Knights of the HTS legal roundtable proclaiming that they were

the "Defenders of the Realm of Apartment Owners and Managers" unveiled their medieval themed castle booth at the AAMD Annual Tradeshow and Educational Expo.

This year's theme of "Bestsellers: Reading, Writing, and Renting"

lead to the Firm's booth theme: King Arthur and the



**Vic & Mark Show Off Booth Trophy  
Awarded to HTS to Evictions Manager  
Tracy Gallagos**

Knights of the Roundtable, from the timeless novel *Le Mort d'Arthur* by Sir Thomas Malory. The Firm believed that the allegory of 'Arthur' was a perfect fit for HTS since it is predicated on the principle of "might



for right" and "justice under law."

The 'castle' walls of the booth were hung with authentic traditional heraldic banners. Individual Coat of Arms battle shields designed for each attorney also adorned our castle walls.

Along with a bejeweled replica of Excalibur and the Chalice, our castle also boasted a life-size knight in full suit of armor. The arduous decoration efforts of HTS did not go unnoticed, and coupled with our custom multi-media slideshow presentation, which carefully



**AAMD President Drake Powell  
& Mark Talk About Success of  
Tradeshow**

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# MEDICAL MARIJUANA: A Fair Housing Accommodation??

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Under Federal law, disabled residents are not entitled to smoke pot as a reasonable accommodation (an exception) to the community's drug free policies or other lease provisions. The analysis is straightforward. Remember, to be entitled to a reasonable accommodation under Federal law, the resident must be disabled. Under Federal law, handicap means a physical or mental impairment which substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, Federal regulations specifically state that the definition of handicap does not include current, illegal use of or addiction to a controlled substance.



Under Federal law, marijuana is defined as a Schedule I controlled substance under the Federal Controlled Substance Act ("CSA"). Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment. Thus, any use or possession of marijuana is illegal under Federal law. As discussed below, many states, including Colorado, have adopted medical marijuana laws. However, Federal law contains no exceptions, making the possession or use of marijuana illegal under Federal law. Further, the United States Supreme Court has specifically held that the CSA which criminalizes the manufacture, distribution, or possession of marijuana was not overridden by the State of California's Compassionate Use Act ("CCA") which authorized the limited use of marijuana for medical purposes.

Under Colorado law, disabled residents can make at least a legally viable argument that they should be allowed to smoke pot as a reasonable accommodation. Colorado law similarly defines handicap for fair housing purposes. However, Colorado does not exclude illegal drug use from the definition of handicap. Colorado only excludes from the definition of mental impairment persons currently involved in the illegal use of or addiction to a controlled substance. Regardless, under Colorado law, certain individuals are legally allowed to smoke pot.



Colorado is one of nearly a dozen states that currently have a state statute authorizing the use of medical marijuana. In addition, in 2005, the City of

Denver legalized the possession of less than one ounce of marijuana. In 2000, the Colorado Constitution was amended to allow medical use of marijuana for individuals suffering from debilitating medical conditions. The Colorado Constitution specifically authorizes the use of marijuana to alleviate certain debilitating medical conditions: cancer, glaucoma, HIV/AIDS positive, cachexia, severe pain, severe nausea, seizures including those that are characteristic of epilepsy, or persistent muscle spasms including those that are characteristic of multiple sclerosis. Id. at 1(a). To legally use and possess medical marijuana, an individual must obtain a Registry identification card from the Colorado Department of Public Health and Environment ("CDPHE").

Because of the conflict between Federal and Colorado law on the illegality of marijuana, there is no definitive legal answer whether you must grant a resident's reasonable accommodation request to smoke pot. While you may clearly deny the request under Federal law, a disabled resident may argue that medical use should be allowed as a disability accommodation because it is legal under Colorado law. No Colorado court has

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# How Do I Evict Non-Compliant Residents?

Sure, evicting your tenants for not paying their rent is pretty cut and dry. Many of you have been doing it for years. But what happens when you get complaints that a particular tenant's apartment smells of marijuana smoke? How do you post a notice when you are afraid of being confronted by an aggressive tenant? When do you use a subsequent violation notice vs. a substantial violation notice?

For these tricky evictions that are NOT rent-related, HTS will be holding a Non-Monetary Evictions workshop on Tuesday, June 12th from 8:30 am until noon at Pavilion Tower I off Parker Road. This class is FREE for all current or potential clients of the Firm. Get your most difficult eviction questions answered by Firm Partner Vic



Sulzer, who will detail how to make your lease foolproof in evicting your non-complying residents. After attending this class, you will know when to use which notice, the new domestic violence laws, and much more! To register, contact Rebecca at 303-699-3484 or rebecca@htspc.com, or visit the Events page of our website (www.htspc.com).



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addressed the medical marijuana in a fair housing context. The Colorado Constitution also fails to address fair housing issues as they relate to the use of medical marijuana. However, the Colorado Constitution does specifically address accommodation issues within the employment arena by stating, "Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place."

You can safely deny any resident's request to smoke pot as a reasonable accommodation if the resident fails to produce a valid registration card. Without a registry identification card issued by the CDPHE, any use of "medical marijuana" is considered illegal under Colorado law. In regard to the limited exception to this rule, i.e. the Denver ordinance permitting possession of less than one ounce, the Denver District Attorney's office has stated they will continue to enforce State law.



Even though there is no definitive legal answer because of the conflict between Federal and Colorado law, the much stronger and better reasoned legal position is that you may deny a resident's reasonable accommodation request to smoke pot. Federal law en-

forcement agencies can clearly punish Colorado residents under federal law for medical use or cultivation which would otherwise be legal under state or local law. Because Federal law makes possession or use of marijuana illegal, you can not be expected to allow the violation of Federal law on a rental property as a "reasonable accommodation" for a disabled tenant even if such an accommodation is required by state law.

Courts deciding employment cases involving similar medical marijuana issues have supported this reasoning. Because the possession and use of marijuana is illegal under Federal law, a court has no legitimate authority to require an employer to accommodate an employee's use of marijuana, even if it is for medical purposes and thus legal under state law. The Americans with Disabilities Act requires only reasonable accommodation for an employee's disability, and it is not reasonable to require an employer to accommodate a disability by allowing an employee's drug use when such use is illegal. Federal law making marijuana illegal preempts a person's claim that his employer must accommodate his medical use of marijuana. State law cannot require what Federal law prohibits; when the two laws conflict, Federal law controls.



## HTS HOA Goes to Head of the Class

The Firm HOA department participated in the Community Associations Institute's (CAI) Spring Show-



**Pete, Ginger Cauley & Sandy Swenson (Countryside Asset Mgmt.), & Wes Chat About HTS HOA Services & Firm Show Booth**

case on Friday, May 11th and was one of the principal sponsors of the tradeshow. While HTS is very well known in Colorado as the Number One Eviction Firm, some are not aware that we also bring the same level of expertise and commitment to our HOA clients.

Our booth's theme, teaching the ABC's of HOA's, was a hit with the tradeshow's

overall Back to School theme. Manning the booth were

Firm attorneys Wes Wol-lenweber and Peter Muc-cio, whose primary focus is HOA representation. The attorneys were pleased to have the opportunity to say hello to our HOA clients



as well as being able to introduce themselves to many new



**Maureen Wade-Coghlan (Colorado Mgmt. Specialists) Compliments Wes on HTS Being Sponsor of CAI Showcase**

HOA Board Members and Management Companies. Attendees were able to hear Wes and Pete's philosophy "that effective representation begins with efficient recovery of delinquent dues and continues with education to prevent unnecessary loss of community resources." CAI members were able to learn how they can benefit from our HOA Collec-

tion Service and our Free Educational Workshops. And, of course, the tradeshow would not have been complete without our drawing for a Canon Powershot 7.1 digital camera. HTS was happy to present winner Silvia Gregory of Hammersmith Management, Inc. with her prize!



**HAPPY FLAG DAY  
JUNE FOURTEENTH**

### HTS Knights Prove Triumphant at AAMD Tradeshow

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followed our medieval theme, our booth was awarded 4th best booth in show!



**Lindsay Chats Up Sarah Phillips (Baron Prop. Mgmt.) & Jenny Vigil (Cherry Creek Place)**

While the Firm was proud to have earned this award, our favorite part of the day was being able to visit with our many friends and clients! This year, we had our booth visitors guess the number of JellyBellys in a large (and very heavy!) jar. The closest without going over won

a Canon Powershot 7.1 digital camera.

Our winner, with a guess that came within one JellyBelly of the total in the jar was the closest entry we have ever had in our Trade-show guessing games.



**Prize Winner Tracy Reeder of Cherrywood Village**

The HTS Team thinks that Tracy Reeder of Cherrywood Village, who had the winning guess, is very lucky or maybe a bit psychic! Congratulations, Tracy, on your incredibly close guess!



**Mark & Vic in Medieval Themed Booth**



## Learn How to Beat the Heat

Summer is just starting to heat up! Escape the craziness of the season of move-in's and move-out's by grabbing a FREE bite to eat at our monthly client luncheon. This month, the Firm will demonstrate its client appreciation by hosting the monthly client lunch on Friday, June 15th from 11:30 am until 1 pm at Piccolo's in Denver at East Hampden and South Monaco. Enjoy Italian and Mexican cuisine while getting to know your colleagues in the property management industry, as well as your attorneys and staff from Hopkins Tschetter Sulzer. Attendees will also have the opportunity to hear Senior Managing Partner Mark Tschetter speak on current legal issues that relate to you, your property, and your employees. And did we mention it's FREE?? To register, contact Rebecca at 303-699-3484 or rebecca@htspc.com, or visit the Events page of our website (www.htspc.com). Remember, space is limited so sign up TODAY!



# Second Serving of Colorado Springs Luncheon

In our May edition of Landlord News, we told you about the great success of our first Colorado Springs luncheon of the year, and we're getting ready to do it again! To be held at Giuseppe's Old Depot Restaurant on July 26th from 11:30 am until 1 pm, the Firm is excited to host another FREE lunch for our clients and friends in El Paso County. For those of you who were unable to attend in May, this event is designed as a way for clients to get to know our attorneys and staff, as well as their peers in the multi-family housing industry, in a fun and sociable atmosphere. In addition, Senior Managing Partner Mark Tschetter will speak on what you and your property need to know NOW in order to avoid legal trouble. To register, contact Rebecca at 303-699-3484 or rebecca@htspc.com, or visit the Events page of our website (www.htspc.com).



**You Might Be a Frustrated Landlord if...**

**BRAIN TEASER**  
if a RENTER with a repair calls and says, "DON'T LET MY CAT GET OUT", yet, when you arrive there are 5 cats, which one DON'T you let get out?

## IMPORTANT JUNE DATES

**June 12th - Non-Monetary Evictions Workshop**

**June 15th - South Metro Client Luncheon**

**June 26th - NARPM Fair Housing Workshop**