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Landlord News

Accommodation or Modification? Sometimes the Answer Is Tricky

At a recent fair housing class, a client asked an interesting question. Coincidentally, right after the class, another client had a similar situation. Both the question and the situation dealt with your obligation, if any,



to install new carpet when a resident starts a lease. More specifically, if a disabled resident asks to have new carpet installed do you have to do it? Is this request a reasonable modification or a reasonable accommodation? Why does it matter if it is a reasonable accommodation or a reasonable modification request? To analyze various carpet scenarios, first we need to review the differences between accommodations and modifications.

A reasonable modification is a structural change made to the premises. A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service. Modifications almost always involve using tools to make changes to physical or tangible items. Accommodations involve exceptions to intangible items that exist only in thought or on paper. You can't touch a policy or a rule. You can only think about it, talk about it, or write it on a piece of paper.

Almost all accommodation or modification requests have associated costs. You can't determine who is responsible for the costs unless you know whether the request is an accommodation or modification. The general rule is that a resident must pay for reasonable modifications, and you bear the cost of reasonable accommodations. The exception to the rule is that communities that receive federal funds must pay for both modifications and accommodations. Failure to know these key

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TRADE SHOW SEASON IN FULL SWING

It's that time of year again when multi-family industry apartment associations present their Trade Shows and Educational Expos for the benefit of their members. Tschetter Hamrick Sulzer actively participates in and supports ALL of the Apartment Associations in the front range. Partner Vic Sulzer serves on both the AASC (Apartment Association of Southern Colorado) and the BARHA (Bolder Area Rental Housing Association) Boards of Directors. Managing Partner Mark Tschetter serves on the AAMD Board and is actively involved in the CAA JLAC committee.

Take a look at our booth and support of the recent AASC Trade-show, where Partner Drew Hamrick taught a workshop on "How to Deal With Murder & Mahem" Also highlighted here is our booth and activities



at the just held NoCoRHA (Northern Colorado Rental Housing Association) tradeshow where partner Mark Tschetter taught an educational session on Fair Housing.

Two lucky attendees at the NoCoRHA show won drawing prizes from the THS booth. Ginger Dodge, Multifamily Coordinator at McWhinney, was the winner of an Android Tablet. She loves the touch screen and is excited to see how she will be able to put her new high-tech prize to work. NoCoRHA Board Member Stephanie Schilling who is a Property Manager at All Property Services (Loveland) had the winning entry for our second prize, a comprehensive



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principals might result in a fair housing discrimination complaint. For example, a landlord may grant an accommodation request, but at the resident's cost. Since the landlord must bear the burden of reasonable accommodation costs, the landlord has committed housing discrimination by conditioning approval upon the resident bearing the cost.



Many cases are straightforward. However, some cases can become complicated, especially when modification world and accommodation world overlap or collide. For example, your community has a no-reserved parking policy, and a mobility impaired resident requests a close-up reserved parking space. However, to grant this request (and you should), your maintenance team needs to install a sign, restripe the space because it needs to be widened and an access aisle needs to be painted, and a curb ramp (curb cut) needs to be constructed. This request clearly involves the use of tools and changes to physical items. So it's a request for a modification, and the resident has to pay for it, right? Wrong. The thrust of the request is for an exception to the community's no-reserved parking policy, which makes this an accommodation request, and courts have consistently ruled this way.

A request for new carpeting or change in flooring is a similarly complicated request. For example, what if a disabled person wants the carpet taken up because their wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification? Fortunately, this question is answered in the Reasonable Modifications Joint Statement published by HUD and the DOJ. The answer depends on the factual circumstances, and of course your carpet / flooring replacement policy. Three specific examples are then discussed.

Example 1: If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.



Example 2: If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a



reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy.



Example 3: If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

Because the outcome of all disability requests is determined on a case by case basis based on the particular facts and circumstances of each case, HUD's three examples are not an exhaustive list of answers to all carpet related disability requests. As a matter of fact, we just had a non-covered scenario phoned into the situation board recently. A pregnant applicant who has severe allergies requested for the carpet to be replaced prior to occupancy. Is this a modification or accommodation request? Does it have to be granted? If so, who has to pay?

While the request does involve changes to physical items (ripping up the carpet and pad, and installing new carpet and pad), we viewed this as a reasonable accommodation request. Similar to a close up reserved parking space request, the thrust of the request was an exception to a policy, i.e. the community's carpet replacement policy. As with every reasonable modification or reasonable accommodation request, the key questions were 1) is the resident disabled; 2) is the request necessary; and 3) is the request reasonable.

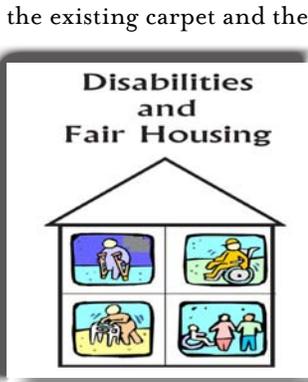
Unless the resident came forward with documentation, the resident is not obviously disabled. Generally, neither pregnancy or allergies are considered to be an impairment that substantially limits an individual. However, pregnancy with complications can meet the fair housing definition of disability. Further, while general or even severe allergies are not considered an impairment meeting the Fair Housing Act's disability definition, courts have found MCS (Multiple Chemical Sensitivity) or EI (Environmental Illness) to meet the definition.

Similarly, unless the resident came forward with documentation, the resident's need for the accommodation was not obvious. The connection (nexus) between

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the existing carpet and the resident's asserted disability was not clear or obvious. Specifically, how the installation of new carpet would lessen the impact of the resident's asserted disability was not obvious or demonstrated. Because the resident was not disabled (had not meet the Fair Housing Act's definition of disability), and had not

shown that the request was necessary, this request was denied. However, as always, we advised the client to engage in the legally required interactive dialog with the resident to make sure that the resident was given every opportunity to present information, and to make sure that the client had all relevant information in making its determination.

Several key questions can quickly assess a person's fair housing knowledge or IQ. Because personnel with inadequate fair housing training tend to lump all disability related requests together, knowing the difference between an accommodation and a modification is good indicator of fair housing knowledge.

If a person doesn't know the differences between accommodations and modifications, their fair housing knowledge needs to be improved. Complicated disability requests involving both modification and accommodation components illustrate two critical rules for handling disability requests. Every disability request, no matter how far fetched it may sound, should always be evaluated, and only after you have all critical facts regarding disability and need. Engaging in the legally required interactive dialog with residents ensures that you get all the critical facts to make solid decisions regarding disability requests.



The Eviction Educator

Providing You With The Eviction Tips of the Month

1. We strongly encourage you to use the eviction forms from our website. If you are unsure if your notice meets the requirements of Colorado Law, please visit our website to download these forms for free! Visit thslawfirm.com/evictions/eviction-forms to download, fill in, and print your notices.



2. Please be sure to inform the evictions staff as soon as possible if your tenant pays or moves.
3. If you are changing properties or leaving a property, please inform the evictions staff so that we can have the most current information on file for you!



IMPORTANT THS MAY DATES

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|-----------------|--|
| MAY 10th | Colorado Springs Client Lunch Ritz Grill - Elbo Room 15 S. Tejon Street Colorado Springs, CO 11:30 a.m. - 1:00 p.m. |
| May 11th | Basic Fair Housing THS Lower Conference Center 3600 S. Yosemite Street Denver, CO 8:30 a.m. - 11:30 a.m. |
| May 16th | AAMD Trade Show Denver Merchandise Mart |
| May 18th | North Client Lunch Dave & Buster's Westminster 11:30 a.m. - 1:00 p.m. |
| May 25th | DENVER COURTS CLOSED FURLOUGH DAY |
| May 28th | ALL COURTS CLOSED MEMORIAL DAY HOLIDAY |
| | THS CLOSED MEMORIAL DAY HOLIDAY |

Don't Miss The AAMD Education Conference
And Trade Show

Release Your Inner Super Powers

BE A HERO!



MAY 16TH
Denver
Merchandise Mart

COME VISIT US AT BOOTH NUMBER 243

TRADE SHOW SEASON IN FULL SWING
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Mark & Vic Chat With Mike Hill,
McWhinney at NoCoRHA

collection of the best of the Muppets. Yes, the Muppets! The theme of our booth was the Muppets and we felt it appropriate to make them part of our participation in the show. Stephanie said that she really

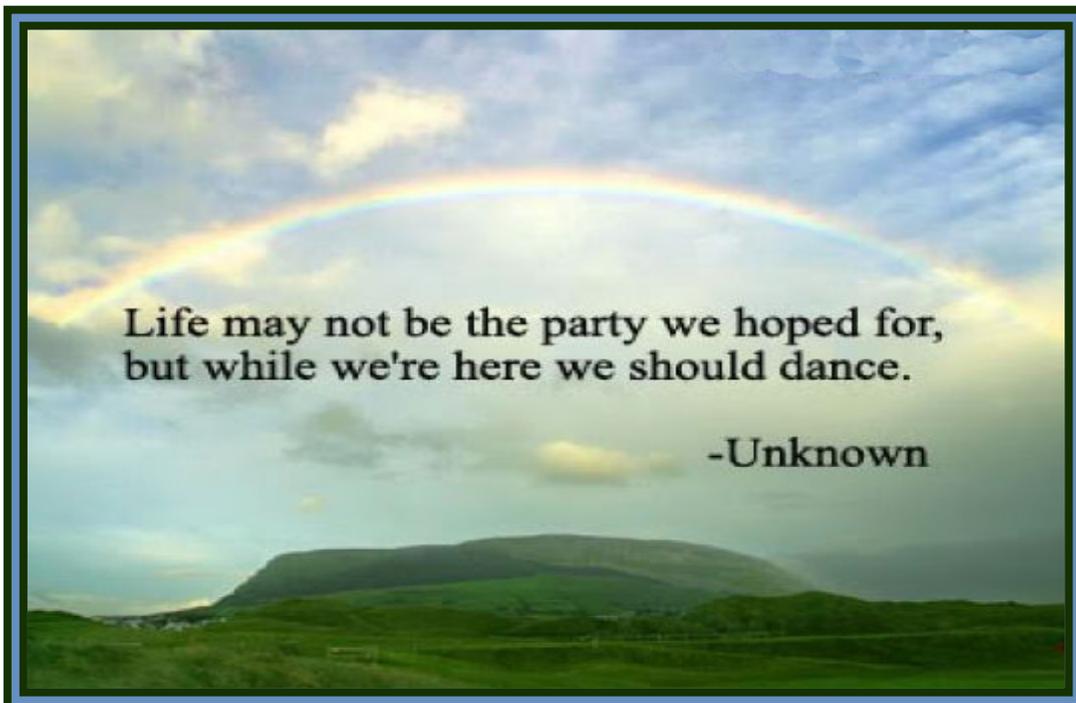
enjoyed the Muppets as a kid and was looking forward to sitting down with her kids to educate them about this classic entertainment and share some new memories of the Muppets with her family. Next up is the AAMD show on May 16th -- check out the information on this event in this newsletter.



Vic, Kathy Kolbu and Carla Scumacher. ConAm, Visit at the AASC Tradeshow



Drew, Gwen Clemente and Becky Deeter, Griffis Blessing, talk about the class he taught at the AASC



Life may not be the party we hoped for,
but while we're here we should dance.

-Unknown