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Landlord News

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YOUR OBLIGATION TO REMOVE BARRIERS TO THE LEASING OFFICE UNDER THE ADA

Your community was built in 1982. A wheelchair bound resident at your community has trouble accessing the leasing office. The doors on the leasing office swing



out. When the resident gets to the door the resident can partially pull the door open, but not all the way because there is no room for the resident's wheelchair to back up.

The resident is tired of having to call ahead to be let in. The resident wants you to install an automatic door opener. Do you have to grant the resident's request? If so, who has to pay for it?

Under the Federal Fair Housing Act ("FHA"), you do not have to grant this request for a physical modification because your community was built for a first occupancy prior to March 13, 1991. The FHA accessibility requirements for public use and common areas only apply to communities where first occupancy occurred on or after March 13, 1991. However, if your community had been built for first occupancy on or after March 13, 1991, the community would have to grant the modification request and pay for it. While residents generally have to pay for modifications on non-federally subsidized properties, properties built after March 13, 1991 have to pay for physical modifications required under the FHA's design and construction requirements. An accessible leasing office is required under the FHA design and construction requirements.

Even though the FHA does apply to this scenario, this is not the end of the analysis. Does the Americans with Disabilities Act ("ADA") apply? While people often mistakenly believe that the Americans with Disabilities Act ("ADA") applies to many fair housing



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HTS ADDS NEW ATTORNEY TO FIRM

Continuing our commitment to deliver the best service and support to our clients the Firm has added another attorney to our legal team, bringing the number of attorneys now available for clients to eight. Stacy D. Stein is the newest addition to our HTS attorney roster. Stacy is no stranger to the Firm, having served an internship at HTS during law school. While interning at HTS her assignments included extensive work on research and responses to "situations" which has provided her with an appreciation and understanding for our clients' needs.

Although Stacy is a recent law school graduate and member of the Colorado Bar, she has a broad background and considerable practical hands-on experience with the



practice of law. Prior to attending the University of Denver College of Law she worked as an ABA-approved paralegal for nine years for several law firms, including while attending law school. Some of her responsibilities during this period were managing and training legal staff employees, managing trial calendars for attorneys, working with client witnesses

and preparing them for trial as well as drafting and filing motions. A primary focus of Stacy's legal work has been in the area of collection, bankruptcy and foreclosure. She brings an extensive background in managing collection accounts from early out to post judgment recovery.

Because of her experience and successful track record, the Firm believes that Stacy is an excellent choice to be the point person on our newly established collection department and we are pleased to have someone of Stacy's background to coordinate this client service.

Prior to her graduation from law school Stacy was offered an associate position with another firm but said she chose Hopkins Tschetter Sulzer because "during my

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situations, the ADA has little applicability to most fair housing issues on your property. However, the leasing office is one area on the property that is covered by the ADA. The ADA applies to places of “public accommodation”. Under the ADA, a leasing office is a place of public accommodation. The property has to pay for all modifications required by the ADA. While not discussed in this article, you should also be aware that in addition to the ADA, Section 504 of the Rehabilitation Act of 1972 is also likely to be applicable if your community receives federal assistance.

Even though the ADA was adopted in 1991, the ADA applies to all communities regardless of year built because portions of the ADA are retroactive. Specifically, the ADA has a retroactive “barrier removal” requirement for existing apartment communities. The ADA requires barrier removal when it is “readily achievable” to do so. Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In our scenario, the leasing office door is a barrier to wheelchair bound residents because they cannot enter without assistance (calling ahead). Thus, the key issue in our scenario is whether the community can readily achieve making the door to the leasing office accessible for disabled individuals.

In determining whether barrier removal is readily achievable, you should analyze all potential solutions, and not just the resident’s specific request. The ADA only requires you to make the leasing office accessible in accordance with ADA standards by removing barriers when it is readily achievable to do so. The ADA does not necessarily require you to grant specific resident requests. In other words, you don’t necessarily have to put in an automatic door opener on the leasing office door, if the barrier issue can be solved by other means that are in compliance with ADA standards. For example, in our scenario, the problem is that the leasing office doors open outward and there is insufficient space for the resident to back up in a wheelchair to open the door. One potential solution would be to reverse the hinges on the doors so that the doors swing inward.

When faced with a barrier removal issue under the ADA, you should employ a qualified architect who is



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HTS ADDS NEW ATTORNEY TO FIRM Continued From Page 1

internship I witnessed first hand the high ethical standards at the Firm, the collaborative positive environment and the strong emphasis on client service and I knew that this was a great fit for me”.

The Steins are natives of California who chose to relocate to Colorado over twelve years ago. An honors graduate of Cal Poly State University with a degree in Political Science, Stacy worked her way through undergraduate school serving as a caseworker for a U.S. congresswoman and then as a constituent caseworker and a scheduler for a California Assemblyman. The proud mother of an almost teenage daughter and a ten-year-old son, Stacy manages to successfully juggle the responsibilities of the practice of law and being a working mother, while still serving as a Girl Scout Leader.

We are confident that our clients will find, as we have, her enthusiasm, work ethic and can-do attitude are a great addition to Hopkins Tschetter Sulzer and we encourage you to join with us in welcoming her to the Firm.



LINDSAY CELEBRATES BIRTH OF DAUGHTER

On October 11th, HTS attorney Lindsay Jasper and her husband Erik became the proud parents of a baby girl, Addison Elisabeth. Weighing in at a healthy 8 lbs., 2



oz., Addison measured 19 1/2 inches. Both Lindsay and Addison are doing well and now mom and dad are learning how to function while sleep deprived. Please join with all of us at

the Firm in welcoming Addison Elisabeth into the HTS extended family.



YOUR OBLIGATION TO REMOVE BARRIERS TO THE LEASING OFFICE UNDER THE ADA Continued From Page 2

familiar with ADA standards to determine barrier removal options, and whether barrier removal is even possible. Barrier removal may not be possible in some cases. An architect's review of the situation could also result in less costly options. Because an architect may propose less costly alternatives, an architect's review should also prevent you from erroneously concluding that barrier removal is not readily achievable because you only focused on the resident's proposed solution. In our example, if you don't get an architect's review and you just focus on the resident's request for an automatic door opener, you may wrongly conclude that barrier removal is too expensive when less costly solutions are possible.

In determining whether barrier removal is readily achievable, keep in mind that the federal government's definition of "without much expense" is different than your definition. Specifically if you are sued, in addition to other factors, a court will use the following factors to determine whether something is too expensive to your community: the overall cost to remove the barrier; the community's overall financial resources; the number of persons employed at the community; the effect of barrier removal on the community's own expenses and resources; and overall size of the business owning the community. Thus, in many instances lack of current cash flow, low occupancy, or the fact that barrier removal will cost several thousands of dollars would not make barrier removal too expensive to be readily achievable.

Even if an owner rightfully believes that barrier removal is too expensive, we always advise to consider the potential cost of not removing barriers. Let's assume that it cost \$3,000 to put in an automatic door opener at the leasing office. This is a significant expense. However, if the community fails to remove the barrier and gets sued, the lawsuit is likely to cost the community tens of thousands of dollars. Moreover, if a suit does result, the community will likely be heavily scrutinized for both FHA and ADA compliance. If other violations are found, the cost to the community can become staggering. Clearly, the community would have been better off by incurring the \$3,000 expense to remove the barrier.

ADA compliant means a leasing office that is accessible to disabled individuals. Generally, this means

accessible routes to the leasing office, including doorways, and when appropriate ramps and curb cuts. The ADA also requires disabled van-accessible parking. A van-accessible parking space under the ADA is eight feet wide with an eight foot access aisle. This is an important point because an accessible parking spot under the FHA is a parking space eight feet wide with a five foot wide access aisle. If removing barriers to your leasing office isn't readily achievable, you still must do whatever is feasible to make the leasing office accessible, or provide reasonable alternatives. For example, if it is impossible for wheelchair individuals to access your leasing office, you should have a policy to meet them at another location on your community that is accessible.



Your leasing office must comply with the ADA. If you're not certain of whether it does, you may want to consider an ADA audit by a qualified expert. After inspecting your community, an expert will inform you if your leasing and other areas of your community are ADA compliant. An ADA audit is a business decision based on risk analysis and other factors. If the ADA audit is positive, you can use it when responding to resident's or prospective resident's allegations that your leasing office is not ADA compliant. If the audit is negative, you would be on notice that the leasing office does not comply with the ADA. For this reason, just like mold testing, many communities decide not to perform ADA audits.



IMPORTANT HTS NOVEMBER DATES

- November 11th - **All Courts Closed**
Veterans Day Holiday
- November 17th - **Advanced Fair Housing**
8:30 a.m. - Noon
HTS Lower Level
Conference Center
- November 26th & 27th **All Courts Closed**
Thanksgiving Holiday
- November 26th & 27th **HTS Closed**
Thanksgiving Holiday



AAMD CHILI COOK-OFF

The 2009 Annual AAMD Chili Cook-Off is



Janet and Eve show Terry getting the chili ready "behind" the scene

now in the history books. Although there were fewer attendees than in past years the level of fun and enthusiasm did not suffer. HTS appreciated the opportunity to see and visit

with many of our clients, vendors and friends.

We would like to congratulate Firm client Legacy Partners for their 1st Place Win for the Best Green Chili. Their green chili was a real crowd pleaser. Another 1st Place winner was Aurora Housing/Resident Data who took home the gold for their well-received Red Chili.



Booth Visitor has more important decision than "which chili" is best

Other HTS clients who were counted among winners in Runner-Up categories were ConAm, Best

Costumes; Greystar, Hottest Chili; and ACCU for their Red Chili. Competition in all categories was spirited and all of the winners are to be congratulated for their winning efforts.

Terry, Judy and Meg get ready to serve up the chili and the nachos

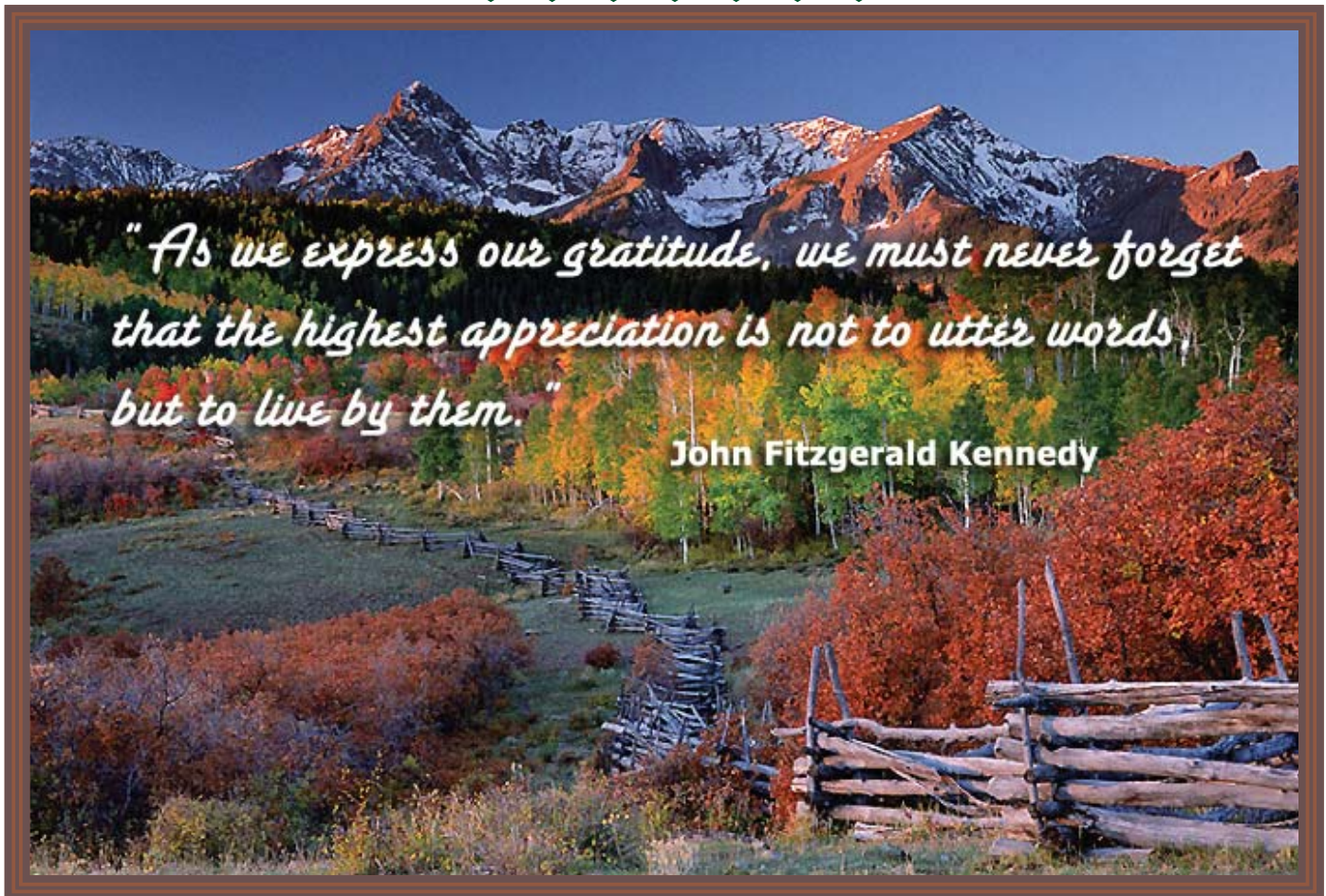
prizes, we had a great time decorating our booth and preparing our green chili, the nachos salsa de queso and handing out lots of candy to the trick and treaters.



Although the HTS Team did not win any



Checking out the HTS Booth are the Tschetterts, Steve and Mark with Mark's daughters Brieanna and Ashley



"As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them."

John Fitzgerald Kennedy