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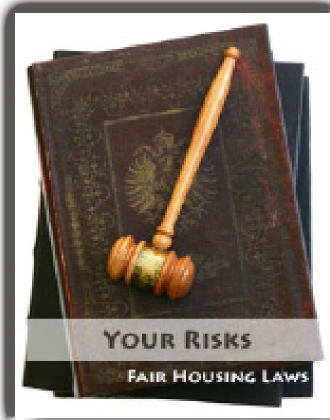
Tschetter Hamrick Sulzer
ATTORNEYS & COUNSELORS AT LAW

Landlord News

3600 South Yosemite Street Suite 828, Denver, Colorado 80237
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

THE ECONOMICS OF REASONABLE ACCOMMODATION DECISION MAKING

Under fair housing laws, disabled residents and prospects are entitled to make requests for reasonable accommodations. A reasonable accommodation is an exception to a rule, policy, practice, or service that allows a disabled resident to use and enjoy the community on the same basis as a non-disabled individual. Each request is a highly specific factual inquiry dependent on the facts and circumstances of the particular request. Sometimes the facts are not clear cut, difficult to evaluate, and/or require you to make difficult judgment calls in determining whether to grant requests for reasonable accommodations. Regardless of the merits of a reasonable accommodation request, your ability to weigh the risks and costs of denying a reasonable accommodation request can prove invaluable in determining close, or problematic requests.



Reasonable accommodation requests come in all shapes and sizes. Many reasonable accommodation requests appear to be unreasonable on their face. In our experience, unusual or uncommon reasonable accommodation requests are often not properly evaluated. When it comes to these requests, the rental industry tends to immediately and exclusively focus on the cost of the request, without properly evaluating other factors. Even when an unusual reasonable accommodation request is properly evaluated, including the costs associated with granting the request, landlords almost always fail to evaluate and weigh the associated risks and costs of denying the request.

The following three reasonable accommodation request scenarios illustrate why it is important and useful

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DISPUTES BY TENANTS

Colorado Statute requires landlords to send a written statement listing the exact reasons for the retention of any portion of the security deposit within 30 days, or up to 60 days if the lease allows. After calculating the unpaid rents, and assessing the damages above normal wear and tear, the landlord sends out a statement to the tenant. At some point later landlord receives a letter disputing some or all of the charges. Now what?

There are several times during the process that a landlord may receive a dispute from the tenant, and the timing of the dispute determines how it must be handled. First, you may receive the dispute in response to the security deposit letter, in which case you are not obligated to respond. Only a third-party debt collector is obligated to respond to written disputes, and normally the landlord is the direct creditor. By responding to a dispute, you may be wasting your time and effort arguing with the tenant over individual charges, especially if the landlord/tenant relationship was contentious at the end of the tenancy. However, a landlord does have the option to respond to the letter and send the tenant receipts for repairs and replacements. Professionally responding to the tenant's letter and providing proof at this point may lead to a dialogue between the parties, and possibly to payment by the tenant. If you receive a dispute from the tenant at this stage of the process and decide to proceed with collections, you should provide a copy of the dispute and any response sent by you to your collection firm.

If you or the collection firm receives a dispute letter after the tenant's case is sent to collections, the collection firm is obligated under state and federal law to respond to written disputes and provide proof of the debt. If the landlord receives the dispute letter directly, they must forward the letter to the collection firm for response. Upon receipt of a written dispute, state and federal law prohibit any further collection efforts by the

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to always evaluate the economics of a reasonable accommodation request, including potential costs associated with denying a request.

A disabled resident (mobility impaired) requests a transfer from the third floor to a ground floor unit. In connection with the request, the resident wants all associated transfer fees and costs waived. The landlord agrees to waive all transfer fees and costs. The disabled resident then comes back and requests that the landlord pay for the resident's move too.

A disabled resident (hearing impaired) already has a close-up reserved parking space. The parking space is located very close to the building entrance and is very convenient for the resident. However, the resident now wants his parking space moved farther away from the entrance. The resident wants to park his car in the space that is closest to his unit so that he can hear his car alarm, even though this requires the resident to walk much further.

A disabled resident (emotionally impaired) has lived at a pet friendly community for a number of years. The resident never informed the community that her pet was a support or companion animal. When the resident renews her lease for the third or fourth time, she now claims that her dog is a companion animal. The resident wants all previously paid pet fees, deposits and pet rent refunded.

All three of these requests are problematic for a variety of reasons. If the community has already agreed to waive nearly $1000 in related transfer fees and costs, is it reasonable to require the landlord to incur another $1000 in costs to move the mobility impaired resident? Does the hearing impaired resident need his space moved when the community has already granted the resident a space? Is there a clear relationship between the resident's request and his disability? Does the fact that the resident's faulty car alarm keeps going off make the resident's request unreasonable? Isn't this more of a personal security request? Is it reasonable for the emotionally impaired resident to request refunds when the resident isn't obviously disabled, has paid all pet costs for years, and now wants all pet costs waived and refunded?

Remember, a resident must meet three require-

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DISPUTES BY TENANTS

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collection firm, including calls, letters and legal action, until a response to the dispute is sent and proof of the debt is provided. Proof of the debt normally includes a copy of the lease, ledger, receipts for repairs, and sometime photographs, if warranted at this stage.

If a dispute is received after a lawsuit is initiated in the collection process, it is normally in the form of an answer, and possibly a counterclaim by the tenant within the lawsuit. If an answer is filed, some courts require the parties to mediate, some require the parties attend a settlement conference, also called a pretrial conference, and some require both pretrial conferences and mediation. If the parties fail to settle, then a trial date is set. At trial, the landlord has the burden to prove each of his or her charges on the ledger, the tenant has the burden to prove his or her claims, and each party must defend against the others claims. The burden of proof in a civil case is a preponderance of the evidence, which means more likely than not to be true. Ultimately, the judge gets to decide whether the lease supports all rent and late fee charges claimed on the final ledger, as well as what repair charges requested by the landlord are beyond normal wear and tear. Judges can pick and choose charges they believe to be valid or invalid, so it is important to have proof for each line item charge in the form of lease provisions, photos, receipts, or other evidence.

Lastly, a dispute can be received after a judgment has entered. After judgment enters, the collection firm is only obligated to send a copy of the judgment as proof of the debt. If the tenant participated in the legal process by way of an answer and did not appeal before the deadline, they are out of luck. If judgment entered by default, meaning the tenant failed to appear in the lawsuit, and tenant can prove excusable neglect and that they have a legal defense to the landlord's claims, there is a possibility that the default judgment can be set aside and the matter proceed through the trial process as described above. Luckily, this does not happen very often!

Disputes are a normal part of the debt collection process. The important thing is to make sure that the landlord and collection firm handle the dispute properly depending on the stage of the case in the collection process.

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ments to be entitled to a reasonable accommodation. One, the resident must be disabled. Two, the resident must need the accommodation to use and enjoy the premises on the same basis as a non-disabled individual. Three, the request must be reasonable. Let's assume that all three of the residents meet the first two tests (disability and need). The reasonableness of an accommodation request frequently turns on cost. The 1988 Fair Housing Act Amendments created the legal right for disabled residents to ask for accommodations. When the 1988 Fair Housing Act Amendments were adopted, the congressional intent was clear, landlords would have to bear some costs associated with granting reasonable accommodations. Unfortunately, Congress failed to establish what costs landlords should reasonably bear.

Subsequent regulations and court rulings demonstrate that the cost test is subjective at best. "The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs." "When evaluating undue financial burden, the court must take into consideration all of the costs to both parties. Some of these costs may be objective and easily ascertainable. Others may be more subjective and require that the court demonstrate a good deal of wisdom in appreciating the intangible but very real human costs associated with the disability in question." Upon first analysis, a reasonable accommodation request is reasonable if the costs do not clearly exceed the benefits.

The foregoing "cost" tests provide little assistance in resolving the three scenarios discussed above. For example, we know that it will cost $2,000 to grant the mobility impaired resident's transfer, but does this cost "clearly exceed the benefit" to the resident? Especially when a court is free to apply "its wisdom" to determine "intangible human costs"? What benefits does the hearing impaired resident receive, when there is no proof that the request is necessary, or guarantee that even if granted, he will always be able to hear the alarm? In the case of the emotionally impaired resident who wants her pet deposits refunded, should a landlord have to incur costs that would have been avoided, but for the resident's failure to act? These scenarios illustrate two important points. One, determining costs associated with reasonable accommodations can be difficult. Two, based on the law, the court or civil rights agency has broad discretion to determine what reasonable costs are.

Determining the costs of denying a request is easier to calculate. If you deny a request, the resident may sue or file a housing discrimination complaint against you. When a resident files a discrimination complaint, you will incur costs both in the form of money and of time. On average, you will spend $3000 in attorney fees to defend a housing discrimination charge. You will also spend time talking to your attorney, producing documents, including financial records, and reviewing documents. Some cases will require you to provide or compile records you may not have readily available, but that you will have to provide or compile based on your recorded data. These cases consume even more employee time. An average housing discrimination complaint can easily consume forty or more hours of employee time. Since time is money, time costs can also be reduced to a monetary figure. At a minimum, an average housing discrimination complaint will consume $500 to $1500 of employee time.

Let's evaluate the economics of our scenarios. In the transfer scenario, the landlord is attempting to avoid the $1000 in moving costs. Are these costs unreasonable? The landlord won't know until the Colorado Civil Rights Division ("CCRD") makes a determination, if a housing discrimination complaint is filed. However, if the resident files, the landlord will incur $4500 in costs even if the landlord prevails. Thus, the landlord is risking $4500 to save $1000. While the landlord may be right in determining the costs of moving the disabled resident are unreasonable, the potential economic risk of denying the request is not a good one.

The economics of the two other scenarios dictate more clearly that the requests should be granted, at least in part. In many cases, the costs of providing a resident with a close-up reserved space are minimal. Of course, some specific or unusual facts could result in substantial costs in granting the hearing impaired resident's request to have his space moved. With respect to the companion animal reasonable accommodation request made after the fact, we normally advise clients to refund pet deposits and fees, but not pet rent paid. Again, depending on the circumstances this advice could change. Assuming pet fees

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and deposits of $500, the economic risk of denying this request make no sense. Unless you have a strong chance of winning, you normally would not bet $4500 in Las Vegas to win $500. However, the outcome of these cases is far from a sure thing.

In a close call or difficult to evaluate case, an economic analysis of the resident's reasonable accommodation request frequently supports the conclusion that granting the request is clearly the less risky economic decision. If you can grant a resident's reasonable accommodation request with no or minimal cost, we routinely advise to landlords do so, even if the resident may or may not be disabled, and even if it is uncertain as to whether or not the resident needs the accommodation.

If it is clear the resident is not disabled, or it is clear that the resident doesn't need the accommodation, you may safely deny the request. You may also deny all requests if, on its face, the cost greatly exceeds any possible benefits. Keep in mind that in many cases several thousands of dollars in costs do not automatically greatly exceed the benefit to the resident. While granting marginally meritorious reasonable accommodation requests may not seem right for many reasons, denying such requests makes no economic sense in a lot of cases. Granting such requests is a cost of doing business, because Congress determined the industry should shoulder some of the burden. Some landlords may deny marginal requests, and then attempt to lessen the cost of defending a subsequent housing discrimination charge on their own. This is not without substantial economic risk in itself, and depending on the result, may prove to be an even more costly economic decision.

IMPORTANT THS NOVEMBER DATES

November 3rd	BARHA TRADESHOW SPICE OF LIFE EVENT CENTER BOULDER, CO
November 24th	THANKSGIVING DAY ALL COURTS CLOSED THS CLOSED
November 25th	THS CLOSED