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Disabled Parking: Must an Association provide parking for disabled residents?

Under the federal Fair Housing Act (FHA)[1] and Washington state law,[2] residents with disabilities may request reasonable accommodations that enable them to use and enjoy their units in the same way that non-disabled residents would. An Association must make a reasonable accommodation for a disabled resident. Failing to do so constitutes unlawful discrimination, but an Association need not make accommodations that are unreasonable.[3]

To establish a claim of unlawful discrimination under the FHA, a resident must show[4] that:

(A) The resident is handicapped;[5]
(B) The Association knew, or should have known, of the handicap;
(C) The resident requested a particular accommodation that is reasonable and necessary to allow the resident an equal opportunity to use and enjoy his unit; and
(D) The Association refused to make the accommodation.

Whether an Association must grant a resident exclusive use of a particular parking space depends upon what types of parking spaces exist within the community.

(1) Unassigned parking spaces in common areas

An Association probably must accommodate disabled residents by allowing the residents to use particular spots that are suited to their needs.[6] Such a spot could be the spot closest to a resident's unit, or a spot that is large enough to allow parking a special van equipped for wheelchairs.

(2) Assigned parking spaces in common areas

An Association probably must also attempt to accommodate a disabled resident even if the common area parking spaces are assigned to particular units (assuming the board has discretion in the assignment of parking spaces rather than them being assigned in the Declaration). One possible way to accomplish this is to ask whether another resident is willing to trade parking space assignments with the disabled resident.

(3) Parking spaces in limited common areas

An Association has no obligation to and cannot take away a parking space that is a limited common element reserved to a particular unit by the Declaration. An Association may still attempt to provide accommodation by asking whether a resident will trade parking spaces with a disabled resident.

If the Association has no common area spaces, it would likely have no obligation to create a disabled parking space for an owner, as it would be unreasonable to request that other owners give up their right to the parking spaces as provided for them in the Governing Documents.

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[1] 42 USC § 3601 *et seq*. Note that the Americans with Disabilities Act (ADA) does not apply to condominiums, because condominiums are not places of "public accommodation" as defined by the ADA. 42 USC § 12181 (Definitions). Some courts will discuss the ADA when interpreting the FHA with respect to disability accommodations because the two Acts contain similar provisions, but this does not affect the ADA's applicability to condominiums. *See,* for example, *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565 (2d Cir. Conn. 2003) (court held the city failed to grant the plaintiff's reasonable accommodation).

42 USC § 3604(f) (Discrimination in the sale or rental of housing and other prohibited practices) provides, in relevant part, that it is unlawful:

> (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of –
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> (A) that buyer or renter;

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of –

(A) that person; or
(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

[2] RCW 49.60 *et seq*.

[3] What is reasonable is specific to each request and the ability of the Association to accommodate. If there is a cost involved usually the requesting owner must pay.

[4] *Astralis Condo. Ass'n v. Sec'y, United States Dep't of Hous. & Urban Dev.*, 620 F.3d 62 (1st Cir. Puerto Rico 2010) (court held the complainants were handicapped, that the Association knew of their handicaps, that the complainants requested a reasonable accommodation, and that the Association refused to honor their request).

[5] "Handicap" is defined in 42 USC § 3602(h) as:

"Handicap" means, with respect to a person—

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or
(3) being regarded as having such an impairment,
but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

[6] No Washington court has ruled on this issue, but courts in other jurisdictions have. *See, Astralis Condo. Ass'n,* 620 F.3d 62, two residents of a unit in a condominium had various ailments causing them mobility problems (they both had government-issued handicapped parking placards). The residents owned the unit and two parking spaces located 230 feet from their unit. Other owners within the condominium owned parking spaces, but there were also many unallocated parking spaces owned by the Association, including ten designated handicapped spaces. Two of these unallocated handicapped spaces were 45 feet from the residents' unit, and the residents asked the Association to assign those two spaces to their exclusive use. The Board denied their request. An administrative law judge determined that the Association had violated the FHA, directed the Board to assign the two handicapped spaces to the residents, and awarded monetary damages; the First Circuit Court of Appeals affirmed.

For other examples, *see, Solodar v. Old Port Cove Lake Point Tower Condo. Ass'n*, 2012 US Dist. LEXIS 61680 (2012) (Denying summary judgment to condominium Board on claim of failure to accommodate disability by reassigning parking spaces); *Wilstein v. San Tropai Condo Ass'n*., 1999 US Dist. LEXIS 7031 (1999) (Affirming grant of summary judgment to board in a parking space accommodation case).