

July 3, 2009

**CARPENTER HAZLEWOOD DELGADO & WOOD**

# ***E-NEWSLETTER***

## **Don't Just Say No to Requests for Disability Accommodations**

**By Jason E. Smith, Esq.**

What is your first reaction when a homeowner asks for an exception to a rule due to an alleged disability? Except for the most obvious of accommodations, such as allowing a visually impaired person to have a dog for assistance, the frequent response is a blunt “no,” especially in cases involving pet restrictions and alleged psychological disabilities. Homeowners requesting accommodations often present themselves with no apparent disability, and management and directors may dismiss the request as being simply an excuse to circumvent the association’s rules. Even if that initial reaction is right given the circumstances, we advise clients to engage in a dialogue with the homeowner (or homeowner’s tenant) to gather more facts before making a final decision on a requested accommodation. This dialogue or “interactive process” both ensures that the association is making the correct decision and portrays the association in the best light possible should the matter ever result in a legal battle.

There are two acceptable bases for denying a requested accommodation. First, if there is no actual disability, the person is not entitled to an accommodation. If the disability is not obvious, then you have the right to require the person to provide you with documentation to verify the disability. We recommend requesting a written statement from a medical provider that states the existence of a disability, describes the necessary accommodation, and shows the connection between the disability and the accommodation. The determination of what qualifies as a disability under the law is an ever-changing (and not necessarily intuitive) analysis.

The second basis for denying a requested accommodation is if the request itself is not reasonable. A request is considered not reasonable if it either fundamentally alters the association’s operations or imposes an unreasonable financial or administrative burden on the association. Federal regulations require that the association engage the requesting party in an “interactive process” to discuss alternative accommodations that will not unduly burden the association. The fact that an accommodation may impose some cost on the association is not itself justification to deny the requested accommodation. The issue is whether the cost to the association is an unreasonable financial burden.

We encourage you to respond to requested accommodations with an open dialogue and engage in the “interactive process” of determining the most reasonable accommodation. It is also wise to involve the Association’s counsel sooner, rather than later, in these situations. Even if you have serious doubts about the legitimacy of the requested accommodation, we advise you to gather more information and treat the homeowner with a high level of deference. If the matter ever gets referred to HUD or the Attorney General for investigation, the association’s initial response to the homeowner will be critical and will set the tone for the investigation while casting the association in a good light.



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