

COMMUNITYMANAGER

MARCH | APRIL 2019



Who's Right and What's Fair

How to manage reasonable requests from people with disabilities.

BY BETH WENGER

A wheelchair-bound resident is asking for easier access to the clubhouse. What should you do next?

“Hire a lawyer right away,” says Marc Markel, founding partner of Roberts Markel Weinberg Butler Hailey in Houston. And that’s not because he’s a lawyer. Markel and his team represent more than 1,200 community associations, including homeowners associations, condominium associations, commercial associations, and some of the largest master-planned communities in Texas. He’s seen what happens when community managers are expected to bear the responsibility of determining whether a request is reasonable.

“Responding quickly to requests is critical,” says Markel, a fellow in CAI’s College of Community Association Lawyers. Too often, a manager will hold on to a request until the next board meeting, which could be a month away. A request that sits around runs the risk of escalating to a claim made to the U.S. Department of Housing and Urban Development (HUD) that the person with disabilities is being ignored and discriminated against. HUD is required to investigate every claim it receives, but the organization doesn’t do that itself. Instead, HUD sends the claims to their respective state offices for investigation. A discrimination claim made in Texas, »

4 Take Note
CAI news and upcoming events.

8 Connecting with Colleagues
2019 Community Association Law Seminar recap.

11 CAMICB
Names new board members.

13 EXECUTIVE INSIGHTS
News and information for senior management.



for example, will go to the Texas Workforce Commission. Many state officers handle both Fair Housing Act (FHA) and Americans with Disabilities Act (ADA) issues, so investigating one could expose an issue with the other. Investigating a claim regarding handicapped parking, which is an FHA issue, for example, could reveal that there are no curb cuts, which is an ADA issue.

Boards make a big mistake by putting the onus on their community manager to figure out how to handle a request for accommodation, says Markel. Knowing the intricacies of the laws—both federal and state—is not in a manager's skill set, nor should it be expected to be. When reviewing a request, the first thing is to determine if the requestor meets the ADA classification of a person with a disability.

The ADA defines disability as “a physical or mental impairment that substantially limits one or more major life activities.” A person who has a history or record of such an impairment or a person who is perceived by others as having such an impairment also are considered disabled. An impairment could be physiological or mental, and while a physical disability is usually obvious, mental disabilities can be harder to see.

In addition, there are short-term disability situations for which accommodations may be deemed reasonable under the FHA. Complicating matters is that you can't ask, outright, about a person's disability and how it limits any major life activities, says Markel.

“There are exceptions to everything. What is considered reasonable in one scenario may be unreasonable in a different scenario. It's not logical.”

HANDLING REQUESTS

Once a disability is determined, someone must assess the request for accommodation: Is it reasonable? The FHA protects the rights of people with disabilities and prohibits community associations from refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.



“Reasonable requests need to be answered with a reasonable accommodation,” says Markel. In that response there is opportunity to set parameters, such as that any reasonable modifications made are to be returned to their original state when the homeowner decides to move; that all modifications need to be done in a workmanlike manner; and that all work must be done within business hours.

Todd Moyer, CMCA, AMS, development coordinator for LC Management in Wilmington, Del., who oversees 12 active and under development community associations has had to handle several requests and worked to supply reasonable accommodations. Each came from people in wheelchairs, so the disability was obvious. But that didn't make the requests any easier. The one that has left Moyer the most satisfied with the outcome was a request for easier access to the clubhouse's exercise room in the winter for an owner in a wheelchair. Moyer gave the owner access through the pool gate, so he could enter the clubhouse through the rear door. “The way the ADA ramps and pavement without the final top coat met made it easier to enter the clubhouse that way,” says Moyer. “He was the only owner whose swipe card would open the pool gate in winter.”

Another person in a wheelchair noticed after he bought his top-floor apartment that the elevator was not to

be used in the event of a fire. He then requested the association find a solution. Moyer turned to the local fire department for help. “The fire department met with him and assured him a safe evacuation in the event of an emergency,” he explains.

A third homeowner had a daughter with severe disabilities who loved the pool and requested the association purchase a pool lift for her. Under the FHA, this request for accommodation is considered reasonable and shouldn't be denied, but the cost belongs to the owner, not the association. Moyer had the association's attorney review their response to the request, which included an offer to store the lift, before delivering it to the homeowners to make sure it was a legally appropriate and acceptable response. The family chose not to purchase a lift. The pool is private and only used by community members and its guests. Had it been public in any way—if the association allowed nonmembers to use it for a fee or any other exchange for compensation, for example—the pool also may have been subject to ADA laws and would have been required to have a lift and to bear the cost of accommodation.

In 2010, the Department of Justice issued new ADA standards of accessible design, which include mandates for removing barriers to access pools and spas. What is required depends on the size of the pool and other factors, such

as whether the pool operates as a place of public accommodation.

EMOTIONAL SUPPORT

Perhaps the trickiest and fastest growing accommodation request community managers and governing boards must navigate is those for emotional support animals in residences that have no pet or restriction policies. There are no specifications on type, size, or quantity of animals that a doctor can prescribe. The only requirement is that the service animal be prescribed by a doctor for a legitimate treatment.

If the service animal is doctor-prescribed, then by law, it's a reasonable request and needs to be honored. The assistance animal cannot be a nuisance or cause damages, however. Again, Markel advises that community managers faced with requests for emotional support animals seek counsel with experience handling requests of this nature right away.

To help, CAI recently launched a new guide to assistance animals and community associations. Designed to be posted in common areas and on bulletin boards for maximum visibility, the brochure gives guidance on defining and differentiating between service, therapy, and emotional support animals. To access CAI's assistance animals and community associations guide, visit www.caionline.org/HomeownerLeaders.

SEEKING COUNSEL

Laws and terminology change. Emotional support animals were once called comfort animals. A lawyer who knows this will serve you better than a lawyer who doesn't. It's incredibly important that the law firm you hire has a working knowledge of the ADA, the FHA, and community associations, says Markel. He advises to do your research in advance. Know which lawyer or law firm you're going to contact when you receive a request for accommodation before you get one. And when interviewing a potential legal representative, it's important to ask: How long have you been practicing community association law? And, how many complaints have you handled?

BEST SERVING THE COMMUNITY

Sometimes knowing who your residents

are is the best way to meet the needs of people with disabilities and make accommodations that are mutually beneficial. Tom Judson, CMCA, AMS, PCAM, chief operating officer of Bella Vista Property Association in Bella Vista, Ark., got to see Bella Vista from homeowners' perspective when one of its social clubs, a support group for families of stroke survivors, invited him to one of their meetings so he could hear about their concerns and needs. "When this group invited me, I sat with them and learned about the world from their perspective and what would make a difference," says Judson.

Bella Vista is home to 30,000 residences and boasts lots of public amenities, including restaurants, a golf course, a pool, and more. What Judson learned at the meeting was that Bella Vista needs to be more accessible to those with disabilities, especially when it comes to parking at various facilities.

"Over the past three years, we've made major renovations to the community. We're 100 percent ADA compliant, and where ADA requires four parking spots, we've added eight," says Judson. "We don't want people to be turned away because there aren't enough handicapped parking spaces."

Beth Wenger is a freelance writer in the Washington, D.C., area.

ADA ABCs

A private community built before 1990, when the Americans with Disabilities Act (ADA) was enacted, might have little to worry about regarding the law, since it applies to public areas that provide goods, services, or privileges to the public. Community associations need to know, however, that ADA rules may apply when renovations occur and that a private community becomes a public accommodation and bound to the ADA when an association changes who may access community facilities. For example, accommodations may be necessary if a community allows the public or outside groups, such as churches, schools, or private clubs, to regularly use or visit the:

- pool
- rental office
- clubhouse for meetings, events, a polling place during general elections
- ball fields, tennis courts, or other portions of the property
- walking paths or trails
- other association facilities

