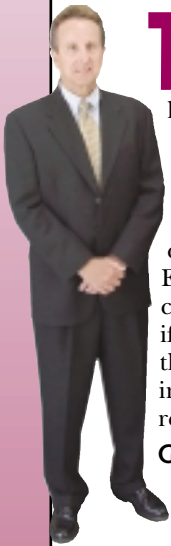




Guidelines and Strategies for Reasonable Accommodations

Fair Housing Part II — Accommodations



The final article, Part II, in our series regarding Fair Housing laws deals with the issue of reasonable accommodation. Under federal and state law, homeowner associations are required to make exceptions to their rules for disabled persons, under certain circumstances, on a case-by-case basis. Residents who request and are improperly denied a reasonable accommodation from the association can file a complaint with the State Department of Fair Employment and Housing that will investigate the complaint and enforce the law against the association if a violation has occurred. This article will explain the ground rules for processing, granting and denying requests for reasonable accommodations from residents.

GUIDELINES AND STRATEGIES

Requirements to Grant Reasonable Accommodations

It is unlawful for any person, including community associations, to refuse to make reasonable accommodations in rules, policies, or practices when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit or the common area according to the Fair Housing Act (FHA). An Association may not enforce existing rules that prevent persons with disabilities from equal enjoyment of the premises.

One example is the enforcement of a rule that “requires assigning parking spaces on a first-come, first-served basis against a person whose mobility is impaired.” This person obviously, because of the disability, has the need for a reserved parking space as close as possible to his own unit. The association, when it controls the right to assign parking, must honor a disabled applicant’s request for assigned parking. *Shapiro v Cadman Towners, Inc. (2d Cir 1995) 51 F3d 328.*

An association would also be in violation of the FHA by enforcing a rule prohibiting nonresidents from using the common facilities where a resident with a disability was unable to use the laundry room and nonresidents were barred from using the laundry room to do the disabled person’s laundry. Similarly, an association would be in violation if it enforced a rule prohibiting vans if a van was necessary to transport a person in a wheelchair. Again, the association is required to afford the person with a disability equal enjoyment of the premises. 24 CFR 100.204.

Sometimes the existence or extent of the disability of the person is called into question in their “request for accommodation.” It is unlawful to inquire about the existence or extent of a disability of a prospective resident, however,

once an applicant or resident requests an accommodation, the provider is entitled to obtain information necessary to evaluate whether the person meets the FHAs definition of disability and the necessity for the accommodation because of the person’s disability.

Processing Requests for Accommodation

Procedures that permit the rapid processing of applications for reasonable accommodations should be established by community associations. If an association causes an “undue delay” in responding to a reasonable accommodation request it may be deemed as a failure to provide a reasonable accommodation.

Federal fair housing laws require you to grant reasonable accommodations to the disabled. However, there are some cases where members who are not disabled try to take advantage of the law to get something they are not entitled to. This could be a better parking space, or an exception to an association rule such as allowing a companion dog for depression. Most member requests are legitimate, but how do you determine when a request is not and should be denied?

Verification Form – The best method is to get verification from the member’s health care provider or other professional, such as a therapist or social worker. To assist you in obtaining verification, a Model Form entitled *Reasonable Accommodation Request Verification* has been provided. See insert, or download from <http://XRL.US/verify>

Granting Requests

When granting accommodation requests, verification that the member is really disabled should be obtained when it is not an obvious disability. The person with a disability, a family member or someone else who is acting on behalf of the disabled person can make the reasonable accommodation request.

Again, the best way, when not an obvious disability, is to verify the reasonable accommodation request by use of a standard form to the health care provider. Give the form to the member to deliver to the health care provider in the interest of privacy. Using the standard form ensures that you give the same treatment to all members requesting an accommodation and that you get all necessary information to evaluate requests.

Tell the member that the health care provider must complete the form and not just write a letter to back up the request. The following is what a Board or Management Company might say to the member:

“We make reasonable accommodations only to members who are Disabled as defined by federal and state law and who need the

Accommodations

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accommodation to have an equal opportunity to use and enjoy their units. If you would like an accommodation, you must have your health care provider – such as a physician – verify these points by use of a form that we'll provide to you. To be fair to all members, we ask that the health care provider complete this form rather than write a letter to verify your request."

When using the Verification Form:

1. Fill in the name and address of the health care provider, the community association, and the member.

2. Then ask the member to sign the release statement [shows the health care provider that the member has authorized the release of confidential information to the association].

The Verification Form form explains to the health care provider that the member has requested an accommodation be made. It states that although the rules don't typically allow for the accommodation in question, the association will consider the request if the member is disabled and requires it. The health care provider is asked three questions:

1. Is member "disabled"? It asks if the member meets the definition of "disabled" under the law. It reprints the applicable definition from the fair housing regulations for understandability. Federal law bars you from requesting information about the nature or extent of the disability, or any other details about the member's condition

2. Is accommodation needed? It asks if the member needs the accommodation, in the health care provider's professional opinion, in order to have the same opportunity that a nondisabled person has to use and enjoy his or her unit.

3. Can condition be treated? It asks whether the member's disability can be treated in order to prevent any substantial limits to the member's major life activities. Major life activities are defined as:

"Those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking."

This form also asks the health care provider whether he would be willing to testify in any proceeding related to the member's need for the accommodation.

However, if the provider says no, it doesn't mean that you should reject the request.

Albeit the health care provider's response is only a single piece of evidence in making a decision to grant an accommodation, pay close attention to the health care provider's recommendations. Use of the Verification Form can help to weed out improper requests.

Denying Requests

There are instances when an association can deny a request for a reasonable accommodation without violating the Fair Housing Act.

An association can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. If the request for a reasonable accommodation is not reasonable, the request can also be denied.

"It is not reasonable if it would impose an undue financial and administrative burden on the association or it would fundamentally alter the nature of the provider's operation," according to the Fair Housing Act.

To determine an undue financial and administrative burden, the association must decide on a case-by-case basis weighing various factors including 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 an association refuses a requested accommodation because it is NOT reasonable, the association should discuss with the requester whether there is an alternative accommodation directly addressing the requester's disability-related needs. Of course this alternative should be without a fundamental alteration to the association's operations and without imposing an undue financial and administrative burden. If the alternative accommodation effectively meets the requester's disability-related needs and is reasonable, the association must grant the accommodation. It is important to use an interactive process in which the association and the requester discuss the disability-related need for the accommodation and possible alternative accommodations. This often results in an effective accommodation for the requester that poses no undue financial

and administrative burden for the association.

The "Fair Housing Act" is an act to follow! There is no room for discrimination in common interest developments. ■

Who is Covered Under the Fair Housing Act

- Hearing or vision impaired
- Physically disabled
- Mental illness or retardation
- AIDS or HIV infection
- Epilepsy
- Cerebral Palsy
- Use of a wheelchair or walker
- Use of a personal care attendant
- Use of a service animal
- Persons who have a record of a disability or who are currently under treatment for same or who are regarded as such
- Alcoholics, in treatment or not
- Prior drug users who have completed a rehab program
- Persons using prescription drugs under a physician's direction

Notes on Companion Animals

Companion animals differ from service animals, like guide dogs, with which we are familiar. Companion animals have been prescribed by a doctor as part of the patient's therapy. Therefore persons qualifying for coverage under ADA have a right to keep them regardless of an association's refusal to allow pets in the home or unit.

Learn more about fair housing by accessing the following Web sites:

<http://XRL.US/FairHousing>

<http://XRL.US/DiscriminationComplaints>

Enforcement Information

HUD Fair Housing Enforcement Office — Washington, DC

US Department of Housing & Urban Development Fair Housing & Equal Opportunity Division – 820 First St., NE Suite 450, Washington, DC 20002-4255
Mr. James Black, Director

Owner Members Pay Voluntarily?

How to Collect Special Assessments from Owners Who Don't Want to Pay

By Kenneth Dillingham, Esq.



Many community associations are plagued with problems in getting their owner-members to pay assessments on a regular and timely basis whether those assessments are regular assessments or special assessments. However, special assessments often present a greater challenge.

Special assessments, by their very nature, are an unexpected, surprise cost that can wreak havoc on a person's finances. As an unbudgeted expense, it is about as welcome as a need for a new transmission in your car on your way to the dentist for a root canal.

Thus, while community associations still have the opportunity (at least this year) to proceed with existing collection policies, including foreclosure, to collect assessments, wouldn't it be much better if you could get the owner-member to pay voluntarily? Here are some suggestions on achieving that goal:

1. Keep the owners involved. The key here is communication. Once the board has considered a special assessment, give owners an idea of "what's on the horizon," and not only by distributing copies of the minutes. Send a letter, newsletter or something similar. Send it early and send it often. The longer someone has to plan for an expense, the better they can be prepared to pay it when due.

2. Offer help. Especially for large special assessments. We recently had two associations with per-unit, special assessments of \$40,000! Some of the tactics used to successfully lobby for approval and then payment included several general owner meetings. The board would be there, and so would the architects and building contractors to present the concepts and needs and to answer questions. Plans and drawings were prepared on large poster boards so that owners could better comprehend the magnitude of the problem. Also, representatives from local mortgage lending companies attended these meetings to discuss alternative financing arrangements.

3. Payment plans. If the association is able, you can offer owners the opportunity to spread the payments over a few or several months. Five months of one-hundred dollar payments is normally easier than one five hundred dollar payment.

4. Borrow funds. Another way to "spread the pain" may be to borrow funds for your project from a lending institution. Repayment of loans is usually spread over many years, and while there are interest charges, smaller monthly payments can be easier for owners to pay.

Remember that the point here is to achieve payment of the special assessment without resorting to collection alternatives. Collection alternatives are still available (at least for now), and can be used if other alternatives fail. ■

Ken Dillingham is an associate attorney with the law firm of Anderson & Kriger, Joel M. Kriger, APC, handling community association matters, including assessment votes and collection.

Mediation? Arbitration? Can't We All Just Get Along?



By Patee Barta, Editor

Conflict is a word we can certainly do without, particularly for homeowners living in common interest developments. Yet

look at community association law — its a necessary element in helping neighbors live harmoniously and within the parameters of the covenants, conditions and restrictions (CC&Rs) set forth by their associations governed by the board of directors.

The CAI Mock Mediation program held on June 1, 2005 at the Del Mar Hilton Hotel was geared to show the difference between arbitration [binding] and mediation



(Seated) Joel Kriger as Attorney Berry Vine represents the Fragrant Village Condos managed by Jacqueline Bill as Ms. Daisy Weed who is next to Terry Shanklin who played the complaining homeowner Mr. Weezer Sneezer. (Standing) Arbitrator Don Fobian next to Narrator/ScriptWriter Patee Barta and Narrator/Mediator Joe Stine, followed by Attorney Mary Deutsch as Attorney Eloweze Right with her Defendant Homeowner Nikki Alexander as Ms. Goldie Bloom, and Mediator Robin Seigle as Ms. Ida Fixit. The Arbitration Video and Mock Mediation was held June 1, 2005 at the CAI San Diego Mini Trade Show and was quite a production.

[informal] methods of conflict resolution and was a project of the newly resurged Mediation Committee that Joel Kriger started and chaired in 1995.

Fragrant Village Condos had a homeowner conflict over a garden planted by Goldie Bloom that caused her new condo neighbor Weezer

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Joel Kriger as Attorney Berry Vine consults with Manager Jacqueline Bill of Transcontinental Management, playing Ms. Daisy Weed in the June 1 CAI-San Diego Mock Mediation held at the Del Mar Hilton.

Mock Mediation

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Sneezer to suffer terribly from allergies to marigolds planted outside her window and in violation of the CC&Rs. Joel Kriger as Attorney Berry Vine was counsel to the board, and Manager Jacqueline Bill played the association manager Ms. Daisy Weed.

After a video on Arbitration, the homeowners decided to try Mediation. Mediator Robin Seigle from National Conflict Resolution Center (NCRC) began the Mock Mediation by giving all parties the rules of conduct. They were allowed to confer with legal counsel, and by the end of the Mock Mediation Mrs. Goldie Bloom decided she liked Mr. Weezer Sneezer and was getting too tired to continue planting her marigolds anyway. The mediation brought out what each homeowner really liked about the community they lived in which minimized the conflict. Both parties agreed to go by their CC&Rs with regard to plant material and planting in the common area. The two homeowners came to the same solution as the decision of the Arbitrator in the video—the CC&Rs took precedence but in a more informal setting.

Joel Kriger has provided some simple mediation tips to consider if your association is facing a mediation situation to solve a homeowner association dispute. ■

Mediation Tips from Joel Kriger

1. In this litigious world and in the community association industry, it is often difficult to avoid mediation. So, how are you going to "win" the mediation? Remember, winning in mediation is solving the problem with a goal of all parties leaving feeling that they each have won the battle; they have to continue living next to each other.
2. Before selecting a mediator, make sure to examine the reputation, expertise, personality, style and experience of said mediator.
3. Make sure all necessary parties and decision makers will be able to attend during the mediation.
4. Before the mediation, it is important to weigh the cost-benefits and litigation risks by doing an analysis of possible outcomes and costs if the matter moves to the courtroom.
5. Project your needs with respect to the outcome from your viewpoint and from the opposing party's perspective by reviewing your interests, goals, objectives and business needs (or those of your associations).
6. Expect the mediator to ask questions such as "What are your feelings about this dispute?" "What issue is the most important to you?" "What is least important?"
7. Present a concise opening statement, which should include a factual summary and remember to outline the relevant issues and strengths of your legal positions.
8. Use demonstrative techniques such as visual, audio, charts, and graphs to make your points interesting and persuasive; remember the mediator may have a white board or flip chart to brainstorm ideas for

solutions from all parties getting you closer to a successful mediation.

9. Listen to the instructions of the mediator and follow the ground rules for the process.

10. Remember that emotions may run high and emotionally charged language may not help bring the parties together; it is okay when appropriate to express empathy for the other party's plight.

11. Listen carefully during the process as the parties are more open in mediation than more structured types of dispute resolution; watch for signals [both positive and negative] throughout the mediation process.

12. Prepare a few good reasons [in advance] that the opposing party should move towards your settlement proposals and be creative taking into consideration underlying business interests and relationships between the parties.

13. It is okay to ask the mediator (when appropriate) to present settlement options after looking at the ideas presented for resolution to avoid parties from becoming reactive and devaluing the other party.

14. If mediation fails, make sure in advance that you have prepared steps you will take to achieve a negotiated settlement.

15. Never use the phrase "take it or leave it" unless it is honestly your position because you lose credibility in present and future negotiation.

Joel M. Kriger, APC of Anderson & Kriger LLP is an attorney and trained mediator who chaired the first CAI Mediation Committee in 1995. He can be reached at: jkriger@a-k.com



Corporate Office

8220 University Avenue, First Flr.
La Mesa, CA 91941-3837
(619) 589-8800 · FAX (619) 589-2680
Offices in Temecula, Orange County,
Riverside, Antelope Valley, Sacramento

www.a-k.com

email: hoalaw@a-k.com

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the A&K News, please call
(619) 589-8800 and let us know.*

Managing Editor – Joel M. Kriger

Editor – Patee L. Barta

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