

From: Jeanne Malys [jeanne@ekmarklaw.com]
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To: Jeanne Malys
Subject: Homeowners Association Tip of the Week - Fair Housing: Part 3

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Questions often arise from associations as to what is the difference between a “reasonable accommodation” and a “reasonable modification.” A reasonable accommodation is when a person is requesting that their disability be accommodated by requesting a specific parking space (that is not otherwise assigned to them) or requesting that they allowed to have a service animal in their unit even though the governing documents otherwise prohibit pets. These are just a few examples of accommodations but, essentially, it is when the disabled resident is requesting an accommodation in the usual operation, governance, or rules of the association to afford that person equal opportunity to use and enjoy their dwelling.

In contrast, a reasonable modification is when a person is requesting that a modification be made to the common areas to allow the disabled person better access to use the facilities. Under the Fair Housing Act (“FHA”), the association must allow a disabled person to make reasonable modifications to the common area if necessary to afford that person equal opportunity to use the facilities. However, the association is not required to pay for the cost of those reasonable modifications. Rather, if the disabled person wants to make reasonable modifications to the common areas, it is at the disabled person’s expense. Furthermore, the association can exercise architectural control over such proposed modifications. If, however, the association is subject to the Americans with Disabilities Act (“ADA”) in addition to the FHA, then the association is required to pay for the cost of the reasonable modification, unless it can show that to be required to pay for this modification would cause the association substantial hardship. As stated in a prior tip, an association is only subject to the ADA if it is a “public accommodation” (i.e. makes its facilities available to the public).

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6720 North Scottsdale Road, Suite 261 • Scottsdale, Arizona 85253
Telephone 480/922-9292 • Fax 480/922-9422
e-mail curtis@ekmarklaw.com
www.ekmarklaw.com