

Reasonable Accommodation Requests For Accessible Parking

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With the arrival of winter, housing providers are often faced with increased requests from disabled tenants for reserved parking spaces closer to their units. These "accommodation requests" raise a number of issues for landlords who may not know how to balance the requests with the interests of other tenants or the rental complex. However, if an accommodation request is not handled properly, a complaint of housing discrimination could result in a landlord having to pay monetary damages and penalties.¹ The following questions and answers are based upon actual court and U.S. Department of Housing and Urban Development (HUD) decisions, and are intended to illustrate how a landlord should respond to reasonable accommodation requests involving parking spaces.

Question: An apartment building has a parking lot with free unreserved spaces for tenants on a first come first serve basis. A tenant with a physical disability who can walk only short distances without great pain often has to park in the outer spaces of the lot because the closer spots are taken by other tenants. The tenant with the disability asks her landlord to convert one of the unreserved parking spaces near her unit into a handicap parking space. Does a housing provider have to create a handicap parking space near a physically disabled tenant's unit if requested?

Answer: The landlord should grant the accommodation requested. Non-disabled tenants are able to walk from parking spaces located further away without pain, while the disabled tenant does not have similar access to her apartment. If the unavailability of parking spaces near her unit leads to greater discomfort and difficulty than experienced by other tenants going to and from their cars, a landlord should accommodate the disabled tenant by providing a handicap space near her unit.² The cost to the landlord is deemed low (paint and a sign).

Further, many multi-family housing structures built for first occupancy after March 1991 are required to have at least two percent of parking spaces accessible to be in compliance with HUD accessibility guidelines. If the accessible spaces that make up the two percent requirement are already assigned to non-disabled tenants, such spaces may be exchanged with accessible spaces created at a location near the disabled tenant's unit. If different types of parking are available (surface, garage, or covered), two percent of each type should be handicap accessible.

¹The Fair Housing Act prohibits discrimination on the basis of disability, which includes refusal to make a reasonable accommodation in rules, policies, practices or services, when such accommodation is necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. 42 USC § 3604(f). An accommodation is not reasonable if it imposes undue financial and administrative hardships on the landlord or creates a direct threat to the safety of other people or property.

² *Hubbard v. Samson Mgmt. Corp.*, 994 F. Supp. 187 (S.D.N.Y. 1998). See also *HUD v. 2000 Linwood Ave. Owners, Inc.*, FHEO No. 02-04-0188-8, charge filed 9/26/06 pending (alleged failure to grant accommodation request for indoor or closer outdoor parking space, resulting in disabled man with crutches falling on ice and snow repeatedly and sustaining injuries).

Question: Rather than a handicap parking space, the disabled tenant requests a parking spot designated specifically for her. Does the landlord need to reserve a space for the tenant, or is the provision of a handicap space satisfactory?

Answer: Several courts and HUD decisions have held that it is a violation of the Fair Housing Act to refuse to grant an accommodation request for an exclusively reserved parking space.³ One U.S. District Court has held that it depends upon whether the handicap spot is sufficiently close to the tenant's unit as compared to the space the tenant is requesting to be reserved for her alone, and whether the handicap space would be available for her regular use.⁴

Question: If a reserved parking space is reserved for a disabled tenant, other tenants with disabilities may want assigned spaces too. How does a landlord respond to these additional requests?

Answer: If the current allocation of parking spaces disadvantages other disabled tenants, then the landlord may have to provide additional handicap or reserved spaces for them in order to assure them the equal opportunity to use and enjoy their dwellings.

Question: Can the landlord charge the disabled tenant a monthly fee for assigning him a designated uncovered parking space?

Answer: Not if free parking is provided to non-disabled tenants. If a disabled tenant requests a type of parking space for which a monthly fee is normally charged, the landlord may be able to charge the disabled tenant the monthly fee. If a fee waiver is requested as part of the accommodation, five factors must be considered: the amount of fees imposed, the relationship between the amount of fees and the overall housing cost, the proportion of other tenants paying such fees, the importance of the fees to the landlord's overall revenues, and the importance of the fee waiver to the disabled tenant.⁵

Information provided by Northwest Fair Housing Alliance (NWFHA) is intended to acquaint landlords with issues implicated by fair housing laws, but is not intended as a substitute for legal advice. For more information about NWFHA visit our website at www.nwfairhouse.org.

³ *Gittleman v. Woodhaven Condo. Ass'n*, 972 F. Supp. 894 (D.N.J. 1997) (condo. Association had to give exclusive use of a parking space to accommodate a condo owner's disability); *Janowski Lee & Assoc. v. Cisneros*, 91 F.3d 891 (7th Cir. 1996) (upholding ALJ decision to designate parking space for disabled tenant); *HUD v. National Church Residences*, HUD ALJ 02-01-0596-8 (a physically disabled tenant settled a complaint with property owners and managers for \$3,000 after repeated requests for a reserved parking space close to his home, in a first-come first-serve parking lot, were denied); and *Shapiro v. Cadman Towers*, 51 F.3d 328 (2nd Cir. 1995) (Apartment building must make reasonable accommodation for physically disabled tenant by assigning her a parking space in close proximity to the building ahead of other tenants on waiting list for the limited spots).

⁴ *Hubbard v. Samson Mgmt. Corp.* See also *U.S. v. Port Liberte Condo 1 Assoc.*, unpublished opinion (D.N.J. 9/27/06) (handicap designation okay when deeds and engineering prevented reassignment of parking spaces allocated to specific condo. units).

⁵ *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, (9th Cir. 1997) (holding that there was no evidence to explain why the imposition of a guest parking fee on a caregiver for a disabled tenant would prevent the disabled tenant from receiving caregiver services).