

Finding a Reasonable Accommodation When It Comes to Parking in Your Condo or HOA

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Parking is one of the three hot-button Ps in the community association world—parking, pets, and people—meaning one of the most contentious issues.

Another challenging issue? When owners ask for a disability or other accommodation.

What happens when the two collide? With [parking](#) often limited and sometimes deeded, what is *reasonable* when you're responding in good faith to a resident's request for a parking accommodation?

Here, our experts discuss the creative ways they've seen condos and HOAs accommodate parking requests, along with instances where they've advised boards that there were no *reasonable* ways to accommodate an owner's parking request.

You're Obligated to Do What's Reasonable

“It's such a sensitive topic,” says [Zuly Maribona](#), LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations. “Although it doesn't come up a lot, it can. And it doesn't get you until it gets you.”

You surely know that when owners seek an accommodation under [fair housing](#) or disability laws, you've got to act in good faith, which can be hard through no fault of your own.

“Sometimes [fair housing laws](#) are clear as mud,” says Cary Devorsetz, a partner at Alderman, Devorsetz & Hora PLLC in Washington, D.C., who for 20 years has been representing condos, HOAs, and co-ops in the district.

Still, you must adhere to or approve an accommodation if it's within reason, explains Noelle Hicks, CCAL, a Houston-based shareholder at Roberts Markel Weinberg Butler Hailey PC, who represents condos and HOAs throughout Texas and has been named to the National Black Lawyers Top 100.

“You can ask for documentation to ensure that this is something the owner really needs, but you can't charge fees for that,” she adds. “And generally, associations are required to grant the requested accommodation unless doing that is going to bankrupt the association or the association absolutely can't do that. If my clients deny a request, I recommend they make sure it's properly documented that the associations made every effort to allow that accommodation.”

Being unreasonable can have consequences, though now that the Trump Administration has [set aside HUD guidance](#) on assistance animals and emotional support animals, it's less clear how condos and HOAs must respond to all requests for reasonable accommodations, reports [Julie McGhee Howard](#), co-founder and managing partner of NowackHoward LLC in Atlanta, who at any given time represents hundreds of condos and HOAs throughout Georgia.

“In the past, I'd say the Department of Housing and Urban Development and the Department of Justice have really put more of a burden on associations to figure something out,” says Howard. “But since September, when the DOJ set aside HUD guidance on assistance animals and emotional support animals, all interpretation of Fair Housing Act guidelines is in flux, and there's a matter of uncertainty there.

“They consider designation of handicapped spaces, including curb cuts, signs, and new striping, to be something the association is obligated to do at association expense,” she says. “That's been the historical bent.

“In the past, I can tell you associations have been penalized and fined for not working with owners to find accommodations for parking,” she adds. “Typically, if you're disabled and you need to modify something to fully enjoy the property, the association has to allow you to do it. But that's not an expense the association incurs. That's not the case with parking, when it has come to such things as marking for handicapped parking.”

So what does this all mean when it comes to parking? It means you may have to be smart and sometimes get creative.

Don't Do a Metaphorical Eye Roll

The first rule in handling requests for accommodation is to take them seriously.

“If someone were to request special parking closer to their unit, never ignore the request,” advises Maribona. “Work with their legal counsel to get advice right away. Steer clear of avoiding or ignoring a request or making the person submitting the request feel like they're being ignored or not welcome.”

Then the question is what your actual physical property permits you to do. “Things you have to look at are whether your owners have separate and deeded spots,” says Devorsetz. “That has nothing to do with the association. We can't force Joe, who owns a spot, to do anything. But maybe we can facilitate a discussion because we want to help people in these situations.

“Similarly, we have limited [common element](#) parking,” he adds. “That isn't separately deeded, but it's close because the board isn't empowered to force anything with this, either. But I'd suggest to my boards that they not just wash their hands of this. If you know Joe has a parking spot by the door, you might be able to say to the person making the request, ‘Maybe Joe will agree to switch with you after your surgery or for forever. Here's his number.’”

“Then we get to general common elements,” says Devorsetz. “Maybe this area isn't parking at all. Maybe it's just a space that's been paved, and the board has temporarily decided that it's going to be a parking area.

“Are there enough parking spaces for everyone?” he asks. “Is there some sort of license to park there granted by the association? If so, is that license terminable by the association at will for any reason or for no reason? If you can terminate a license and give that person a different space or no space at all, why wouldn't you do that if you're permitted to cancel that license? I'd argue there could be exposure for the condo or HOA if you don't do that.”

Other issues will arise. “If it's unlawful to park in an area, that's one thing,” says Devorsetz. “But if it's not going to obstruct or cause a danger, but an area isn't already a parking space, I think the board should consider the optics of telling a disabled resident they can't park somewhere when the negative isn't dangerousness or a violation of the law, instead of it just being because of aesthetics or sticking to your rules. I'd advise against that.”

Howard has similar advice. “If there's no common property the association can designate for handicapped parking, then it really becomes: Is there an actual solution here?” she says. “We've had situations where, if there's limited common element parking assigned to a unit, the association engages with an owner that has a spot that can work for the handicapped person to see if they can get it reassigned.

“But by definition, a limited common element is assigned to an owner for their exclusive use,” notes Howard. “That's the only creative way to accommodate some of these requests—either creating parking on some other land that exists or working to engage other owners who have a limited common element space who might be willing to work with the condo or HOA to reassign the spaces.”

Some Go Big, Some Can't Do Anything

Maribona has a client that worked hard to grant a few parking accommodations. “We manage a property that's a combined residential and commercial space,” she explains. “It's kind of a big outdoor mall with residential units also.

“The developer didn't do a great job of creating handicapped spaces or ramps for the residential portion of the community,” says Maribona. “Residents were requesting ramps on sidewalks, so we were working with a commercial entity to create ramps for the sidewalks that would also benefit nonresidents and give access to everyone.

“The board came up with temporary ramps the community was paying for,” she says. “The residential portion of the community paid for the construction and never charged the commercial plaza just as a way to accommodate the one or two residents who'd made the request.

“That board held a town hall and decided this was worth avoiding the liability but also that these ramps should have already been here,” says Maribona. “Even then, the people requesting this wanted more, saying, ‘We want a ramp here and another there.’

“The board said, ‘Here's a compromise. We don't have this budgeted, but we're willing to move forward with this investment,’” she notes. “The residential board wasn't working the commercial plaza and were just thinking maybe the commercial plaza would join the effort and help the residential board expand the work in the future.”

Even with creativity, sometimes the answer is that nothing can be done. “We have some smaller communities that may be gated and have limited parking access and limited guest parking,” says Hicks. “Maybe the homeowner needs wheelchair access. If the association doesn't have enough funds to pay for that and is unable to get a loan because they're in such dire financial straits, there's not much that can be done. They just can't afford to do it.

“I've never seen an association levy a special assessment for a reasonable accommodation,” she adds. “I don't know if that's reasonable, to make the rest of the community put in money for an accommodation that would benefit one homeowner. I'm not saying it can't be done. But I've not seen it before.”