



ALTUS LEGAL LLC

CONDO AND HOA LAW

LEGAL TIPS

Handicapped Resident Parking Accommodations

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A recent federal case¹ out of Hawaii, involving handicap parking has been on our radar. The facts of the case include unit owners with a disabled son suing their condominium association due to the association's temporary refusal to provide them access to ground-level parking. Board members and attorneys should closely monitor such court decisions because they help shape the requirements of community associations to accommodate such requests by residents (owners, tenants, etc.). Failure to properly address such requests can result in a lawsuit under the Federal Fair Housing Amendments Act² ("FHAA"). **The Hawaiian case we just mentioned may ultimately result in the unit owners winning money damages for the emotional distress caused by the situation, which is what we prefer to help our clients avoid.**

By way of example, an Illinois homeowner association may have a lot or garage mixed with parking spaces separately-deeded and owned by the unit owners as well as visitor spaces owned by the association. **Should a new owner with special needs, whose assigned parking space is too far from the building entrance or too close to adjacent cars to allow wheelchair access, request a different space, how should the board respond?**

The first step is to contact the association's attorney. FHAA complaints can be expensive and time-consuming, so it's best to get an attorney specializing in community association law involved immediately (a misstep at the outset can result in far more legal fees).

The association's attorney should consider the following factors:

1. **Ownership of the parking spaces** – Are the association spaces assigned as limited common elements, leased or licensed by the association residents, or separately-deeded and owned?
2. **Availability of spaces** – Are there any handicap-accessible spaces under the board's control? What steps can the board take to "free up" such spaces?
3. **Type of request** – Did the occupant (or *prospective* occupant) properly request an accommodation? Is the request "reasonable"?

¹ Lau et al. v. Honolulu Park Place, AOA, et al. (1:18-cv-00295)

² 42 U.S.C. Section 3601 et. seq.

While the FFHA does not “create a right to an assigned handicapped space”³, under applicable building codes, developers of community associations are required to build specific parking spaces as handicap-accessible. The problem is, however, barring immediate purchase by disabled individuals, the developers often sell these handicap-accessible spaces to *non*-handicapped individuals. **As of the date of this particular “Legal Tips” memo, Illinois law does not mandate that an association actually “take” a legally-owned handicap-accessible space from a non-handicapped individual and provide it to a person who has a genuine need for the space. However, Illinois courts have held that a board must make some effort to accommodate the request of the disabled individual nonetheless.** The extent of such efforts depends on the particular facts at hand (such as whether there are association-owned and controlled spaces that can be provided to accommodate the request, or whether the association can help facilitate communication between other owners to discuss swaps or sales of individually-owned spaces, etc.).

A few final details to bear in mind. First, the FFHA protects occupants (and *prospective* occupants) of an association – **guests and visitor issues are slightly different. Boards should discuss guest requests with the association's attorney.** If the association has some areas of public access (such as a commercial area, public park, etc.), visitor and guest protections are provided under a different set of laws. Second, a board’s response to occupant or prospective occupant requests may consider both costs to the association as well as benefits to the requesting party – for example, a request for a special rooftop helipad by a handicapped individual need not result in an automatic “yes” (hence the inclusion of the word “reasonable” in the term “reasonable requests”).

Best practices are to ask for the association attorney’s guidance regarding any such requests. The right answer “off-the-bat” will likely save the association time and money.

Contact [Altus Legal](#) with questions on this or other issues.

³ *Jafri v. Chandler L.L.C.*, 970 F.Supp.2d 852, 863 (N.D. Ill. 2013) (citing *Jankowski Lee & Assoc. v. Cisneros*)