Reasonable Accommodation

Recently, I received a message from a former board member in one of our communities. She had a concern about a resident who would like to attend board meetings, but is hearing impaired and cannot understand what is transpiring in the meeting. Her question was, "what is the board required to do, if anything, to accommodate this owner at our meeting"? Well that is a very good question because under either the Americans with Disabilities Act or the Federal Fair Housing Act, boards do have to make reasonable accommodation under certain circumstances for people with a disability.

So, it sent me to the library (online of course) to do some research. In this case prompted by the question above, the simple option was to waive the requirement of only permitting community members at meetings in order to have an American Sign Language interpreter present for the owner - at the owner's expense.

So what about other situations that may require "reasonable accommodation"? What if an owner was sight impaired? A reasonable accommodation might be that the meeting materials could be provided in advance in time to obtain a Braille translation again, at the owner's expense.

There are some accommodations that may not be as easily solved such as parking spaces, ramps, service or emotional support animals.

To be clear about how the Americans with Disabilities Act and the Federal Fair Housing Act affect homeowners and condominium associations, the Americans with Disabilities Act is generally for public and government facilities - except when HOA's are operating what can be considered a "public accommodation". A public accommodation is any facility which a HOA* is holding out for use by members of the general public - not solely for the use by the HOA's members and their guests. HOA's have been subject to ADA requirements when the HOA allows members of the public to buy memberships or passes to the HOA's pool, clubhouse amenity, tennis courts or where the HOA allows schools, church groups or clubs to use HOA facilities on a regular basis or where the HOA maintains a rental office on the property that receives regular visits from the general public. Any HOA (or condo)

considering allowing such activity should carefully inspect their facilities to ensure compliance with the ADA requirements.

The Federal Fair Housing Act (FFHA) is similar to the ADA; however, the FFHA applies directly to housing facilities, including HOA's. Under the FFHA the HOA may not legally refuse to make such an accommodation (one that is reasonable and necessary to afford a disabled owner the full enjoyment and use of his/her unit.) The FFHA also requires HOA's to permit a disabled owner to make, at such owner's expense, reasonable modifications to the owner's unit and HOA common areas. The latter could be power stair lifts, ramps or hand rails. The owner requesting accommodations which require modifications to either their home/unit or common area is still required to submit plans and specifications to the HOA for review. The HOA may also require that the plans for the modification are consistent with the overall design of the neighborhood and may require, through the execution of an agreement that the owner return the property (common area) to its original condition upon leaving the property.

Any time HOA's receive a request for modifications or are granting members of the public access to HOA facilities, it is important to contact your legal counsel to determine the HOA's rights and liabilities.

I learned several important things when researching this issue. That the Association has no obligation to offer the modifications or accommodations, the owner must make the request. The request must precede any work or exterior modifications. And, given the request, the reasonable accommodation may be an alternate offer of equal accommodation.

Our advice is that almost all of these requests for accommodation should be reviewed by the Association's legal counsel. There are too many cases where associations have made decision on their own that wound up costing many thousands and sometimes hundreds of thousands of dollars more, than if the attorney had been brought in at the time of the request to provide guidance to the Board.

*HOA is being used interchangeably with condominium throughout this article.