

# Kimball, Tirey & St. John LLP

## Disabled Parking Requirements

*Lynn N. Dover, Esq.*

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How do owners and managers of residential rental properties comply with all the applicable laws regarding parking for persons with disabilities? There are federal laws, state laws and sometimes local laws which may conflict with one another, and may apply to different areas of the property or different users of the parking spaces. This article is designed to help clarify the current state of the law.

### **PUBLIC PARKING**

The federal law called the Americans with Disabilities Act (ADA) requires that any area to which a member of the public is invited, must be “accessible” to disabled persons. There must be curb cuts, ramps, wide doorways, lever door handles, etc. on the routes that a disabled person might take in order to contact a representative of the owner of the property.

Under California law, properties with 16 or more residential rental units must have a representative of the owner on-site. If that representative interacts with the public, for instance conducting tours and taking applications from prospective residents, the office (or the portion of the representative’s unit which is used to conduct business) must comply with the ADA. In addition, if a property allows public use of amenities (such as allowing members of the general public who are not residents or guests of residents to rent the clubhouse for activities), the ADA would require those areas to be accessible as well.

But what about parking? If there is no parking on the property...or all parking is reserved for residents, then there is no “public” parking and the ADA does not apply to parking on that property. If there is prospective resident or guest parking on-site, the ADA applies and there must be a blue-striped space with the blue wheelchair sign designated for the use of persons with disability placards or license plates. The ADA requires at least one designated disabled space for every twenty-five parking spaces. The ADA focuses only on public parking, so the rule can be interpreted to mean that there must be one designated disabled space for every twenty-five public spaces. There are few rental communities which have twenty-five or more spaces for public parking. Therefore, the requirements of the ADA should be able to be met on properties which have public parking by establishing at least one designated disabled parking space in each area in which the public is allowed to park. The first designated space must be a van-accessible space. In parking lots with numerous disabled spaces, one out of eight such designated spaces must be van-accessible.

Take note that all public places must be made accessible to the extent that it is readily achievable and technically feasible. It is a common misconception that older properties are “grandfathered in” and do not have to comply with ADA guidelines. Many landlords have been sued for failure to comply with the ADA in recent years and have found out the hard way that their properties were not exempt. When considering changes to an older property to make it ADA compliant, a Certified Access Specialist (CAsp) should be consulted.

## **FEDERAL FAIR HOUSING ACT, 24 CFR 100.205**

This is the law that mandates certain accessibility features for all new residential construction that was built for first occupancy on or after March 13, 1991. With respect to the parking requirements, at least 2% must be made accessible, and be located on an accessible route. Accessible means there are no barriers; in other words, it must be constructed in such a manner that a disabled person could access and use it. If the development contains different types of parking, such as surface parking, garage or covered spaces, there must be accessible spaces located in each type of parking. These requirements are distinguishable from the ADA, in that they do not require actual “disabled” (blue striped, and signed) spaces.

## **CALIFORNIA CODE OF REGULATIONS**

Title 24 of the California Code of Regulations (CCR) serves as the basis for design and construction of buildings in California and includes accessibility requirements for residential rental property. Unlike the fair housing act, the CCR requires blue, disabled spaces to be located in the private (“resident only”) parking areas of the property. It may be possible to reserve marked handicapped spaces in parking areas, but landlords should consult with a CASp on the specific situation before taking such an action. The code further indicates that all disabled spaces must be painted blue and have the universal disabled (wheelchair) symbol, and that unassigned or guest spaces must also have the disabled parking signage – assigned disabled spaces do not require signage.

## **LOCAL BUILDING CODES**

Local government codes may require a greater or lesser number of accessible spaces than what is required by federal or state law. If this is so, the laws which provide the greatest benefit to persons with disabilities should be followed.

## **CALIFORNIA VEHICLE CODE**

The California Department of Motor Vehicles website seems to indicate that anyone with a disabled placard or license plate may park in any designated disabled space. It does not appear to make a distinction between public and private property or between reserved and unreserved spaces. This creates a potential problem for landlords who may assign a disabled space in their “resident-only” parking areas to a particular resident who has disabilities and then discover that another resident who has a valid disabled placard or license plate is parking in that “reserved” space.

The “violating” resident may argue that the disabled placard or license plate gives him/her the right to park in any disabled parking space. Complicating matters, landlords may find that their towing companies are unwilling to tow a person with a valid disabled placard or license plate out of such a space, notwithstanding the fact that it is reserved for use by another resident who has disabilities. When assigning a disabled parking space to a resident with disabilities, landlords would be well advised to advise the resident of this possibility (preferably in writing). If it becomes a problem, work with one or both residents to see if there is a reasonable accommodation (as described below) that would address the problem.

## **DISABILITY ACCOMMODATIONS FOR RESIDENTS**

Federal and California fair housing laws require that landlords make “reasonable accommodations” (exceptions to the rules, policies, procedures and services of the community) for residents with disabilities. The reservation of a space that is close to the resident’s unit is generally considered to be reasonable. The expense and effort of the reservation of the space is often minimal and usually borne by the landlord.

The request from the person and its approval or denial should be processed in accordance with fair housing guidelines. Please see our resource library at [www.kts-law.com](http://www.kts-law.com) for information on proper conformance with current rules.

If the property has no reserved parking spaces, a space would be reserved pursuant to the resident's request, as an exception to the rules. Note that if other residents ask why someone was given a reserved space, the confidentiality of the person with the disability must be maintained. An owner or manager should just indicate that although the reason for the reservation cannot be disclosed, the action was taken in compliance with the law. If the party questioning the action files a discrimination complaint, the documentation regarding the accommodation should support the reasonableness of the landlord's position.

If all of the spaces on a property are assigned to residents, making a reasonable accommodation can be very challenging. Other residents can be asked to trade spaces voluntarily...without disclosing the reason. If no one will cooperate, you may need to explore other alternatives (as outlined below).

If the person needs a wider space or a van-accessible space, you may need to assign the person two side-by-side spaces and have them striped like a van-accessible space, but using white paint instead of blue and without the wheelchair symbol or disabled parking signage. A sign should be installed indicating: "Reserved – Violators Will Be Towed." As long as your parking lot has the other required signage prohibiting public parking and stating that unauthorized vehicles will be towed, you should be able to have a violator towed out of the resident's reserved parking space.

When a request for accommodation is considered to be unreasonable or impossible, the landlord should attempt to negotiate an alternative accommodation. In the case of parking, if the resident can wait and is willing to do so, he or she can be put on the waiting list for parking (ahead of any non-disability-related parking request). If he or she cannot wait for the next available space which would suit his or her needs, the resident should be offered an opportunity to terminate the tenancy without penalty.

Residents often think that they should be able to use public ADA parking spaces on a regular basis. However, such spaces must be available on a first come, first served basis for members of the public who come to the property to transact business. They can't be assigned to anyone, but as outlined above, it is likely not legal to tow a resident out of such a space if he/she has a valid disabled placard or license plate. Instead, offer an opportunity for a reasonable accommodation as described above. It is important that there be written documentation of such interactions.

*If you don't already have forms designed to address requests for assignment of parking based on disability, KTS has a complete packet of policies, procedures and forms for dealing with both disability accommodation and modification requests. The forms are for sale at [www.kts-law.com](http://www.kts-law.com). KTS can also recommend Certified Access Specialists who can perform an evaluation of properties throughout the state for ADA and other compliance issues.*

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