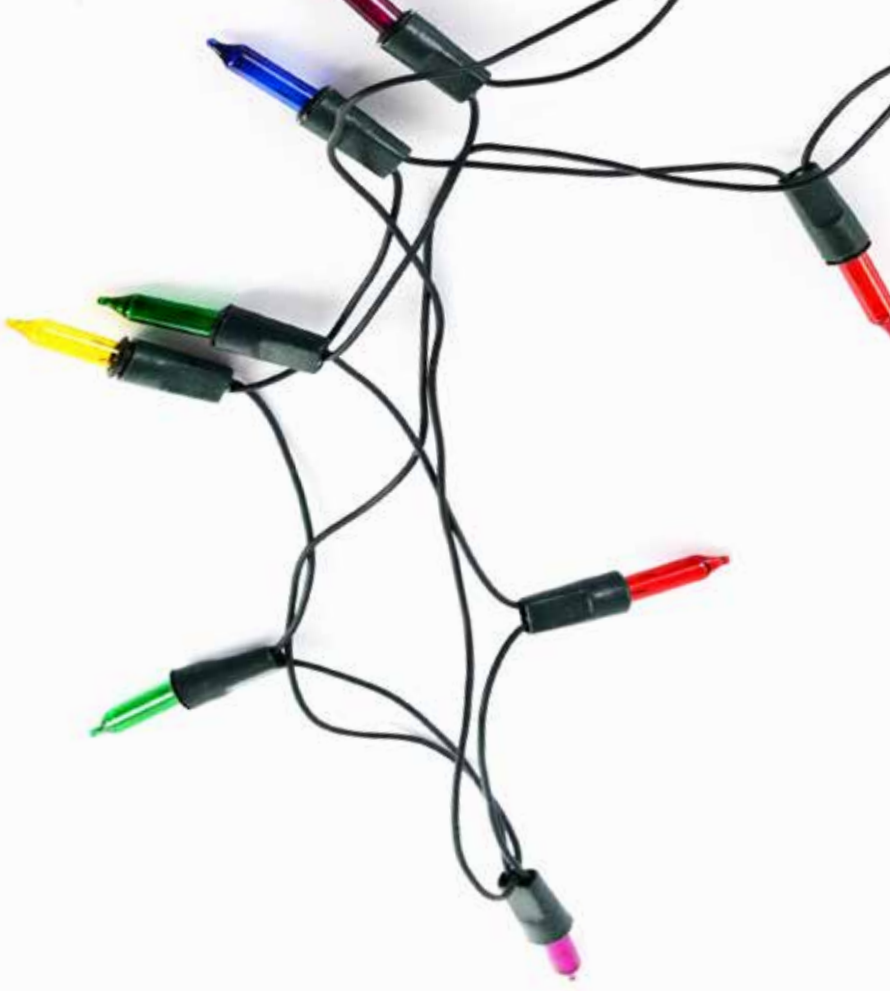
Whose Holiday is it Anyway?

Can a Community Association Regulate an Owner's Display of Religious Holiday Decorations?



by Javier B. Delgado, Esq. & Greg A. Stein, Esq.
Research performed by Jeff Solloway, JD Candidate.

While community associations can regulate an owner's display of religious holiday decorations, they must act carefully to avoid claims of religious discrimination. One Idaho community association recently learned this lesson the hard way.

In Morris v. West Hayden Estates First Addition Homeowners Association, Inc., a husband and wife (the "Owners") purchased a home within the West Hayden HOA (the "Association"). The Owners intended to host a large-scale holiday light display - a "Christmas Program" on their front yard.

By 2016 the Christmas Program included ten miles of Christmas lighting (for a total of 20,000 lights), a live nativity scene featuring a live camel and goat, 27 professional costume biblical characters, and singing carolers, experiencing over 10,000 visitors. Tensions between the Owners and the Association came to a head when the Association complained that the religious nature of the display was offensive to some residents.

In refusing the Association's demands to tone down their display, the Owners alleged that some Association members blocked vehicular access; others made death threats against them. The Owners alleged that the Board was complicit and failed to take steps to calm the hostile atmosphere.

The Owners ultimately sued the Association in Federal Court alleging violations of the Federal Fair Housing Act ("FHA"). Specifically the Owners alleged that the Association, as a housing provider, engaged in prohibited religious discrimination. After a weeklong trial held in late October 2018, a jury found that the Association had discriminated against the Owners, and awarded them substantial damages - $75,000.00.

FHA Discrimination

Jury Verdict $75,000

Although the facts may be extreme, the Morris case provides a few important takeaways for community associations seeking to regulate an owner's display of religious holiday decorations:

- Almost all community associations qualify as "housing providers" under the FHA.
- Community associations—as housing providers—are prohibited from engaging in discriminatory housing practices on the basis of any protected class, i.e. race, color, religion, national origin, sex, disability, and familial status (families with children).
- Whereas, we typically associate the FHA with claims of disability discrimination, the FHA prohibits discrimination on the basis of any protected class.
- Something as seemingly harmless as regulating Christmas lights on an owner's property could devolve into costly and time-consuming litigation.

Based on our experience, the vast majority of board members would never intentionally discriminate against a resident based on his or her membership in a protected class.

However, the United States Supreme Court recently held that a plaintiff asserting FHA claims is not required to demonstrate that a defendant acted with a discriminatory intent. Instead, the Supreme Court ruled that such a plaintiff may only be required to demonstrate that the defendant's actions resulted in a "disparate impact" upon members of the protected class. A disparate impact may arise when a facially neutral policy or practice disproportionately affects the members of the protected class.

As a threshold matter, discriminatory intent is clear when the rules of a community association expressly permit residents to display decorations for some religious holidays, while prohibiting displays for other religious holidays. Consider the following hypothetical rule language:

"Accepted holidays for the purpose of displaying holiday decorations are limited to Christmas, Hanukkah, and Kwanzaa. Residents shall not display holiday decorations for any other holiday."

Faced with this result, the board of a community association might say, "This is too difficult. Let's just ban decorations for any religious holiday. Only decorations for secular holidays are permitted." At first glance, limiting the display of decorations to secular holidays avoids the problem identified above – favoring one religion over another. However, this approach could be challenged on the basis that it discriminates against all religions in favor of a secular approach.

We recommend a third approach to limit potential liability for religious discrimination under the FHA:

1. Be inclusive and recognize all religious holidays (not just "traditional" holidays). Although it can seem impossible to include every religious holiday in a rule governing holiday decorations, it is advisable for community associations to adopt such a rule and recognize as many religious holidays as possible.

2. Include exculpatory language. The rule should expressly state that the association will consider a resident's request to recognize additional religious holidays.

3. Remain open-minded in enforcement actions. Be quick to dismiss violations arising out of misunderstandings concerning "non-traditional" religious holidays.

4. Adopt reasonable time, place and manner restrictions. An association's rules may appropriately govern many other aspects of holiday displays, including but not limited to:

a. Time - how long before and how long after a holiday decorations may be displayed.

b. Place - where on a resident's property the decorations may be displayed; and...

c. Manner – the size, scale, and magnitude of the proposed decorations.

Javier and Greg are attorneys with Carpenter, Hazlewood, Delgado & Bolen, LLP. They can be reached at 480.427.2800 and javier@carpenterhazlewood.com and greg@carpenterhazlewood.com. Jeff is a law clerk with the Firm and a third year law student at the Sandra Day O'Connor College of Law. *The information contained in this article is not intended to be legal advice and is provided for educational purposes only.*