



KEOUGH MOODY

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Newsletter

With Summer in full swing and much of the rainy weeks behind us, it is likely that your association has seen an increase in the use of its common areas, whether that may be the hosting of parties and the use of pools to barbecuing and everything in between. With this increased use, many associations encounter the difficulty in balancing the enjoyment of the common areas for its members and their guests or tenants while also protecting those same common areas from damage, destruction, or activities that may become a nuisance or otherwise give rise to illegal activity.

If your association is interested or otherwise concerned with any practices and use of the common areas, please do not hesitate to contact either Dawn Moody at d1m@kmllegal.com or Gabriella Comstock at grc@kmllegal.com.

Chuck Keough



DOES THE ASSOCIATION HAVE THE ABILITY TO REGULATE THE DISPLAY OF FLAGS AND OTHER VARIOUS DECORATIONS AND/OR ORNAMENTATION?

As the month of July brings Independence Day celebrations and patriotic feelings for many homeowners, associations may see an increase in the amount of American flags and military flags being flown from homes and balconies. Along with flags, associations may also see an increase in other decorations such as strings of red, white and blue lights or patriotic banners and lawn ornaments celebrating the holiday. Such displays are a common occurrence at this time of year. As such, these types of decorations could lead boards to wonder about their ability to limit such displays, either by size or duration, as they may already do with other holiday decorations. Fortunately for boards, both the Illinois Condominium Property Act ("Condo Act") and the Common Interest Community Association Act ("CICAA") provide guidance on this issue.

While boards cannot prohibit the displaying of American flags or military flags by homeowners on the "limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located" pursuant to the Condo Act and the CICAA, associations are allowed to adopt reasonable rules and regulations as to "the placement and manner of the display" of such flags. 765 ILCS 605/18.6 and 765 ILCS 160/1-70. As it relates to the American flag in particular, the rules and regulations must be consistent with Sections 4 through 10 of Section 1 of Title 4 of the United States Code, which governs the official flag of the United States. Additionally, boards cannot "prohibit the installation of a flagpole for the display the American flag or a military flag, or both, on or within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located" pursuant to the Condo Act and CICAA. Id. However, boards are allowed to

"adopt reasonable rules and regulations regarding the location and size of flagpoles", like they are allowed to do with the American flag and military flags. Id. This allows boards to navigate the fine line between allowing homeowners to express their excitement for Independence Day, while at the same time keeping a uniform appearance as to the building or neighborhood.

Adopting rules and regulations related to the display of the American flag or a military flag may be something a board should consider when reviewing its rules and regulations. Doing so could help prevent any issues that may arise regarding location of flags and flagpoles, as well as guide any owners that may be considering installing a flagpole in the future. Additionally, both the Condo Act and CICAA specifically state that an "American flag" is a flag as defined in the United States Code and any Executive Orders, "made of fabric, cloth, or paper displayed from a staff or flagpole or in a window." 765 ILCS 605/18.6 and 765 ILCS 160/1-70. The Acts go on to say that the American flag "does not include a depiction or emblem of the American flag made of lights, paint, roofing, siding, paving materials, flora, or balloons or similar building, landscaping or decorative component." Id. Therefore, boards may be able to prohibit certain displays like the use of red, white and blue string lights or a large wooden yard sign depicting the American flag because those types of items would not fall under the definition of American flag as outlined by the Acts. Boards can treat the depiction or emblem of the American flag or military flag during Independence Day like any other holiday declaration. Therefore, while boards may want to allow such decorations to be displayed during the holiday period, properly adopted rules and regulations can limit the duration of those displays as an association may do already during other holidays. However, as with all rules and regulations, any rules related to the display of the American flag or military flags or depictions of those flags must be reasonable.

As a good practice, boards should review the rules and regulations of the association from time to time to ensure that the objectives of the rules are still being met. Over a period of time, boards may find that some rules are no longer necessary. While on the other hand, circumstances may have arisen since the last set of rules were adopted that may necessitate the adoption of new rules. Additionally, as existing laws are modified and new laws enacted, an association's rules may need to be updated to keep in compliance with the law. Therefore, being proactive with the association's rules and regulations can help boards avoid any challenges down the road.

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