



While it may appear, based upon store displays, that we are fully in the Christmas season, it is still November. November is the month of Thanksgiving – a time where we take a step back to gather with family or friends to be thankful for all that we have. At Keough and Moody, P.C., we are thankful for each other, our clients, and the community association managers and other members of the team, which manage or support our clients. Thank you for your time and service to your communities and for your support of our firm. We appreciate you and we hope that you take time this month to thank and appreciate those who support you, individually or as an association!



Sign(s) of the Times

Considerations for handling restrictions on signs within community

associations

When you walk down the street in your neighborhood, at one point or another you will come across a sign in someone's yard or property. Whether this sign is in support of a sports team, local school, or a political candidate, it is almost impossible to avoid seeing them. The prevalence of homeowners installing signs, especially over the last few years, seems to have increased tenfold, especially as it relates to signs, which can be viewed as political, and there is no sign of this trend slowing. As a result, more than ever before associations are struggling to determine not only what restrictions should be implemented, but also what can legally be enforced. Trust us when we say, we, as attorneys have also struggled with this issue. While there is no perfect solution, we hope that we can provide, at a minimum, considerations for boards to discuss in determining whether your association should adopt (or modify) rules regarding signs and if so, to what extent.

In determining whether or how to adopt a sign restriction, the first question is whether your association is a condominium or non-condominium community association. As with many questions in our industry, this will determine the extent of the restriction. For condominiums, there is the ability to implement far greater restrictions related to the display of signs. For example, condominiums have the ability to outright restrict all signs within the common elements, which is a large portion of the property. However, as it relates to non-condominiums, an outright restriction is not necessarily available, since owners have certain rights to use the property that they own, which may include portions of the exterior lots and homes. This does not mean that those associations cannot implement any restrictions, though. It is just that those restrictions may not be able to extend to a prohibition against the display of all signs on the owner's property.

So, what sign restrictions can or should a board look to adopt? Initially, boards can look to adopt content neutral limitations, such as limitations on the number of signs that can be installed on a property or the size of signs. While that may prevent an owner from turning his home into a full political display, what about the content of those signs? This - the board's authority to limit the content of the signs - is a more difficult consideration. In considering such limitations, the board must balance the interests of First Amendment free speech rights, with addressing any message that might violate the governing documents of the association by advertising a message that is offensive, harassing, or that creates a hostile or threatening environment. While a rule can be crafted prohibiting such signs, enforcement of those restrictions can and will be difficult, as, in many cases, what is offensive, harassing, or viewed as creating a hostile or threatening environment, is subjective.

To the extent that a board adopts rules governing signs, it must enforce them. The board should determine, as a group, whether a particular sign violates the association's rule. Violation letters should not simply be issued because someone complains about a sign (simply because one complains does not mean that there is a violation of the community instruments). The board must first confirm that the sign objectively (not subjectively) violates the association's rule. Therefore, personal feelings about a particular candidate or position, along with who posted the sign, should be checked at the door and the board should only consider whether, *on its face*, the sign violates the association's rules.

Additionally, in making that determination, we recommend not considering extrinsic evidence. In other words, take the sign, at its face, and not at a meaning that society or someone else may have subscribed to the sign. For example, a sign that says “I love fall” should be taken just as it states, that person loves fall and not something along the lines of well you love fall, so you obviously hate spring! If we take signs at their face value without any other interpretation or implication, or a meaning that someone has assigned to it, we can help ensure that we are enforcing any restriction objectively.

Evaluating a sign at face value is one way to objectively evaluate political signs. There may be other ways to evaluate whether a sign violates an association’s restriction. The key is for the board to evaluate the contents of signs in an objective manner and not to selectively enforce the restriction. As stated above, enforcement is important. Therefore, when a board is determining how they will evaluate complaints related to signs, it is important to develop a process that is clear and easy to follow.

The 2020 political season created a number of issues within communities. We expect those issues to intensify with the 2024 political season. For those associations who do (or want to) limit signs, it should be reviewing its rules now to determine whether those rules reasonably address expected issues in the year ahead and if not, to start working with counsel now on getting those rules prepared and adopted. As noted, boards should also be discussing how complaints related to signs will be handled going forward. This may require establishing new processes and procedures to ensure that the board is fairly enforcing restrictions and doing so in a manner that does not stifle owners’ reasonable First Amendment rights. It is important to note that rules on these topics, and enforcement thereof, will not make everyone in your community happy and that is ok. It is important to make sure that while people are allowed to express themselves and their political views, that they are not doing so in a manner viewed as objectionable to a reasonable, objective person.

As with any restriction, each individual association is unique, and what can or cannot be implemented is not only impacted by the law, but also what is already contained in your declaration and by-laws. If there are any questions regarding the implementation of sign restrictions or limitations, please do not hesitate to contact Gabriella Comstock or Dawn Moody so that our office may assist your association in making these determinations.

THE Q&A CORNER



Question: I have always been friendly with the neighbors in my building. Now, being a newly elected board member, my neighbors are approaching me frequently with questions about the association, their assessment accounts, etc. One of the other board members says that I need to direct my neighbors to talk to the management company, but my neighbors say they do not respond and I do not want to leave them with unanswered questions if I can help. As a board member, I should be helping my neighbors with association concerns, right?

Answer: Yes and no. Yes, as a board member, you should be helping address association concerns. However, there is a time and place for that and it is not in the hallway on your way to pick up your mail - it is at an open meeting of the board! Therefore, no, you should not be individually helping your neighbors with their association concerns (unless your fellow board members have given you express approval to do so).

The board of directors is comprised of several board members. It acts by a majority vote of a quorum of its members at an open meeting. What does this mean? This means, that no individual board member has the authority to act on behalf of the association (at least not without the board's express consent). The group of board members must act as a whole. While it is understandable that one wants to be neighborly and helpful, individually speaking with other owners about association concerns can cause problems for not only the association, but also for you, individually. By casually speaking with an owner about an association issue, you may inadvertently make representations on behalf of the association – representations that you do not have the legal authority to make and representations that will harm the association. This can occur even if you did not intend to make a representation on behalf of the association. Once it happens, the association may be bound by your actions and the association pursuing you, individually, for any loss created by those actions. (And yes, this does happen!) No one wants this!

In short, the best course of action to take when approached by a neighbor about an association concern is to remind them that you do not have any independent authority and to redirect them to management (or the next open board meeting), so that the board as a whole can consider any question or request. Yes, you may hear that management does not respond and in the event that you hear that, you can certainly follow up with management directly. In most cases, you will learn that either (a) management *did* respond and the owner did not like the response; or (b) the request was just made (it is important to allow

management reasonable time to address non-emergency concerns). The association is your home too and you should be free to walk around and enjoy it without risk of being bombarded by an owner with association issues. This is a wonderful perk of being professionally managed. Do not let a neighbor wanting something immediately open you up to personal liability and prevent you from just enjoying your home!

If you have a general question, please email it to either Dawn or Gabby (d1m@kmlegal.com or grc@kmlegal.com). The subject line of your email must state "NEWSLETTER QUESTION". Questions must be general "how to" questions and not specific to your declaration or community only. We look forward to reading your questions!

Save the Date!

February 9, 2024

Save the date for the 2024 IL Condo-HOA Conference & Expo presented by the Illinois Chapter of Community Associations Institute where Gabby and Dawn will be presenting!

[Learn more about the 2024 IL Condo-HOA Conference & Expo](#)

Thank you for your continued support. Please do not hesitate to contact us if you have any questions.

Chuck Keough (cmk@kmlegal.com); Dawn Moody (d1m@kmlegal.com) and Gabby Comstock (grc@kmlegal.com)

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