RICHARDSON | OBER

Election Rules: Equal Access to Media and Common Area

By Matt D. Ober, Esq., CCAL

As with many provisions of the Davis-Stirling Act, we look to judicial decisions interpreting the statutes for guidance in applying them in our own communities. With respect to community association voting and election laws, however, the Courts have steered clear of published decisions leaving us to rely upon our own interpretation or that of legal counsel, until now. In Wittenberg v. Beachwalk Homeowners Association the Court of Appeals gave us a welcome interpretation of two provisions of the elections law, albeit an interpretation that to many seems obvious.

The Wittenberg v. Beachwalk Homeowners Association opinion leaves no doubt that Civil Code Section 5105 requires equal access to association media and common area. But the opinion provides an important message to association boards in community association election matters: when the board advocates for or against a particular election position, it is treated no differently than any individual member. Equal access is required.

Despite the best intentions, boards sometimes overstep their authority when purporting to act in the best interest of the community. This is particularly the case when an association incurs significant expense to amend its governing documents. The board will be compelled to advocate in favor of passing the amendment through town halls, campaigning and letter writing urging support for the proposed amendment. But under the Beachwalk opinion, such action will trigger the obligation to allow a member with an opposing view the right to hold his or her own town hall or use of the association media to advocate their views.

In Beachwalk, the board conducted three election campaigns over a period of time to amend the association's governing documents. The association employed the use of cover letters, ballot enclosures, newsletters, bulletin board posts, and the association's website in an effort to encourage members to vote for the proposed amendment. After the third attempt, the amendment passed but in the entire process, the board denied members who opposed the amendment access to the media and association common areas. The Court found the association in violation of Civil Code Section 5105.

At issue were the sections of the elections law which require associations to ensure equal access in elections. First, Section 5105(a)(1) requires whenever a member advocating a particular position in an election receives access to association media (newsletters, bulletin boards, website, etc.), members advocating an opposing or contrary view must have equal access to the media. Second, Section 5105(a)(2) requires that all members receive free access to all existing common areas in election matters.

For whatever reason, the Beachwalk board determined that it was somehow exempt from these two sections and could use common area and association media while denying same to opponents of the amendment. The Court resoundingly disagreed. It found that "board members are treated as any other member" in terms of the equal access provisions of the Act. The court further concluded that the board went beyond merely providing information about the amendment and crossed the line into advocating their point of view. "Having engaged in advocacy, under subdivision (a)(1) the association was bound to permit other members equal access to association media."

While the opinion makes it clear what the law of the land is regarding equal access, even without this opinion it is clear that granting equal access to differing points of view was the right thing to do. Respectful opposition and debate are healthy and should be encouraged, particularly if a community desires to keep its members engaged and avoid owner apathy. Any reasonable board objectively and in fairness should have seen it is in the best interests of the community as a whole to allow those with opposing views equal access to the association media and common area. Sometimes, common sense must prevail.