



Soulful Consideration

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Sheng Tchou moved to the United States from China, where he was persecuted for his Christian beliefs. For the past decade, he enthusiastically decorated his home in Johnson City, Tenn. with multi-colored lights at Christmas. He was surprised last December when the Hunter's Lake Homeowners Association sent a letter asking him to remove the decorations. The community allowed only white lights at Christmas, he was told. "I come from a communist country," Tchou told local reporters at the time. "I suffered a lot from the communist regime, and this is a free country here. I enjoy my freedom and free speech." To Tchou, the colored Christmas lights were not merely decorative. To Tchou, those lights were an expression of his religious beliefs.

Each holiday season, community association boards wrestle with disputes over decorations that are too bright, too gaudy and too large — or on display too long. But these disputes become most passionate when the decorations are manifestations of residents' religious expressions. We seem to accept, albeit reluctantly, restrictions on where we park our cars, place our garbage containers, erect our basketball hoops, play our stereos or place our birdfeeders. However, when an association rule is applied to restrict a resident's religious expression or cultural observance, it's much more personal and potentially offensive.

One of the toughest challenges of association governance is how to preserve the architectural standards of the community without infringing on what many homeowners see as a fundamental right — the freedom of cultural expression or religious observance.

The debate has moved far beyond committee discussions about holiday decoration rules to community-wide protests over acceptable levels of cultural diversity and religious tolerance. In some areas, the increased diversity has extended what used to be a seasonal issue into a debate over the year-round display of religious symbols.

SACRED GROUND

To religious observers, the displays are at the heart of their cultural observance and religious practice. They are an attempt to express who they are in contrast to the board's adherence to aesthetic uniformity. Indeed, to those devout dwellers, the inability to display a religious symbol is not only a denial of their right to practice their religion, but also a denial of their right to house.

And these disputes are not limited to unfamiliar religious practices and symbols. Under some community rules, a religious symbol as recognizable to Christians as the Blessed Mother is no more regarded than a common birdbath. In the Long Island condominium community, the board at Country Pointe at Coram tried to prohibit resident Peter Kelly from placing a statute of Mary outside his home. Under association rules, garden gnomes and gazing balls were permitted, but birdbaths, birdfeeders and religious statutes were not. The board president defended the prohibition against religious statutes as non-specific and asserted that those who desire religious objects can find them in their churches and synagogues. After pressure from

community members and much media attention, the board reversed its ban on religious statutes. In an ironic turn of events, Kelly was later elected to the board.

FACING THE GIANTS

Over the years, state and federal laws and regulations have tipped the scales in favor of individual residents' rights, limiting community association authority to restrict such items as flags, signs and satellite antennae on owners' properties. Until recently, such laws and regulations had not gone so far as to interfere with an association's sacred authority over common areas. But as in the story of David and Goliath, this seemingly undefeatable authority over the common area may have met its match when confronted by the diminutive mezuzah.

Just 6 inches tall, the mezuzah is a symbol of the Jewish faith and literally means a "door post" in Hebrew. It originates with the commandment to place a small parchment scroll inscribed with sections from the Torah in an ornamental holder on the door post or frame of a Jewish home. To observant Jews, displaying a mezuzah on the door frame is not an option — it is an obligation.

This was the position advanced by a resident of Chicago's Shoreline Towers when she challenged her condominium's prohibition of the mezuzah. Lynne Bloch, a former board member who lived at Shoreline Towers more than 30 years, is an Orthodox Jew. The association prohibited "mats, boots, shoes, carts or objects of any sort" in the hallways.

During a remodeling project, Shoreline Towers residents were told to remove all external hallway objects. Following the remodeling, those tenants who re-affixed their mezuzahs to their door frames were told they were violating the hallway rules. Bloch insisted the ban did not apply to the mezuzah because it was mandated by her religion. Concerned about hallway uniformity, the board insisted that the ban was absolute and applied to religious symbols as well. Nevertheless, Bloch returned her mezuzah to her door frame. The dispute escalated in June 2005 when she returned from her husband's funeral to find the association had removed her mezuzah. Bloch and others filed suit against the association contending it violated the federal Fair Housing Act.

The publicity over the dispute prompted the Chicago City Council to add a provision to the city's fair housing ordinance prohibiting interference "with the religious observances or practices" of building tenants.

In addition, the Illinois state legislature enacted a law in 2006 that requires condominium associations to make "reasonable accommodation for religious practices, including attaching religiously mandated objects to the front door area of a condominium unit," guaranteeing condominium dwellers the unfettered ability to practice their religion in this way. Still, Bloch pursued the case, seeking damages. In July, the 7th Circuit U.S. Court of Appeals, which sets precedent for federal district courts in Illinois, Indiana and Wisconsin, ruled in favor of the association, offering the earlier federal district court ruling.

Writing for the 2-1 majority, Judge Frank Easterbrook wrote that "The hallway rule. . . is neutral with respect to religion. It bans photos of family vacations, political placards, for-sale notices and Chicago Bears pennants." While the decision has little effect at Shoreline Towers, which has long since abandoned its controversial rule, it can be instructional to other associations as they re-evaluate the impact that their rules have on religious displays.

The appeals court found that Shoreline Towers' hallway rule prohibited "objects of any sort" from being placed on the hallway side of the door. The court concluded that the Shoreline Towers rule didn't target any particular group, but "potentially affects every owner."

In a dissenting opinion, Judge Diane Wood took a sharply contrasting position, finding that banning residents from placing mezuzahs on the door posts caused a "constructive eviction" of observant Jewish residents and interfered with owners' ability to sell their unit to observant Jews. "The association might as well hang a sign outside saying, 'No observant Jews allowed,'" she wrote. She found substantial evidence of constructive eviction, diminished ability to sell and harassment constituting a violation of the Fair Housing Act.

Nevertheless, the court's majority sent a clear message that matters of religious accommodation would be left to the state legislature, not the courts.

"Any requirement of religious accommodation creates occasion of conflict," Easterbrook wrote. "An entitlement of one group to display its symbols may cause unease for other faiths that abhor all icons. Within the bounds set by the Constitution's establishment clause, a legislature may authorize or require religious accommodation in housing, as Illinois and Chicago have done. Deciding whether this is to be done, and if so how far the obligation extends . . . is a task for the legislature."

In response to that decision, U.S. House Rep. Jerrold Nadler, D N.Y., introduced a bill in September that would allow condominium owners to display religious objects or decorations on their doors unless the objects create a public safety problem or nuisance.

Meanwhile, Florida lawmakers recently banned condominium associations from prohibiting a reasonable accommodation for religious practices including attaching religious objects to and around the front door of a condominium.

Similar to Illinois' law, the new Florida law states: "An association may not refuse the request of a unit owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the unit owner, a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep."

Florida's law also was motivated by a dispute between a condominium and one of its residents. Laurie Richter, a 28-year-old lawyer who rented a unit at The Port Condominiums in Fort Lauderdale, was told to remove her mezuzah because it violated the association's ban on anything "attached, affixed, hung, displayed or placed on the exterior walls, doors, balconies, railings or windows of the building."

Richter was quick to point out the Christmas wreaths that remained on some doors until February. In fact, they were what led Richter to assume that a mezuzah was permissible when she moved in. Not so. Like the Chicago case, Richter's story gained media attention and the support of local officials including Florida Attorney General Bill McCollum, who asked the association to reconsider its decision. Eventually, Richter received the support of local legislators who proposed legislation.

In Pennsylvania, a pending Senate bill would require a unit owner—not the association—to disclose to a new purchaser any restriction on the display of religious symbols contained in the declaration, bylaws, rules or regulations. The unit owner's failure to disclose such restrictions to

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a new owner would make them unenforceable by the association. The proposed legislation also would exempt current owners from any religious restriction adopted after the effective date of the legislation.

The Pennsylvania bill presents unique issues not raised in the Illinois and Florida laws. Although it wouldn't mandate accommodations for religious displays, it would place the association's ability to govern at the mercy of the owners, who must disclose the restrictions to buyers for the restrictions to be enforceable. The end result would be an inconsistent application of a community's regulations. In addition, it would diminish the effectiveness of the new rules. Since existing owners would not be subject to any new rules, the owner wouldn't be permitted to place a cross on his door during a holiday, but his neighbor would. While the proposed law may be intended to ensure greater disclosure of religious restrictions, the effect of this legislation would be conflict among neighbors.

While both the Florida and Illinois laws aim to protect a resident's right to public expression of religion, it remains to be seen whether these laws will eliminate selective enforcement or discriminatory application of association rules regarding religious displays. These laws still require association boards to decide what is a religiously mandated object or part of a required religious observance. Does a condominium board want to assume this role when our courts have expressed extreme reluctance to do so?

GOTTA HAVE FAITH

Even with a clear pronouncement from state legislators to accommodate religious expression in the hallways and common areas, determining which recognized religion is entitled to an accommodation still will be up to the board.

Consider the plight of Orlando, Fla., resident Hector Febus, who believes he was forced out of his Waterford Lakes home because of his unique religious practices. Febus, a native of Puerto Rico, is a member of the Santeria religion. One of the religion's rituals is to kill farm animals as offerings to the spirits.

According to neighbors who complained, Febus was engaged in some form of witchcraft. They described the activity in the Febus home as "creepy." To these association members, Febus had the right to practice his religion, but not in a residential area. But to Febus, the conduct was just one small part of a religion that involves healing and purification.

What is certain is that community associations will continue their perpetual struggle between uniformity and self-expression. At times, the desire for architectural uniformity and aesthetic harmony is at odds with the natural inclination toward individuality. And in the emotionally charged context of religious practices, the clash between a community's governing documents and religious expression is inevitable.

Most have come to accept that the community association is where uniformity and adherence to architectural standards should prevail over individual tastes and personal desires. But as illustrated in the conflicts across the country between architectural restrictions and religious freedom, the state legislatures have a very different view of community association governance when it comes to limiting fundamental individual freedoms. While an owner may agree on paper to be governed by the community's covenants, conditions and restrictions (CC&Rs), she does not necessarily agree that the community's laws should prevail over her right to individual expression of state or federally guaranteed freedoms.

Communities are more socially, culturally and religiously diverse than ever before. Residents embrace their cultural and religious identities in the face of overwhelming efforts toward uniformity and sameness.

But perhaps architectural uniformity and cultural individuality can co-exist. Boards can still preserve the community's architectural standards and aesthetic quality while carving out reasonable rules that respect residents' religious beliefs.

The first step should be to check your governing documents. Make sure that the rules your community adopts are supported by and not inconsistent with the CC&Rs. For example, Sheng Tchou's Christmas light problem was resolved after the association's attorney discovered that the ban on colored lighting wasn't supported by the community's CC&Rs, according to association manager Joe Wise. The CC&Rs specifically exempt seasonal lighting from the architectural rules.

Second, gather input from the community so that the rules reflect the values and desires of the residents. Incorporate their suggestions if you can. Otherwise, the rules will not be accepted and will be difficult to enforce.

By developing rules to accommodate religious and cultural displays, your association can counter the effects of seemingly unyielding architectural restrictions that threaten residents' free expression. Instead, they would feel welcome to celebrate religious holidays without disturbing their neighbors or restricting association leaders' ability to govern.