



ACTS *of* faith

BY MIKE RAMSEY

Nearly three years ago, David R. Schneider bought a single-family home in a Dallas homeowners association with a large Orthodox Jewish population. He had no problem with the religious heritage of his new neighbors.

He did have a problem, however, with the synagogue that materialized across the street.

Several observant Jews in his neighborhood had begun attending daily services in a house on his block. Schneider, a Unitarian, was concerned about the increase in traffic and the possibility he could have trouble selling his own property if worshippers continued meeting at the private residence, the new home of Congregation Toras Chaim.

“My pool of potential purchasers is going to be reduced,” says the computer software developer. “People who buy in a deed-restricted neighborhood are expecting to be in a neighborhood where houses are used for residency.”





Emotionally charged pushback isn't surprising, experts say, when religion becomes entwined with enforcement. Debates over seemingly black-and-white issues can turn into larger controversies that sometimes end up on the evening news.



WHEN DISCUSSIONS with the synagogue failed to yield a compromise, Schneider filed a lawsuit asking a judge to evict the congregation. After he was elected board president of the Highlands of McKamy Community Improvement Association IV and V, the association joined him in the legal action.

The synagogue and its attorneys argued the regulations of the homeowners association created a substantial burden on the Orthodox Jewish members.

"They're not allowed to drive on the Sabbath. They have to meet at places that are within walking distance of their homes," explains Justin Butterfield, senior counsel for the Liberty Institute, a Plano, Texas, nonprofit that defended the congregation.

Early this year, a Collin County judge ruled in favor of the synagogue, which cited federal and state religious-freedom laws in its bid to stay put. Such laws traditionally have been seen as curbs on government, not community associations. But Butterfield says congregations in some real-estate markets would be hard-pressed to find property that isn't controlled by a homeowners association.

"As we see homeowners associations take more power and become larger, the argument that they are quasi-governmental becomes stronger and stronger," says Butterfield.

Technically, the dispute in Dallas was a fight over the use of a private residence, and an expensive one at that. Schneider estimates the association's legal costs at around \$75,000. The religious backdrop only served to enflame the disagreement. A group of residents launched a successful recall campaign against Schneider.

"It exposed a lot of rifts within the community," he says.

Emotionally charged pushback isn't surprising, experts say, when religion becomes entwined with enforcement. Debates over seemingly black-and-white issues can turn into larger controversies that sometimes end up on the evening news.

"There's this cloak of sensitivity around the issue," says Matt D. Ober, senior partner at Richardson Harman Ober in Pasadena, Calif., and a fellow in CAI's Col-

lege of Community Association Lawyers (CCAL). "The idea is that you're being deprived of free use of your residence on the basis of your religious belief or your cultural belief."

Consider these three cases:

■ A developer-controlled homeowners association in Santa Fe, N.M., found itself under the microscope last year after managers told resident Tenzin Digkhang to remove the Tibetan prayer flags he hung near his home's front entrance. The colored handkerchief-sized cloths, which have mantras printed on them, did not fall under the community's guidelines, although American flags and state flags were permitted.

Digkhang, a state government employee whose parents fled the Chinese occupation of Tibet, went to the media. He told *The New Mexican* he felt as if his culture and religion were under fire: "For me, being in a free country, if I can't do something really simple like this, it would be really shameful."

The association, which did not comment for this article, granted him a variance, according to published reports.

■ In 2008, a Chantilly, Va., homeowners association threatened one of its residents with escalating fines unless he

removed a "kolam," or greeting symbol, that he had painted on his driveway as part of a Hindu religious ceremony. The homeowner paid a \$50 fine and agreed to paint over the design but felt managers handled the disagreement poorly.

■ A decade ago, the Chicago high-rise Shoreline Towers became a focal point of community association critics when managers cracked down on the hanging of mezuzahs—small displays of sacred text—on the doors of some units. A rule intending to prohibit clutter banned all objects from the hallways. Things came to a head when someone removed the mezuzah of a unit owner who was mourning the loss of a family member, according to media accounts.

In the ensuing backlash, the city of Chicago and the Illinois legislature passed laws protecting the display of the religious icons. A discrimination lawsuit filed by aggrieved Shoreline Towers residents dragged on for years, reportedly being settled confidentially with the association in 2011.

CAUTION: RELIGION AHEAD

Even when community associations feel they are in the right, Ober and other legal professionals advise using tact and sensitivity when somebody's religious faith comes into play.

Those qualities may have been lacking when a Kissimmee, Fla., homeowners association directed Enock Berluche, a devout Catholic, to remove statues of the Virgin Mary and Jesus from his front lawn because he hadn't received prior approval. When Berluche formally requested permission, his request was rejected. The retired chemist says he was warned he would be fined if he didn't comply with the original request.

Instead, Berluche went around his community and took photographs of front yards where his neighbors had placed their own statues, seemingly with impunity. Among the sculptures he documented: a topless Greek figure and a collection of stone skulls. The homeowner says he and his wife were singled out because of the religious nature of their statues.

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REGULATING

season's greetings

GOT YOUR GLOWING LAMPS ready for this year's Diwali celebration in mid-November?

You may not, but your Hindu neighbor may be good to go. And if he or she tolerates your blinking Christmas lights and Santa figurines, you should be prepared to return the favor.

So say community association lawyers who help clients navigate the sometimes tricky landscape of holiday decorations. When it comes to determining who gets to put up what—and when—at community associations, things have the potential to get complicated, especially given the changing demographics of the United States.

"You have to allow everybody or nobody. If you allow nobody, then you get resentment. So, there's got to be some sort of balance, and that's where your rules come in," says Matt D. Ober, senior partner at Richardson Harman Ober in Pasadena, Calif., and a fellow in CAI's College of Community Association Lawyers (CCAL).

The most uniform way to regulate holiday displays, he says, is to grant owners a window of time to display decorations. His rule of thumb is two weeks before the holiday's calendar date and two weeks after.

"It cannot be permanent," Ober says.

Ellen Hirsch de Haan, a partner at Wetherington Hamilton in Tampa, Fla., says boards also may wish to consider restricting the hours during which celebrants are allowed to turn on their holiday lights. Otherwise—in the case of shared balconies, for example—displays could become nuisances. Along those lines, boards may choose to ban

sounds, such as music or recordings of "Ho, ho, ho."

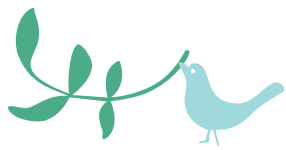
"There are noises that will drive you absolutely homicidal," says de Haan, a CCAL fellow and CAI past president.

Some associations have drawn the line at "sukkahs," the rustic dwellings some devout Jews build outside to



mark the seven-day festival of Sukkot. The holiday period commemorates the time the Hebrews spent in the desert after being released from Egypt. Boards tend to frown on the structures, especially when they're built on limited common elements, such as balconies.

"The funny thing is, since it's only seven days, by the time the association gets around to enforcing it, it's usually down," Ober says. "The question is: What happens when they do it next year?" —M.R.



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“These are the symbols of our faith,” he says.

Liberty Counsel, an advocacy organization that assists people in First Amendment cases, agreed to represent the couple. Richard L. Mast, a litigation attorney with the organization’s Lynchburg, Va., office, says the community association’s initial approach was heavy-handed. It included a demand, he says, that the Berluche family explain the religious significance of their statues.

“That was rightly perceived as being offensive,” says Mast.

Liberty Counsel, unaffiliated with the group that represented the Dallas synagogue, receives two or three inquiries each

year from residents of community associations who feel they have been wrongly targeted for religious signs or decorations, according to Mast. A compromise usually is brokered to avoid going to court.

In the Kissimmee dispute, Mast sent a letter to the community’s attorney, pointing out the disparity in enforcement. Soon after, the association gave Berluche written permission to keep his statues where they were.

The association’s law firm could not be reached for comment for this article.

Ellen Hirsch de Haan, a partner at Wetherington Hamilton in Tampa, Fla., says the disagreement bolsters the argument that associations should restrict sculptures and yard art to the rear of properties.

“That’s the approach I take with my clients so that they don’t get caught up in trying to describe what kind of yard art would be OK,” says de Haan, a CCAL fellow and CAI past president. “Then you don’t run into a problem of discrimination.”

If a community association has been lax about policing yard art, de Haan says the board may consider serving notice that enforcement will resume. Statues that snuck in during the laissez-faire period will have to be grandfathered in until an owner removes or tries to replace them, she says.

Religion-based disputes at community associations generally have stemmed from individual residents who express their faith. Associations themselves have been seen as religion-neutral—at least up until now, says

Michigan community association lawyer Kevin Hirzel, partner at Cummings, McClorey, Davis & Acho.

He says a recent U.S. Supreme Court decision known as *Burwell v. Hobby Lobby* could change things. Justices in that landmark case ruled that some closely held, for-profit businesses are protected under the federal Religious Freedom Restoration Act. In theory, Hirzel says, the decision may open the door to community association boards to invoke policies based on religious morality.

“Based on my involvement in condominium associations and the way the world works these days, people have religious beliefs, and they bring them into their daily activities and their daily decision-making,” he says.

Hirzel doesn’t recommend community association boards go in that direction, and there could be other laws at the state or federal level that would offset the high court ruling. Twenty states have their own specially tailored religious freedom restoration acts.

If boards dabble in decisions about religion, it’s usually about whether to allow a holiday display in a common area (see “Regulating Season’s Greetings,” p. 21). Experts say boards should be prepared to make accommodations for people of other religions if they request a similar showcase.

THE BIBLE STUDY NEXT DOOR

The controversy in Dallas isn’t an anomaly. Mast says Liberty Counsel has become involved in cases in which associations have challenged group worship within a private residence. He says the circumstances typically have involved small gatherings of Christians who meet quietly once a week for bible study and, inevitably, someone who doesn’t like it.

“All of the cases I’ve been involved in have had someone who was an atheist and didn’t like the fact that other people were meeting,” says Mast. “You have someone who tries to shut down other peoples’ religious expression. Other than the fact that the mere knowledge that they’re meeting over there for worship, there’s no harm

HAPPY policy DAYS

IF YOU NEED HELP crafting a holiday decorating resolution or updating a current one, consider some of the following elements:

TIMING. Holiday decorations may be displayed no more than X days before and X days after the actual holiday.

COMMON AREAS. A committee will survey residents and determine what holidays will be represented on common areas. Decorations, such as small white lights on trees and menorahs, will be installed by the association. Santa figures, sleighs, reindeer and Nativity scenes are prohibited on common elements.

INDIVIDUAL PROPERTIES. Homeowners may install decorations on their properties. Holiday lighting may only be used from sunset to 10 p.m. and must not interfere with a neighbor’s use of his or her property. The decorations must not be offensive or obscene.

ENFORCEMENT. Items that do not conform to these guidelines will be removed by the association. —STAFF



other than that perceived mental harm. That's not going to fly."

Bible study inside a residence is one thing. But what happens when a religious practice becomes demonstrably disruptive or obnoxious to neighbors? That, of course, will be in the eye of the beholder, but experts say a nuisance is still a nuisance. There may be legitimate grievances about noise levels and increased vehicular traffic.

For the most extreme cases, Ober says, call authorities. The California lawyer cited problems some municipalities in his state have had with Santeria, an Afro-Caribbean religion that can include animal sacrifice.

"Someone in their unit is sacrificing a chicken. That's when you pool your resources," Ober advises. "You call in health and safety officials. Because it's really not a religious issue, it's a health, safety and animal cruelty issue and all the rest. You let (authorities) go at it."

The dispute over the Orthodox Jewish synagogue in Dallas isn't over. Now, the city government of Dallas has taken Congregation Toras Chaim to court, saying the synagogue has failed to comply with fire safety, handicap accessibility and parking requirements. The home's owners also are named as defendants in the suit.

"The congregation is welcome to operate in the single-family house it currently occupies, but it has to follow the same rules applicable to all places of worship," says Richard Hill, a spokesman for the city.

A trial could commence early next year, but Butterfield, the attorney for the synagogue, says a compromise may be reached with city officials. Some of the changes requested by the city, including the establishment of more than a dozen parking spaces, "just doesn't really fit with the character" of the Orthodox Jewish congregation, the attorney says.

Butterfield says he doesn't think the case opens the door wide for religious institutions to plant themselves in community associations. The circumstances in Dallas are unusually narrow, he says, with the congregation members needing a place of worship within walking distance.

"You have to look at the facts of each situation. Just because it's happened in one case doesn't mean it will automatically happen in every case," Butterfield says.

Schneider, the neighbor and former board president who first challenged the synagogue, is hopeful city officials will go the distance and prevail in court. He stresses he harbors no ill will toward the rabbi or congregation members.

"We're all friendly," he says. "We don't have any animosity, other than our stances." **CG**

Mike Ramsey is a Chicago-based freelance writer.

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