



Political Signs Can Be Tricky Despite First Amendment

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: During the recent election, I put some signs in my yard supporting the candidates I endorsed for office. My homeowner's association sent me a letter, telling me I had to remove the signs. While the election is now over and I took the signs down anyway, I want to know what to do in the future. Even though I understand that I am subject to regulations of my HOA, do I not have free speech rights? **B.R. (via e-mail)**

A: Good question. To my knowledge, this issue has never been addressed by the Florida courts, nor are there any specific provisions in Florida's housing statutes addressing political signs.

The first question is whether the governing documents for your community prohibit signs. If, for example, there is a blanket prohibition against signs (rather than the ability to erect signs if approved by the Board), then the restriction would appear to be clear on its face, and prohibit political signs in yards.

Whether members of a community association enjoy "free speech" rights is the subject of some debate. Most legal opinions I have seen on the topic conclude that the constitutional protections of free speech do not apply in the association context. The underlying premise for this position is that the actions of an association are not "state action",

which is necessary to trigger constitutional protections.

In a Florida appeals court decision that arose in a Naples neighborhood, a homeowners' association sued an owner who refused to remove a "For Sale" sign, which violated the restrictive covenants. The judge ruled in favor of the homeowner, finding the association's rule to be an abridgement of free speech. On appeal, the appellate court sided with the association, finding that the association was not an arm of the government, and hence there was no "state action." *Quail Creek Homeowner's Association, Inc. v. Hunter.*

Clearly, a different rule applies to local government. The landmark case on this point is *City of Ladue (Missouri) v. Gilleo*, a 1994 decision of the United States Supreme Court. A homeowner in the City of Ladue posted a 24 x 36 inch sign which read: "Say No to War in the Persian Gulf, Call Congress Now" (this involved the first Gulf War). The City advised the homeowner that the sign violated the City's ordinances, which it justified by the sign's potential to obstruct views, distract motorists, and create an eyesore. The Supreme Court ruled that the homeowner's constitutional speech rights trumped the City's regulatory interests.

There are obviously legitimate considerations on both sides of this debate. However, my interpretation of the law is that such a restriction would be upheld in the association context. Of course, if the members of the association do not like the restriction, your covenants likely contain a petition process for amendment.

Q: Our HOA documents provide that board members may be paid for performing their duties. My question is whether board members who are paid are required to hold a manager's license under Florida law. **K.C. (via e-mail)**

A: Section 468.431(2) of the Florida Statutes defines "community association management" to include any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration, and when the associations served contain more than ten units or have an annual budget in excess of \$100,000.00: controlling or disbursing funds of an association; preparing budgets or other financial documents for an association; assisting in the notice of conduct of association meetings; or coordinating day-to-day maintenance for the development.

This law used to provide that a license was only required for persons who performed these services for pay when done "for the public", meaning that a person who was paid for performing "management services" for their own association would not need to be licensed. The "for the public" exception was removed from the law some time ago.

It is my understanding that the state agency which regulates manager licensing takes the position that if a board member is paid for their services (which must be authorized by the association's bylaws), that the person receiving remuneration must have a community association manager's license if they perform any of the above-listed functions.

Q: I would like to know what Florida's laws are pertaining to the length of time that hurricane

shutters may be deployed (left in the closed position). There is a debate in my community about this issue. **G.C. (via e-mail)**

A: The Florida law applicable to homeowners' associations does not address hurricane shutters at all. The condominium law addresses shutters and other forms of hurricane protection (for example, impact glass), but focuses on procedures for mandatory installation and the board's right to promulgate aesthetic specifications.

This is a common issue in many communities. Residents who are "seasonal" argue that if they cannot leave their shutters deployed while they are away, they will not be able to protect their home from damage when a storm is approaching.

Conversely, as many people will argue the other side of the case, stating that a "shuttered up" community looks abandoned, may invite burglars, and the like. Further, the advent of many new types of hurricane barriers (including various types of screens and galvanized panels) introduce products that are often considered less aesthetically acceptable than traditional roll-down shutters, which are permanently affixed to the building.

In the homeowner's association context, I believe that the provisions of the governing documents, including properly made reasonable rules of the board of directors, control the issue. For example, I have seen recorded covenants which specifically state that shutters can only be deployed when a certain level of storm warning has been issued, and must be taken down within a specified time thereafter. I believe such a covenant would be enforceable in the HOA context. Slightly different considerations may apply under the condominium laws.

This is definitely an issue where the Florida Legislature could come up with sensible regulations that accommodate both sides of the debate.

co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.