



Know the difference between a holiday decoration and a religious symbol in order to properly handle any issues involving a religious display or religious symbol to avoid a lawsuit.

The Fair Housing Act makes it illegal for a community association to make unavailable or deny services or facilities in connection to housing based on, among other things, religion. The State of California and some municipalities also have additional protections for their citizens, including religion.

This year, in an effort to enhance religious protections, the State of California adopted a new law governing the display of religious items. This new law, which is codified in California Civil Code Sections 1940.45 and 4702(a), effective January 1, 2020, permits the display of religious items on the unit door or door frame. Further, it provides that a community association can make a rule that prohibits the display of anything that threatens public health or safety, violates existing law, contains obscenities, hinders the opening or closing of any entry door, or is larger than 36" by 12" inches. An item can be caused to be removed for maintenance of the common area it is affixed to.

What is a religious item, you ask? The state's definition is an item displayed because of a "sincerely held religious belief." These items include items like a Mezuzah or Toran.

Further, to avoid discrimination claims, associations with holiday decoration rules or rules about affixing items to the common area, must evaluate the manner in which the community operates regarding these rules. An association must equally apply their rules. If Christmas lights are allowed, all religious holiday displays must be allowed.

Religious symbols are protected all year long by the new law. Holiday decorations are not. What's the difference?

- A Christian nativity scene is a religious symbol and a Christmas tree is not.
- A Jewish menorah is a religious symbol, but is not solely "religious" in nature. When a menorah is put next to a Christmas tree, it is secular in nature.
- Whether or not a holiday decoration is actually a religious symbol depends on whether an observer would believe the decoration is an endorsement or disapproval of an individual religious choice, to be deemed by a "reasonable observer" standard. See *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989).

However, residents may disagree with the Supreme Court's opinion. An association should have legal counsel review their rules to avoid rules that have disparate impact (rules which seem neutral on their face, but discriminate against a particular religion) and ensure that the rules apply equally to all religions.