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*Community Association Attorneys*

## ***'TIS THE SEASON TO BE TOLERANT***

### **Building a Sense of Community in Spite of Holiday Decoration Rules**

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From November through December of each year we greet each other with the phrase “Happy Holidays”, focusing on both words “Happy” and “Holidays”. During this time, people of all ages, religions, faiths and ethnic backgrounds will join in celebrating everything from Thanksgiving, Hanukkah, Kwanzaa, Christmas, New Years and beyond. But, just as one homeowner takes pleasure in untangling and displaying holiday lights, another homeowner may find the same holiday decorations offensive or annoying.

Though homeowners’ personal tastes are not within the association’s realm to regulate, it is within the association’s control when decorations violate use restrictions found in the association’s governing documents, including its rules and regulations. Even when decorations are not in violation of an association’s governing documents, many residents find that holiday decorations detract from the community’s aesthetics, and many boards are stuck in the middle, not able to make either side happy.

#### **Who creates the rules?**

To assist the board in developing rules that will hopefully foster community-wide support, a board may want to consider appointing a Holiday Committee to develop and recommend decorating rules and regulations. Written surveys or forums can be used to obtain

homeowners' input before presenting potential new rules to the board of directors for their review and approval. Including members in the rule making process will likely result in individual issues being addressed, leaving less room for potential discrimination or disparate treatment claims.

### **What are the rules?**

Most CC&Rs do not contain restrictions that apply to holiday decorations specifically (nuisance provisions are arguably applicable). However, adopting a complete set of rules and regulations can help associations preserve the community's aesthetic value while encouraging seasonable celebrations. Consider the issues that you are trying to protect before creating a complete prohibition on holiday decorations.

Holidays can and should be viewed as opportunities to embrace homeowner individuality. Remember the phrase, "Happy Holidays". Therefore, rather than advocate a wholesale prohibition, an association should establish dates for installation and removal of holiday decorations, as well as definitive, but reasonable guidelines for certain types of decorations.

An example of a reasonable rule is one that requires that holiday lights be turned off by 10:00 p.m. during weekdays and possibly a later time on weekends. With regard to removing decorations, associations should be reasonable as well; for example, a rule requiring decorations to be removed by the end of January would likely be reasonable whereas a rule requiring decorations to be removed by January 2<sup>nd</sup> may not be reasonable, especially since Orthodox Christians celebrate Christmas on January 7<sup>th</sup>. Further, the association's rules may allow homeowners to apply for an extension due to extenuating circumstances.

The health and safety of homeowners and the community should be a primary consideration when adopting rules. For example, to guard against the risk of fire in hillside communities, heavily wooded areas or areas where there is extensive dry brush, an association could

require that all holiday lights hung on the roofline be UL rated or specified for outdoor use only. Similarly, during periods of drought, or in communities with wooden structures, an association may prohibit installation of electrical decorations on trees and bushes.

It should also be noted that in condominium associations, the association can generally prohibit homeowners from affixing decorations to the common area (patios, balconies, *etc.*). But prohibiting all decorations not attached to the common area would likely be unenforceable pursuant to Civil Code Section 4710.

### **How to adopt the rules?**

Don't forget about Civil Code Section 4360. The Civil Code requires that rules be discussed in open session, forwarded to the homeowners for a 28-day comment period, approved in open session, and distributed to the homeowners within 15 days of the approval date. Accordingly, associations should begin considering holiday decoration rules in early October to allow for enough time to adopt rules in accordance with the Civil Code, if not already adopted. If an association already has applicable rules, a good way to remind homeowners of the rules is to publish the rules on the association's website and/or in the association's newsletter.

### **Now you have rules... how do you encourage participation?**

Awarding prizes for the best decorated home or the most effective use of holiday lights can motivate participation from homeowners who would otherwise choose not to decorate and contests involving children are an excellent way to involve their parents. Contests can also be an effective way to encourage homeowners to fulfill their ongoing maintenance obligations. Residents who decorate their home during the holidays may become more aware of the condition of their property and may take a more proactive maintenance role throughout the year.

Beware! Not all holiday contests can lead to nirvana. Instead of building a sense of community or preserving the aesthetic value of the

community, what begins as an innocent community holiday decorating contest can escalate into a holiday war. We have all seen the 20-foot, illuminated Christmas tree extending from the neighbor's chimney so bright as to cause a traffic jam on the overlooking highway. If there is a prize to be had and egos are involved, the creative possibilities are seemingly endless.

In Dallas, Texas, a block of neighbors living in a cul-de-sac adopted a "Twelve Days of Christmas," theme, and each home was decorated to represent one of the twelve days. You can just imagine the home with the partridge in a pear tree next to the home with two giant illuminated turtledoves. News of the contest quickly spread, congesting the neighborhood with looky loos. Of course, if the entire community embraces this idea and is not bothered by the increased viewing traffic, this type of contest may well help to build community spirit. However, decide in advance how far your community is willing to go. Although more rules and regulations will not necessarily satisfy the community's grinch, reasonable rules are an effective way to balance competing emotionally charged interests during the holidays.

Happy Holidays!

*Need assistance with establishing Holiday Decor Rules at your association? Sandra Gottlieb can be contacted at 800-327-2207 or via email: [slg@sghoalaw.com](mailto:slg@sghoalaw.com).*