

QUORUM™

WMCCAI'S MAGAZINE FOR COMMUNITY VOLUNTEER LEADERS, PROFESSIONAL MANAGERS, AND BUSINESS PARTNERS



Community Self-Help for Foreclosures

IN THIS ISSUE

MEETING MINUTES 19

UPDATING YOUR RESERVE STUDY 21

The Yays and Nays of Political Signage

By Leslie Brown, Attorney at Law, with contributions from Kim O'Halloran, Attorney at Law

With the 2008 presidential election looming on the horizon, homeowners are gearing up for the election season by placing campaign signs on their properties in support of their respective candidates. Sometimes owners even go a step further and attempt to place political signage in association common areas. Associations are inevitably posed with the question as to how far it may go to regulate the placement of political signs.

In the normal course of things, the regulation of regular, non-political signs placed on property is simply a covenants issue; the recorded covenants either allow for the placement of signs on property, prohibit signs all together, or provide for something in between....

In the normal course of things, the regulation of regular, non-political signs placed on property is simply a covenants issue; the recorded covenants either allow for the placement of signs on property, prohibit signs all together, or provide for something in between (i.e., prior approval from the board of directors, or permission to place signs of a certain size, duration, or content; such as “for sale” and “rental signs”). Sometimes the board is empowered with the ability to adopt rules and regulations regarding the placement, type, and content of signs. These rules are generally adjudged under the “business judgment rule,” in which a court will give deference to the board’s rule-making authority so long as it is in good faith and not in contravention of any other powers or applicable law.

However, when the signs are political in

nature (such as campaign yard signs), free speech rights are championed by homeowners, while associations are often left wondering whether they can lawfully enforce their covenants prohibiting or curtailing political sign placement, both on lots and in common areas. Complicating things is the fact that the law has been oddly silent on the matter, and the answer is dependant on state law and the jurisdiction in which you live.

The issue garnered the national spotlight in 2006 with a case in New Jersey called *Committee for a Better Twin Rivers v. Twin Rivers Homeowners Association* (known in community association circles as “the *Twin Rivers* case”). In this case, a lower New Jersey court found it unconstitutional for a homeowners’ association to restrict an owner’s display of political signs or to deny access or a right of reply in the association’s newsletter for a homeowner to express his or her political views. The basis for this decision was that the lower court found that the association at issue acted more like a municipality or governmental entity due to the association’s governance rights, overall size, and the amenities and services provided by the association. Hence, the court reasoned that the same constitutional prohibitions on restricting political speech

applied to government bodies should also be applied to “government-like” associations. The lower court was also persuaded by the fact that the New Jersey constitution afforded more protection to speech restrictions enacted by private entities than does the U.S. Constitution.

In 2007, however, the New Jersey Supreme Court overruled the lower court’s ruling and upheld the ability of an association to impose reasonable limitations on the display of political signs, the use of community property for political speech, and the use of the association newsletter for political speech. The high court held that associations are not governments, nor are they government-like entities, and thus are not prohibited from restricting free speech rights as other governmental bodies are. The New Jersey Supreme Court deemed the issue to be one merely of a contractual arrangement between homeowners and associations, as found in the governing documents. Since the contractual, or governing, documents allowed the association to restrict speech, the association was within its rights so long as the rules were enacted in good faith (see the Legal Perspective column in the October 2007 issue of *Quorum*TM for more on the *Twin Rivers* case).

So far in Virginia there are no special protections for the placement of political signs. Restrictive covenants regarding signs contained in the governing documents are enforceable to restrict the placement of all signs, including political ones. Virginia courts have not yet commanded associations to afford free speech rights that are normally guaranteed by government bodies. In Virginia, an association’s authority to enforce restrictive covenants is not deemed to be an “action by the state,”

which would otherwise trigger constitutional free speech protections.

Accordingly, associations in Virginia will be free to enforce signage restrictions contained in covenants to political and campaign signage on both private lots and in common areas. If the governing documents afford the association the ability to adopt reasonable rules and regulations regarding political signage, the association will be able to do so and enforce such rules, unless the rules were promulgated in bad faith or in contravention of some other law.

Other states, such as Maryland, have acted in this area. Both the Maryland Homeowners Association Act and the Maryland Condominium Act have enacted a statute that prohibits restrictions on the placement of political campaign signs on individual lots or units, except that the association may restrict the placement of political signs for a period of no less than 30 days prior to and seven days after an election. The association may also restrict the placement of the political signs in common areas or common elements.

Regardless of what locality you live in, associations should be mindful that the issue of posting political campaign signs is very personal and highly sensitive. With the coming presidential election, those associations with the ability to promulgate reasonable rules and regulations may want to do so to afford residents a sense of free speech.

A balanced approach is key. Balanced rules involve a limitation on the size of the signs, a restriction on the number of signs, a set duration the sign may be up (such as Maryland's 30 days prior/seven days after rule), rules on the location (many associations think window postings are tacky and wish to prohibit them), and rules on the style of signs (*i.e.*, no illumination).

In the end, the more the association can do to educate owners and work with them to establish reasonable rules that provide owners with a sense of speech freedoms, while also preserving the aesthetics of the community, the better off all constituents will be. ☐

Leslie Brown, Attorney at Law, is an associate with the law firm Rees Broome, PC. Kim O'Halloran, Attorney at Law, is a shareholder with Rees Broome, PC.

COMMON INTEREST MANAGEMENT



We put more than **35 YEARS EXPERIENCE** to work for all our clients. Our portfolio of condominiums, cooperatives, and homeowner associations include some of the **BEST KNOWN ADDRESSES** and **PREMIER LOCATIONS** in the Metropolitan area. Our **EXPERIENCE** with boards, capital projects, transitions, and in mixed use communities is **UNPARALLELED** and that experience **BENEFITS** everyone.

Arthur N. Dubin CPM, PCAM, CMCA
President
 Direct: 301.495.6633
 adubin@zalco.com

AT ZALCO, EXPERIENCE MATTERS

MULTI-FAMILY
RESIDENTIAL
MANAGEMENT

COMMERCIAL
MANAGEMENT

REAL ESTATE
LEASING &
BROKERAGE

LIMITED
FINANCIAL
SERVICES

ENGINEERING
& FACILITIES
MANAGEMENT

ZALCO
ESTABLISHED 1971

Stop Wasting Your Money!!!

Have your swimming pool repairs done right the first time.

At Community Pools Construction, you will receive reliable, accurate assessments, quality workmanship, and timely job completion. We also have an extended warranty program.



Since 1977
30 Years of Excellence

- Piping Replacement
- Leak Detection and Repair
- Filters
- Concrete Repair and Replacement
- Coping/Tile Replacement
- Caulking
- Plastering
- Pump Replacement
- Safety Covers



COMMUNITY POOL SERVICE, INC.

Equipment • Service • Repairs • Chemicals
 220 Girard Street, Suite C, Gaithersburg, MD 20877
 MD—301-948-2400 VA—703-276-7665 FAX—301-948-8693

Experience • Safety • Quality • Reliability