

COMMUNITY RESOURCE

INSIGHT & EDUCATION FOR COMMUNITY ASSOCIATIONS

NOVEMBER
2018

This Issue

CONGRATULATIONS
CORNER

2019 PMDP
SCHEDULE

ANNUAL MEETINGS Myths vs Facts



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UPCOMING EVENTS

CAI National Events in yellow

JANUARY

10 **New Member Breakfast (Sponsorship Available)**
 Location: TBA
 Sponsor: TBA

23-26 **Annual Community Association Law Seminar**
 Location: New Orleans LA

29 **CAI - Central Arizona Educational Lunch
 2019 Priceless Legal Panel**
 Location: Hilton Phoenix Airport
 2435 S. 47th St., Phoenix

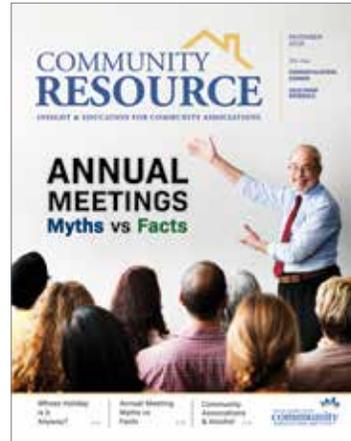
FEBRUARY

7-8 **PMDP Course M-205 Phoenix, AZ**
 Location: Hilton Phoenix Airport
 2435 S. 47th St., Phoenix

22 **Board Leadership Development Workshop**
 Location: AAM Corporate Office
 2435 S. 47th St., Phoenix

MARCH

15 **CAI -Central Arizona Educational Lunch
 CANsel Out Hunger Event**
 Location: PMG Upper Parking Structure



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FROM THE DIRECTOR

Executive Director's Summary

by Kayte Comes | Executive Director
CAI - Central Arizona Chapter

The 2019 Annual sponsorship have been released! Why consider a sponsorship, how would it benefit my business, and what do we get out of it, these are the types of question I receive throughout the year.

First off, the sponsorships are designed to be a one stop shop for the entire year for events, marketing and networking opportunities. Many businesses partners and management companies participate, and many do not. The sponsorships have been created to save money as the year progresses and to keep you focused on specific events that you enjoy attending and find value in as a member and have business potential.

A la carte pricing is available as well but being an annual sponsor increases your recognition within our main marketing strategies, our email blasts, website, events, magazine, directory and social media sites. Each year annual sponsors can expand their branding through all of the outlets mentioned above without increasing the price of their favorite sponsorship. The chapter staff has come up with some new ways of advertising our members and increasing their visibility without increasing sponsorship pricing. The chapter offers many levels of sponsorships for all different size and types of businesses and management companies. We have something for everyone!

Why is the sponsorship campaign so important to the chapter, the sponsorships are what fund the majority of the chapter's budget each fiscal year and without that funding we would not be able to provide the service we currently offer. Sponsorship success keeps a la carte pricing down, like the tradeshow, golf tournament, monthly luncheons and any other events the chapter offers. Sponsorships allow the chapter to increase membership value for managers and homeowner leaders through continuing educational classes, webinars, roundtables and other requirements that may be necessary to retain CAI designations and certifications. Sponsorships increase membership value for business partners and management companies that are looking for new business or trying to retain current business. Marketing your business has shown to increase visibility by offering measurable results in sales, leads, and branding. Marketing through CAI enables us to reach a large number of people at a low cost. Most small business owners and employees play many roles within the company. In some organizations, different members of the team jump in to help with marketing, and in other organizations, a single person must develop and execute the entire marketing strategy. Let CAI Central Arizona help you market your organization through our annual sponsorships and event packages. Our mission is to provide membership value, education and networking opportunities, through public awareness and advocacy. Please visit our website www.cai-az.org for more information on the 2019 sponsorships.

All the Best!

Kayte Comes, MBA, MNML
Executive Director
CAI-Central Arizona Chapter

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Ms. Kathryn Wood	Kathryn Wood
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2019 PMDP



Central Arizona Chapter Schedule

Month	Dates	Course	Course Description
February	7-8	M-205	Risk Management
June	21	M-203	Community Leadership
August	22-24	M-100	Essentials of Community Association Management
November	21-22	CASE STUDY	Examination of an actual Community Association

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Whose Holiday is it Anyway?

Can a Community Association Regulate an Owner's Display of Religious Holiday Decorations?

by Javier B. Delgado, Esq. & Greg A. Stein, Esq.
Research performed by Jeff Solloway, JD Candidate.

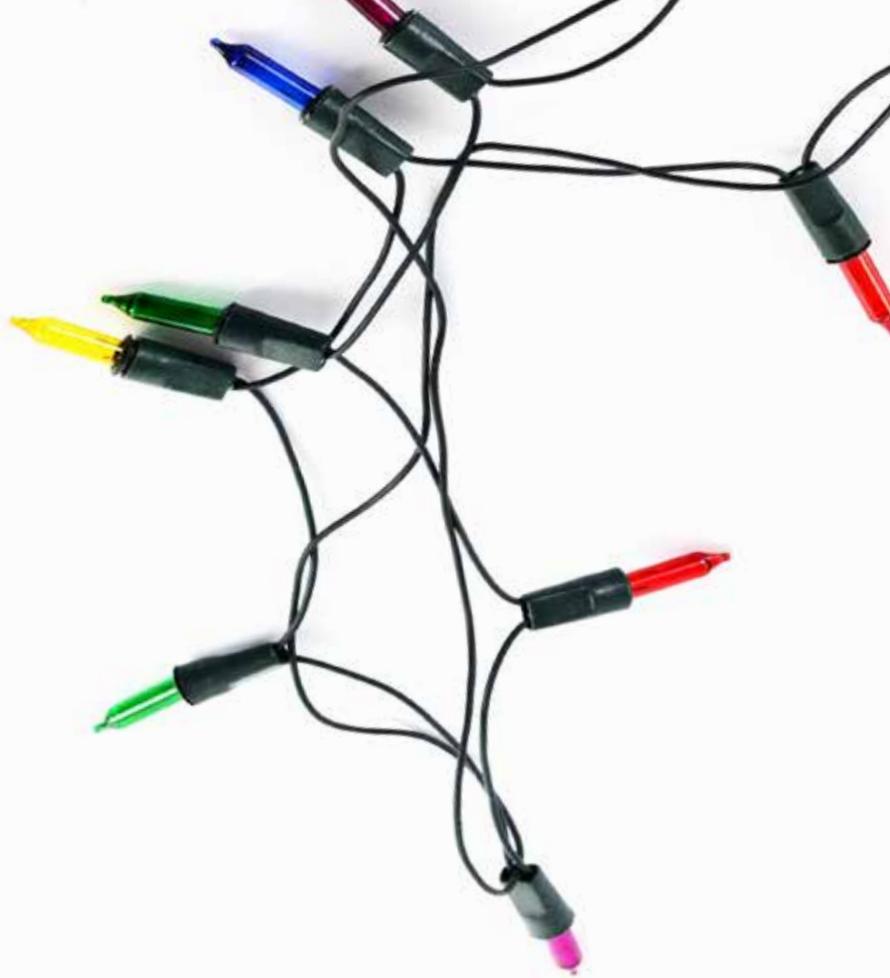
While community associations can regulate an owner's display of religious holiday decorations, they must act carefully to avoid claims of religious discrimination. One Idaho community association recently learned this lesson the hard way.

In *Morris v. West Hayden Estates First Addition Homeowners Association, Inc.*, a husband and wife (the "Owners") purchased a home within the West Hayden HOA (the "Association"). The Owners intended to host a large-scale holiday light display - a "Christmas Program" on their front yard.

By 2016 the Christmas Program included ten miles of Christmas lighting (for a total of 20,000 lights), a live nativity scene featuring a live camel and goat, 27 professional costume biblical characters, and singing carolers, experiencing over 10,000 visitors. Tensions between the Owners and the Association came to a head when the Association complained that the religious nature of the display was offensive to some residents.

In refusing the Association's demands to tone down their display, the Owners alleged that some Association members blocked vehicular access; others made death threats against them. The Owners alleged that the Board was complicit and failed to take steps to calm the hostile atmosphere.

The Owners ultimately sued the Association in Federal Court alleging violations of the Federal Fair Housing Act ("FHA"). Specifically the Owners alleged that the Association, as a housing provider, engaged in prohibited religious discrimination. After a weeklong trial held in late October 2018, a jury found that the Association had discriminated against the Owners, and awarded them substantial damages - \$75,000.00.



FHA
Discrimination

Jury Verdict
\$75,000

Although the facts may be extreme, the Morris case provides a few important takeaways for community associations seeking to regulate an owner's display of religious holiday decorations:

- Almost all community associations qualify as “housing providers” under the FHA.
- Community associations—as housing providers—are prohibited from engaging in discriminatory housing practices on the basis of any protected class, i.e. race, color, religion, national origin, sex, disability, and familial status (families with children).
- Whereas, we typically associate the FHA with claims of disability discrimination, the FHA prohibits discrimination on the basis of any protected class.
- Something as seemingly harmless as regulating Christmas lights on an owner's property could devolve into costly and time-consuming litigation.

Based on our experience, the vast majority of board members would never intentionally discriminate against a resident based on his or her membership in a protected class.

However, the United States Supreme Court recently held that a plaintiff asserting FHA claims is not required to demonstrate that a defendant acted with a discriminatory intent. Instead, the Supreme Court ruled that such a plaintiff may only be required to demonstrate that the defendant's actions resulted in a “disparate impact” upon members of the protected class. A disparate impact may arise when a facially neutral policy or practice disproportionately affects the members of the protected class.

As a threshold matter, discriminatory intent is clear when the rules of a community association expressly permit residents to display decorations for some religious holidays, while prohibiting displays for other religious holidays. Consider the following hypothetical rule language:

“Accepted holidays for the purpose of displaying holiday decorations are limited to Christmas, Hanukkah, and Kwanzaa. Residents shall not display holiday decorations for any other holiday.”

Faced with this result, the board of a community association might say, “This is too difficult. Let's just ban decorations for any religious holiday. Only decorations for secular holidays are permitted.” At first glance, limiting the display of decorations to secular holidays avoids the problem identified above – favoring one religion over another. However, this approach could be challenged on the basis that it discriminates against all religions in favor of a secular approach.

We recommend a third approach to limit potential liability for religious discrimination under the FHA:

- 1.** Be inclusive and recognize all religious holidays (not just “traditional” holidays). Although it can seem impossible to include every religious holiday in a rule governing holiday decorations, it is advisable for community associations to adopt such a rule and recognize as many religious holidays as possible.
- 2.** Include exculpatory language. The rule should expressly state that the association will consider a resident's request to recognize additional religious holidays.
- 3.** Remain open-minded in enforcement actions. Be quick to dismiss violations arising out of misunderstandings concerning “non-traditional” religious holidays.
- 4.** Adopt reasonable time, place and manner restrictions. An association's rules may appropriately govern many other aspects of holiday displays, including but not limited to:
 - a. Time** - how long before and how long after a holiday decorations may be displayed.
 - b. Place** - where on a resident's property the decorations may be displayed; and...
 - c. Manner** – the size, scale, and magnitude of the proposed decorations.

Javier and Greg are attorneys with Carpenter, Hazlewood, Delgado & Bolen, LLP. They can be reached at 480.427.2800 and javier@carpenterhazlewood.com and greg@carpenterhazlewood.com. Jeff is a law clerk with the Firm and a third year law student at the Sandra Day O'Connor College of Law. The information contained in this article is not intended to be legal advice and is provided for educational purposes only.



Annual Meetings: Seperating Myth from Fact

by Lynn Krupnik Esq., CCAL
& Elaine Anghel CMCA, AMS, PCAM

Many associations hold their annual meetings over the next couple months. Annual meetings are a great time to celebrate the accomplishments of the association over the course of the year, thank the volunteers who have worked tirelessly to serve the needs of the community, and give the members a glimpse into the goals of the association moving forward. However, they also serve a legal purpose of fulfilling the requirement of holding an annual meeting and often electing directors. Therefore, it is important for an association to make sure it understands and follows its governing documents and the law so that there are no challenges to these legal requirements.



Myth #1:

The annual meeting can be held whenever the board decides it should be held.

Fact:

Many articles of incorporation or bylaws for an association identify when the annual meeting should be held. If the association is not holding its annual meeting when required by its governing documents, the association should amend its governing documents. Additionally, the nonprofit corporation act states that a court may summarily order a nonprofit corporation to hold an annual meeting upon the application by any member if an annual meeting was not held within fifteen months after the prior annual meeting.

Myth #2:

If new items come up during the annual meeting, the association can make decisions on those items during the meeting.

Fact:

After termination of the declarant control period, the association shall provide for votes to be cast in person and by absentee ballot, and may provide for voting by some other form of delivery. By law, the ballot shall set forth each proposed action. If the association made decisions on new actions at the annual meeting, those items would not have been included on the absentee ballot. Therefore, all owners who voted by absentee ballot would not have been given the opportunity to vote on the new matters that came up during the annual meeting.

Myth #3:

Associations must always allow for nominations for directors from the floor at the annual meeting.

Fact:

There is no specific requirement for nominations in the nonprofit corporation act. Therefore, the association should check its governing documents to determine if they contain any requirements for nominations for directors. If the association's governing documents are not clear on this process, or if the association is not following the process set forth in its governing documents, the association should amend its governing documents.

Myth #4:

The nominating committee has the responsibility to choose a slate of qualified candidates and to solicit votes for and provide that information to the membership.

Fact:

There are no statutory requirements for an association to appoint a nominating committee. However, some governing documents do require that one be appointed. The nominating committee should avoid the appearance of "hand picking" candidates for the membership to consider. Rather, it is the responsibility of the nominating committee to ensure that the candidates meet any eligibility requirements that the documents may have.

Myth #5:

Any owner who is delinquent in their assessments, or who has a pending infraction of the governing documents, is not permitted to cast a ballot or to run for the board of directors.

Fact:

This is not always the case, as there is no statute on point. The authority for the association to suspend voting privileges, and whether such suspension is mandatory or discretionary by the board, is outlined in the governing documents. Furthermore, the requirements to serve as a director are set forth in the governing documents. Therefore, an association should always check its articles, bylaws and declaration for this information.



Lynn Krupnik is a partner with the law firm of Krupnik & Speas, PLLC. She has been representing community associations since 1997. Lynn is a member of the CAI College of Community Association Lawyers ("CCAL"), co-chair of the CAI Legislative Action Committee ("LAC") for Arizona, and speaks and writes often on topics that affect community associations.

Elaine Anghel is the Senior Vice President of On-Site Management at AAM, LLC and has been in the homeowner association industry since 1993. The content contained herein is provided for informational purposes only and does not constitute legal advice. Anyone reviewing this article should not rely upon it as legal advice.

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Community Associations & Alcohol

by Mark K. Sahl, Esq. and Javier B. Delgado, Esq.

The holiday season is upon us and with the holiday season come holiday parties that often involve the consumption of “tasty” beverages. Eggnog, pumpkin everything, and, well, alcohol! The question often arises as to whether or not a community association should permit residents to consume alcohol on association premises and if so, what risks are associated with doing so.

Continued next page

Community Association

The first thing that you need to know about associations and alcohol is that the liquor laws in Arizona were not written with associations in mind. As a result, there is often a fair amount of “gray area” in this area of the law. This article will help explain some of the common situations that an association may encounter and how to best handle them.

Scenario I

An association hosts an annual “wine and cheese party” where the association serves wine and cheese to its members and their guests. The association charges a minimal fee for the cheese. Is this permissible?

Answer

The association is prohibited from selling alcohol in any way, without a license. Even though the charge is allegedly for the cheese – the State of Arizona likely will not agree and will presume that the association is selling alcohol at its wine and cheese party, because the association is charging a fee and supplying alcohol to its members.

Scenario II

What if the association hosts the wine and cheese party mentioned above, but does not charge for the wine or the cheese?

Answer

The answer does not significantly change. While the association is no longer selling alcohol (which is at least slightly better than the previous example), the State of Arizona does not permit an unlicensed business (i.e. a business that does not have a liquor license) to serve alcohol. Pursuant to A.R.S. §4-244, it is unlawful to either sell or “deal in” spirituous liquors without obtaining a license to do so, which generally includes supplying/serving alcohol.



Best Practice for Scenario I & II

If the association hosts a few parties each year and it wishes to sell and/or serve alcohol, it should consider obtaining a Series 15 special event liquor license pursuant to A.R.S. §4-203.02 through the State of Arizona. This type of license (which may be available to many associations) allows an association to actually sell alcohol at its premises for up to 30 days, each calendar year. While certain requirements must be met, this option presents a viable alternative for many associations in Arizona.

Scenario III

The association's board of directors wishes to allow the board and homeowners to bring their own beer (BYOB) to help board meetings be a bit less "edgy." The board does not want to get involved with having a liquor license and is not selling or serving any of the beer.

Answer

I think that most of us can agree that boards may not make their best decisions after having a few alcoholic beverages. However, if a board wishes to allow BYOB events at its clubhouse, including board meetings, it should carefully consider the potential risks and options available prior to doing so.

Pursuant to A.R.S. §4-244.05, any person owning, operating, leasing, managing or controlling a business establishment or business premises which are not properly licensed shall not allow the consumption of alcohol if: (1) food and beverages are sold; (2) entertainment is provided; (3) a membership fee or cover charge for admission is charged; or (4) a minimum purchase or rental requirement for goods or services is charged. While it is debatable whether an association clubhouse constitutes a "business establishment" or "business premises," and whether annual assessments are "membership fees," this area of law has not been sufficiently developed to provide associations with clear guidance on this issue.



For some associations the above exemption may not prove workable. If the association wishes to allow "BYOB" events or otherwise allow consumption of alcohol on its premises, without a liquor license, or an unlicensed business establishment exemption, it should consult with its attorney as there are some arguments that can be made in favor of this approach if the association is willing to adopt certain positions and accept some level of risk.

Clearly, the most risk-free approach is to prohibit alcohol from association premises. However, that is not always feasible in certain communities. Accordingly, each association will have to determine whether it wishes to completely prohibit alcohol, allow "BYOB" consumption, obtain an unlicensed business exemption, obtain a special event (Series 15) liquor license, or obtain a permanent liquor license. There is no "one size fits all" approach.

Finally, an association must also consider other issues if it chooses to allow consumption or sale of alcohol on its premises. Does it have the proper insurance? Does it need security? Are the premises safe? Are people driving home intoxicated? Associations must give significant consideration to these issues prior to permitting the consumption of alcohol on-site.

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Best Practice for Scenario III

If the Board wishes to allow BYOB events with little risk, it should consider obtaining an Unlicensed Business Establishment Exemption from the State of Arizona pursuant to A.A.C. R19-1-324. If approved, this type of exemption expressly allows an unlicensed business to permit alcohol consumption on its premises. Having this type of exemption also comes with some restrictions, though. For instance, alcohol consumption may only occur between certain hours (4:00 p.m. and 2:00 a.m.) and those consuming alcohol are limited to possessing or consuming no more than 40 ounces of beer, 750 ml of wine, or 4 ounces of distilled spirits. Additionally, no more than 300 people may attend any function where alcohol is consumed.

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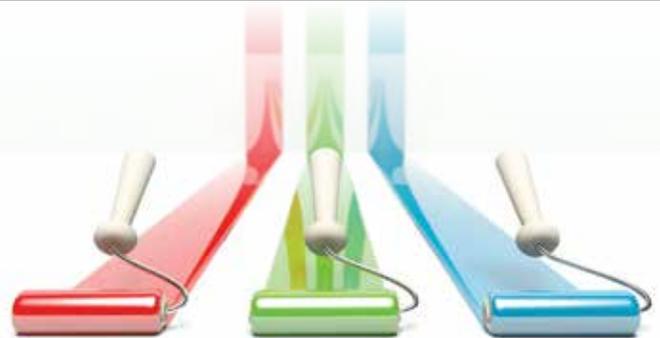
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