

HOMEOWNERS ASSOC. RESIDENTS HAVE RIGHTS

[Bill Donohue](#)

We often get complaints from members who live in apartment complexes or condominiums that homeowners association managers are too restrictive in dealing with religious symbols at Christmas. We decided to do something about it.

We have spent weeks putting together an email list of over 2,000 Homeowners Association managers. We are contacting them today. Here is the text of the letter.

Now that the holiday season is upon us, it is important that the religious rights of owners be observed. The Federal Housing Act (FHA) of 1968 prohibits discrimination by housing providers on the basis of seven characteristics, one of which is religion. Before 1968, HOA managers had a lot of leeway in enforcing policies that restricted religious practices, but that changed when the FHA was passed.

As interpreted by the U.S. Department of Justice, the FHA permits religious decorations on doors and in common areas. This would include a Jewish mezuzah and a cross. "Similarly, when condominiums or apartments have a common room that can be reserved by residents for private activities like parties or book studies, residents seeking to hold a Bible study or other private religious activity may not be discriminated against."

It should be noted that the Eleventh Circuit has stated, "the Supreme Court has repeatedly instructed us to give the Fair Housing Act a 'broad and inclusive' interpretation.'" In other words, the religious rights of residents are presumptively protected.

What the courts take seriously is any selective enforcement of

HOA rules. For example, to allow a menorah but not a nativity scene, or vice versa, is a clear violation of the FHA. Furthermore, the Supreme Court has ruled that a menorah is a religious symbol (even if it is not solely religious in nature). The crèche is also religious, but a Christmas tree is not—it is a secular symbol. This needs to be said because every year there are instances where these kinds of violations occur.

HOA managers have greater latitude in adopting restrictive rules for balconies. Balconies can be kept clear from displaying religious symbols; they are not analogous to doors or common areas. However, even if the rule is “facially neutral,” there can be a violation of the law if there is evidence of an underlying intent to discriminate.

In conclusion, there should be no attempt to favor one religion over the other, nor should there be any intent to discriminate.

Wishing everyone a happy holiday season.

William Donohue, Ph.D.

President

Catholic League for Religious and Civil Rights

450 7th Ave.

NY, NY 10123