

Holiday Cheer: Uniformity of Appearance, Seasonal Decorations, and Fair Housing Considerations

Paul A. Henderson, Esq., Law Offices of Scott M. Clark, P.C.

'Tis the season for holiday ornamentation. Whether you are Ebenezer Scrooge or Clark Griswold, you know that people will be putting up seasonal decorations in their homes, on their cars, and around their places of work. In a couple of days, we'll be hearing about decking the halls, sleighing to grandmother's house, and a certain girl's desire for a very specific Christmas present – a hippopotamus.

While this time of year is supposed to encourage positive thinking and goodwill toward others, there is a concern that celebrating Christmas and/or Hanukkah by permitting residents to decorate the publicly-visible areas of their homes or through management personnel decorating the exterior of the apartment community may constitute a violation of the anti-discriminatory requirements of the Fair Housing Act. After all, one of the protected classes is religion. By its very definition, decorating for one specific event (e.g., Christmas) would seem to be discriminatory against non-Christians.

If we look at a different time of year and ignore the season that begins shortly before Halloween and ends in mid-January (or, if you're a fan of gridiron football, the Super Bowl), property management is frequently engaged in a struggle with residents to maintain the uniformity of a community's appearance. Residents are barred from storing non-patio items on balconies (but that ratty couch looks good there!), hanging window coverings to block visibility (aluminum foil curtains are *très chic*), and leaving garbage strewn about the entrance (better outside than inside, no?). Management can compel the removal of these items – and other similarly offensive subjects – in order to maintain the visual aesthetic of the community.

What happens when a resident wants to hang a religious symbol at the door to his/her dwelling? This practice is more common than you might think – *mezuzot* are affixed to the doorjamb, chalk symbols are traced across the lintel and around the frame, and icons or symbols are frequently mounted on the door itself. Other times, items are left beside the door for the same purposes. However, if your community strictly enforces its appearance rules, it would seem that you have a conflict between religious freedom and valid business needs. The Fair Housing Act and the Department of Housing and Urban Development, interestingly enough, permit the landlord to ban any of these items so long as the community enforces its visual appearance rules on every member of the community.

But what about holiday decorations? Whether they are red-and-green, white, blue-and-white, or a gaggle of mismatched bulbs, it would seem that strands of lights would be impermissible adornments, just as would be door/window-hung wreaths and management-erected Christmas trees. Considering that garlands and other garnishments are common not

just in Arizona but throughout the country, how do you put them up without violating the Fair Housing Act?

The secret lies with the U.S. Supreme Court. During the early 1980s, the Federal judiciary was faced with this issue, as municipalities were putting up holiday decorations and were being sued by “offended” citizens and groups. The Supreme Court took up the case of Lynch v. Donnelly, 465 U.S. 668 (1984) in order to settle the issue. This case concerned the town of Pawtucket, RI and its Christmas display, which included a crèche. Although the lower courts ruled against the town, the Supreme Court settled the issue in an interesting way. Chief Justice Berger, writing for the majority, held that where a secular purpose or explanation exists for the display, even one originally of a religious nature, it did not constitute an impermissible religious endorsement. Take note that the Court didn’t just limit its ruling to Christmas trees – it included a Nativity scene as permissible in the context at question!

When applied to holiday decorations and apartment communities, the Lynch decision and its progeny mean that as long as the community maintains its policies and decorates without an overtly religious theme, holiday decorations are acceptable. Putting up wreaths and lights and *tannenbaum* during December does not violate the Fair Housing Act. Similarly, you can permit your residents to decorate during this season without too much worry, but if questioned, make sure you clearly state that the exemption is tied to this season and won’t continue past its end.

There is one thing to keep in mind, though: make sure your decorations are tasteful and your residents don’t go overboard. You really don’t want to replicate National Lampoon’s *Christmas Vacation*...