COMMUNITY COUNSEL

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RECENT CASES

- **2nd DCA shows no common sense in ruling that commercial ads on a vehicle are not signs on a lot.**
- **Maintaining two unlicensed vehicles on a lot is a residential use.**
- **Actual living arrangements determine who is a member of insured**

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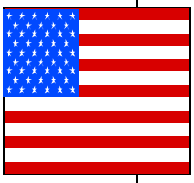
Flying the Flag

Its time to address the emotional issue of flag flying. In the late 1980s a veteran living in a Florida condominium decided to fly a flag from the common element catwalk. After he refused to remove the flag and was threatened with legal action, he filed suit against his association in federal court. The court entered a summary finding that, in a classic example of judicial activism, ignored both substantive law and the procedural status of the case to support the ability of an owner to fly the American flag and affix it to the common elements of a condominium. The core of the court's strained holding - that condominium associations are state entities - has been widely ignored by courts ever since. Shortly after that, however, the Florida Legislature adopted a poorly worded amendment to the Florida Condominium Act permitting owners to display a portable flag in a respectful fashion from the common elements. After 9/11/01 a similar provision was quickly added to the HOA statute, Chapter 720, eliminating the right of an association to approve placement of the display.



In matters of patriotism, tradition, symbolism and ceremony are understandably important. But it is unfortunate when the urge to show the depth of one's passion for home and country is used to trump the important principles that the sons and daughters of this land have championed with their lives for over 200 years.

do you support the Symbol? Do you know what it stands for? Do you support that too?

All over the country rugged-individualist property owners battle faceless community associations and municipalities over display of the American flag. Disproportionately large poles, bright lights and large flags that snap in the wind like a gunshot report are only tangentially related to display of the flag. Yet they are wrongly used to pit patriotism against contract and property rights. "Flag" disputes such as these, revolving around the *method of display,* invariably inflame the emotions of all involved, but more than a hint of farce is too often present, and in such display disputes all sides lose.

Consider a sad case playing out in the South Florida community association of Broken Sound: a case which has seen Florida's Governor raising a flag – from the Florida Capitol – over the property owner's home. Yet that owner is now on the verge of losing his home to a lien foreclosure brought to recover the Association's legal fees. The owner, unbowed, rails on about his constitutional rights and his intention to take the case to the U.S. Supreme Court.

Some people just don't get it. The constitutional right to freedom of expression protects citizens from government, not from private contracts. The right to fly the American flag, like other expressions, is not an unqualified right, and *the method of expression* (as opposed to the message) is subject to time, space and other situational constraints. Every day people agree to refrain from unfettered expressions. Are those agreements not enforceable because they involve the flag, even indirectly? Does this country not stand for the proposition that "my word is my bond?"

Worse, politicians mislead well meaning citizens when they propose legislation like SB 260 (Fasano), allowing the exhibition of the flags of the military service branches on certain enumerated holidays. Next year, why not Florida sports teams?

The fact is that statutes - purporting to elevate and prefer certain symbols and expressions over others - themselves may constitute governmental action sufficient to guarantee that the exhibition of ***any*** flag, pennant or symbol, no matter how trivial or heinous, will have to be permitted, thereby cheapening the display of the flag the statutes are trying to elevate, and clogging our neighborhoods with all types of personal advertising. Politicians who encourage unrestricted conspicuous displays of patriotism should put at least equal effort into fostering a better understanding of what those symbols represent.

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RECENT CASE SUMMARIES

In **Kenneth and Shelly Wilson, and Paul and Monica Vigna**, **v. Rex Quality Corporation**, (Fla 2nd DCA 3/26/2003) each of two property owners in a subdivision parked a vehicle with commercial advertising on the owner's lot. One was a red van bearing the slogan "Enjoy Coca Cola" in several places. The other was a small pick-up truck with the name and phone number of a pest control company on its side. The Association demanded that the vehicles be removed based on a prohibition contained in recorded Declaration of Restrictions that provided that "…. no sign of any kind shall be displayed to the public view on any lot….." When the owners failed to comply, the Association brought suit. The trial court found that this provision controlled and ordered the property owners to comply with the restriction. On appeal the Second District Court of Appeals reversed. Because resolution of the case revolved around interpretation of the documents the appellate court felt free to come to its own conclusion about the meaning of the documents. The court found a conflict between the stated provision and another which addressed parking on Lots and provided that "….no commercial trucks (except small pickup trucks) shall be permitted…." and ruled that the conflict required that the documents be interpreted in favor of the freest use of the property. The court was also persuaded by fact that two law enforcement vehicles where parked in the subdivision without objection.

In **Floreal De La Garza v. Miami-Dade County**, Circuit Court, 11th Judicial Circuit Case No. 02-213 AP. L. C. Case No. 01-791301. February 18, 2003, the Circuit Court, sitting as an appellate court to review the action of the County Code Enforcement Hearing Officer rejected a finding that a property owner who kept two unlicensed passenger vehicles on his lot was violating zoning restrictions on the approved uses of single family residences. The court found no evidence in the record that the vehicles were used or intended to be used for commercial purposes, and it stated that no substantial competent evidence existed in the record below showing that storage of two unlicensed passenger vehicles was not a customary use of single family residences.

In **Florida Residential Property & Casualty Joint Underwriting Association v. Patricia W. Anthony** (Fla 4th DCA 3/26/2003) Insurer denied coverage under a policy it wrote for Homeowner's sister in connection with payment of a $100,000 judgment for personal injuries resulting from a dog bite that occurred at a house owned by Homeowner in Hollywood, Florida. At the time of the injury the Homeowner's adult son was living in the property. Homeowner's sister maintained an insurance policy written by Insurer that covered a property she owned but did not occupy in Clewiston, Florida. However, the policy covered claims against "residents of your household who are [your] relatives." The trial court entered summary judgment for the Homeowner on the question of coverage. The Fourth District Court of Appeals reversed, finding that because Homeowner and her sister never occupied the same home for more than a few days, they could not be said to be part of the same household. The absence of any landlord-tenant relationship did not control the result of the case. Rather, the actual living arrangements dictate whether one can be said to be a member of the same household as another person.

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