

# Can or Should Community Associations Impose Firearm Regulations through Governing Documents

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The recent senseless slaughter of school children in Parkland, Florida has fueled and reignited the long-simmering debate about gun control in our society. Community associations are not immune to violent tragedies, including gun deaths.

We are all familiar with the case involving Trayvon Martin, a teenager who was shot and killed by a neighborhood watch volunteer. In 2012, David Merritt, president of the Spring Creek Homeowners Association, called a homeowners association meeting to order. Approximately 30 minutes later, Merritt, and former president of Spring Creek Marvin Fisher, would be fatally shot by their neighbor, Mahmood Hindi. The dispute between Hindi and Spring Creek involved an unapproved driveway and fence installed by Hindi. Hindi was charged with murder, but committed suicide in jail prior to his trial. Other examples of violence within mandatory membership communities can readily be identified.

It is not the intention of this article to argue whether additional governmentally-imposed gun control is desirable, and if so, what that would entail. The focus today is whether community associations can, and should, impose firearm regulations through their governing documents.

While the “can” issue is a bit complicated, the “should” issue is perhaps easier to discuss. In general, community associations do not owe residents the duty to prevent criminal actions of third parties. However, that rule of law has been swallowed up by exceptions, mostly focusing on whether the association knew or should have known of the potential for third party violence.

In my view, one of the worst things a community association can do is impose regulations aimed at personal safety and then not enforce them. For example,

let us assume that a board adopts a rule prohibiting lawfully licensed persons from carrying concealed weapons into association meetings. Let us also assume for the sake of discussion that such a rule would be upheld as legally valid. How would the association enforce such a rule? I doubt most organizations are going to install metal detectors at the door of their meeting room. If an incident occurs notwithstanding such a rule, it seems to me that the association is in a much worse legal position than simply not having had a rule at all.

As to the “can” aspect of the equation, community associations are not governmental entities for the purpose of the protections found in the United States Constitution, its Bill of Rights, or other amendments to the Constitution. On its face, the Second Amendment does not apply to community associations simply because an association is not a government actor.

However, and the law is not particularly well-settled on this point, it appears that the trend is that if an association uses a court to address an issue with constitutional implications, “state action” can be found to exist, meaning that the regulation would be subject to constitutional scrutiny. For example, in the recent case of *Fox v. Hamptons at Metrowest Condominium Association, Inc.*, a Florida court of appeal struck down a trial court’s order that prohibited a unit owner from publishing blogs and website postings about the board of directors and the association. The appellate court found that the prohibition against future communications was a “prior restraint of free speech” in violation of the First Amendment to the U.S. Constitution. The apparent theory for applying the Constitution goes back to a 1948 U.S. Supreme Court case finding that the enforcement of private covenants which contained racial restrictions in a state court was tantamount to “state action.”

The reach of the Second Amendment is a matter of great debate, both among pundits and constitutional scholars. The U.S. Supreme Court’s 2008 ruling in *District of Columbia v. Heller*, a 5-4 decision, is often at the center of these debates. In *Heller*, the court found that an absolute prohibition against the ownership of handguns held and used for self-defense in the home was a violation of the Second Amendment. The court left open the possibility that there may be limits on the reach of the Second Amendment, noting that it does not necessarily confer “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”

So where does this leave community associations? In my view, certain regulations would be upheld, and others would not. Whether regulation (or what type of regulation) is a good idea is a serious issue for the board to consider.