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“Owner Social Media Page Raises Questions,” News-Press

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By: Joseph E. Adams

Q: Our homeowners’ association has a new board that is currently working on the transition from the builder. Residents have become quite vocal, and complaints are numerous about general association matters and other residents. A resident set up a social page open to members of the community, which has become predominantly a method for complaints and insults toward the new board and other residents. Although not board sanctioned, this resident also posts association information from unknown sources. This has caused additional complaints and negativity. Is social media appropriate for use as an official means of communication of official association matters? (M.Z., via e-mail)

A: Section 720.303(1) of the Florida Homeowners’ Association Act specifically provides that a member does not have the authority to act for the association by virtue of being a member. This member has no authority to speak or act on behalf of the association. If he or she purports to do so, or engages in defamatory or other inappropriate commentary, the board should refer the matter to its attorney.

Further, if the association’s name is being used for the page, there is case law in Florida suggesting that the association may have standing to complain if confusion is being caused as to whether the association is the host of the page and the contents thereof the association’s positions on matters. There is also some case law that extends limited First Amendment protections to social media postings, so your board would be well advised to discuss these matters with legal counsel.

The board should also take reasonable action to make clear that the social media page being managed by this member is not affiliated, directed by, or monitored by the association, and that all views expressed therein are the views of the individuals who choose to participate. I do not recommend that board

members participate in these groups. Some associations have their own social media pages, though I have found that allowing for reasonable and courteous member input is better managed through an association hosted website.

Q: I received a "first notice of violation" letter from my homeowners' association about my display of the Gadsden flag. The letter cites to the Florida Statutes and the association's rules and regulations pertaining to political signs and banners and demands that I take the flag down within 10 days. Am I required to take it down? (J.B., via e-mail)

A: The Gadsden flag (the yellow "Don't Tread on Me" flag with a snake) is a historical American flag from the American Revolution. Although it was one of the first flags of the United States, the Gadsden flag has been replaced by the current "Old Glory" flag with thirteen horizontal stripes, alternating red and white, and 50 stars as the official flag of the United States of America.

The Florida Homeowners' Association Act provides that a homeowner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag not larger than 4.5-feet by 6-feet that represents the United States Army, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag, regardless of any covenants, restrictions, bylaws, rules, or requirements of the homeowners' association.

The "Freedom to Display the American Flag Act of 2005" is an Act of Congress that prohibits community associations from preventing owners from displaying the flag of the United States on their property. The "flag of the United States" is defined in that law as the current "Old Glory" flag. While the Gadsden flag is considered a historical American flag, it is not the current official flag of the United States and not protected by these laws.

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