

## **The Character of Our Content**

Ask The Expert

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Q: One of the chartered clubs in our community decided to donate a Bible to the library at the community center. Our rules and regulations suggest that if a club wishes to make a donation to the community, a letter should first be sent to the board of directors of the HOA for permission. I interpreted this as a major donation (e.g., speakers, stage curtains, electrical equipment), not a book. The board in turn discussed this letter at a workshop and voted unanimously against the Bible being placed in the library. There is nothing listed in our covenants or bylaws to this effect. I feel this is a form of censorship. Since when does the board of any association have the right to censor what reading material goes into a community library? --Ocala, Florida

A: The board of directors of any association is always responsible for the content of common-element or common-area facilities--including playgrounds, fitness centers, game rooms, and, yes, libraries. This responsibility certainly doesn't give the board any powers of censorship, but there is an element of choice involved, and the choice can sometimes be tricky. Just as the board must be concerned about the safety of fitness or recreational equipment, it must be concerned about the nature of reading material in an association-sponsored library.

#### **BOOK BY BOOK?**

A well-informed board will realize that it is foolhardy indeed to attempt to evaluate and approve reading material on a book-by-book basis. Even the Supreme Court is hard-pressed at times to determine what constitutes freedom of expression and what materials have no redeeming social value.

How, then, is a board to make the same choices? Should it allow the Bible, the Koran, and the Torah? How about books on Satanism or the Ku Klux Klan? What standards does it impose? Can it ban books that discuss or espouse hatred or racism? Who on the board is going to read every book proposed for the library to make sure it has no religious content? And what about books that discuss sex or have sexual content?

Balancing freedom of religion, freedom of expression, political freedom, and the "best interests of the community" may be a task that even the board should avoid. True, the association isn't a governmental entity and thus isn't necessarily subject to the rules against censorship that the courts have imposed on public libraries. But the mere fact that the library is private, not public, will make little difference in the community once charges of censorship are leveled.

So, the real question is whether an association can stock its library with publications that don't offend anyone. Given that someone recently told me that she found certain parts of the first Harry Potter book "disturbing," I suspect that one might never find a single book that wouldn't be offensive to someone. And if the books that are in the library don't offend anyone, someone nonetheless will be offended if the book they recommend for inclusion is rejected by the board.

#### **CONTROL ISSUES**

The solution is obvious: Either the board provides no books and lets the library exist purely as a community project--without official association approval or disapproval of its content--or it doesn't allow a library to exist in association space.

Many boards will have a difficult time giving up the control over content that is required to let residents stock the library themselves. However, in this context, control is an all-or-nothing

issue. If the board doesn't give up total control, it may as well keep it. Many would argue that the board is responsible for content merely because the library is kept in the common area of the association--an area under the board's exclusive dominion. In fact, they would argue that the board cannot give up control and allow the community to stock the library for that same reason. The alternative solution--no library at all--may be politically and legally correct, but it appears to violate the spirit of community for which every association strives. However, a "no library" policy may actually better foster a sense of community because it avoids polarizing battles. For these reasons, the existence of an association library is a tough decision that each association board should approach carefully, seriously, and with the aid of legal counsel.

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