

# Is your home still your castle?

**Homeowner associations have a lot of power over how their residents live**

**Joe Strupp** Asbury Park Press | USA TODAY NETWORK – NEW JERSEY

In some private communities, the election of the local homeowners association board often seems more important than who is running for mayor, senator or president.

So much so that in one Monroe Township development, strict campaign rules were instituted earlier this year that sharply curtailed the use of campaign signs, bumper stickers and even buttons related to candidates running for the homeowners association, or HOA. | No surprise that it was the HOA itself that put the rules in place. | “One of the biggest things that bothered us was that you could not campaign in the clubhouse,” said Loren Sattinger, a 10-year resident of Stonebridge, the private community where the rules took effect in March. “It is the center of the community.”

*“They do not have political power; everyone is organized except the homeowners.”*

**Evan McKenzie** professor of political science and law at the University of Illinois

The Stonebridge case is just one of several this year that have tested the power of homeowners associations to restrict the actions of their residents, from the Howell veteran who was barred from installing a flagpole in his front yard to Lakewood residents opposing the separation of the sexes at a swimming pool in a predominantly Orthodox Jewish community in Lakewood.

The disputes are occurring at a time when construction of housing communities is on the rise, sparking an increase in the number of HOAs, experts say. Attorneys involved in the disputes say people are being more assertive on both sides, reflecting today’s divisive climate.

At Stonebridge, Sattinger’s objections led to a lawsuit he filed with another resident in April against the Stonebridge Community Association Inc. claiming the restrictions violated the First Amendment.

The HOA has agreed to remove the rules, but the plaintiffs still want a court ruling that declares they were unconstitutional. An attorney for the HOA, Samuel McNulty, declined to comment.

“If we don’t get some kind of validation from the court that it’s unconstitutional you sort of give people a pass to keep doing it,” said Amy Agnew, an attorney who is handling the case and others like it.

More disputes are inevitable as the number of such associations grows, along with the number of private communities in New Jersey, the attorneys say.

“Eighty percent of new (housing) construction (in New Jersey) includes a common interest community — a condo or an HOA or a co-op — in the last two years,” said Larry P. Thomas, president of the New Jersey chapter of the Community Associations Institute, which advises HOAs and holds dispute resolutions for their members. “As the land is more and more scarce, a lot of people want to move to

55-and-older communities so the major builders are seeing a desire for these communities.”

Thomas, whose organization represents 2,200 members in the Garden State, said there are 6,700 homeowners associations, condo associations and co-ops — overseeing 1.4 million people. That’s an increase from 5,700 just 10 years ago, he said.

The New Jersey Department of Consumer Affairs reveals that the number of new housing construction permits has been steadily increasing for the past 10 years, from 10,827 in 2009 to 18,235 in 2013 to 25,743 in 2018.

“There are more and more being built, and (the number of challenges) is going to go up. We are living in an aggressive society these days,” Thomas said. “The climate is that people are more and more apt to take on a cause.”

HOAs generally regulate basic conditions in private communities, ranging from the height of front lawns to noise levels to public smoking. But some go beyond their purview and impermissibly limit personal actions and free expression, according to some critics.

Agnew blamed what she and others view as increased HOA regulations on a national effort to infringe on people’s rights: “I think it’s getting worse, I think it’s a reflection of politics in our country right now. People in the White House have given carte blanche that it’s OK to trample on people’s rights.”

In some instances, the residents have a case when the homeowners association oversteps its boundaries, according to Jose D. Roman, an attorney who has represented homeowners in such disputes.

“A lot of these associations are poorly managed,” said Roman, who is based in Old Bridge. “In my experience, problems will arise when HOA Rules and Regulations go too far and start unreasonably infringing on the individual freedoms and property rights of community members. An HOA has every right to adopt reasonable rules and regulations. But that power is not unlimited. An HOA still has to abide by state and federal laws when adopting rules and regulations.”

One such case Roman handled was the gender-segregated pool time policy that limited access by women at a predominantly Orthodox Jewish Lakewood community.

In April, the Third Circuit U.S. Court of Appeals, overturning a District Court ruling, found in favor of three residents at A Country Place in Lakewood who sued after they were fined \$50 by their condominium association for using the pool during hours the association’s rules said they could not.

The HOA rules had established separate swimming times for men and women, a policy in line with principles held by Orthodox Jewish residents who made up two-thirds of the association’s residents at the time of the 2016 lawsuit.

The court found that “inequitable features” of the association’s schedule made it unlawful when women were allowed 3.5 hours of pool time after 5 p.m. on weeknights, compared with 16.5 hours for men.

“The problems you see are in the smaller older communities that haven’t been well-managed in the past and the board thinks that they have the power to do whatever

the majority of the community vote for,” said Roman, who represented the Lakewood plaintiffs. “Or whatever the majority of the boards want.”

Another Lakewood case involving a different private community and an Orthodox Jewish restriction ended in favor of the religious provision. It began when a resident of The Enclave community requested an exemption from using the pedestrian gate’s electric security access key on Saturdays due to his inability to use electronic devices on the Sabbath under Orthodox law.

The resident, Nathan Reiss, filed a state discrimination complaint in December 2017 claiming the gate prevented him from walking outside of the community on the Sabbath because he could not open and close the gate manually.

In April, the state Attorney General’s Office announced a deal between Reiss and The Enclave, in which the gate would be unlocked during Sabbath hours and on Jewish holidays.

“Sometimes both sides get a little off the track, out of their lanes. You have to be reasonable,” said Thomas. “I’ve seen overzealous boards and I have seen residents who just want to make trouble.”

As the number of these communities grows and the HOAs and similar boards gain more power, experts contend they need to be better trained in the constitutional aspects of residential living, as well as due process for complaints and meetings.

“And the board members do things without consideration of federal or state law that may conflict with what they want for their community as a whole,” Roman said. “You have the federal Fair Housing Act and the New Jersey Law Against Discrimination, both of which have provisions in there that are specifically related to fair housing. The larger, better managed ones do consult with attorneys. The ones that aren’t are getting into trouble.”

A landmark 2007 New Jersey case that set the tone for many future regulation fights involving free speech was the Twin Rivers lawsuit brought by residents of the East Windsor private community. They opposed several HOA restrictions involving political signs, fees for use of a community room and the association newsletter barring opposing viewpoints from being printed.

When the case reached the state Supreme Court, the justices affirmed two of the regulations but declared the political signage limit to be a violation of the First Amendment.

Since then, most complaints have gone in favor of the HOAs, observers say. They contend that since most of the communities are private entities and that residents agree to follow their rules upon purchase of their homes, their objections often gain little traction.

“Almost always the associations win in these actions,” said Evan McKenzie, author of “Privatopia: Homeowner Associations and the Rise of Residential Private Government.” “They just have to show they are reasonably related to the operation of the association.”

McKenzie, who is also a professor of political science and law at the University of Illinois, said part of the problem is that the residents are not as organized or as powerful as the associations.

"They do not have political power; everyone is organized except the homeowners," he said. "It does not reflect what they need, it reflects what the builders and property managers and bankers and real estate agents want. They organize and set up the homeowners associations and they are empowered by the developers, they are instruments of the developer."

But that does not mean residents are powerless when there is clear infringement, attorneys say. Regulations and state laws have been put in place in recent years that give them more support than in the past.

"Initially they could be very authoritarian. They thought they could run the place and tell people how to behave, but they were wrong," said Frank Askin, an attorney who was involved in the Twin Rivers case and others related to free speech. "They can't create rules that deny them free speech. A lot of the people get elected on these boards and they think they can run people's lives but they can't."

Among the recent changes that favored residential rights was the 2017 Radburn Law, which opened the process for joining a homeowners association board. It stemmed from a 2010 lawsuit by residents of the Radburn private community in Fair Lawn who objected to the limited access for residential service on the local board.

Dispute resolution requirements have also been in place since 2013 when the state required that HOAs offer an independent mediator to be brought in to hear both sides of a dispute and render a binding judgment.

"It is a good rule because a lot of the things need another set of eyes," said Thomas, whose organization offers dispute resolution services. "A third party to come in who doesn't live there. It is a lot easier to handle these disagreements."

And he says the requests for mediation are on the rise. While his group received about 100 such requests in 2018, they have already been asked to intercede in 85 cases so far this year with estimates that it will reach 150 by the end of 2019.

Some new issues have arisen in recent years just as they have across society. One is the expanded use of personal service animals beyond the traditional service dog. Now that the category has expanded to a wide array of therapy animals, residents are challenging HOA rules barring animal from communities.

One recent case that was offered dispute resolution involved Howell resident Mike Burt, a Vietnam veteran who had requested the right to place a flagpole in the small garden outside his house in the Equestra at Colts Neck Landing gated community on Route 33 in Howell. The homeowner's association denied the request, but offered a list of alternatives that included installing a flagpole in a common area.

It also offered to go to a dispute resolution mediator, which Burt plans to do.

Most associations stand behind the stipulation that rules were laid out and residents agreed to them before they even moved in, Thomas said.

“When you do buy into an association, you are agreeing that you will abide by the rules and regulations and covenants of the organization. The board also agrees to fulfill their defined duties as outlined in the bylaws, covenants and governing documents,” Thomas said.

Ellen Vastola, president of the Common Interest Homeowners’ Coalition, which represents residents, said it is up to the homeowners to get more involved and gain the power that being on a board offers.

“You are living in a community that is self-governed,” she said. “When you come into your community you should expect at some time to serve on your board, you should not sit back and have the mentality that other people will take care of it. People are lazy and it drives me nuts.”

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**Vietnam veteran Mike Burtt wants to install a flagpole in his front yard to show patriotism, but his local homeowners’ association won’t let him.**

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