

Flags, Signs and Associations

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A homeowner wants to erect an 80-foot flag pole on his front yard to display the American and Washington State flags in support of our local troops in Iraq. While the board is sympathetic to the owner's patriotism, the association has rules against additional exterior lighting, flags and lawn ornaments.

Another owner wants to show his constant support for a city council candidate by posting a political sign year-round on the common area of the condo abutting the street where people will see it when they drive by.

What does the board do?

Most board members probably don't realize how upholding state, federal and even constitutional law may play into their daily decisions. Yet when the United States flag and political signs are involved, the First Amendment protects a person's right to free speech over an association's CC&Rs.

The Freedom to Display the American Flag Act of 2005 (4 U.S.C. 1) provides that a condominium or other association is prohibited from adopting or enforcing CC&Rs that would prevent a member of the association from displaying a flag "on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use." Thus, the Act generally grants homeowners in both condos and associations the right to display the American flag within the unit or within the limited common elements.

According to the federal law, the display of the flag must be consistent with federal provisions for the proper display of the flag or any "rule or custom pertaining to the proper display or use of the flag."

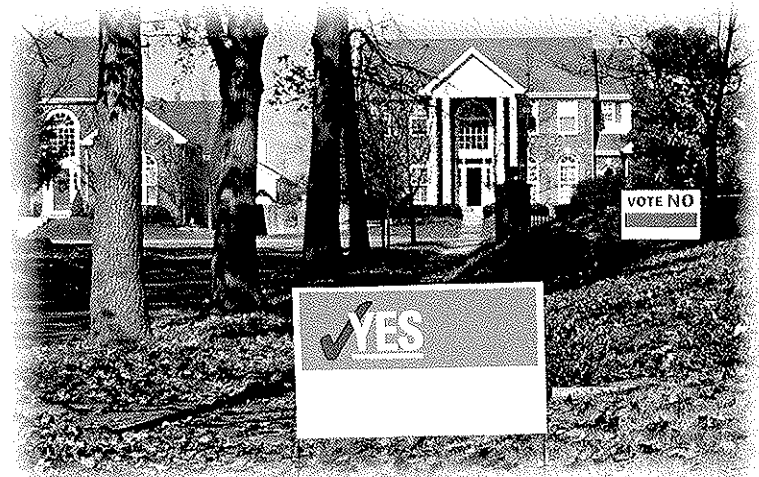
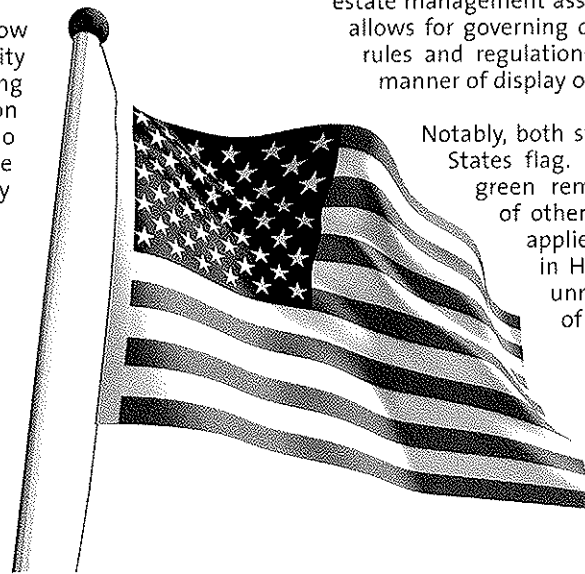
The state law, found only in the HOA Act (so condos are *not* covered) echoes the federal law, providing that "the governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property . . ." RCW 64.38.033. The state law even protects homeowners from prohibitions against flag *poles* to a certain extent.

But even First-Amendment speech is subject to reasonable "time, place and manner" restrictions. The federal Flag Display act is explicit, allowing "any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the condominium association, or residential real estate management association." The state law similarly allows for governing documents to include reasonable rules and regulations regarding the size, placement, manner of display of the flag and poles.

Notably, both statutes apply only to the United States flag. Good ole George on a field of green remains unprotected, as do flags of other states or nations. The state act applies retroactively, so that provisions in HOA CC&Rs created prior to 2005 unreasonably prohibiting the display of the flag are void.

Thus, the homeowner above probably cannot be prohibited from displaying the *American flag* in his front yard (if that area is designated for exclusive use by him). If he lives in an HOA as opposed to a condo, his right extends to some kind of flag pole but because of the exception allowing reasonable rules and regulations regarding the size of the flagpole, he may be required to shorten the pole or use a wall-mounted pole because those probably further

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a “substantial interest of the association” in preserving other owners’ views and aesthetics.

The other free-speech hot button for associations across the nation over the last few years has been the restriction of political yard signs. This debate was finally quelled in 2005 when the Washington legislature enacted RCW 64.38.034, which retroactively provides that the governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner’s or residents’ property *before any primary or general election*.

Like the state flag display statute, an association is allowed to impose reasonable rules and regulations governing placement and manner of display. Unlike the flag statute, however, the sign statute restricts signage to the owner’s property.

Since it applies only to HOAs and not condos, the owner above may be prohibited from posting the sign year-round. In fact, a reasonable restriction can be made to coincide with the statute’s mandate that the signs be allowed “before” a primary or general election. Unfortunately, how soon before the election is unspecified. The owner can also be prohibited from posting the sign on common areas of the association.

Associations are encouraged to draft rules and regulations specifically addressing these issues consistent with the federal and state laws, remembering that restrictions on political speech must further a substantial interest of the association and be reasonable. 

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