

Can Homeowner Associations Regulate Political Signs?

Amundsen Davis Real Estate Alert
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Now is a good time for homeowner associations ("Associations") to review applicable state statutes, local ordinances, and other relevant guidelines regarding political signage in order to prepare for this fall's local elections and next year's round of mid-term elections.

Questions often arise about whether or not Associations can regulate political yard signage. Political speech isn't limited to signage endorsing a candidate or ballot issue, but can include signs protesting or supporting government actions, expressing opinions on social issues, or indicating membership in a particular group, in addition to other media such as flags, messages posted on trees, located in windows, or chalked on a driveway.

Most states and municipalities have statutes or ordinances prohibiting some regulation of political signage. While laws prohibiting the regulation of political signage vary between jurisdictions, there is a common theme: Any regulation of political signage (or other political speech) cannot be based on the content; however, reasonable regulations may be allowed.

Since statutes and ordinances prohibiting the regulation of political signage by Associations vary among jurisdictions, the criteria for what is "reasonable" might also vary. Associations which base their signage restrictions on a municipal ordinance have a basis to claim that such restrictions are reasonable; however, even a restriction based on a state law or local ordinance is not immune to challenge. If the applicable ordinance or statute is overturned, that restriction might also be invalidated.

When considering proposed rules on political signage, Associations should consider the following factors:

- **Content:** If the rule allows for one type of subject matter, but not another, the rule is content-based and unenforceable.
- **Time:** If signs must be removed following an election or other event, the rule may be content-based and unenforceable, but if local ordinances provide limits for such removal, the Association might rely on the ordinance and consider similar time frames.

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- Place: If certain types of signs may be placed in a specific location such as in a window, on the yard, or on the mailbox, the rule may be content-based and unenforceable. An alternative is to prohibit signage or other medium within the right-of-way or in common areas.
- Manner: If the rule does not allow similar treatment for all signs, it may be content-based. Alternatives are to require all signs to be a certain style (such as ground-mounted), or to require that signs be properly maintained.
- Number: If the rule makes exceptions for or places limitations on only certain types of signs, the rule may be unenforceable. Instead, the number of signs displayed may be limited, but the maximum number should not exceed that set forth in the applicable ordinance.
- Size: If certain signs must be smaller than others, the rule may be unenforceable. An alternative is a rule setting forth the maximum square footage for all signs, but the size limitation should not exceed that of the applicable ordinance.

Any Association limiting political signage must be careful to balance a property owner's rights of free speech against the Association's obligation to protect the health, safety, and welfare of the residents and preserve property values and aesthetics within the community, all while acting within the confines of applicable laws. Any Association considering rules regulations on political signage is advised to review its own state and local laws and to seek the advice of a licensed attorney in their jurisdiction.

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