

August 2012

Community Associations Newsletter

Regulation of Political Signs

By: Erik W. Fox, Esq.
Marguerite L. Selton, Esq.

It's that time again. Political signs are popping up throughout the neighborhoods, decorating the landscape like the first flowers of Spring. Each political season, residents display signs in their yards and neighborhoods to promote their favorite political candidate, political party, or political issue. However, these signs often run afoul of community associations' restrictive covenants. While owners believe they are entitled to display signs on their property in exercise of their right to free speech, associations must check an unfettered exercise of that right to ensure compliance with governing document standards. What should associations do to prepare for this potentially contentious time?

Associations should be familiar with what signage is permitted within their community. Reviewing both local laws and governing documents is essential. While it is clear that association property is "common area" and within the realm of association control, the bigger challenge is regulating signs placed on private property. The tack an association takes on restricting private property signs will depend upon the provisions of the applicable laws and governing documents.

First, review your state and local laws before prohibiting or restricting political signs. Virginia and the District of Columbia do not have any statutes which prohibit associations from banning or regulating political signs on private property. Therefore, associations in these locations may rely upon the provisions of their governing documents to prohibit or regulate political signs. In contrast, Maryland has adopted a statute that prevents associations from prohibiting or restricting candidate signs during a timeframe not fewer than thirty (30) days prior to, and seven (7) days after, an election.

Assuming your locality permits the prohibition or restriction of political signs, your second task is to review governing documents. Be sure to determine whether signs are prohibited altogether or can be regulated.

If the covenants do prohibit all signs, then enforce this restriction equally throughout the community. At the very least, do *not* single out one candidate, party, or political issue. Enforcement must be even handed.

If your documents permit regulation of signs, be sure to note whether this applies to signs in yards, windows or elsewhere. You may consider carefully drafting a resolution that circumscribes sign usage. This resolution could address the number of signs permitted, the dimensions or other characteristics of signs, the location of the signs, and the timeframe in which the signs can be displayed. Any such regulations must be *content neutral* regarding the time, place and manner of restriction and be applicable to all signs, not just political ones. Exceptions can be made for “For Sale” signs.

Where owners flaunt the association’s rules with regard to signs, you may handle the situation as a covenants violation of a continuing nature. Make sure that you comply with your due process resolution regarding citations, hearings and imposition of charges. In following the due process procedures, you may often find that the violation will be abated between the time of the initial notice and the final hearing.

Although there may be substantial push back from owners to sign prohibition or regulation, remember that associations are not governmental entities. Therefore, they are not subject to the same constitutional scrutiny as local, state or Federal agencies. Rather, associations are governed by the covenants and rules of contract. When owners purchase property within a community, they agree to be bound by the association’s documents, including any provisions which bear on their right to display signs.

With all these issues looming, the best plan is to highly publicize your community’s prohibitions and regulations before the first sign is stuck in the ground. You may consider putting this information on your association website or in your association newsletter. Educating your community will go a long way toward controlling sign usage.

Although election time poses a significant challenge for associations, it is not an impossible task. Planning ahead and communicating before sign season will help navigate through the election year waters. Following the above guidelines should help you to maintain a pretty landscape and to avoid being overtaken by the “flowers” of November.

If you have any questions about the political sign regulation issues discussed in this memorandum, please contact any of our Community Association attorneys and we would be glad to help.