

You're A Grand Ol' Flag, But You Sure Come with A Lot of Rules!

Displaying the American Flag in Community Associations

By Diana C. Godoy, Esq.

Fourth of July evokes thoughts of hot summer days, picnics, fireworks, and displays of the American flag. But for those living in a community association, displaying the American flag, even on the Fourth of July, might subject them to regulation under the guise of architectural uniformity and aesthetic harmony.

Signs, flags, and banners allow residents in community associations a rare opportunity to express their individual beliefs, holidays, favorite seasons, and athletic teams. While unrestricted, these symbols of individuality can impact negatively a community's aesthetic. Certainly, we can all agree on displaying Old Glory, or can we?

Under federal and state law, community association homeowners have a right to display the American flag, and homeowners associations may not adopt or enforce any policy that prevents a homeowner from exercising that right. The federal [Freedom to Display the American Flag Act](#) protects the right of homeowners to display the American flag on their separate interest or exclusive use common area and prohibits restrictions on displaying the American flag on a homeowner's unit, lot or exclusive use common area.

Exclusive use common areas are those areas within association property in which a homeowner has a right to exclusive possession or use.

The right of homeowners to display the American flag on their separate interest, however, is not unlimited. The extent of a homeowner's right depends, in part, on the type of common interest development and what constitutes a homeowner's separate interest and exclusive use common area.

A homeowner's separate interest in a planned development usually includes the lot, which contains the front and back areas, and the residential structures. Generally, homeowners in planned developments have more options as to where they can display the American flag. In contrast, in condominium developments, the homeowner's separate interest is usually the unit, usually consisting of the airspace enclosed by the unit's walls and the right to exclusive possession or use of patios and balconies adjoining the unit. In general, condominium homeowners are far more limited as to where they can display the American flag.

Moreover, the right of homeowners to display the American flag might be subject to additional restrictions. [The Freedom to Display the American Flag Act](#) allows homeowners associations to adopt and enforce reasonable restrictions pertaining to time, place, and manner to protect a substantial interest of the association, and many states have further specified the types of display of the American flag that are protected.

At the State level, [California's Civil Code § 4705](#) protects a community association resident's right to display the American flag on their separate interest or exclusive use common area if the flag is made of fabric, cloth, or paper. Height and placement guidelines to protect architectural uniformity and aesthetic harmony are permitted. [Civil Code § 4705](#) does not, however, protect



depictions or emblems of the flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative components.

Homeowners should always be familiar with their association's governing documents, but if you should have any question about what is allowed in your community, check with your association's board or community management before displaying the Stars & Stripes on your property. If your community leadership has any questions, please contact us for further information.

Happy 4th!

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