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I screamed, you screamed, we all screamed about yard signs

In March 2020, the landscape of the world, our country, our state and our neighborhoods was likely forever changed. In addition to the COVID-19 pandemic, the nation experienced galvanizing events in the social justice movement including, among others, the death of George Floyd and the resulting Black Lives Matter movement. Yard signs, flags and window signs began to spring up conveying support for front-line medical workers, Black Lives Matter, the Thin Blue Line, along with messages of equity, diversity, inclusiveness and other more universal expressions of each homeowner's (sometimes conflicting) values.

However, unbeknownst to many homeowners living in communities governed by a homeowners' association, their HOAs contained policies that either regulated or prohibited the display of signs and flags, with the only exceptions being the American flag, service flags and political signs in the weeks immediately surrounding elections. When HOAs began to enforce these previously noncontroversial elements of community design, homeowners were both surprised and upset – many times taking their stories to the local news.

As a result, the Colorado Legislature passed HB 21-1310 (aka the New Flag Law), effective Sept.



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7, 2021, which dramatically changed an HOA's ability to regulate the display of signs and flags by homeowners. The New Flag Law modifies a section of the Colorado Common Interest Ownership Act; the law that generally dictates what HOAs can and cannot do. Prior to the passage of the New Flag Law, HOAs had the ability to prohibit the display of nearly any sign or flag. This led to discord in many HOA communities in the past two years – and an influx of homeowners advocating for changes in the law.

The stated purpose of the New Flag Law is to simplify and broaden the protections of CCIOA. Under the new law, HOAs now are required to permit the display of any flag or sign at any time, subject only to "reasonable, content-neutral limitations" such as the number, size or placement. The only exception to homeowners' newfound freedom is that HOAs still may prohibit displays bearing "commercial messages."

While an HOA's ability to regulate and/or prohibit the display of



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flags and signs has diminished, HOAs still have significant discretion under the New Flag Law to fashion rules preserving the unified design of the community. HOAs still

may regulate the number, location and size of the sign or flag, so long as the rules are "reasonable" and content-neutral. In addition, while the new law treats the display of signs and flags generally the same, it allows HOAs to regulate the display of signs by relying on "other objective factors." Despite its straightforward prohibitions, the New Flag Law provides little, if any, other guidance on what constitutes a "reasonable content-neutral limitation."

This raises questions for HOAs. How are they supposed to craft "reasonable" rules and regulations moving forward? In light of how recently the new law took effect, case law is largely undeveloped in this respect. Undoubtedly, what is "reasonable" will be different for each HOA depending on its residents, its size and its location. Likewise, aside from size, location and number, what other "objective factors" can an HOA



Colorado's New Flag Law, HB 21-1310, will impact how homeowners' associations regulate residents' yard signs, flags and window signs.

legally consider to support sign and flag regulations? Such uncertainty very well may force HOAs to spend more time and money dealing with homeowner disputes over displays and/or homeowner challenges to the new HOA rules. The same questions also will affect homeowners in determining what forms of expression are acceptable and whether their HOA's policies are legal under the new law.

Due to the uncertainties surrounding what the New Flag Law permits, legal challenges are likely to arise, seeking clarification on: what is a commercial vs. noncommercial message; what is a "reasonable content-neutral limitation"; and what "objective factors" should be considered when regulating the placement, number and size of signs on a homeowner's property. As was the case before September 2021, and regardless of the type of legal challenge, home-

owners are left with no express expedited process to challenge HOA rules, regulations or enforcement actions. After the New Flag Law, the recourse available to homeowners remains the same: File a lawsuit in the appropriate court to challenge HOA rules and regulations.

For homeowners, HB 21-1310 changed the landscape for how HOAs can regulate their display of signs. While homeowners may have newfound freedom to use signs to signal each of their unique values, they should be on the lookout for new guidelines from their HOAs that may reign in how those values are signaled. For HOAs, given the enactment of the New Flag Law, the first step is clear: Current covenants and restrictions must be reviewed and updated to comply with HB 21-1310. The next steps are murkier, but working closely with legal counsel will help HOAs craft regulations that are reasonable, content-neutral and that define acceptable placement, number and size of flags and signs for their communities. Legally sound policies can balance the community standards HOAs seek to uphold with homeowners' chosen medium of expression and allow HOAs and homeowners to avoid becoming embroiled in heated legal disputes. ▲

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