

“Can Political Flags Be Flown?,” Naples Daily News

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Q: I went on a walk in my community and saw at least 8 homes flying either Trump or Biden flags. Is it legal to fly a political flag on a home located in a homeowners association? *I.B.*

A: Sections 720.304(2)(a) and 720.3075(3) of the Florida Homeowners Association Act specifically permit the flying of the US flag and other types of governmental flags, including flags of the various military branches. These statutes do not address other types of flags, such as political flags.

The governing documents for some communities prohibit owners from flying non-exempt flags, such as political flags or flags with sports team logos. There is an open and rather complicated legal issue as to whether it is an infringement of a homeowner’s First Amendment free speech rights to restrict political speech.

The First Amendment only applies by its terms to Congress, and, by virtue of the Fourteenth Amendment to the Constitution, to the states and their local governments. In legal jargon, “state action” is required before constitutional rights come into play. There are several Florida cases which have held that a community association is not a state actor.

Your association’s attorney should be able to determine if these political flags are indeed regulated by the governing documents, and if so, guide you through the constitutional law analysis that is part of deciding your options.

Q: Your February 2020 column addresses the cap on transfer fees for condominium associations. Is there a similar cap for homeowners associations? *D.P.*

A: No. My February 2020 column referenced Section 718.112(2)(i) of the

Florida Condominium Act, which states that no charge shall be made by a condominium association in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and unless a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee (in the condominium association context) may be preset but may not exceed \$100 per applicant other than husband/wife or parent/dependent child, who are considered one applicant. There is no similar provision found in Chapter 720 of the Florida Statutes, the Florida Homeowners Association Act.

Q: I am considering purchasing a home in a community with a homeowners association, but I have been told that there is a “capital contribution” fee of \$1,500 charged to all purchasers. Is such a fee legal? *T.F.*

A: Sometimes referred to as a “flip tax”, these charges are not uncommon in the homeowner association context. There is neither authority for nor prohibition on this type of fee in the law applicable to homeowners’ associations (the condominium law does address this issue). If the authority to charge the capital contribution fee is contained in the appropriate governing documents, the prevailing view in the legal community is that such charges are legally valid.