

HOA sign bill divisive, unnecessary

COLUMN

» *By Stan Hrinkevich, YourHub Contributor*

The HOA flag bill, HB 21-1310, infringes upon an HOA's right to govern locally, will set the stage for community divisiveness, and can result in your HOA's ambiance morphing into a cacophony of flag/sign messaging in front yards, windows, balconies and decks.

The bill states an HOA must allow "any flag, any time" with any message and anywhere. Do you really want your neighborhood to be a platform for political and social messaging year-round, with no limits on divisive, hateful or social messages?

Understanding HB 21-1310

1. Which of these flags/signs could be banned under HB 211310 and which can an HOA currently ban?

Black Lives Matter, White Lives Matter, White Power, LGBTQ Forever, MAGA, Re-Elect Joe Biden, Trump is Still our President, Racist Pig Republicans, Adolph Hitler Was Right, Nazi flag, graphic abortion flag, Abortion is Murder, Vaccines Kill, Immigrants are the Problem.

Answer: HB 21-1310 states no flag/message can be banned unless inciting a riot, instigating personal harm to others, or a few other exceptions. All of the messages above could be displayed in an HOA if the bill passes. Currently, flags sporting any of those messages can be banned by an HOA, as long as a ban is consistently enforced.

2. When can flags/signs be displayed under HB 21-1310 vs. under current HOA laws?

Answer: HB 21-1310 allows flags of any sort, year-round. Currently, HOAs can restrict when flags are flown based on state law related to the American and political flags and develop rules for other flags — or restrict all flags.

3. What's the difference in selective enforcement of HOA flag restrictions under HB 21-1310 vs. now?

Answer: Under HB 21-1310, the issue of selective enforcement would not exist as all flags/signs would be allowed. Currently, state law addresses violations of selective enforcement.

4. Where can flags/signs be displayed in an HOA?

Answer: Under HB 21-1310, flags could be displayed almost anywhere, year-round. Currently, HOAs can develop rules limiting areas where a flag can be displayed.

5. How will HB 21-1310 be enforced vs. how laws are handled today?

Answer: A homeowner filing a complaint under HB 21-1310 would have to get remedy through a costly court action; most people can't afford that and thus the law would be mostly unenforceable from the homeowner's perspective. In thare respect, there is no change; the state currently offers no affordable or accessible dispute resolution process.

6. Under HB 21-1310, can a homeowner protest a flag in their HOA community?

Answer: HB 21-1310 allows any sign or flag posting most anywhere. Current law allows HOAs to ban signs and flags.

Problem causing or problem resolving?

You might wonder if this bill is causing a problem or attempting to resolve a problem for which a solution is already in HOA law.

The answer will become apparent when you can't avoid overt hate, racist and graphic signs and flags in your community, 365 days a year. HOAs now have a means of controlling such displays.

Read on for more detailed background on this bill and why it is bad HOA governance.

This bill is in response to a "flag rights messaging" issue taken on by the ACLU. It concerns a homeowner displaying a flag in an HOA community with a Black Lives Matter (BLM) message. The homeowner claimed the HOA selectively enforced a flag restriction based on that flag's message. This was not a freedom of expression or speech issue, but one of selective enforcement by an HOA.

Is another bill needed to address selective enforcement issues? No. Selective enforcement is already addressed within HOA state law, thus this bill is unneeded and redundant of existing state law.

There was also an issue of whether this BLM flag was labeled political by the HOA. If it was, it could be restricted under state law. The proposed bill invalidates state law limiting the timeframe in which political signs can be displayed in an HOA community. So, politics that are so divisive of late could become a 365-day ordeal with HB 21-1310.

Keep in mind, state law doesn't preclude an HOA from banning all flags to avoid issues related to defining what is political or getting involved in social and political issues with flag messaging. The proposed bill would end this option in HOA governance.

What's the cost of seeking a resolution?

The problem for homeowners was not that they needed another law to preclude selective enforcement or what they could message via a flag or sign, but enforcement of existing HOA law prohibiting selective enforcement. This bill will not resolve that.

All state HOA laws of the past 25 years are absent any workable means of enforcement from the homeowner's perspective. If the only enforcement requires time in court, it's not really an option for many. And a violation under HB 21-1310 would pose the same issue — heading to court.

The legislature has consistently rejected the recommendations in several state reports to implement an affordable, accessible and binding dispute resolution process within the state HOA Office for homeowner complaints. Such a process would have resolved the BLM flag issue instantly based on state law.

Is a new bill addressing signs and flags needed?

The controversy of banning flags based on content already has a workable, effective solution for HOAs. HOAs can prohibit all flags and signs except for the American flag and political signage during an active campaign.

This is simple for an HOA to implement and enforce, is nonprejudicial, gets the HOA out of involvement in social and political issues, and eliminates the issue of selective enforcement.

Most HOAs have decided their communities are a respite from ongoing, in-your-face, volatile, divisive and political issues, but HB 21-1310 wants to change that tranquility.

If an HOA has a flag policy and enforces it in conjunction with the law and consistently and without prejudice, there is no problem.

It's worth noting that this proposed bill was written in response to no more than three dozen flag complaints from the 700,000+ HOA homeowners in Colorado. Talk about special interest influence!

In short, this bill is bad governance and bad for HOA local authority. It is surely going to cause more problems within HOAs communities concerning flags and signs than solve any existing problem.

Stan Hrinkevich is president of the Colorado HOA Forum. the largest HOA homeowners advocacy organization in Colorado.

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