

## **The Freedom to Display the American Flag Act**

The Federal “Freedom to Display the American Flag Act” was passed into law in 2005. This law applies to condominium associations and property owners associations.

In short, property owners associations may not prohibit their owners from flying the American flag on an owner’s lot or in any “exclusive use or possession area.” However, community associations are permitted to regulate how the flag may be displayed. An “exclusive use or possession area” is more relevant to condominium associations, and would mean, for example, that since owners do not have exclusive use of the common areas, owners could not fly a flag there. This is also relevant to property owners associations. If you have common areas such as a park or a pool, owners do not have the right to fly their flag there. In condominium associations, however, common areas extend to the exterior walls, etc.

You may place restrictions on flying the American flag as follows. You may require compliance with the United States flag code. The United States flag code requires flags to be lit at night, prohibits display of the flag in a manner other than the appropriate manner (right side up, in good condition, not defaced, etc.) You may also adopt “reasonable restrictions pertaining to time, place, and manner of displaying the flag necessary to protect a substantial interest of your association.”

Reasonable restrictions would most likely include a restriction against a large floodlight (this is in the interest of protecting the neighbors’ use of their property.) Reasonable restrictions would probably also include size restrictions, display restrictions (e.g. no flagpoles, and no flag mounts more than six feet long, etc.) “Time, place and manner restrictions” generally refer to restrictions that are narrowly tailored to further a substantial and legitimate interest of an association. It might be considered a substantial interest of your association to keep the neighborhood aesthetics uniform, so it may be permissible to prohibit flagpoles, or if they’re allowed, require a certain size, a certain type, etc.

Our firm can help your association craft rules should it wish to adopt rules addressing United States flags. The law mentioned in this article only applies to United States flags.

### ***Firm information***

Niemann & Heyer LLP has been representing POAs and specializing in POA law for more than 20 years. Our lawyers have been instrumental in drafting virtually all POA law in Texas, including the Texas Uniform Condominium Act (Property Code Chapter 82) and the Texas Residential Property Owners Protection Act (Property Code Chapter 209). Connie Niemann Heyer is a past president and current board member of the Austin chapter of the Community Associations Institute, and is a lobbyist for the Texas Community Associations Institute Legislative Action Committee.

*This article represents the opinion of our attorneys. Other attorneys may have different opinions.*