
Judiciary Committee

HB 2934

Title: An act relating to ensuring that members of homeowners' associations may display the flag of the United States on their properties.

Brief Description: Limiting homeowners' associations' restrictions on the display of the flag.

Sponsors: Representatives Wallace, Clements, Jarrett, Sump, Orcutt, Darneille, Moeller, Hudgins, Hunt, Boldt, Morrell, Campbell, Sullivan, Linville, Condotta, Newhouse, Shabro and Kenney.

Brief Summary of Bill

- Provides that a homeowners' association may not prohibit a resident from displaying the United States flag in a manner consistent with federal flag display laws, but allows the association to have reasonable rules and regulations regarding the placement and manner of display;
- Provides that a homeowners' association may not prohibit residents from installing a flagpole for the display of the United States flag, but allows the association to have reasonable rules and regulations regarding the location and size of the flagpole.

Hearing Date: 2/6/04

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Homeowners associations are organizations consisting of homeowners within residential developments. Homeowners' associations generally levy and collect assessments, manage and maintain common property for the benefit of the residents, and enforce covenants that govern developments. The authority to carry out these functions generally come from governing documents, such as the declaration of covenants, conditions, and restrictions, the association's bylaws, and the deeds to the property within the development.

Restrictive covenants are generally recorded in property deeds and may regulate such broad issues as the architectural designs of homes, the size of mailboxes, and the placement of satellite dishes or antennas. A person who purchases property within a subdivision governed by a homeowners association and subject to restrictive covenants becomes a member of the association and generally must abide by the restrictive covenants.

Recently, several states such as Arizona, Florida, and California, have enacted legislation stating that homeowners' associations may not prohibit its residents from displaying the American flag.

Article 1, Section 23 of the Washington State Constitution provides that "No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed." Article 1, Section 10 of the United States Constitution also provides that no state shall pass a law impairing the obligation of contracts. Washington courts have held that the state and federal contract clauses are substantially the same and are given the same effect.

A contract is impaired if the statute alters its terms, imposes new conditions, or lessens its value. Courts will examine whether the law has substantially impaired a contractual relationship. The impairment is substantial if the complaining party relied upon the supplanted part of the contract. Even if a substantial impairment of contract occurs, it may not be unconstitutional if it was reasonable and necessary to achieve a legitimate public purpose. A court will compare the level of impairment with the public purposes sought to be advanced by the law.

A retroactive statute is unconstitutional under the due process or contract clauses if the statute is unfair or unreasonable. The test of the constitutionality of retroactive legislation is whether a party has changed position in reliance upon the previous law or whether the retroactive law defeats the reasonable expectations of the parties.

Summary of Bill:

A homeowners' association's governing documents may not prohibit the outdoor display of the United States flag by an owner or resident if the flag is displayed in a manner consistent with federal flag display laws. The association may have reasonable rules and regulations regarding the placement and manner of display of the U.S. flag.

In addition, a homeowners' associations' documents may not prohibit the installation of a flagpole for the display of the U.S. flag. The association may have reasonable rules and regulations regarding the location and size of the flagpole.

"Flag of the United States" means the flag, as defined under the federal flag display laws, that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. It does not include a flag depiction made of lights, paint, roofing, siding, paving, materials, or any similar building, landscaping, or decorative component.

The act applies retroactively to any governing documents in effect at the time the bill becomes effective.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.