

## **FREEDOM TO DISPLAY THE AMERICAN FLAG**

Pub. L. 109-243, July 24, 2006, 120 Stat. 572, provides that:

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Freedom to Display the American Flag Act of 2005.”

### **SEC. 2. DEFINITIONS.**

For purposes of this Act -

(1) the term “flag of the United States” has the meaning given the term “flag, standard, colors, or ensign” under section 3 of title 4, United States Code;

(2) the terms “condominium association” and “cooperative association” have the meanings given such terms under section 604 of Public Law 96-399 (15 U.S.C. 3603);

(3) the term “residential real estate management association” has the meaning given such term under section 528 of the Internal Revenue Code of 1986 (26 U.S.C. 528); and

(4) the term “member” -

(A) as used with respect to a condominium association, means an owner of a condominium unit (as defined under section 604 of Public Law 96-399 (15 U.S.C. 3603)) within such association;

(B) as used with respect to a cooperative association, means a cooperative unit owner (as defined under section 604 of Public Law 96-399 (15 U.S.C. 3603)) within such association; and

(C) as used with respect to a residential real estate management association, means an owner of a residential property within a subdivision, development, or similar area subject to any policy or restriction adopted by such association.

### **SEC. 3. RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES.**

A condominium association, cooperative association, or residential real estate management association may not adopt or enforce any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.

### **SEC. 4. LIMITATIONS.**

Nothing in this Act shall be considered to permit any display or use that is inconsistent with -

(1) any provision of chapter 1 of title 4, United States Code, or any rule or custom pertaining to the proper display or use of the flag of the United States (as established pursuant to such chapter or any otherwise applicable provision of law); or

(2) any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the condominium association, cooperative association, or residential real estate management association.

**STATUTES REFERENCED:**

*Under section 604 of Public Law 96-399 (15 U.S.C. 3603):*

(4) “**condominium association**” means the organization, whose membership consists exclusively of all the unit owners in the condominium project, which is, or will be responsible for the operation, administration, and management of the condominium project;

(6) “**condominium unit**” means a portion of a condominium project designated for separate ownership;

*Under section 528 of the Internal Revenue Code of 1986 (26 U.S.C. 528):*

(3) **Residential real estate management association.**--The term “**residential real estate management association**” means any organization meeting the requirements of subparagraph (A) of paragraph (1) with respect to a subdivision, development, or similar area substantially all the lots or buildings of which may only be used by individuals for residences.

Subparagraph (A) of paragraph (1) provides:

(1) **Homeowners association.**--The term “**homeowners association**” means an organization which is a condominium management association, a residential real estate management association, or a timeshare association if--

(A) such organization is organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property,

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**100.535 Maintenance and improvement of units.** (1) Subject to subsections (5) and (6) of this section and any additional limitations contained in the declaration or bylaws, a unit owner:

(a) May make any improvements or alterations to the unit of the unit owner that do not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(b) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may submit a written request to the board of directors for permission to remove or alter any intervening partition or to create apertures therein, even if the partition in whole or in part is a common element.

(2) The board of directors shall approve the change unless it determines within 45 days that the proposed change will impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(3) The board of directors may require the unit owner, at the expense of the unit owner, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(4) Removal of partitions or creation of apertures under subsection (1) of this section is not an alteration of boundaries.

(5) A unit owner shall make no repair or alteration or perform any other work on the unit which would jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament or increase the common expenses of the association unless the consent of all the other unit owners affected is first obtained.

(6) Unless otherwise provided in the declaration or bylaws, a unit owner may not change the appearance of the common elements or the exterior appearance of a unit without permission of the board of directors of the association.

(7) Unless otherwise provided in the declaration or bylaws, a unit owner is responsible for the maintenance, repair and

replacement of the unit. [Formerly 94.265; 2007 c.410 §15]

**100.540 Use and maintenance of common elements; access for maintenance.** (1) Each unit owner may use the common elements in accordance with the purposes for which they are intended, but may not hinder or encroach upon the lawful rights of the other unit owners.

(2) Unless otherwise provided in the declaration or bylaws:

(a) The responsibility for maintenance, repair and replacement of the common elements is the responsibility of the association of unit owners; and

(b) The cost of maintenance, repair and replacement is a common expense of the association.

(3) The necessary work of maintenance, repair and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(4) The association of unit owners shall have the right to have access to each unit as may be necessary for the maintenance, repair or replacement of the common elements, or to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit. [Formerly 94.270; 2007 c.410 §16]