

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 503

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO HOMEOWNER'S ASSOCIATIONS; AMENDING SECTION 55-115, IDAHO CODE,
TO PROVIDE RESTRICTIONS ON THE AUTHORITY OF A HOMEOWNER'S ASSOCIATION
TO REGULATE THE DISPLAY OF POLITICAL SIGNS AND CERTAIN FLAGS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 55-115, Idaho Code, be, and the same is hereby
amended to read as follows:

55-115. HOMEOWNER'S ASSOCIATION -- PROHIBITED CONDUCT. (1) As used in
this section:

(a) "Homeowner's association" shall have the same meaning as in section
45-810(6), Idaho Code.

(b) "Board" means the entity that has the duty of governing the associ-
ation that may be referred to as the board of directors, executive board
or any such similar name.

(c) "Member" or "membership" means any person or entity owning or pos-
sessing an interest in residential real property or lot within the phys-
ical boundaries of an established homeowner's association.

(2) No fine may be imposed for a violation of the covenants and restric-
tions pursuant to the rules or regulations of the homeowner's association
unless the authority to impose a fine is clearly set forth in the covenants
and restrictions and:

(a) A majority vote by the board shall be required prior to imposing any
fine on a member for a violation of any covenants and restrictions pur-
suant to the rules and regulations of the homeowner's association.

(b) Written notice by personal service or certified mail of the meeting
during which such vote is to be taken shall be made to the member at least
thirty (30) days prior to the meeting.

(c) In the event the member begins resolving the violation prior to the
meeting, no fine shall be imposed as long as the member continues to ad-
dress the violation in good faith until fully resolved.

(d) No portion of any fine may be used to increase the remuneration of
any board member or agent of the board.

(e) No part of this section shall affect any statute, rule, covenant,
bylaw, provision or clause that may allow for the recovery of attorney's
fees.

(3) No homeowner's association may add, amend or enforce any covenant,
condition or restriction in such a way that limits or prohibits the rental,
for any amount of time, of any property, land or structure thereon within
the jurisdiction of the homeowner's association, unless expressly agreed to
in writing at the time of such addition or amendment by the owner of the af-
fected property. Nothing in this section shall be construed to prevent the
enforcement of valid covenants, conditions or restrictions limiting a prop-

erty owner's right to transfer his interest in land or the structures thereon as long as that covenant, condition or restriction applied to the property at the time the homeowner acquired his interest in the property.

(4) No homeowner's association may add, amend, or enforce any covenant, condition, or restriction in such a way that prohibits the installation of solar panels or solar collectors on the rooftop of any property or structure thereon within the jurisdiction of the homeowner's association; provided however, that a homeowner's association may determine the specific location where solar panels or solar collectors may be installed on the roof as long as installation is permitted within an orientation to the south or within forty-five (45) degrees east or west of due south. A homeowner's association may adopt reasonable rules for the installation of solar panels or solar collectors consistent with an applicable building code or to require that panels or collectors be parallel to a roof line, conform to the slope of the roof, and that any frame, support bracket, or visible piping or wiring be painted to coordinate with the roofing material. The provisions of this subsection shall apply only to rooftops that are owned, controlled, and maintained by the homeowner.

(5) (a) No homeowner's association may add, amend, or enforce any covenant, condition, or restriction in such a way that prohibits or has the effect of prohibiting the display of a political sign.

(b) For the purpose of this subsection, "political sign" means any fixed, ground-mounted display in support of or in opposition to a candidate for office or a ballot measure.

(c) A homeowner's association may adopt reasonable rules, subject to any applicable laws or ordinances, regarding the time, size, place, number, and manner of display of political signs.

(d) A homeowner's association may remove a political sign without liability if the sign:

(i) Is placed within the common ground;

(ii) Threatens the public health or safety;

(iii) Violates an applicable law or ordinance;

(iv) Is accompanied by sound or music or if any other materials are attached to the political sign.

(e) Except as provided in paragraph (d) of this subsection, a homeowner's association shall not remove a political sign from the property of a homeowner or impose any fine or penalty upon the homeowner unless it has first provided the homeowner three (3) days' written notice that specifically identifies the rule and the nature of the violation.

(6) (a) No homeowner's association may add, amend, or enforce any covenant, condition, or restriction in such a way that prohibits or has the effect of prohibiting the display of:

(i) The flag of the United States of America;

(ii) The flag of the state of Idaho;

(iii) The POW/MIA flag; or

(iv) An official or replica flag of any branch of the United States armed forces.

(b) A homeowner's association may adopt reasonable rules, subject to applicable laws or ordinances:

(i) That require:

1 1. The flag of the United States of America and the flag
 2 of the state of Idaho to be displayed in accordance with 4
 3 U.S.C. 5 et seq.;

4 2. A flagpole attached to a dwelling or a freestanding flag-
 5 pole to be constructed of permanent, long-lasting materials
 6 with a finish appropriate to the materials used in the con-
 7 struction of the flagpole and harmonious to the dwelling;

8 3. The display of a flag, or the location and construction
 9 of the supporting flagpole, to comply with applicable zoning
 10 ordinances, easements, and setbacks of record; and

11 4. That a displayed flag and the flagpole on which it is
 12 flown be maintained in good condition and that any deterio-
 13 rated flag or deteriorated or structurally unsafe flagpole
 14 be repaired, replaced, or removed;

15 (ii) That regulate the size, number, and location of flagpoles on
 16 which flags are displayed, except that the regulation may not pre-
 17 vent the installation or erection of at least one (1) flagpole per
 18 property that:

19 1. Is not more than twenty (20) feet in height and, subject
 20 to applicable zoning ordinances, easements, and setbacks of
 21 record, is located in the front yard of the property; or

22 2. Is attached to any portion of a residential structure
 23 owned by the property owner and not maintained by the home-
 24 owner's association;

25 (iii) That govern the size of a displayed flag;

26 (iv) That regulate the size, location, and intensity of any lights
 27 used to illuminate a displayed flag;

28 (v) That impose reasonable restrictions to abate noise caused by
 29 an external halyard of a flagpole; or

30 (vi) That prohibit a property owner from locating a displayed flag
 31 or flagpole on property that is:

32 1. Owned or maintained by the homeowner's association; or

33 2. Owned in common by the members of the association.

34 (c) A property owner who has a front yard and who otherwise complies
 35 with any permitted homeowner's association regulation may elect to in-
 36 stall a flagpole in accordance with paragraph (b) (ii) of this subsec-
 37 tion.

38 (7) Attorney's fees and costs shall not accrue and shall not be assessed
 39 or collected by the homeowner's association until the homeowner's associa-
 40 tion has complied with the requirements of subsection (2) of this section and
 41 the member has failed to address the violation as prescribed in subsection
 42 (2) (c) of this section. A court of competent jurisdiction may determine the
 43 reasonableness of attorney's fees and costs assessed against a member. In an
 44 action to determine the reasonableness of attorney's fees and costs assessed
 45 by the homeowner's association against a member, the court may award reason-
 46 able attorney's fees and costs to the prevailing party.