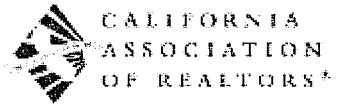

save this page send this page

print page close

Real Estate Signs: Can They Be Regulated And To What Extent?

Member Legal Services
Tell 213.739.8282
Faxx213.480.7724
March 19,,2004 (revised)

Copyright©2004, CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). Permission is granted to C.A.R. members only to reprint and use this material for non-commercial purposes provided credit is given to the C.A.R. Legal Department. Other reproduction or use is strictly prohibited without the express written permission of the C.A.R. Legal Department. All rights reserved.

INTRODUCTION

The ability to display real estate as well as other signs is afforded certain protections under the United States and California Constitutions as a form of free speech. California also has several statutes limiting the ability of local governments and private entities to regulate real estate signs. However, as long as not in conflict with constitutional protections and state law, a city, county, and private entity, such as a homeowners"association,,may regulate the display of signs.

Determining the extent offpermissible regulation is unfortunately not a simple matter. Commercial advertising does not receive the same level of constitutional protection as other types off "speech."" The extent to whichreal estateesignsscan be regulated will depend on the facts and circumstances of the particular situation.. In 1980, the U. S. Supreme Court in *Central Hudson Gas & Elect. Corp. v. Public Service Comm'n* (447 U.S. 557) established a four-prong test for determining whether restrictions on commercial speech are constitutionally permissible referred to in later cases as the Central Hudson test.. The court defined commercial speech as "espression related solely to the economic interest of the speaker and its audience" and the government may prohibitt forms of communication more likely to deceive the public than to inform it and commercial speech related to illegal activity.. The four-prong test goes as follows:: (1) the state/city/locallentity has to assert a "substantial interest" to be achieved in regulating the speech, (2) the regulation must be in proportion ot that interest,,(3) the regulation must directly advance the interest of the state/city/local entity, and (4) the regulation must be the most limited means available to achieve the state/city/local entity's interest.

Here are some general principles that are helpful in analyzing sign regulations:

- The extent to which a governmental or private entity can regulate the display signs depends on whether the sign is displayed on privately-owned versus publicly-owned property.
- A city, county or state may ban all signs on publicly-owned property. (*Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984).)

- A city, county or state cannot completely ban signs on privately owned property.
- A city, county or state may impose reasonable restrictions on the time, place, and manner of displaying signs regardless of whether it is on privately or publicly owned property.

BASICS

Q1. ***What protection is afforded by the United States and California Constitutions for the display of signs?***

A Most signs are considered a form of free speech and therefore they are afforded certain protection from governmental and private regulation under the United States and California Constitutions. In general, constitutional protection requires that regulations on the display of signs must be reasonable as to time, place, and manner. However, the level of protection afforded by the U.S. and California Constitutions will vary depending on the type of free speech (i.e. commercial versus political), and the location where the signs are sought to be displayed (i.e. publicly versus privately owned property).

Q 2. ***How does one determine if regulations concerning the display of signs are "reasonable?"***

A Determining if regulations concerning the display of signs are reasonable will depend on the facts and circumstances of each particular case. Usually, regulations are reasonable as to time, place and manner if the regulations do not reference the content of the sign, are narrowly tailored to serve a significant governmental interest (i.e., traffic safety or environmental beauty), and leave open ample alternative channels for communication of the information. There are several United States Supreme Court, lower federal court and state court decisions analyzing the reasonableness of a particular regulation. Looking to these cases as precedent can be helpful but there are no bright lines to determine whether particular sign regulations are "reasonable."

REAL ESTATE SIGNS - -GENERAL ISSUES

Q3. ***May real estate signs be regulated?***

A Yes, they can be regulated.. However, since real estate signs are a form of free speech, they are constitutionally protected meaning they cannot be prohibited.. (*Linmark Associates, Inc. v. Township of Willingboro,* 431 U.S. 85 (1977).)) In addition, California has several statutes which specifically limit the ability of local governmental and private entities to regulate the display of real estate signs.

Q 4. ***Who may regulate real estate signs?***

A In general and subject to the limitations discussed in this memorandum, governmental and private entities may regulate the display of real estate signs.

Q 5. ***May private real estate signs be totally banned on public property?***

A Yes, private real estate signs may be banned from public property.. Since a

real property owner does not have a direct legal ownership interest in public property, the public entity which owns the property may prohibit the display of real estate signs from public property. *(Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984).)

If a public entity wishes to prohibit signs, it must do so without reference to the content of the signs. An ordinance may proscribe signs based on time, place, or manner of communication but not on content. In other words, a city or county cannot specifically exclude real estate signs but allow other types of signs on its property. (*Linmark Associates, Inc. v. Township of Willingboro,* 431 U.S. 85 (1977).)

Q6. ***May real estate signs be totally banned by a local ordinance or CC&Rs from display on private property?***

A No.. A private property owner has the right to display real estate signs on his or her own property subject to reasonable regulations.. (Cal. Civ. Code § 712.)) The law also protects the right to display signsson mobilehomes in mobilehome parks.. (Cal. Civ. Code §§ 798.70, 799.1.5.)

Q7. ***What are the California statutory law protections for the display of real estate signs?***

A In addition to the minimum constitutional protections, California Civil Code sections 712 and 713 guarantee owners of real property in California certain protections regarding the right to display real estate signs on their property.

Civil Code section 712 declares void any purported prohibition or restriction on the right of a real property owner or his or her agent to display or have displayed on the real property, or on real property owned by others with their consent, signs which are reasonably located, in plain view of the public, are of reasonable dimensions and design, and do not adversely affect public safety and which advertise the property for sale, lease, or exchange, or advertise directions to the property.

Civil Code section 713 in effect restates that a real property owner has the right to display real estate signs pursuant to Civil Code section 712 and that a city or county, or both, cannot adopt an ordinance which restricts or prohibits this right. However, a city or county does have the authority under Civil Code section 713 to determine what "reasonably located, in plain view of the public, are of reasonable dimensions and design, and do not adversely affect public safety" are.

Other regulations affecting real estate signs are found in the California Business and Professions Code. These sections regulate billboards on interstate and primary highways. The definition of a primary highway is ambiguous. If an owner or his or her agent is contemplating placing a sign adjacent to an interstate highway or what may be a primary highway, further investigation is required.

Q 8. ***What are reasonable sign regulations regarding "dimensions and design" according to Civil Code section 712?***

A Civil Code section 712 does not define "reasonable dimensions and design" for real estate signs. However, Civil Code section 713 gives a city or county government the authority to determine reasonable limits on the dimensions and design of real estate signs. If a city or county has an ordinance that reasonably limits the dimensions and design of real estate signs, Civil Code section 712 provides that any display of a real estate sign which complies with such local ordinance is deemed of reasonable dimensions and design.

Q9. ***Can the owner's name or his or her agent's name, including address and telephone number, be included on the real estate sign?***

A Yes..Under Civil Code section 713, an owner of real property may include the owner's or his or her agent's name, including address and telephone number, on the real estate sign.

HOMEOWNERS' ASSOCIATION ISSUES

Q 10. ***May a homeowners' association regulate signs, including real estate signs?***

A In general, yes. Subject to the restrictions discussed in the questions below, a homeowners' association may regulate signs, including real estate signs.

Q11. ***May a homeowners' association totally ban the display of real estate "for sale" or directional signs on the homeowner's property?***

A No. California Civil Code section 712 voids any purported attempt by a homeowners' association to ban the display of real estate signs on the homeowner's property advertising the property for sale or advertising directions to the property.

Q12. ***May a homeowners' association regulate the display of "for sale" or directional signs on the homeowner's property?***

A Yes. However, under Civil Code section 712, such regulations may not prohibit or restrict the homeowner's right to display signs advertising his or her property for sale that are reasonably located, in plain view of the public, are of reasonable dimensions and design, and do not adversely affect public safety.

Q13. ***If a local city or county has a ordinance regulating the dimensions and design of real estate signs, can a homeowners' association adopt more restrictive regulations regarding the dimensions and design?***

A No. Civil Code section 712 states that any real estate sign advertising the property for sale, lease or exchange, or giving directions to the property, which complies with the local city or county ordinance is deemed "of reasonable dimensions and design." Therefore, any attempt by a homeowners' association to be more restrictive than the city or county's ordinance with regard to dimensions and design would probably be void.

Q14. ***May a homeowners' association totally ban the posting of "for sale" or directional signs in the common area of the complex?***

A It depends. There is no clear answer to this question as there is no case law which addresses this issue. However, the key factor in this question is the characterization of the ownership interests in the common area. If the unit owners have an undivided fractional interest in the common area with all other owners of the homeowners' association, there is a strong argument that a homeowners' association cannot ban signs in the common area pursuant to Civil Code section 712. Civil Code section 712 refers to the displaying of real estate signs on an owner's real property. If the common area is also part of the owner's "real property," then Civil Code section 712 applies to the common area. Therefore, under this argument, signs displayed in the common area cannot be totally banned but may be regulated by the homeowners' association.

However, if the common area is owned exclusively by the homeowners' association or if the unit owners do not otherwise have any ownership interest in the commons area, signs in the common area could probably be banned.

Currently, many homeowners' associations allow placement of real estate signs in the common area, but regulate the dimensions and design of such signs. For example, a homeowners' association may allow "for sale" signs to be placed at the entrance to the complex on a common area sign board, but limits such signs to a certain size on the sign board.

MOBILEHOME PARK AND MOBILEHOME SUBDIVISION ISSUES

Q15. ***Are there special rules for regulating the display of real estate signs in (i) mobilehome parks, and (ii) in mobilehome subdivisions, cooperatives, and condominium complexes?***

A Yes. Civil Code section 798.70 regulates the placement of signs advertising the sale, lease or rental of mobilehomes in mobilehome parks and Civil Code section 799.1.5 regulates the placement of signs advertising the sale, lease or rental of mobilehomes in mobilehome subdivisions, cooperatives, and condominium complexes.

Q16. ***What are the special rules for mobilehome parks under Civil Code section 798.70?***

A Civil Code section 798.70 provides certain minimum rights to display real estate signs for mobilehome owners in mobilehome parks. Specifically, the owner of a mobilehome in a mobilehome park has a right to display a sign advertising the sale or exchange of his or her mobilehome. In addition, he or she may display a sign advertising the mobilehome for rent if the mobilehome park management permits renting in the park.

In addition, the mobilehome owner can also advertise on the sign that the mobilehome is an "open house" unless the mobilehome park management prohibits open houses. Whatever the case, the sign advertising the mobilehome for sale or rent, or both, can be displayed in the window of the mobilehome, on the side of the mobilehome facing the street, or in front of the mobilehome facing the street.

The sign can be at least 24" wide and 36" high and can state the name,

address, and telephone number of the mobilehome owner or his or her agent. The mobilehome owner can also put a folder containing leaflets which provide information on the mobilehome for sale or rent.

Q17. ***What are the special rules for mobilehome subdivisions, cooperatives, and condominium complexes under Civil Code section 799.1.5?***

A Civil Code section 799.1.5 provides certain minimum rights to display real estate signs for mobilehome owners in mobilehome subdivisions, cooperatives, and condominium complexes. Specifically, the mobilehome owner may place a sign in the window of the mobilehome stating the mobilehome is for sale or exchange, and for rent if the mobile- home subdivision management permits renting in the subdivision. The sign may be at least 12" x 12" and state the name, address, and telephone number of the mobilehome owner and/or his or her agent.

REAL ESTATE BROKERAGE ISSUES

Q18. ***My city is considering banning all "open house" signs on public property. Can they do this?***

A Yes. California law does not give a person or property owner any special rights to display real estate signs on public property. However, all citizens are guaranteed the minimum constitutional protections of free speech regarding the right to display signs. Therefore, if your city is considering banning all "open house" signs from public property, it has to do so reasonably. The city, in order to ban open house signs reasonably, must ban all signs on public property or the ordinance would be based on the content of the sign. An ordinance attempting to ban signs based on content would be invalid. Such was the case several years ago in Chula Vista, when the city council proposed a ban on all "open house" signs on public property.. After members of the local Board of REALTORS®®raised the point that this would be regulation based on content, the council abandoned its proposal.

Q19. ***The city removed my "open house" sign from a street corner and now wants me to pay $50 to get the sign back. Is this legal?***

A Yes. If the city has a valid ordinance regulating the placement of signs on public property, and the removed sign was in violation of that ordinance, the city may remove the sign and impose a fine as provided in the ordinance. For example, San Anselmo prohibits the posting of any directional signs on street medians or other public property. The city confiscates any signs posted in these areas and assesses a fine to the sign owners to them.

Q20. ***My Board/Association claims that I was in violation of the city's sign ordinance when I posted a few "open house" signs last weekend. The Board/Association confiscated my signs. Can they do this?***

A No. Assuming that the city ordinance is valid, the city is the proper entity to enforce the ordinance by confiscating signs which violate the ordinance. The Board/Association may not enforce the ordinance on behalf of the city. If the Board/Association or any of its members confiscate signs in the guise of

enforcing the city ordinance, they are guilty of theft and could be prosecuted by local officials.

Q21. ***Can a local Board/Association, through the Multiple Listing Service, impose a fine for the violation of a local sign ordinance?***

A No.. NAR specifically states in Part 6 of the **2004 NAR Handbook on Multiple Listing Service Policy** that a Multiple Listing Service shall not "make any rule relating to the posting or use of signs."

NAR's Interpretation No. 26 of the NAR Handbook on Multiple LIsting Policy states, "A Board rule prohibiting the posting by Members of 'for sale' or other similar signs on property for which the Member is agent, is an inequitable limitation on its membership."" A regulation of signs has nothing to do with any conceivably rational concern of function of a Multiple Listing Service. It is a matter for the owner of the property, his authorized agent, and public authority.. A Board, therefore, cannot become involved in the enforcement of a local sign ordinance. Often a Board/Association or MLS sign committee attempts to enforce sign guidelines to ensure voluntary compliance with the existing ordinance. This is done particularly to avoid more stringent sign regulations by the city. Despite being well-intentioned, it is in violation of NAR policy.

Q22.. ***Where can readers get more information?***

A This memorandum is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit *C.A.R. Online* at www.car.org.

Readers who require specific advice should consult an attorney...C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at 213.739.8282... C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at 213.739.8350 to receive expedited service.. The access times are Monday through Friday, 9:00 A.M. to 6:00 P.M... Members may also fax or e-mail inquiries to the Member Legal Hotline at 213.480.7724 or **legal_hotline@car.org**.

Written correspondence should be addressed to:

California Association of REALTORS®
Member Legal Services
525 South Virgil Avenue
Los Angeles, California 90020

The information contained herein is believed accurate as of March 19, 2004. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

print page close

find this article at:
Home > Legal > **2004 Q&As** > Real Estate Signs: Can They Be Regulated And To What Extent?

Terms and Conditions of Use | Privacy Policy | Permission to Reprint Content | Site Map
Copyright © 2005 California Association of REALTORS®