

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 212 (Senator Mooney)  
Judicial Proceedings

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**Residential Property - Prohibited Restrictions on Exercise of Free Speech**

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This bill repeals provisions of the Maryland Homeowners Association Act that permit the governing documents of a homeowners association to restrict or prohibit the display of a sign regarding a candidate or ballot proposition. Accordingly, except as otherwise provided, a homeowner or tenant may not be restricted or prohibited by a residential governing body or landlord from displaying noncommercial signs, posters, flags or banners or engaging in election-related or other constitutionally protected activities.

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**Fiscal Summary**

**State Effect:** If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

**Local Effect:** The bill does not materially affect local finances or operations.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A homeowner or tenant may not be prohibited from (1) peacefully assembling on the individual's property or contacting neighbors; (2) engaging in lawful election-related activities; or (3) using common property based on constitutionally protected beliefs, expressions, or activities. The bill specifies that the authority of homeowners or tenants to engage in the aforementioned activities is subject to the reasonable rules of a condominium council, homeowners association, housing cooperative, or landlord and may not be restricted or prohibited except as required to

protect the public health or safety or unless the activity would otherwise violate federal, State, or local law.

A court may award reasonable attorney's fees and costs to a party who prevails in an action to enforce the provisions of the bill.

**Current Law:** A recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association may not restrict or prohibit the display of a candidate sign or a sign that advertises support or defeat of a ballot question. However, a homeowners association may restrict the display of such signs:

- in the homeowners association's common areas;
- in accordance with existing federal, State, and local laws; or
- if a time period is not specified in local law, to a period of no less than 30 days before, and 7 days after, a primary election, general election, or vote on a proposition.

For all residential property, and regardless of the terms of any contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease or rental agreement, or other similar document, a homeowner or tenant may not be prohibited from displaying a portable, removable United States flag in a respectful manner consistent with federal law. However, the board of directors of a condominium, homeowners association, or housing cooperative, or a landlord may adopt reasonable rules and regulations regarding the placement and manner of display of the flag.

Prior to adopting any rules or regulations, the governing body or landlord must (1) hold an open meeting to provide all affected homeowners and tenants an opportunity to be heard on the proposed changes; and (2) provide advance notice of the time and place of the meeting by publishing the notice in a community newsletter, on a community bulletin board, by means provided in the governing documents or lease, or by other methods reasonably calculated to notify affected homeowners and tenants.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2010  
mam/kdm

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