

# *Raven Pointe*

October 31, 2016

**To:** Raven Pointe Homeowners

**From:** Raven Pointe Board of Directors

**Re.** Political Signage on Raven Pointe Lots

Dear Raven Pointe Homeowner:

As some of you know, the issue has come up as to whether the restrictive Covenants in the Raven Pointe Deed of Dedication prohibit the posting of political signs by homeowners on their lawns. The 2016 Board asked counsel to look into the matter and based on the information provided, the 2017 Board has tentatively concluded that the Covenants legally prohibit the placement of any signs, including political signs, on Lots in Raven Pointe with a single exception. The only exception is "For Sale" signs and even that is regulated as to size. We base this on the following:

Article VII, Paragraph 2 of the Deed of Dedication - Use, Restrictions and Covenants ("Covenants") clearly sets out an unequivocal prohibition that covers all signs, including political signs, as described above.

Some homeowners may argue that they have a First Amendment right to freedom of speech and that their constitutional rights trump the language in the Covenants. They may even cite cases where state and federal courts have found that homeowners have a First Amendment right to display political signs on their lawns. A suit against Arlington County is but one example.

The homeowners are correct as to their First Amendment right; however, it is a right that can be contracted away by homeowners. The leading cases on this subject all involve a government agency, usually local, enacting an ordinance or regulation that prohibits political signs. The First Amendment Right was intended to prevent the government from abridging the right to free speech. It does not extend to similar prohibitions by HOA's.

Every homeowner, whether they read them or not in advance of settlement on their homes, contractually obligated themselves to abide by the Covenants. Moreover, the Raven Pointe Covenants have been a matter of public record since they were filed in 2004. It is considered notice to all. The homeowner's right to contract away his/her First Amendment right with respect to political signs, negates the First Amendment claim.

To address that issue, some States have enacted laws restricting HOA's from adopting regulations to prohibit political signs. Apparently Virginia has not even though Bills were introduced on two separate occasions to do so. Both attempts failed after the lobbying of the Community Association Institute against the legislation. To our knowledge, that is still the situation.

Virginia Code §15.2-109 restricts the ability of a ***“locality”*** to prohibit the display of political campaign signs on private property. Virginia’s Attorney General issued an opinion in 2004 on the applicability of §15.2-109. The AG concluded that “locality” meant county, city, or town and the restriction did not apply to HOA’s.

Since there is no State law restricting the signage prohibitions in the Covenants and the homeowners have contractually waived their Free Speech rights regarding the display of political signs on their Lots, it seems clear to the Board that certain homeowners are currently violating the Covenants.

The Board encourages all homeowners to participate in the election process to the extent they want so long as it does not violate the Covenants. Political signs can be placed inside windows of the dwellings, for example.

In the meantime, the Board is asking all homeowners who have political signs on their lawns to remove those signs voluntarily. If you want to review the Deed of Dedication containing the restrictive covenants, please go to our website.

Depending on the community response to the Board’s voluntary request, further actions of the Board will be considered up to and including the filing of a case in the Circuit Court for Frederick County and a request for an injunction against non-complying homeowners. The Covenants call for the payment of costs and reasonable attorneys’ fees to the HOA by homeowners if a successful enforcement action has resulted. This is, by far, not a desired outcome by the Board. However, political expressions are only one form of free speech and failing to take appropriate action could lead to a proliferation of signs on virtually any subject.

If anyone has any contrary thoughts or authority they can cite to justify the signs, they are invited to provide the information forthwith.

The 2017 Board of Directors