



## **Policy Paper and Statement of Position Sign Ordinances**

### **Why Real Estate Signs Are Important**

Families don't buy or sell their homes based on market conditions. Real estate is not like owning stocks or bonds. Most Americans own just one piece of real estate: their home. People don't make decisions about investing in real estate like they would in the stock market, even though their home may be their single largest investment. Most Americans buy and sell real estate because they changed jobs, got married, had a child, or their children have moved away. Often these circumstances are quite urgent to the families involved.

It is the job of the 2,000 members of the Western Upstate Association of REALTORS® to help those families make those changes efficiently with as little additional disruption to their lives as possible.

Signs are an important factor in our members' ability to help families respond in a timely manner to changes in their housing needs. While the Internet has changed how real estate is marketed, real estate signs continue to be a very important tool in bringing buyers and sellers together. Without real estate signs, the market would not be as efficient.

### **How Many Buyers and Sellers Use Signs?**

A survey by the National Association of REALTORS® shows the importance signs play in the marketing of real property:

- 42% of buyers used signs to locate available properties
- 17% of buyers used signs exclusively to locate their new home
- Signs are especially important to first-time homebuyers
- 75% of REALTORS® identified signs as an important sales technique

### **Legal Basis for Signs**

Signs, for any commercial purpose, are protected speech. Courts have repeatedly affirmed the proposition that other forms of communication are not a reasonable and sufficient replacement for signs, especially real estate signs:

- In *Linmark Associates, Inc., v. Willingboro* (1977), the U.S. Supreme Court said the alternative to real estate signs was "far from satisfactory." Willingboro sought to maintain stable, integrated neighborhoods by prohibiting homeowners from placing "For Sale" or "Sold" signs on their property. The Court invalidated this sign ordinance because it held that the First Amendment prevented the township from "achieving its goal by restricting the free flow of truthful information."

- The U.S. Supreme Court reiterated the Linmark ruling, verbatim in dicta, in *City of Ladue v. Margaret Gilleo* (1994).
- In *Reed v. Town of Gilbert* (2015), the U.S. Supreme Court invalidated Gilbert's sign ordinance because it regulated different types of signs differently depending on their content. Temporary directional signs were regulated strictly by Gilbert, but political signs were not.

These cases hinged on signs being a protected form of free speech. All held that the respective community's desire to regulate signs, and ban some portion of their use entirely, as a means of minimizing visual clutter was not a compelling reason. The court also found that no reasonable substitute for signs exists for the exercise of free speech, whether for real estate sales or political statements.

### **Signs Don't Discriminate**

In 1988, the Federal Trade Commission concluded that signs provide an important source of information to buyers because signs don't discriminate by illegally "steering" people to, or away from, a particular neighborhood. In a marketplace where fair housing concerns have resulted in fair housing audits, real estate signs ensure that all buyers can readily tell whether a property is for sale or rent.

### **Questions to Consider When Regulating Signs**

Several questions should be considered when drafting regulations for signs. The first question to consider is:

Does the ordinance strike a reasonable balance between the need for signage, no matter the business, political, or personal need, and the necessity to ensure signs do not present an unreasonable threat to the public health, safety, and welfare?

A second concern to address when considering sign regulations is the user-friendliness of the ordinance:

Is the ordinance internally consistent and easily understood by the community and the officers who enforce the ordinance?

The third and final question to consider:

Is the ordinance consistent with those of other nearby jurisdictions, particularly in the same county?

There are significant economic forces that make consistency among jurisdictions important. In many jurisdictions, few if any restrictions apply to real estate signs. If the health, safety, and welfare of the greater community is not compromised by this absence of regulation, REALTORS® find no compelling reason to implement new regulations.

In communities that have chosen to regulate signs, the principal rationale for doing so should be to protect the health, safety, and welfare of the community. Addressing visual aesthetics is not a

sufficient reason to regulate signage, according to the U.S. Supreme Court. It is the position of REALTORS® that a balance must be struck between health, safety, and welfare issues and the needs of businesses and the public to offer, and receive, adequate information about business opportunities including the availability of real property for sale.

### **Our Position Regarding Real Estate Sign Regulations**

It is the position of the Western Upstate Association of REALTORS® that any ordinance addressing signs should be drawn cautiously, so as not to prevent the use of signs, especially small temporary commercial signs like real estate signs. All forms of signage should be accommodated, with ordinances addressing issues like obstruction of view of motorists, reasonable size limitations, and reasonable limits of quantity per business or property.

Off-premise lead-in signs should be allowed for the purpose of leading potential buyers to available properties. Reasonable limitations regarding size and setbacks are acceptable, as well as time limits for their placement, as long as the ordinance conforms to the generally accepted practice of the real estate industry in the jurisdiction. We suggest Friday at 12 noon until Monday at 8 a.m.

### **Rationale**

Housing is critical to quality of life in America. Homeownership is a fundamental tenet of the American Dream, and the highest priority of the members of the Western Upstate Association of REALTORS®.

After food and water, housing is at the top of the list of human needs. It is for that reason that we have strong public policies regarding housing, including federal, state, and local legislation and ordinances. It is also the reason for the existence of organizations like the Association of REALTORS®.

Signs are a critical element in making affordable and decent housing available to all Americans, whether that housing is purchased or rented. Signs are also a critical means of giving all citizens, regardless of race or economic situation, fair access to housing. It is for that reason that the Federal Trade Commission issued its opinion that signs provide an important source of information on housing. It is also why the U.S. Supreme Court cited the FTC's opinion in the Linmark and Ladue decisions. And as the Supreme Court ruled in Gilbert, signs are protected speech.

While we agree that communities have a right, and a duty, to protect themselves from abuses, the higher responsibility is to protect the housing market by providing for this important communication tool, and to be faithful to the Constitution and laws of the United States of America.

Adopted:

Grassroots Government Affairs Team, November 29, 2022

Board of Directors, January 25, 2023