Table of HOA Cases; Restatement (Servitudes)

Note: The following information is not exhaustive nor do the cases represent the final word on the issue in question. These cases are provided as introductory research material.

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I. CASES

(a) FEDERAL

2. AVERY v. MIDLAND COUNTY, 390 U.S. 474 (1968) (14th amendment & local government)
5. Bonner v Lewis, CA(Ariz) 1988 857 F2d 556 on remand 714Supp 420 (federal 9th district court of appeals) “pro se complaints are to be held to a less strict standard than those directed by a lawyer”.
17. El Fundi v. Deroche 625 F 2d 195 (state action via security guards)
22. Girard v. 94th St. 530 F 2d 66 (tiered state action for covenants)
24. Goldberg v. 400 East Ohio 12 F Supp. 2d 820 (color of law; distributing materials)
25. Griffin v. Maryland 378 US 130 (1964) (private use of police can be a state action)
27. Hadley v. Junior College Dist 397 US 50 (1970) one-vote rule to special gov’t agencies)
28. Holden v Hardy 169 US 392 (1898) (property rights subject to public good)
32. Lochner v. New York 198 US 45 (1905) (police power & general welfare; right to contract is fundamental)
33. Loren v. Sasser 309 F 3d 1296 (constitutional protections beyond what is appropriate)
34. **Lugar v. Edmondson Oil** 457 US 922 (1982) (courts to restrict their interference with private interests)
36. **Meyer v. Nebraska** 262 US 390 (1923) (legislative actions)
37. **Misco** 484 US 42 (court to protect public good)
38. **National Cable v US, 415 US 336** (SC doesn’t question agency on non-delegation of authority)
42. **Pierce v. Society of Sisters** 268 US 510 (1925) (legislative action)
43. **Planned Parenthood v. Casey** 505 US 833 (1992) (Footnote Four Plus)
44. **Quail Creek v. Hunter** 538 So 2d 1288; 724 F Supp. 884 (disagreed with Gerber, #33)
46. **Stelly v. Kraemer** 334 US 1 (prohibitive state actions by use of judicial enforcement as state was fully aware of the illegal use of the courts; judicial enforcement harms constitutional rights)
47. **Slaughter House Cases** 83 US 36 (1873) (privileges or immunities clause; 14th Amendment and procedural due process)
49. **US v. Carolene** 304 Us 144 (1938) (Footnote Four)
50. **US v. Darby** 312 US 100 (1941) (commerce clause)
51. **Village of Euclid v. Amber Realty** 272 US 365 (1926) (unreasonable zoning is unconstitutional)
52. **Virginia v. Rives**, 100 U.S. 313 (1879)

(b) **STATE**

a. **Arizona**

78. **Safeway Ins. Co., Inc. v. Guerrero**, 1 CA-CV 02-0661 (attorney contract interference).
b. California


87. Chantiles v. Lake Forest 37 Cal App 4th 914 (state laws protecting rights of homeowners)


91. JAMES F. OTTOLE COMPANY, INC., v. LOS ANGELES KINGSBURY COURT OWNERS ASSN., 126 Cal. App. 4th 549; 23 Cal. Rptr. 3d 894 (SECOND APPELLATE DISTRICT 2005). (HOA refused to pay judgment to non-homeowner).


94. Lamden v. La Jolla Shores Clubdominium Homeowners Assn. 980 P.2d 940 (Cal. 4th 1999) (court deference to board judgment)


100. Sokolow v. County of San Mateo 213 Cal App 3d 231 (significant state involvement for state action)

101. Surfside 84 v. Mullen Ct. of Special Appeals of Maryland, No. 495 (September 1984) (state action; procedural due process; lack of notice; CAI Reporter).


103. Villa de Las Palmas v. Terifaj, 90 P.3d 1223 (CAL. 2004) (amended restrictions are binding on all)

104. Villa Milano v. Il Davorge 84 Cal App 819 (2000) (CC&Rs are contracts; adhesion contracts)


c. Other states

110. Blackburn v. Habitat Development 57 SW 3rd 378, (quasi govt)
112. Brooks v. Northglen 76 S.W. 3rd 162 (statutes & contract interference)
115. Cashio v. Shoria 481 S 2d 1013 (LA 1986) (restrictions on signs)
116. Chalkey v. Roush 757 A 2 972 (condo not muni govt ??)
117. Chesus v. Watts 967 SW 2d 97 (quasi govt)
119. Covered Bridge Condo Assn. V. Chambliss, 705 S.W.2d 211 (Tex. App. 14th Dist. 1985) (reasonable covenants are not unconstitutional; age restrictions).
123. Finley v. Glenn 154 A 299 ( PA1931) (constructive notice of covenant)
124. Foley v. Osborne Court 724 A.2d 436 (a remand to consider statute an unconstitutional delegation of governmental powers; fines)
125. Frank v. Spadafora 447 NE 2d 1250 (what theory to apply --constitutionalism)
126. Gloriouex v. Lighthipe 96 A 94 (NJ 1915)
127. Golden Sands v. Waller, 545 A 2d 1332 (Md.1988) (upheld HOA notice as valid as civil court adjudicates; prior liens)
131. Indian Lake v. Director of Revenue, 813 SW 2d 305 (not civic organization)
132. Inwood v. Harris 736 S.W.2d 632 (Tex. 1987) (homestead; covenants running with the land)
134. Lake James Community v. Burke County, NC, CA-96-177-4-T (4th Cir. 1998) (waiver of rights; arbitration; contract)
135. Lee v. Katz 00-35755 2002 DJDAR 373 (state actions and governmental powers)
137. Lycoming County v. Com. Dept of Labor 267 A 2d 238 (public funds create public body)


143. **New Jersey v. Kolcz** 276 A 2d 595 (constitutional right to free speech for political info)

144. **Ocean Trail unit Owners Assn., Inc. v. Mead**, 650 So.2d 4 (Fla. 1994) (members to pay assessments for unauthorized board acts)

145. **Pittman v. Cohn Communities** 229 SE 2d 526 (1977) (HO protest sign prohibition)

146. **POMPONIO v. CLARIDGE OF POMPANO CONDOMINIUM**, 378 So.2d 774 (Fla. 1979) (impairment of contracts analysis).


150. **Sanborn v. McLean** 206 NW 496 (MI 1925) (appearance of community as notice of covenant)

151. **Terre du Lac Assn v. Terre du Lac** 737 SW 2d 206 (Mo. App. 1987)(not authority for the concept that an association’s “quasi-governmental” actions are state actions).

152. **Tulk v. Moxhay** 2 Phil. 774 (Ch 1848) (covenants and early laws)

153. **Unit Owners Association v. Gillman** 292 S.E.2d 378 (fines are a government power; Act doesn’t give such power to Condo)


155. **Westphal v. Lake Lotawana** 95 SW 3d 144 (Mo. App. 2003)(no support for “close nexus” state action).

156. **White Egret v. Franklin** 379 So 2d 346 (what theory to apply - constitutionalism)


II. **Restatement Third, Property (Servitudes) -- in part**

Note: The Restatement, formally the Restatement of the Law Third: Property - Servitudes, is not statutory law but common law, which is court made law as a result of prior court opinions. States first look to statutory law and in the absence of pertinent laws will look to common law for persuasive authority. The Restatement is the work of lawyers under the publisher, ALI, who “summarize” numerous court opinions into a workable, understandable set of guidelines to be applied to issues to be decided by the courts. As “persuasive authority”, such restatements are not binding upon the court.

See webpage for selected sections:
http://pvtgov.org/pvtgov/ahlis/restatement_servitudes.pdf

III. **SLAPP statutes**

1. **Arizona**

12-752. Strategic lawsuits against public participation; motion to dismiss
A. In any legal action that involves a party's exercise of the right of petition, the defending party may file a motion to dismiss the action under this section. When possible, the court shall give calendar preference to an action that is brought under this subsection and shall conduct an expedited hearing after the motion is filed with the court and notice of the motion has been served as provided by court rule.
B. The court shall grant the motion unless the party against whom the motion is made shows that the moving party's exercise of the right of petition did not contain any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual compensable injury to the responding party. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating facts on which the liability or defense is based. At the request of the moving party, the court shall make findings whether the lawsuit was brought to deter or prevent the moving party from exercising constitutional rights and is thereby brought for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation. If the court finds that the lawsuit was brought to deter or prevent the exercise of constitutional rights or otherwise brought for an improper purpose, the moving party is encouraged to pursue additional sanctions as provided by court rule.
C. The motion to dismiss may be filed within ninety days after the service of the complaint or, in the court's discretion, at any later time on terms that the court deems proper.
D. If the court grants the motion to dismiss, the court shall award the moving party costs and reasonable attorney fees, including those incurred for the motion. If the court finds that a motion to dismiss is frivolous or solely intended to delay, the court shall award costs and reasonable attorney fees to the prevailing party on the motion. For the purposes of this subsection, "costs" means all costs that are reasonably incurred in connection with
a motion to dismiss pursuant to this section and includes filing fees, record preparation
and document copying fees, documented time away from employment to confer with
counsel or attend case related proceedings, expert witness fees, travel expenses and any
other costs that the court deems appropriate.
E. This article does not:
1. Affect, limit or preclude the right of the moving party to any remedy otherwise
authorized by law.
2. Apply to an enforcement action that is brought in the name of this state or a political
subdivision of this state.
3. Create any privileges or immunities or otherwise affect, limit or preclude any
privileges or immunities authorized by law.
4. Limit or preclude a legislative or executive body or a public agency from enforcing the
rules of procedure and rules of order of the body or agency.

2. California
Section 425.16, subdivision (b)(1), states: "A cause of action against a person arising
from any act of that person in furtherance of the person's right of petition or free speech
under the United States Constitution or the California Constitution in connection with a
public issue shall be subject to a special motion to strike, unless the court determines that
the plaintiff has established that there is a probability that the plaintiff will prevail on the
claim."
Section 425.16, subdivision (e), defines acts in furtherance of free speech or petition
rights in connection with a public issue as follows: "As used in this section, `act in
furtherance of a person's right of petition or free speech under the United States or
California Constitution in connection with a public issue' includes: (1) any written or oral
statement or writing made before a legislative, executive, or judicial proceeding, or any
other official proceeding authorized by law; (2) any written or oral statement or writing
made in connection with an issue under consideration or review by a legislative,
executive, or judicial body, or any other official proceeding authorized by law; (3) any
written or oral statement or writing made in a place open to the public or a public forum
in connection with an issue of public interest; [or] (4) . . . any other conduct in
furtherance of the exercise of the constitutional right of petition or the constitutional right
of free speech in connection with a public issue or an issue of public interest."

IV. Secondary Authority

• Monell Claim: In Monell v. Department of Social Services, 436 U.S. 658 (1978), the Supreme Court held that local government units are
"persons" suable (under 42 U.S.C.A. § 1983), for violations of federally
guaranteed rights. However, a local government unit may not be sued
under a theory of employer liability, but rather only when the execution
of a government’s policy or custom inflicts the injury for which the
government as an entity is responsible. Therefore, in order to
successfully bring a Monell claim against a government unit, a plaintiff
must plead sufficient facts to show (1) the existence of a government
policy or custom and (2) that the unconstitutional act was taken pursuant
to that policy or custom. The primary cause for dismissal of an action
brought under this theory is plaintiffs’ failure to plead sufficient facts to
establish the existence of a policy or custom. (http://jaildeathlawyer.com/
blog/2012/03/30/the-contours-of-a-monell-claim-for-a-policy-or-
procedure/)

• FOOTNOTE FOUR: There may be narrower scope for operation of the
presumption of constitutionality when legislation appears on its face to be
within a specific prohibition of the Constitution, such as those of the first ten
amendments, which are deemed equally specific when held to be embraced by
the Fourteenth. US v. Carolene, 304 Us 144 (1938).

• FOOTNOTE FOUR PLUS: It is also tempting, for the same reason, to
suppose that the Due Process Clause protects only those practices, defined at
the most specific level, that were protected against government interference
by other rules of law when the Fourteenth Amendment was ratified. But such
a view would be inconsistent with our law. It is a promise of the Constitution
that there is a realm of personal liberty which the government may not enter.
Neither the Bill of Rights nor the specific practices of States at the time of the
adoption of the Fourteenth Amendment marks the outer limits of the
substantive sphere of liberty which the Fourteenth Amendment protects. . .
As the second Justice Harlan recognized:

[T]he full scope of the liberty guaranteed by the Due Process
Clause cannot be found in or limited by the precise terms of the
specific guarantees elsewhere provided in the Constitution.


• References

16 C.J.S. Constitutional Law § 82 (waiver of constitutional rights)
17A C.J.S. Contracts § 213 (agreements in violation of constitution)
19-SUM Comm. Law 24, Coon, sign restrictions in residential
communities (large HOAs are public bodies)
29 Real Est. L J 322, Womack & Timmons, Homeowners associations:
are they private governments? (public functions test)
30 Val. UL Rev. 509, Rishikof and Wohl, Private communities or public
governments: the state will make the call
31 C.J.S. Estoppel and Waiver § 67 (waiver of rights, statutory rights)
33 St. Mary's L J 323, Pena, Reigning in property owners’ associations’
power: Texas’ need for a Comprehensive Plan34 Am. Jur. POF 3rd,
Violation of restrictive covenants34 Urb. Law 521, Rahe, the right to
exclude: preserving the autonomy of HOAs
35 Urb. Law 177, Franzese & Guth, Ramapo looking forward: gated communities, covenants and concerns (state constitution application to property rights)
65 ALR 5th 1, Privatization of governmental services by state or local governmental agency
7 J. Land Use & Envtl. Law 203 (constitutionalism & legal failures)
76 Am. Jur. POF 3rd 89
86 ABA J 30 (HO complaints)
Am. Jur. 2d Constitutional Law sec 800,926; sec 20 regarding HOA conduct as state action (state actions)
Am. Jur. 2nd, Covenants, Conditions & Restrictions
Barton & Silverman, Common Interest Communities: Private Government and the Public Interest, 1994
Ellickson, Cities and Homeowners Associations, 130 U PA L Rev 1519 (reasonableness for court decision)
French, Law of Servitudes: Reweaving the Ancient Strands 55 S Cal L Rev. 1261
Hyatt & Rhoads, Concepts of Liability in the Development and Administration of Condominium and Home Owner Associations, 12 Wake Forest L Rev. 915
Lewis, The Meaning of State Action, 60 Colum L Rev 1083 (1960)
McKenzie, Privatopia (1994)
Mich. Law Rev. vol. 102, Gardbaum, The horizontal effect of Constitutional Rights (US Cons. supremacy clause leads to no issue of state action)
Reichman, Residential Private Governments: An Introductory Survey, 21. 43 U Chi L Rev 253 9 (HOAS as a legal trust; voluntary consent)

- Restatement of Property, Servitudes 3d, Common Interest Properties Restatement (Third) of Property, Servitudes, Westgroup, 2000 § 6.7(3). Absent specific authorization in the declaration, the common-interest community does not have the power to adopt rules, other than those [designed to protect the common property], that restrict the use or occupancy of, or behavior within, individually owned lots or units. Rule of Law in Residential Associations 99 Harv. L Rev 472 (1985) (constitutional rights)

- Steven Siegel
  1. Co-author of AARP amicus brief to NJ Supreme Court in the 2007 Twin Rivers HOA free speech appeal.

The Urban Land Institute, Technical Bulletin No. 50, The Homes Association Handbook
4 Mary Jo Cornish wd. 1964

Tucker, “Of the Constitution”, Blackstone’s Law Dictionary appendix (179)

V. Black's Law Dictionary

- **arbitrary** 1. depending on individual discretion . . . by judge rather than fixed rules. 2. founded on prejudice or preference rather than reason or fact (usually known as 'arbitrary and capricious').

- **business judgment rule** The rule shields directors and officers from liability for unprofitable or harmful corporation transactions if the transactions were made in good faith, with due care, and within the directors' of officers' authority. [See "negligence" as an alternative].

- **capricious** characterized by or guided by unpredictable or impulsive behavior.

- **good faith** A state of mind consisting of (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing . . . , or (4) absence of intent to defraud or to seek unconscionable advantage.