



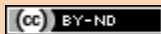
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## **HOA Buyer's Advisory:**

**Surrendering your rights and freedoms  
in exchange for an empty promise of  
maintaining property values**

A collection of five important 'need to know' papers  
about life under a Homeowners Association regime

July 28, 2012



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# HOA Privatization Scale

The HOA Citizen, June 2003, revised May 2012.

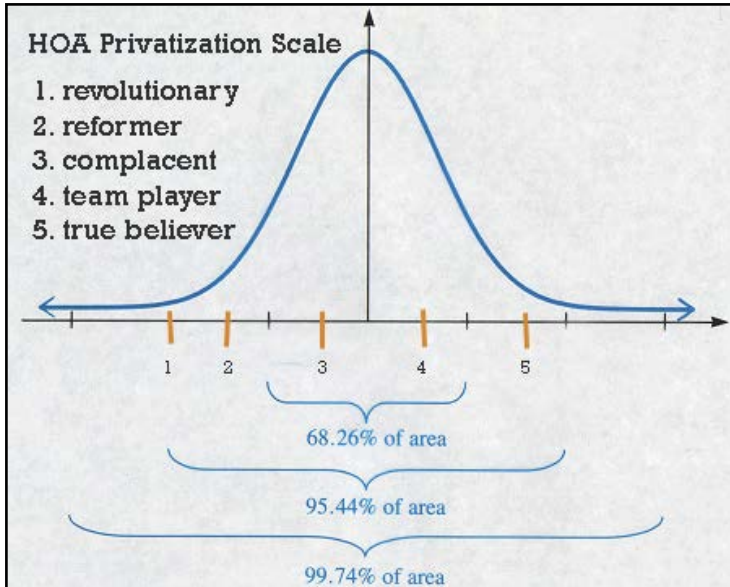
[Note: I made minor revisions to my 2003 classification system for homeowner views toward HOAs. Where do you fit?]

Having spent a few years in this arena of homeowner associations, I've come up with a scale to help define where a person stands on the status and acceptance of HOAs. This is based on the attitudes and statements made by the person and will be helpful in understanding and communicating with him.

I chose a scale based on the degree of privatization that is acceptable to the HOA member; that is, how strongly does the person identify and accept the level of privatization in one's life and home and the intrusion into one's privacy by HOA boards. There are 5 classifications:

\* \* \* \* \*

1. **REVOLUTIONARY** - This person sees HOAs as an anomaly to the American way of life and beliefs, and operating outside the laws of the land. The HOA model must be completely revised or removed.
2. **REFORMER**-- This person generally accepts the HOA legal model and powers of the HOA as granted by the CC&Rs, and permitted by the state governments. He only wants the board to change its ways to conform to his views. He's primarily concerned about his own local problem.
3. **COMPLACENT** -- He is the person who is content with his HOA, only seeing "personal" aspects of the HOA's powers and functions; that is, the HOA keeps the community neat and clean, provides amenities, etc. This person does not understand the broader issues surrounding HOAs. There are no problems with the board, just those homeowners who don't comply. The board does a good job.
4. **TEAM PLAYER** -- This person understands the private nature of the HOA, but prefers it and the sanctions against members. He primarily is concerned about the quality and value of his community. A believer in private clubs and their restrictions, and a person's right to associate with whom he pleases. He does not let violations of fundamental principles and laws affect him.
5. **TRUE BELIEVER** -- This person is a power player who understands that the HOA private organization structure, with the lack of government enforcement against HOA board violators, offers an opportunity to control and to dominate. Enforcement is necessary to protect property values. What's good for him is good for the community. Most horror stories can be found here.



The graph shows a normal distribution curve and the percentages of the people within each segment. As can be seen, I have shifted the Complacent category to the left. It signifies a preference by HOA members in favor of acceptance of the HOA legal concept, beyond an unbiased expectation. That is, all things being equal, as I've tried to accomplish with the scale, category 3 should fall in the center of the graph.

In the normal course of things, those at the extremes, the Revolutionaries and True Believers, are the most proactive and vocal segments, but not in equal strengths of being active. The right-side has been more vocal and influential.

From my many years of direct involvement in the HOA reform movement and my research and study into social and political reform movements, the environment and conditions necessary for substantive reforms to occur are not even on the horizon. Token reforms will occur here and there, and some have brought substantive changes like the OAH adjudication of HOA disputes in Arizona, and the prohibition on foreclosing just for HOA fines. Sadly, though, many substantive reform bills have been repeatedly rejected by state legislatures.

As long as reformer-advocates continue to accept the legitimacy of the HOA legal scheme they have surrendered their most powerful weapon in their battle to achieve substantive reforms. And in doing so, they have allowed their very powerful oppressors to sit as equals at the bargaining table. The outcome is, and can only be, as expected and as demonstrated historically.

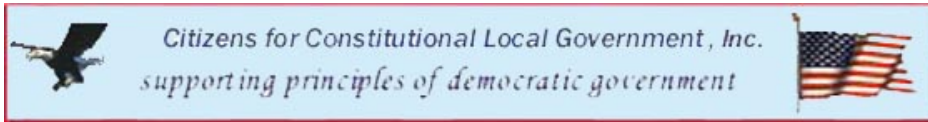
## ASSERT YOUR RIGHTS AS A CITIZEN

### REJECT THE HOA CONSTITUTION

Send the HOA Member [Declaration of Citizenship](#) to your legislators!



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## **10 HOA Myths**

1. MYTH: The HOA attorney represents you, and will assist you in your claims of wrongdoing against the board.  
REALITY: The attorney represents the HOA as reflected by the board. He defends the board.
2. MYTH: In spite of your contractual CC&Rs, your civil and fundamental rights are still protected by the Constitution.  
REALITY: As a private contract, your CC&Rs have priority over the Bill of Rights, unless those particular rights are so enumerated by the US Supreme Court, such as the Fair Housing Act. People have the freedom to contract and can surrender their rights as happens, many times unexpectedly, as stated by the CC&Rs.
3. MYTH: Disputes are resolved by an independent tribunal with an opportunity to examine witnesses and the charges.  
REALITY: Generally, the board issues complaints and decides the issue.
4. MYTH: You can file a complaint with the local government for enforcement of state law violations by the board.  
REALITY: HOA disputes are treated as private disputes, and local police / attorneys do not get involved. Filing a civil suit is generally required, even in the case of a state law violation.
5. MYTH: If unhappy with the board, homeowners can vote the board out in any election as elected public officials can be voted out.  
REALITY: There are no protections against violations of the election process, nor oversight of fair elections since the incumbent board, like a corrupt political machine, controls the elections and hears any claims of voting irregularities.
6. MYTH: The HOA fosters vibrant, healthy communities with the general welfare of the homeowners as an important goal.  
REALITY: HOAs are created to maintain property values, and to exercise police powers to regulate the use and operation of the common areas and amenities. There is no equivalent Bill of Rights to protect homeowner fundamental rights as with public government. HOAs do not have to be fair, reasonable or competent.
7. MYTH: Not actually having read, actually signed, or acknowledged the provisions within the CC&Rs invalidates its legality.  
REALITY: Just the mere posting of the CC&Rs at the county clerks office is sufficient to create a binding agreement when you accept your deed.

8. MYTH: As in the case of a dispute with your credit card company, in a dispute with your HOA you can send a certified letter to your HOA and no action can be taken until the dispute is resolved.
- REALITY: You must always make your payments regardless of any dispute. Buying in an HOA is equivalent to pledging your home as collateral for the timely and continuous payment of assessments. Your home can be foreclosed and sold at auction by the HOA.
9. MYTH: The home you buy in an HOA is your private property to do and act in any manner as you please that is not contrary to municipal ordinances.
- REALITY: The CC&Rs represent a surrender of your property rights to the HOA, granting it broad, discretionary powers not envisioned at the time of purchase nor clearly stated within the CC&Rs.
10. MYTH: As with any other contract, you are protected by the version of the CC&Rs in effect at the time of purchase.
- REALITY: The courts have upheld subsequent amendments to be binding on all homeowners regardless of when they bought their homes, and these amendments can have far reaching financial consequences beyond the reasonable expectations of the purchaser. In other words, those CC&RS can be a meaningless piece of paper.
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**Homeowner Association (HOA)**  
**Buyer "*Truth in HOAs*" Disclosure**  
**&**  
**Consent to be Governed Agreement**

**By my signature below, I , the undersigned Buyer, have read and understood the restrictions imposed upon me by law and the courts as a member of an HOA, and have agreed to the waiver and/or surrender of my rights explicitly contained below. All other rights not expressly prohibited below or expressly granted below to the HOA are retained by me.**

I, the undersigned Buyer, and the undersigned HOA by its President, hereby acknowledge and consent to the following:

(a) that the declaration of covenants, conditions and restrictions (CC&Rs), the bylaws, and any written rules and regulations are treated as binding private contracts by the courts; and that to enforce my rights under or compliance with the governing documents I must file suit in civil court, and that such a civil suit involves no state agency official, attorney general, or county attorney ;

(b) that under current court holdings, I am legally bound by any and all amendment to these documents validly enacted in accordance with the governing documents, with or without my vote or consent, provided that they are found not to be unreasonable, contrary to public policy or unconstitutional; and that an amendment may alter the CC&Rs at the time of purchase, binding me to the amendment without my consent;

(c) that under current law, there are no substantive penalties against violations of the governing documents or state laws by the officers or directors of the association sufficient to serve as a detriment to future violations;

(d) that the association (HOA), as a private entity and not an arm of the state, is not subject to the restrictions and prohibitions of the 14th Amendment to the US Constitution that otherwise protects the rights of the people against actions by public government entities; and that the governing documents in all legal practicality serve as the subdivision's "constitution," taking precedence over state laws and the state and US Constitutions, unless specifically denied by any such laws or legal precedence;

(e) that the governing documents contain due process protections, in instances of alleged violations of the governing documents, that are less than as required under public laws and civil court procedures, that are lacking requirements for an independent tribunal, such as the right to introduce or confront witnesses, or the right to introduce and challenge contrary evidence;

(f) that in any dispute with the HOA, and contrary my rights under the federal fair debts collection practices act (FDCPA), the courts require continued payment of your assessments even while the dispute continues;

(g) that there are no equivalent clean or fair elections procedures as found in public government elections, to protect the integrity of the HOA election process; and

(h) that the practicable ability to institute member “initiatives” and make changes to the governing documents or ACC rules is highly dependent upon the active participation of my neighbors who, as a member of an HOA, have been described as indifferent and apathetic; and that there are no provisions for HOA board “referendums” on issues that ethically should be put to a vote of the members;

(i) that, although legally allowed to do so, I may have no alternative but to sue the HOA for its refusal to permit me to view all of the association's documents, books and records, and other financial documents, and other association information that I deemed pertinent, which would be vital to an informed sale;

(j) that, as an owner, I understand that through this purchase I am relinquishing to the HOA my rights to protect my personal assets to the full extent of law.

_____	_____
Homeowner Association	Buyer
_____	Date: _____
By its President	
Date: _____	



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## **Declaration of US and State Citizenship**

***With the understanding that the association, as a private entity and not a subdivision of the state, and as a de facto but unrecognized private government, is not subject to the restrictions and prohibitions of the Fourteenth Amendment to the US Constitution that otherwise protects the rights of the people against actions by public government entities; and***

**That the governing documents in all legal practicality serve as the subdivision's constitution, taking precedence over state laws and over the state and US Constitutions unless specifically denied by any such laws or legal precedence;**

***Therefore, the members of the association, having not waived or surrendered their rights, freedoms, privileges and immunities as citizens of the United States under Section 1 of the Fourteenth Amendment, and as citizens of the state within which they reside, the CC&Rs or Declaration for any planned community, condominium association or homeowners association shall state that, or be amended to comply,***

***The association hereby waives and surrenders any rights or claims it may have under law and herewith unconditionally and irrevocably agrees 1) to be bound by the US and State Constitutions, and laws of the State within which it is located, as if it were a subdivision of the state and a local public government entity, and 2) that constitutional law shall prevail as the supreme law of the land and conflicting laws and legal doctrines of equitable servitudes shall conform.***



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February 29, 2012

By: George K. Staropoli

### **Why people do harm to others in the HOA subculture**

I am disappointed at the lack of serious study into the behavior of people within the basically closed-minded HOA subculture. What makes directors and officers do harm to others? There is a serious absence of socio-psychological studies into the well-defined patterns of behavior in HOAs, which constitute an ideal, real-life laboratory for further study and analysis.

The early studies of social dynamics within HOAs (see *Common Interest Communities*, Barton & Silverman, eds., 1994) dealt with civic matters, democracy, etc. and the apathy and conflicts generated from the public-private mix of HOAs. A hint of group dynamics and social forces at work is given by Gregory Alexander when he asks (p. 163), “*Why do not unhappy HOA owners respond to their disappointments by articulating it and acting to change the HOA governance?*” One still hears this plea by pro-HOA interests, “Get involved!” Gregory answers his question with, “*for individuals to practice participation, there must be a pre-existing participatory consciousness. The question is whether any means exist to create such a consciousness.*”

Alexander rejects Rational Choice Theory because “*it overlooks the roles of participatory rituals in creating a democratic culture . . . . Ritual is a means of converting the obligatory norms of society into desires of individuals, of creating socialized sentiments.*” Rituals serve as a means of conformity in a society whereby the people do things according to custom and tradition, like almost always signing on the “blank page” – signing without reading or understanding — in agreement with whatever the board tells the members what’s good for them. Often with the “blessings” and advice of the HOA attorney.

### **Being a “team player” - unquestioned obedience to HOA boards**

The Alexander study demonstrated the influence of custom and tradition of the group and its effect on individual members’ behavior, in contrast to just looking at the individual as the sole determiner of his behavior. Alexander also spoke of a “pre-existing culture” that is necessary to shape the behavior of the members as a whole. The question to be addressed

is, what are the origins of this pre-existing culture? What factors shape the HOA culture? As I've argued, there is no participatory culture within the HOA community, as is well documented in the literature with the appeals for "get involved" and make the HOA concept work.

In fact, throwing people together who have had no prior relationship with one another, complete strangers, and binding them together in a mandatory group, under a contract, admits to the absence of a participatory culture. The designers of the HOA concept could only hope or expect such a culture to develop on its own, since the HOA concept does not impose or establish a plan to develop or encourage realistic and workable "kumbaya" togetherness.

In a more expansive view: What are the factors that do create and shape the rituals and culture of the HOA society? Two studies, two experiments, shed some important light on this issue. While they are most demonstrative of rogue and abusive boards, one must keep in mind that HOA members live at the suffrage of the board as a result of the lack of democratic protections for homeowners under an authoritarian, corporate form of government. As many of the studies in *Common Interest Communities* attest, democracy in HOAs is highly questionable – and this was back in 1994.

The homeowners' association needs to meet basic democratic standards of openness, fairness, and responsiveness to its members. . . . The common interest association [is] a potentially workable but flawed tool for collective decision making. . . . These residents treated the governing board of directors not as trustees of the public interest but as neighbors who had unfair powers over them. (Chapter 13).

In the first experiment, the researchers examined how far people would go to cooperate with and obey authority figures. Donie Vanitzian (*Villa Appalling!*, 2002) describes homeowners who say "they were forced into conformity," "I finally gave in," and I "gave up the fight." Vanitzian comments on "group psychological intoxication" where individual members of a group would do things that they never had dreamed that they would do when part of the group. (p. 214-215). She makes her point with reference to the 1974 Milgram Experiment.

### **Milgram Experiment**

In *Obedience to Authority*, researcher Stanley Milgram asks the question that his 1974 experiment sought to answer: "How does a man behave when he is told by a legitimate authority to act against a third individual?" Milgram carefully points out that the authority figures, the "trainers" in the experiment, are not sadists when 2/3 of the "trainee victims" were obedient subjects. This experiment applies directly to the behavior of both the authority figure, the HOA board, president, director, manager, or attorney, and the apathy and acquiescence of the homeowner

Quickly stated, the Milgram experiment consisted of “trainers,” the real subjects of the experiment, administering high levels of electric shock to “trainees” who were part of the experiment. The “victims” would scream, cry, and shout in pain to stop. And if they refused to answer the trainer’s question, a shock was also required. The shock levels included the headings, “Danger”, “Severe Shock”, and “XXX” (no subject refused to continue at the XXX level). A surprising 65% - 62% (under a signal or voice reply conditions) of the trainers delivered the maximum shock, XXX, to their subjects in obedience to the “authority” researcher demands. The repeated pressure that “*The experiment requires you to continue*” resulted in the subjects losing all personal involvement and adopting the objectives of the authority figure, “*The Experiment had acquired a momentum of its own.*”

How often have homeowner rights advocates heard the mantra from the CAI national lobbying attorneys, “The law requires the board to enforce the CC&Rs” (which is only as a result of the covenant, written by the attorneys, to do so, and the courts enforcing the contract). And the board complies. A harsh example of the requirement to obtain obedience is the 2000 murder of two HOA board members in Arizona. The precipitating event was an injunction filed by the HOA against the Richard Glassel, the homeowner, to stop maintaining the shrubbery on his property. Rules must be enforced.

This obsession with enforcement is well documented in HOAs where boards/managers/attorneys 1) file for foreclosure against those legitimately without money to pay: seniors, widows, young single parents, and against those with medical problems like Marie Brown being evicted in a gurney (she later died in a subsidized group home, 2 years later), 2) where copies of canceled checks showing accepted payments are ignored, and 3) where blatant violations of the law and governing documents are common occurrences. The HOA obsession is to “enforce at all costs” and who cares about justice and fairness, or the effects of enforcement on the individual.

### **The Stanford Prison Experiment**

The Milgram Experiment focused on the obedience to authority even when it demanded cruel and unusual punishments. The 1971 Stanford Prison Experiment by Philip Zimbardo, focused on the “*transformations of good, ordinary people . . . into perpetrators of evil in response to corrosive influence of powerful situational forces.*” (*The Lucifer Effect: Understanding How Good People Turn Evil*, 2007). He sought to know, “What makes people go wrong?” He argued that these forces push people “*into engaging in deviant, destructive or evil behavior when the settings are new and unfamiliar . . .*” where our customs and rituals “*no longer function to sustain the moral compass that has guided us reliably in the past.*” Zimbardo writes that “*this book details how easy it is for ordinary people to begin to engage in evil deeds, or to be passively indifferent to the suffering of others.*” (P. viii).

Zimbardo defines evil as “*intentionally behaving in ways that harm, abuse, demean, dehumanize, or destroy innocent others —or using one’s authority and power to encourage or*

*permit others to do so on your behalf.*” The definition applies to many, many HOA directors, presidents, and ACC committees whether labeled as rogue or just strict enforcers of the CC&Rs.

I want to know what makes HOA boards go wrong. The question here is to determine what forces, if any, in the HOA situation and system allows for good people to do evil. I begin with the argument that a private government regime whose authority comes not from the Constitution or public sector, but from an explicit, written declaration of covenants, conditions, and restrictions constitutes a new and unfamiliar situation or condition for members of an HOA. It is a document that is not subject to constitutional protections that guarantee citizens certain protections under the law. It is a document that is severely lacking in homeowner protections and upheld by the courts. It is a document where the courts are frequently making new laws that are not covered within the alleged binding contract, and that the legal-academics have referred to as a *sui generis* form of government.

The reasonable expectations of homeowners that the customs and traditions of our civil government would continue to protect a homeowner, as they do for any other citizen living in this country or state, is a complete fallacy. Homeowners, who believed that the HOA was subject to the same laws to which all other corporation and contract were subject, are constantly amazed to learn that they were completely wrong.

According to Zimbardo, how then are people to act without being able to rely on the usual public customs, rituals, and laws to guide them in this new communal situation? Apparently this same question must have been on the minds of the designers of the current HOA incarnation, those who wrote the 1964 “bible” for HOAs, *Homes Association Handbook* (Urban Land Institute, Tech. Bull. #50). After only nine years since publication, they had to form the Community Associations Institute (CAI) to teach and guide people how to live under these new and unfamiliar conditions — under undemocratic authoritarian regimes.

This experiment (popularized in the harsh 2010 movie, *The Experiment*) involved role playing by two groups of subjects. The environment was that of a prison where one group played the part of the guards, and the other group the part of the prisoners. The randomly selected guards were simply told “maintain law and order”, “not do any violence toward the prisoner subjects”, and “not to allow them to escape.” A message was given that the prisoners were powerless. The aim of the experiment was to see what changes in personality would take place as a result of the subjects’ new roles in isolation from the greater community.

To simulate reality, the “prisoners” were actually arrested and booked. Then blindfolded before taking them to the make-believe prison. The prisoner subjects were read some 17 rules to abide by while in prison. The rules read like one would expect from a highly regimented institution and dealt with when to speak, when and how to eat, when to shower, when mail is delivered, etc., and never to refer to their condition as an experiment.

Of particular interest to HOA regimes, the prisoners were told that they must report all infractions to the guards, and they must obey all order from the guards at all times. Failure to obey the rules would result in punishments. These conditions apply about equally to the authoritarian HOA regime.

The experiment was designed to run for 14 days. After just 4 days the researchers realized that the prison situation was getting out of control due to the extreme behavior of the subjects. It was shut down 2 days later, on the 6<sup>th</sup> day. Understand, that like with the hands-off, “not my job” policy of state authorities treating HOA disputes as civil matters, not providing for civil punishments for board violations, and permitting the denial of the equal application of the laws, the HOA is a closed system just as was the Stanford Prison Experiment. No external intrusions. Also, as in the Experiment, the options available to homeowners for dispute resolution are severely limited.

Zimbardo summarized the results of his experiment as follows:

Healthy young men developed pathological symptoms that reflected the extreme stress, frustration, and hopelessness they were experiencing as prisoners. Their counterparts . . . repeatedly crossed the line from frivolously playing their role to seriously abusing their prisoners.

### **Looking Toward the Future**

In the Milgram and Stanford Prison Experiments researchers explored what evil men can and will do to others 1) under repeated pressure from authority figures to follow the rules, and 2) in an environment where one is expected to act in accordance to the roles of the community. The researchers found that basically good people will indeed do harm, even do severe harm, to others. The conditions and factors present in these experiments exist within the HOA community, and the harm being done to others in these HOAs is well documented in the media and in the courts.

The authoritarian insistence on enforcing complete obedience to the CC&RS, as repeatedly impressed on HOA boards by their attorneys, is well documented. The compliance by the directors and officers with these pressures for enforcement is well documented. The blind obedience, apathy, and passivity to authority by HOA members – the “prisoners” -- who sign and agree to provisions blatantly detrimental to their interests, is well documented. The adoption of the roles demanded of them by the system and by the situation -- state laws and the court opinions , the adhesion CC&Rs and governing documents, and the lack of effective recourse -- is well documented. The numerous “educational” seminars taught by the attorneys and managers, many of which are sponsored by state and local governments, serve, not to fully inform but to indoctrinate the members into roles of obedience and passivity, is well documented. Good people doing bad things or remaining silent in the midst of wrongful acts and actions by the HOA is well documented.

State governments, the legislatures, cannot allow HOAs to continue to run amuck and to freely violate the laws and their contractual obligations without legitimate and necessary constraints holding them accountable for the harm that they do to others. Stop the “free rides.”

Do not be conned by the HOA special interests unsubstantiated fear mongering about the demise of HOAs, and their “only 5% are bad”, so we don’t need any restrictions. Property crimes over the past 5 years averaged 3.3% yet we have laws. Murder and rape rates are so miniscule compared to 5% (roughly 5 in 100, 000, or .00005), yet we have laws against these crimes. If HOAs are indeed the next best thing to Mom’s apple pie, than they will survive. If not, then it was the factor that “we got a good thing going here,” in terms of anything goes, that was the driving force behind all the clamor. Fear not, people will continue to buy homes that are truly their private property.

But, to let the people in HOAs continue to do harm to others and do nothing as a matter of public policy is shameful.



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