

COMMUNITY ASSOCIATIONS:

A VIEW BY A HOMEOWNER RIGHTS ADVOCATE

A homeowner rights advocate reviews this book, funded by CAI and ULI, and strips away the high praise given to the proponents of planned communities and the founders of CAI. He reveals the business profit motivations and actions to make this “innovation in housing” a success, and the lack of interest or concern for the democratic governance of these planned communities.



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Community Associations: The Emergence and Acceptance of a Quiet Innovation in Housing (Contributions in Economics and Economic History), Donald R. Stabile, Greenwood Press, 2000
A CAI and ULI funded publication.

Reviewed by: George K. Staropoli

1. CAI Admits HOAs are Private Governments

Review of Chapter 1.

(Remember that the author is an economist and not a political scientist or sociologist).

The chapter begins with statements in regard to marketplace forces on the price of housing:

"Economists would interpret the growth in CAs over the past two decades as an indication that this new form of housing has succeeded. Critics should not ignore this market test as an indicator of consumer satisfaction"

Knowing that this is not the complete picture, the author continues, *"For markets to work properly there must be competition"* and that would determine the price of housing. Yet, he feels the need to address the question of "fair market practices",

"With a CA, they [home buyers] may not be willing or able to read a complicated copy of CC&Rs. As a result, developers must try to ensure that consumers know that they are purchasing a home and an organization. Real estate agents need to give accurate information about CAs. Home buyers need to shop around for alternative homes and learn what life in a CA will entail for them".

I would add that state legislatures must get involved to protect home buyers from the abuses that have been occurring, and continue to occur, by organizations quite familiar with current marketing practices. The legislators must act now and stop their "hands off, not my problem" attitude of the past and take responsibility for allowing these abuses to continue.

He then argues that planned communities allow builders to make a profit while keeping the price of housing low. ***"CAs are a way for a home buyer to have more influence over the ancillary components of housing [public services, neighbors, schools, roads, etc]."***

See what we are really up against and who is espousing this view? Pure economics and no discussion of the means and methods to attain and force home buyers into living in CAs, or concerns about democratic processes. And this book was written in 2000, not some 10 years ago!

Stabile goes on to say that the government is not the best means of supplying affordable housing and that businesses are better, because, ***"The advantages businesses have in carrying out plans is that they have a 'bottom line' of profits to inform them when a plan succeeds and when it fails"***. No mention of all those governmental acts that place restrictions on business abuse, going back to

the "Trusts" at the turn of the century and the Sherman Antitrust Act, the excesses of the tobacco companies, the drug company regulations and even the Fair Housing Act.

But the author catches himself once again and adds, ***"To be sure, the CC&Rs place limits on the political process, much as the US Constitution limits what the federal government can do"***. I have been arguing that CAI really knows that HOAs are independent city-states, and this statement putting HOAs on the same level as the federal government clearly indicates this arrogance. They forgot Teddy Roosevelt's statements, referring to the Trusts, that we created these private companies and we have the right and obligation to regulate them.

Getting caught in arguments of government and efficiency that he started with the above quotes, the author attempts to defend CAs on political and not economic grounds.

"They [CAs] provide their residents with services usually considered public goods, such as roads, police, garbage collection and general maintenance. The advantages of private associations are their efficient decision making and the responsiveness of the 'government' to local concerns".

The reviewer, having been involved in homeowner rights advocacy for several years, wonders where and in what country Mr. Stabile found his assertions to be anywhere near valid. Apparently, he had not seen any evidence to the contrary from the political scientists' research and court cases.

Finally, the author attempts to deal with political and governance issues within the CA when he raises the question of setting fair rules and regulations. Who does he use to shed light on the issues? Jefferson? Madison? John Locke? Rousseau? No, he chooses R. H. Coase, a Noble winning economist who favored Bentham's utility analysis of economic behavior. The author uses, "the greatest good for the greatest number". We are aware of this argument that gets translated into "the rule of the majority".

He continues to wrestle with this problem of rule setting that is faced by any organized society, but can only state,

"CAs are a private form of government that regulates through CC&Rs and association bylaws. By joining a CA, members have implicitly agreed to a private contract to eliminate the social costs of neighborhood effects [setting fair rules and regulations] in a prescribed way".

Notice the phrase, "implicitly agreed to a private contract". Webster defines implicitly as, "without questioning". The truth of the matter is, "without appropriate knowledge and information as to the consequences of purchasing an HOA-controlled property".

Yes, there is much that the public, the media and the legislatures are unaware of and are not being told, even with this CAI funded publication. The book is informative, yet biased toward the purchase and acceptance of HOAs.

2. CAI speaks on its noble purpose for a better America

"To give them guidance [CAs], in 1973 the FHA, the ULI [a nonprofit educational group, Urban Land Institute], the NAHB [business trade group, Nat'l Assn of Home Builders] ... formed CAI."

This is not another book that homeowner rights advocates can openly point to and say, "See, he supports us, too". At least not on the basis of the Forward by David O. Whitten ("Series Advisor for Contributions in Economics and Economic History, Number 218") and the author's Acknowledgments and Introduction. As you probably already noted, it's not a book on government or democracy or politics, but on \$\$\$\$\$.

In this reviewer's opinion, being a homeowner rights activist for over 2 years and finding himself opposing CAI on several issues, this book is a self-serving propaganda vehicle for CAI. It makes no serious attempt to inform the reader of all the issues relating to community associations, especially those dealing with the denial of association member's civil liberties because of a private contract interpretation of CC&Rs, the undemocratic aspects of HOAs and the questionable practices still being used to sell this defective product to unsuspecting homeowners.

Rather, the author and David O. Whitten, writing a Foreword, try in the Forward and Acknowledgments sections to "sell" the idea of highly democratic governance of community associations and lavishes high praise for CAI and its "noble purpose". The reader should bear in mind that they are economists by trade who are commenting on the governance and democratic aspects of the associations. They are, in the reviewer's mind, attempting to persuade the reader of the virtues of CAs while not speaking of their undemocratic, private government status within America.

Here's how this book starts out with the Forward by Whitten:

"Community Associations ... illuminates the important yet unheralded application of democracy to the provision of one of mankind's essentials, shelter... Entrepreneurship in the application of democracy to units smaller than local governments has brought homeownership within the grasp of millions -- 42 million people were represented by 205,000 community associations"

The justification for employing this private government model is money, we are told.

"Democratic governments at every level of the American federal system play an essential role in the creation and operation of CAs by specifying property rights and creating a legal framework within which developers can establish CAs and homeowners can direct them"

The reader should be careful as to what is cleverly being said, and what is not said. In the reviewer's mind, what is being said is that democratic institutions, your government, at all levels have worked to create and to maintain CAs for the developer's benefit, and that these are supposedly democratic organizations.

Very little discussion is made of the works of political scientists, such as McKenzie, Dilger, Barton & Silverman of criticism, complaints and problems with the so-called democratic processes within

CAs. Lip service is paid to these criticisms in the 6-page Introduction with only one and one-half paragraphs touching on these problems. Stabile offers a one line rebuttal that is not from another political scientist, but, again, from an economist. In fact, only Prof McKenzie's name appears in the index, only because he's mentioned as a speaker at CAI functions and that his works appears as a chapter in a CAI publication. However, three of the four texts criticizing CAs are only found buried in the Notes on p. 6, presumably put there so the author can say I referenced the criticism.

It would seem that the author is telling us that affordable housing takes precedence over our fundamental rights as citizens. That good bricks and mortar make good communities and a better America. Why this seeming bias? Well, in the Acknowledgments we find:

"Research and authorship for this book were funded by a grant from the Land Economics Foundation ... and made possible by contributions to the foundation by the Community Associations Institute, the Urban Land Institute Foundation...."

The author further displays his bias when he pays tribute to his "sponsors" with:

"I found it refreshing to be among persons who went about their work with a sense of purpose, here the noble purpose of improving the lifestyles available to members of community associations. I do not live in a community association and probably never will. They are not for everyone".

By this, I have to wonder whether the author is saying, I don't believe what I wrote.

While providing some historical content and views of the proponents of "affordable housing" and efficient land use policy, it fails to provide a balanced view. And since it was funded by CAI and ULI, it is definitely a propaganda piece to deflect serious and growing criticism of the CA model of community government, and of CAI's approach to defending the status quo. The very sub-title, "*The Emergence and Acceptance of a Quiet Innovation in Housing*", reveals, indeed, that there has been a quiet acceptance as a result of this propaganda and the failure to hear the other side's viewpoints.

Mr. Stabile provides a "why" for this acceptance, when he makes the following statements:

"It [this book] will record what ... the founders of the CAI had to say about how CAs and the CAI should function and whether that functioning was consistent with the potential for CAs to offer attractive housing and political participation to their residents.... For this potential to be realized, home buyers must choose to purchase homes in CAs [bold is my emphasis]. They are a product and sold by businesses for profit, a legal entity imposing rights and obligations on their purchasers, a corporation, a community, and a lifestyle".

Mr. Stabile says a lot here. Justification for HUD / FHA to look the other way on homeowner rights -- mortgage lending protection. Justification for the developers to look the other way on homeowner rights -- profits. Homeowner rights advocates have found that these products, the CAs, **are indeed defective products** with respect to the denial of a citizen's guaranteed civil liberties. Laws have been created in favor of the developers and HOAs without any Bill of Rights protection for the homeowners, and some of these laws, where they can be used to protect homeowners, lack any means of enforcement such that they are really ineffective and useless.

Furthermore, CAs are being sold under highly questionable methods that would not be permitted for new securities or used car sales. Adhesion contracts where the buyer doesn't sign off on or negotiate any provisions; a failure of a "meeting of the minds" as a result of partial and non

disclosure of material facts relating to severe restrictions on a homeowner's rights, as compared to homeowners choosing not to live in a CA; and a private contract ruling that legalizes undemocratic, private governments whereby the state government has no or very limited oversight authority.

The author, in his chapter on "A Period of Change", fails to mention that CAI elected to become a business trade group and is no longer an educational tax-exempt organization. Yet, to this day in its Mission Statement and in other publications, CAI continues to imply that it's still an educational organization. More propaganda.

3. The Emperor Has No Clothes

Comments:

This book reveals that many of the problems existing today were known as far back as the 1970s. It mentions many attempts and reports by CAI to remedy these problems, but they remain today. It discloses the intents and motivations of the CAI founders and creators of the planned community development; that it's purely a "for profit" motivation with very little concern for democratic government or the application of the US Constitution and its Bill of Rights.

The book contains many prescriptive terms, "should be", "recommended" "encouraged to", "advised to", etc. quoted from studies, reports, manuals and from key individuals. Subsequent events clearly show that many of these prescriptions have not only gone unheeded, but have been actually resisted by the various industries, including CAI.

It's time to turn to the advocates for solutions to their problems because it's obvious that CAI cannot or will not make reforms necessary to bring the equal protection of the laws to homeowners.

a) Pre-HOA communities

The initial concepts of planned communities in the early 1900s, which evolved into our current planned communities, were utopian visions of an ideal community in reaction to industrial-urban blight. The concept focused on a community run by the experts and governed by experts in their respective fields.

This utopian concept was not dissimilar to socialistic views or the communist view of, "From each according to his abilities; to each according to his needs".

b) The beginnings of planned communities.

Early planned communities had CC&Rs, but no homeowners associations. The CC&Rs were voted on by all the current homeowners, and not designed by the developers and provided as an adhesion contract to homeowners.

They were profitable to developers.

"The innovators of CAs were entrepreneurs ... who set up CAs to make money by creating better communities."

c) The mass marketing of community associations

Problems arose relating to the business decision to increase sales and profits by the mass marketing of HOAs. Even with these early HOAs the developers encountered homeowner apathy. This led to

the need for HOAs, as the enforcement agency that strictly enforced the CC&Rs, as well as the need for mandated membership.

d) The Feds get involved (1960s)

In addition to the desirable public interest benefits of affordable housing as a result of space usage, the federal government entered the picture with federal mortgage insurance -- Fannie Mae, Ginnie Mae, Freddie Mae. And these agencies also saw the business benefits, as well as public benefits, to require the HOA enforcement agency.

An FHA booklet read, *"Establishment of property owners associations is also advisable to provide an effective means of obtaining adherence to protective covenants"*.

The FHA and its ULI arm wrote manuals [TB50] on how to set up community associations and how to run them, strictly from the point of view of a viable business enterprise. It contained such "gems" as:

- For legal reasons, CC&Rs must be in place from the outset and the power to modify them must be limited.
- those who hold themselves as directors or committee chairmen do not always have the necessary talent to operate a community organization
- They [CAs] exhibit a combination of traits in keeping with their being a consumer product sold by a profit-seeking firm, a legal device, a corporation reliant on both coercive and voluntary cooperation.

Caution was included that the home buyer must be told that he was buying into a business when he bought his HOA-controlled home. Disclosure requirements were also included in order to inform the buyer as to just what he was getting into. Happy purchasers were the reasons for these requirements, because happy people make good testimonials for the HOA model.

e) The need for professional management (1973)

As the mass marketing brought more and more people into the planned communities that required mandatory membership in an HOA, problems arose. The author writes, "Critics of this collaborative effort [between FHA and ULI/NAHB] find this an unhealthy alliance between government and business to promote CAs to unwary consumers".

People wanted homes, not to be government officials. The profitability of these HOAs were becoming a problem, so ULI and NAHB formed CAI to provide professional business management to these HOAs that were still seen as a business, not a community or government.

The need for "experts" as originally seen in the utopian concepts were now realized.

f) The beginnings of CAI

Remnants of the early utopian concept of a society run by experts was carried into CAI with its membership categories from 5 involved areas -- public officials, HOAs, association managers, professionals, other related industries. It was founded as an educational nonprofit to keep those HOAs solvent and viable.

"The Leadership Group [CAI study committee] felt that CAI needs to be the voice of the industry by relating positive aspects to the public ... Founders of the CAI recognized that its structure of equal interest groups would be difficult to preserve, but deemed it important for attaining legitimacy for the CAI as a voice for the entire CA industry".

CAI prepared educational courses and "how to" manuals on how to run an HOA business as well as educating "certified professionals". One CAI brochure said,

"The major responsibility of the association is to protect the investment and enhance the value of the property owned by members ... an important thing to remember about a community association is that it is a business".

g) HOAs as a civil government

In the late 1970s there was criticism of the HOA board's inflexibility with respect to the enforcement of the CC&Rs. *"Articles in the press have attacked these often for being unduly restrictive and taking away basic human rights"*. A CAI handbook was produced with the key element of *"regarding whether or not to define them [CAs] as governments. Legal opinion was offered, in a debate on the issue, that "the Supreme Court had required constitutional procedures in a 'company town' and with "political parties"*. This handbook discusses the government vs. business issue without attaining any clear definition.

h) The utopian concept runs into trouble (1992)

Problems continued to plague the HOA model of government. After almost 20 years in existence, CAI had less than 4% of the total HOA market, as compared to AARP that had some 50% of people over 55 as members. Conflicts began to show between the membership categories -- some arguing that CAI was a consumer group, others argued that it was a professional group.

Federal legislation was being considered that would regulate HOAs. Research studies were pointing to problems with democratic processes, HOA boards, rules enforcement, etc. CAI reorganized its membership and began acting like a trade group and started lobbying committees nationally and in

the chapters. In 1980, CAI had produced a report highlighting problems with HOAs, part of which said, *"Problems in sales and resales took place because developers did not inform consumers about the social, financial and legal factors related to CA membership"*.

According to the author, CAI President Keenan, at this time, "understood that CAs were a social experiment".

Various CAI members said,

"Although homeowners had not joined in large numbers and professionals came to dominate the CAI; the CAI board had a hard time getting homeowner members; the objective of this change was to create a culture in the CAI more conducive to lobbying as a national membership coalition"

"Longtime members of the CAI, including several of its founders, disapproved of this change [in 1992]. They feared it would turn the CAI into a trade association for CA managers".

It was strongly noted by the reviewer that no mention was made that CAI did become a business trade group, a 501(c)6 tax-exempt nonprofit organization.

A paragraph is given to McKenzie's piece in CAI's *Community First!* publication (1999), with such wording, "a new paradigm for CA management... McKenzie raises issues relating to his new paradigm, such as how it connects with a communitarian movement emerging in intellectual circles", omitting his statements about the problems with HOAs. Professor McKenzie is an outspoken critic of the private government HOAs since his publication of *Privatopia* in 1994.

"Its [CAI educational materials] overall message is clear: CAs should be managed as a business."

4. An Advocate Responds

Many homeowner rights advocates would agree that planned community developments, common interest properties, provide public interest benefits with respect to affordable housing and the efficient use of land. Their objections are to:

- a) the undemocratic form of governance, the nonprofit corporation charter, without due process, no separation of powers, no checks and balances, and no “bill of rights” protection for the homeowners who are the owners of the HOA;
- b) the use of the mandatory membership HOA that functions as a strict enforcement agency of the community laws as contained in the governing documents;
- c) the absence of state governmental oversight of this privatization of community governance and the reluctance of state legislatures to protect homeowners from abuses by rogue boards that easily occur as a result of these conditions;
- d) the enforcement of a contract between the homeowner and the HOA in which questionable sales and marketing methods are employed;
- e) the use of laws that are favorable to HOAs, that promote the denial of civil liberties to homeowners in order to support an otherwise defective product, and that would fail without these oppressive laws;
- f) the government’s continued support of the HOA model, whose primary purpose was for the financial benefit of private enterprises -- the developer / builder, the real state agent, and the special interest firms that supply services to these HOAs.

Many homeowner rights advocates believe 1) that the benefits of planned communities could be achieved without the HOA model of governance and within the American system of government, with its protection of the rights of its citizens, and 2) that the use of unconstitutional and repressive statutes in order to make the HOA viable, and that interfere with free and open market forces, is unconscionable.

This book, funded by CAI and ULI, describes events that support these views by homeowner rights advocates.