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A BILL OF RIGHTS FOR HOMEOWNERS IN RESIDENTIAL COMMUNITY ASSOCIATIONS

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"A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse." (Thomas Jefferson, 1787)

This is an exploration of the fundamental and the particular rights that accrue to homeowners in residential community associations. This is not a legal document. It is a document based on the traditions of American democracy as they apply to the RCA form of housing.

DISCUSSED HERE ARE A HOMEOWNER'S RIGHTS -

To Property Rights

To a Proper Governance Structure

To Proper Administration

To Participate Fully

To Accountability

To Information

To Rights As a Neighbor

To Constitutional Rights

THE SEARCH TO IMPROVE LIVING IN RESIDENTIAL COMMUNITY ASSOCIATIONS

The central problem of community associations is how to create and maintain a home environment that enthralls owners that their housing needs are met in a superior way by living in a CA. Good management of a small corporation is relatively simple compared to the task of creating and sustaining an enthusiastic community of homeowners. A major part of this difficult enterprise is the balancing of individual rights and collective rights. The individual rights arise from the fact that community associations belong to the homeowners and they have a right to private control of their homes. The collective rights arise from the fact that each must respect the others and that joint action is required to ensure this.

Attendance at conferences and working groups has revealed there is a national search for ways to improve the current situation. The search goes on in legislatures, in Congress, in industry organizations like CAI, in community associations, in the press - and now on the Internet. An underlying theme of this search is how to get the proper balance of individual rights and collective purpose.

These efforts are vital to ensuring that RCA-style living remains an attractive and superior form of housing to a large public. Homeowners organized in associations is a recent housing style. It has wonderful potentials. It needs major revisions to ensure that it is not a short-term style - like so many other experiments in housing.

An important step toward strengthening RCAs is to codify the individual and the collective rights of homeowners. Some of the rights to be discussed are already in law, others are in the process of being put into law, and others are emerging as proposals for discussion. This should not be considered a static listing of rights. There is the constant need to improve, to adapt to basic social changes, to absorb into an association the advanced thinking of professionals, and to respond to legal changes.

RIGHTS ARE DEEP ROOTED

One of the foundations and finest achievements of our country's form of governance is a system of rights of persons that are enforced dispassionately and equally for all persons. These rights cannot be signed away by individuals or denied to them arbitrarily by those in power. The most basic are those codified in the Constitution and in law. These broadly accepted rights are extended and formalized within organizations of all types. There is no place in our society where certain fundamental rights do not apply - in a corporation, a prison, a street corner, the White House, or a residential community association.

HOMEOWNERS MUST DEFEND RIGHTS

Americans believe deeply in these individual rights, in the Constitution and laws that protect their rights, and in the importance of these rights to their welfare. Rights need to be tended to and asserted or they will be violated, eroded, or cease to exist. They must be constantly reaffirmed in ceremonies, in daily practice, and when necessary, in the courts.

In community associations, it falls ultimately to homeowners themselves to define and affirm the rights, protect them, and see that they are enforced. Other groups with interests that may diverge from those of unit owners, such as managing agents and professionals in the housing industry, are actively pursuing their particular interests in the operation of RCAs through their professional associations, through lobbying legislators, and through the courts.

While the topic of "Homeowner Rights and Responsibilities" is frequently presented for discussion - in books, articles, and conferences on RCA management and operations, in state laws, in association by-laws, and in board minutes - the focus of attention consistently turns to the obligations of homeowners, and scant attention is given to homeowners' rights. To date we have found no document that presents a thorough treatment of homeowner rights - such as has been provided for tenants, workers, hospital patients, disabled persons, consumers, children, investors, and others.

A PARTNERSHIP WITH HOMEOWNERS

It is opportune now to advance the formal discussion and codification of homeowner rights, and of the place of homeowners in what must be a

partnership of four principal groups: homeowners, boards, professionals in the housing industry, and the public interest as expressed in government. Associations nationwide are entering a third stage of development of governance. In the first stage the sponsors were the dominant influence. In the second stage many boards became entrenched power centers and professionals in the RCA industry developed strong partnerships with the boards, replacing the power formerly exercised by sponsors.

A third stage is beginning, in which homeowners are becoming increasingly knowledgeable and are seeking a greater role in the partnership and greater recognition of their rights. Legislatures in the major RCA states have responded by specifying in law the rights of homeowners, such as their rights to access to information, open meetings, availability of fair dispute resolution procedures, and appropriate enforcement of rules. Current disclosure of corrupt practices by some property management firms, as reported extensively in the New York Times, is stimulating homeowners to pay more attention to the operation of their property and how the operation of their association impacts on their rights, finances, and lifestyle.

The thrust of these developments is to highlight and to mandate that the purpose of the four partners is the welfare and happiness of the homeowners. Each of the four groups in the partnership has a stake in developing and maintaining a successful RCA housing system. Each group has a particular and important function to carry out. Ideally, an improved partnership will be forged among these four groups, with homeowners assuming the role of full-fledged partners.

SOURCES FROM WHICH HOMEOWNERS DERIVE THEIR RIGHTS

Homeowners derive rights from five principal sources. First, the most fundamental rights are derived from the Constitution. The Bill of Rights (the first ten amendments to the United States Constitution) guarantees rights such as freedom of speech, freedom of religion, due process of law, and freedom from governmental search and seizure. Court decisions have reinforced and extended these rights.

Rights are also stated in many federal and state laws and court decisions. Most particularly, these include the various residential community association laws, which regulate the creation and operation of RCAs, as well as the regulations issued by state agencies to implement and enforce the laws.

The official governing documents of each association - Master Deed, Bylaws, Covenants - enunciate rights and responsibilities for the particular association. In addition, associations generally develop Rules and Regulations governing use of the property. State RCA laws take precedence over an association's governing documents.

Another source is professional and business associations, such as the Community Associations Institute and the American Institute of Certified Public Accountants, which have developed recommended principles and procedures by which community associations should operate.

Finally, social codes have evolved to protect people from abusive and unfair treatment, and to guide how they should relate to others. These include informal, though well established, standards governing relations between

people in a community setting, such as civility, fairness, decency, honesty, courtesy, and respect for privacy. Particular social codes have developed for community associations, based on the legal and social structure of this form of housing. The residential community association form presumes equality, rights to full participation, easy access to information, democratic governance, and formally approved procedures to assure members' rights will not be violated.

"A special respect for individual liberty in the home has long been part of our culture and our law." (Supreme Court Justice John Paul Stevens, 1994)

The intent of condominium law in New Jersey is stated in this way: "The association shall exercise its powers and discharge its functions in a manner that protects and furthers the health, safety and general welfare of the residents of the community." A board of directors is generally established and is given powers to advance this purpose, and while the board may seek to facilitate its work, it may not do so at the expense of compromising this fundamental obligation.

In essence, this is the standard that defines the fundamental right of homeowners and the obligation of those in power. Every action of an association must conform to the standard: Does it promote the welfare and protect the rights of the members of the association?

A PROPOSED BILL OF RIGHTS FOR HOMEOWNERS

1. YOUR RIGHTS AS A PROPERTY OWNER

A condominiums homeowner has these property rights:

A. Exclusive Use of Your Unit

Each unit may be dealt with by the owner in the same manner as is permitted by law for any other parcel of real property. Specific rights to use your unit include these:

Maximum privacy within your unit. The association may enter your home only to maintain or replace a common element or to make emergency repairs necessary to prevent damage to common elements or to other units;
To live in your home free of conditions that materially interfere with your peace, comfort or health;
To bring action for relief against others for a violation that affects your occupancy;
To decorate your unit;
To alter or improve your unit (subject to restrictions);
To mortgage your unit;
To sell or transfer your unit;
To sublet or rent your unit (subject to anti-discrimination laws and the established rules of the association);
To use the limited common elements assigned to your unit (subject to restrictions).

B. Use of the Common Facilities on an equal basis (in accordance with approved rules and regulations).

C. Have the Common Elements Maintained, Repaired, Replaced and Kept Sanitary to an Agreed-Upon Standard

D. Receive All Services Due on an equal basis.

E. Security and Protection from Criminal Acts and Hazards

Vigorous efforts to protect against fire, storm, and other hazards; against any violations of security or any criminal acts; and against any infringements of owners' personal data or other rights;
Reasonable concern for stability of investment values to the extent these are affected by common actions.

2. YOUR RIGHT AS AN ASSOCIATION MEMBER TO A FORMALIZED, PROPER GOVERNANCE SYSTEM THAT IS EMINENTLY FAIR

New Jersey Condominium law mandates that homeowners have a fundamental right to an association government which furthers the well being of the homeowners.

A. The Association Must Be Organized into a Proper Governance Structure

This includes:

A board of directors/trustees of specified number and qualifications, officers, powers and duties, election procedure, term of office, procedure for removal and filling vacancies of directors, and liability;

Meetings with schedule, agenda, notification, minutes, and attendance by unit owners.

B. Procedures for Rule Enforcement

The association will be managed in accordance with association documents and rules, which will be enforced diligently, consistently and equally;
Formal and approved mechanisms for enforcement of rules.

C. Mechanisms for Justice

A basic principle is to attempt to solve problems rather than punish alleged offenders or win a dispute. This would begin with reasonable informal processes before any formal procedures are invoked. The formal procedures include:

A separation of powers so there is justice free from political interference;
Mediation/ADR must be used to resolve complaints and disputes before resort to litigation;

Resolution of alleged rule violations and disputes may not be delegated to a managing agent;

The association will not undertake to resolve alleged criminal actions;
Due Process: The rule enforcement and dispute resolution process must be based on due process. With the sole exception of regular assessment collections, an association must afford each of its members due process before any disciplinary action is taken. Due process requires: The procedures for enforcing rules and settling disputes must be approved and made known; the rules and penalties must be approved and published prior to any enforcement; equal enforcement of rules; written notice of the specific complaint; presumption of innocence; a hearing in a fair tribunal before an

impartial and qualified referee, with the opportunity to see evidence and confront accusers; opportunity to appeal to an impartial forum; no unreasonable penalties.

D. Fair Elections

There must be approved and published Election Policies and Procedures detailing all aspects of elections, including nominating or election committee, nominating procedure, campaigning, notice of election, rules for absentee and proxy ballots, conduct of the election, and vote counting.

The election procedures must have commonly accepted means to prevent irregularities and the perception that irregularities could occur, such as a level playing field for all candidates and a neutral party to conduct the elections.

E. Proper Procedures Will Be Developed With Homeowner Involvement and Will Be Published and Adhered To

Approved procedures are needed to assure the governance system will function effectively and in a manner consistent with law and the needs of unit owners.

These procedures should include the operation of the board, elections, creating and changing rules, rule enforcement, dispute resolution, hiring and firing, employee work schedules, contracts and purchasing, communications, budgeting and auditing, and other necessary procedures.

3. YOUR RIGHT TO PROPER EXECUTION OF POLICIES, PROCEDURES, AND FIDUCIARY RESPONSIBILITIES

A. Homeowners Have the Right to Full and Proper Performance of Duties by the Board

Every board member must follow the procedures designed to advance the association members' welfare;

Every board member must actively perform as a director and may not simply sit and observe.

Fiduciary responsibility may not be abdicated to anyone;

Every board member must see to it that unit owners' rights are protected, and if any right is violated, particularly by an officer, each board member must make every effort to correct the offense to the unit owner and the violation of procedure.

B. Ethical Conduct and Protections Against Corruption and Conflicts of Interest

Board members will use the powers and resources of a director only for advancement of the association and not for any personal gain, whether financial, legal, power in the community, or other benefit;

The association must have a published code of ethics for board members detailing prohibited conflicts of interest and assurances of ethical

conduct;

The managing agent and superintendent must not have a conflict of interest. The managing agent must observe the code of ethics of the industry and association;

The managing agent must give allegiance to all the unit owners of the association, and will show no favoritism to board members.

C. Compliance With Laws

The association will be law-abiding and will:

Comply with legal requirements applying to all parts of society, such as non-discrimination in housing;

Comply with health and safety codes;

Comply voluntarily with legal provisions and recommended procedures for protecting the interests and rights of homeowners, and will not resist complying;

The board will bring the association's rules and procedures into conformance with the state law and with changes in the laws.

D. Careful, Judicious Handling of Association Finances

Honest, careful, and open dealing with association finances;

Adequate safeguards against corruption and enforcement of those procedures;

Detailed and careful record keeping;

Compliance with recommended accounting procedures;

Full and regular reporting to unit owners;

Easy access by unit owners to financial records;

Maintenance of adequate reserves to cover replacement of common elements;

Prompt and vigorous action to collect delinquent assessments;

Appointment of a finance committee with responsibility to oversee all aspects of association finances, including bills, bidding, performance of suppliers, and payroll, and to report to owners and the Board;

Adequate supervision of all vendors and competitive bidding;

Adequate insurance coverage of the common elements.

E. Appropriate, Businesslike Relations With Government Officials

No infringement on unit owners' citizenship rights to work and vote for any political party or candidate in any public election;

The association is not to act as an arm of any political party, faction, or candidate on any level of government.

4. YOUR RIGHT TO PARTICIPATE IN ASSOCIATION AFFAIRS

An open system that gives homeowners a direct say in the political process and that has published rules that encourage broad participation, attracts candidates for the board and committees, that guarantees equal opportunity and provides no special advantage to incumbents and their supporters.

A. Voting Rights

To vote the share allocated to your unit in any election or on any issue brought before the membership. All unit owners who are in good standing are

qualified to vote, and are qualified if they have paid all due assessments and charges;

To elect board members;

To remove a board member or members at any meeting of the unit owners at which a quorum is present, with or without cause;

To approve or disapprove a major capital expenditure;

To approve or disapprove any proposal to amend the governing documents.

B. An Active Committee System

A system of committees with meaningful assignments and utilization of their efforts;

Encouragement and appreciation of committee volunteers;

A system that provides for reasonable turnover in board, committee, and newsletter membership, and broad participation in the association governance structure without harassment or obstacle.

C. An Open and Appropriately Responsive Board which:

Voluntarily, not grudgingly or only under pressure, conducts association business openly under the gaze of unit owners;

Listens with grace and understanding and encourages rather than suppresses unit owner participation and contributions;

Listens to suggestions and critiques of board policies and procedures and of association operations;

Gives prompt response to questions, suggestions, and requests;

Refrains from recrimination, rebuke, intimidation, or retribution in response to suggestions or criticisms of board actions or policies.

D. Right to Exert Influence On Any Association Matter

To petition the board on any association matter, including requests to do something, to not do something, or to change policy or procedures;

To organize and join with other unit owners in forming independent committees;

To conduct surveys, hearings, conferences, or meetings - to inform members of the association and to petition the board;

To publish and distribute independent newsletters, information sheets, or other materials;

To have equal access to be published in an association newsletter.

5. RIGHT TO HOLD THE BOARD ACCOUNTABLE

In all types of organizations in which a few have the power and authority to affect the welfare of others, it has been established that those affected have the right that those in power account for their actions. The essential idea of accountability is that those with power must with diligence and thoroughness routinely disclose the financial and other records and maintain transparency in governing to those whose welfare is affected. Accountability must be built into the system.

In an association of homeowners, some specific forms of accountability are directly required, such as financial audits released to all, while others are stipulated but the precise form of compliance is not specified - provisions

for fair elections, for example. In addition, oversight for accountability

is built into the system through agencies outside the specific organization and which then exercise oversight - by the courts and regulatory agencies, for example. A free press and outside arbitrators in disputes are other examples. In effect, it is essential to have a system of checks and balances.

The right of homeowners to hold those in power accountable through oversight is also realized in relatively simple procedures:

The right to a quick, factual response to an inquiry;

The right that financial and other records will be kept in routine manner, such as inventory controls and check-writing controls;

The right to disclosure procedures which insure easy access to most documents within a reasonable time and without unreasonable restrictions;

The right to be routinely informed in the course of business;

A right that a Book of Resolutions will be kept by the board: an orderly, indexed record of resolutions and procedures adopted by the board, including the date and reasons for the each resolution;

That every position - president, director, newsletter editor, or other - is a scripted position with public knowledge of the obligations and limits of the position.

Unit owners are able to fulfill their right (and responsibility) to scrutinize and hold the board accountable for its policies, actions, and statements and to protect their investment and their home, only if they have full and unfettered access to all forms of information and actions generated by the board, managing agent, employees, and contractors.

6. YOUR COMMUNICATION AND INFORMATION RIGHTS

To meet the requirements of accountability and rights to responsible participation, an association should have a system to diligently and regularly keep unit owners fully informed on affairs of the association and external matters that affect the association, and which includes sufficient opportunities for owner viewpoints to be expressed without retribution.

A. An Objective and Complete Two-Way Communications System

B. Full Disclosure, in Writing, of All Policies, Procedures, and Rules

C. Access to Records:

A right that is unequivocally specified in community association law, association governing documents, and recommended procedures for association operations is access to association records. This includes access to:

Minutes of board meetings. The board must maintain accurate and detailed records of its actions and minutes of all meetings, which must be available for examination by homeowners;

All policies and rules and regulations and changes therein;

Committee minutes and reports;

Financial records. The financial reports of the association should be designed to meet homeowners' needs for prompt, complete, intelligible, and accessible financial information. Financial records include the detailed books of account and supporting vouchers, a chronological record of all receipts and expenditures, monthly income and expenditure statements, the proposed annual budget, a separate account for each unit, the proposed

assessment against each unit and any proposed special assessments, a copy of the certified audit of the association's accounts prepared by a certified public accountant;
Studies and reports prepared for the association, including drafts of those reports, such as engineering studies and lawyers' reports;
Contracts: with the managing agent and other vendors;
Insurance policies;
Records are to be available at the association's office and at reasonable hours.

D. Open Board Meetings, With Notice, Agenda, and Minutes

All meetings of the board of directors must be open to attendance by all unit owners. All board decisions and votes must be conducted in public sessions.

Executive sessions may be held only on certain limited and specific confidential matters;

Meetings must be held at reasonable hours;

Adequate notice of board meetings must be given to all homeowners;

Minutes of the proceedings must be taken at all meetings and copies made available to homeowners before the next meeting;

Agendas for all meetings must be made available to homeowners before the meetings.

E. Freedom of Expression

Freedom to express views in oral, written, or graphic form;

Freedom from interference or political harassment for views expressed;

Opportunity to hear all views expressed without having flow of information from any segment of the association curtailed.

7. YOUR RIGHTS AS A MEMBER AND NEIGHBOR IN A RESIDENTIAL COMMUNITY

The essence of the residential community association form is a community of owners living in mutual respect for each other's rights, which include:

Courteous and respectful treatment by the managing agent, the staff, and other homeowners;

In their conduct as directors board members will not slander the character or motives of any homeowner;

All homeowners will comply with association documents and rules;

Other homeowners will respect and actively support your right to live in peace, as you will respect theirs.

8. RIGHTS DUE ANY MEMBER OF UNITED STATES SOCIETY

A. The Association Must Provide for and Protect All the Rights That Apply to All Americans

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