

ARIZONA CAPITOL TIMES

Legislature fails to acknowledge HOA wrongs

By George Staropoli

Friday, March 21, 2008

At the Homeland Security and Property Rights Committee hearing on Feb. 25, Rep. Doug Clark commented that this bill was “trying to solve a lot of society’s ills.” This astute observation has been long in coming. Still, the Legislature fails to acknowledge the wrongs of the past. The bill has been in limbo since the hearing, and the Legislature has failed to act to protect homeowners against Homeowner Association boards.

HOA boards can operate not as representatives of the people, but as authoritarian, through private agreements that are held as binding contracts, although easily recognized as adhesion contracts. Boards are unaccountable to the state and to the homeowner for their actions, as all public governments are accountable.

I have long held that the fundamental problems that surface year after year are both political and societal, and not simply real estate issues as the special interests ardently strive to confine the debate. In no other area have the laws been so bent and distorted to protect private, contractual enforcement agencies. HOAs have been granted, under the law, powers to inflict financial harm to citizens without adequate due process. In no other area has justice been so perverted and the Constitution so denied to support these private de facto governments as a convenient approach to ease the financial burdens of local government. While it may be arguable that there is indeed a legitimate government interest in such support, it cannot be argued that the means to this end, the denial of the 14th Amendment protections for homeowners, is justifiable.

What does this public policy say about the society in which we live? Does the Constitution still stand as the supreme law of the land, or has the common law of covenants superseded the Constitution? Are we still living in the America of our founding fathers or in a new America where maintaining property values has become the dominant and overriding concern for people living under more and more HOA regimes? Two state Supreme Court cases, *Twin Rivers* in New Jersey and *Inwood* in Texas, have held that, essentially, the restatement of property laws as applied to HOAs is the rule of the land. The restatement states: “The question whether a servitude unreasonably burdens a fundamental right is determined as a matter of property law, not of constitutional law.”

H2724 seeks several substantive reforms to protect not the special interests, but the people, the homeowners who seem to have been forgotten by the legislators. We still hear legislators using the special-interest mantras of “agreeing to abide by the contract” and “interference in contracts” as the rationale to protect these HOAs. Those defenses imply that the state has no business in regulating HOAs to protect the people, the homeowners, as it does with truth in advertising, truth in lending, equal opportunity, etc.

It reflects an unrealistic view that whatever a group agrees to do cannot be touched by the state, that the group can do no wrong. Our Constitution was deliberately constructed in full awareness of the weaknesses of human nature, and that power corrupts and absolute power corrupts absolutely. What has changed with HOAs? Could it be the strong arm of the special interests?

Will the Legislature act to protect the people, the homeowners, by fixing some of the ills of society brought about by the wrongful protection of HOAs?

George K. Staropoli is a long-time homeowner rights advocate and president of Citizens for Constitutional Local Government.