



Activists Must Be Proactive

The Activist's Handbook: a primer, Randy Shaw, (second edition, University of California Press 2001).

A. INTRODUCTION

A serious problem that homeowner rights advocates and activists have failed to correct over the years is the failure to realize that HOA reforms are not a local problem affecting only them or their HOA, but affect society in general. Homeowner rights advocates are in the business of social change on a national level, whether or not they want to be. Just look at how public policy regarding planned communities, homeowner property rights, constitutional protections, and authoritarian private governments dominate the decisions of the courts and the legislators. This public policy has not been seriously challenged for over 40 years, since the promotion of the ULI *Homes Association Handbook* in 1964, and consequently, has been accepted as true, just and proper. This view of a society of private governments unregulated by state laws has been accepted by the policy makers, and is engrained into their beliefs, values and desires. An advocate will not change their attitude, their mindset, by simply holding up the US or state Constitution, or the Bill of Rights, saying, "My HOA board is abusing my rights when they don't let me see the HOA records, and they changed the CC&Rs without following the proper procedures. This is wrong."

Do not be discouraged. It took the US Supreme Court 58 years to reverse the "separation but equal" ruling in *Plessy v. Ferguson*, (163 US 537, 1896) with *Brown v. Bd. of Educ.* (347 US 483, 1954). It can and will be done with respect to homeowner rights because the existing mindset is unjust, unfair, and violates the Constitution. But it will take a focused, coordinated campaign involving the energies of dedicated homeowners.

The following are excerpts from *The Activist's Handbook*:

B. STRATEGIC ERRORS

1. Chief among these is the activists' failure to hold politicians at all levels to their campaign promises.
2. Activists also err when they allow their adversaries to set the terms of the debate.
3. Activists must be proactive. It is only by creating and implementing their own agendas, rather than fighting defensive battles, that social change is achieved.

C. SOCIAL CHANGE

1. Today's activists use strategy and tactics to triumph in their own campaigns for change.
2. Central to all social change activism is the need to engage in proactive strategic and tactical planning.
3. Avoid fighting battles on their opponent's terms by establishing a broad, realizable program for fulfilling your goals.
4. This proactive approach ensures that the social change organization will set the public debate, forcing the opposition to respond to the increasing drive for reform.
5. Activists do think globally, and act locally.

D. WORKING WITH LEGISLATORS AND OTHER POLITICIANS

1. **Focus on results, not promises.**
2. **Pursue your agenda, not the legislators.**
3. Today's activists confront a political landscape in which too many politicians require strong prodding before they will support their agenda.
4. Politicians refuse to give you respect. They don't recognize your dignity. So we must act in ways to get their attention.
5. Groups that become too closely aligned with elected officials invariably see their agendas subsumed to those of the politicians.
6. For activists striving to accomplish social change, an independent stance brings both power and respect.
7. Activists also must let officials know when they are right and when they are wrong. Politicians deserve public credit when they fight hard for fairness and social justice.
8. Today's politicians are uniquely adept at using their power and winning public personalities [advocates] to distract social change activists from their agendas.
9. **Politicians are experts at the psychology of "win-win" – they know how to make supporters feel bad for demanding action instead of promises.**
10. By appointing such [advocacy] leaders to prestigious boards, commissions, or task forces, the politician can display his loyalty to social change constituencies [advocates] without having to act on behalf of their agenda.
11. [This subversion of the activists' agenda] may be served by holding a public hearing to address an activist organization's concerns. Public hearings may even be more effective than task forces in funneling activist energy into the politician's agenda.
12. Social change groups agree to the hearing because it gives them a chance to mobilize their members and is expected to produce some tangible results. There is only one problem: they occur prior to drafting legislation on the subject.
13. **A social change organization, however, rarely achieves its goal through a public hearing.** The real work for accomplishing change – through legislation or public pressure campaigns – occurs after the hearing.
14. If a politician is not committed to fighting beyond the hearing, do not allow said official to reap the publicity benefits of the event.
15. **Focus on results, not promises.**
16. **Pursue your agenda, not the legislators.**

E. WORKING WITH TOUGH LEGISLATIVE OPPOSITION (GKS comments)

A very good example illustrating the extent to which special interests dominated legislatures will oppose HOA reforms took place in the Arizona Legislature in 2006 relating to HB 2824, the “due process” bill. In this third attempt in three years by sponsor, Representative Farnsworth, to pass reforms, this bill, made use of the existing Administrative Procedures Act and the adjudication department, the Office of Administrative Hearings, to resolve HOA complaints.

The bill passed through the House committees with very little opposition from committee members. Then it stalled in the House Rules Committee for three weeks in an unprecedented delay by its Chairman (see Exhibit A). This was followed by similar tactics when the bill moved unopposed in the Arizona Senate until it, too, reached the perfunctory Senate Rules Committee where it again ran into another “brick wall” (see Exhibit B). A failure to pass the bill would kill it. It took the efforts of an advocate, a local CBS-TV reporter, Greg Mocker, and a strong willed sponsor, Rep. Farnsworth, to raise an outcry in the media that the Chairmen had to relent and pass the bill to be voted upon by all the legislators. Both the House and Senate passed HB2824 with very little opposition.

Please keep in mind that it was the actions of the committee chairs who are appointed by the party in power, and take orders from the party in power. Without such party leadership support, the Chairs would be in deep, deep trouble for taking such unprecedented actions. Yet, the rank and file of the legislature agreed with the bill as reflected by their almost unanimous vote. See the following exhibits that reflect the outrage by homeowner rights advocates.

F. GRASSROOTS INITIATIVES

1. Ballot initiatives are increasingly the only viable route left for the attainment of significant social change. The ‘complex public debate’ surrounding the legislative process primarily involves corporate lobbyists and the politicians under their control; the ability to achieve serious social change . . . is increasingly illusory.
2. [Yet], Ballot measures are difficult to pass. Initiative campaigns are costly and time consuming It simply makes no sense to try to pass an initiative if its objective can be accomplished through the legislative process, direct action, or other less daunting tactics.
3. **A significant portion of the voters must view its passage as being in their own self-interest.** Political realists see the world as it is: an arena of power politics moved primarily by perceived immediate self-interest. This noteworthy and altruistic ‘do what is good for society’ theme could not possibly overcome individuals’ [self-interest].
4. **Keep it simple.** Lack of simplicity is the fatal flaw in all too many ballot initiatives. Measures that attempt to achieve too many goals at once “cannot be explained to the voters in one sentence and are defeated”
5. The need to keep it simple does not mean that an initiative’s language cannot be complex. As long as the measure can be explained in one sentence, most voters will not read to review the text carefully.
6. The easiest way to defeat an initiative is to focus on its most controversial points and talk about nothing else. All political sides use this tactic to defeat measures that violate the rule of simplicity. The idea is to ensure that all voters find at least one part of the initiative objectionable.

7. Winnable battles are too often lost due to the failure to understand the importance of political timing: initiatives that require a large voter turnout are placed in off-year elections; a campaign that . . . could not overcome the additional hurdle of an electorate focused on other issues.
8. Activists must accept that every initiative will meet opposition from private industry groups that will spend whatever they deem necessary to maintain the status quo.
9. **All too many initiatives are defeated not because of anything the opposition said or spent but because the expected grassroots campaign never materializes. A grassroots effort is defined by bodies,** not by a shoestring budget and inadequate campaign materials.

G. DIRECT ACTION

1. "Direct action" is more appropriately limited to events that immediately confront a specific individual or organization with a set of specific demands (see exhibits below).
2. Public protests, marches and rallies are important, but they are no substitute for developing a proactive program for social change.
3. Activists cannot allow themselves to remain defensive because of the identity or power of their adversary.
4. Activists can hardly forsake actions against certain enemies for fear of a media backlash (the media sides with your opponent).
5. Knowledge is power. This fact runs as a continuous thread through social change organizations' victories over hostile bureaucracies.
6. The astonishing ascension to power and influence in only a few years is largely attributable to [activist organization's] credibility as an organization that effectively mobilizes facts as well as bodies.
7. Those who personally dislike confrontational politics are more likely to support them after all else has failed. The idea that one's opponents have 'forced' a group into direct action fuels activism as well as militancy.

H. EXAMPLES OF REFORM LEGISLATION

Many advocates overly complicate reform legislation, trying to nail down every conceivable method that the opponents may use to get around the law. Don't presume to have all the answers, or that your answers are the only acceptable ones.

In Arizona this year, independent adjudication of HOA disputes was not accomplished by some 10 -14 pages of proposed legislation that would solve everyone's problems, but by one simple provision:

41-2198. Administrative adjudication of complaints
Pursuant to chapter 6, article 10 of this title, an administrative law judge shall adjudicate complaints regarding and ensure compliance with:

1. The Arizona mobile home parks residential landlord and tenant act.
2. Title 33, chapter 9 and condominium documents
3. Title 33, chapter 16 and planned community documents.

This is the enabling statute that grants OAH the right to hear HOA complaints. It's that simple. The remaining provisions of the bill just add restraints to protect homeowners from the hostile opponents trying to get around loopholes.

This simplicity works both ways. In Arizona, again, a simple single sentence in 1996 took away homestead protections for homeowners in HOAs:

33-1807. Lien for assessments; priority; mechanics' and materialmen's liens
C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. **The lien under this section is not subject to chapter 8 of this title.**

This dastardly sentence hides the fact that "chapter 8 of this title" refers to the Homestead Exemption statute.

One approach to reinstating the Texas homestead exemption.

Today, in Texas, the homestead exemption exclusion can be handled in the same, simple manner with:

TEXAS PROPERTY CODE
Sec.41.001. INTERESTS IN LAND EXEMPT FROM SEIZURE.

- (a) A homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property.
- (b) A Encumbrances may be properly fixed on homestead property for:
 1. A purchase money;
 2. A taxes on the property;
 3. A work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);
 4. A an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
 5. A the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;
 6. A an extension of credit that meets the requirements of Section 50(a)(6), Article XVI, Texas Constitution; or
 7. A a reverse mortgage that meets the requirements of Sections 50(k)-(p), Article XVI, Texas Constitution.
- (c) **No encumbrance shall be permitted for an existing affirmative covenant running with the land at the time of a sale of a lot subject to a declaration of covenants, conditions and restrictions of the subdivision regulations** (taken from Inwood).

(adjust statute enumeration to conform to new provisions)

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Any legislation must address the Texas SC opinion in *Inwood v. Harris*, 736 S.W.2d 632 (1987) that upheld the HOA's right to an "encumbrance", even though not implied or explicitly stated in the Texas Property Code. Advocates must make use of the dissenting opinions of Texas Justices Mauzy and Gonzalez as the basis of their attack on Inwood. The difficulty lies in making the right arguments for this change, those that can be defended against the opposition's use of the laws and court rulings, and the need for the HOA to survive if the exemption, and foreclosure, are taken away from these ineptly operated private governments.

In this writer's lay opinion, the Court used reverse – or perverse – logic in holding covenants running with the land as being superior to the Texas Constitution while ignoring any discussion of the Texas Constitution as being the supreme law of Texas. Discussing Inwood with a respected and former Arizona assistant Attorney General, her view was one of perplexity, stating “where there are differences between common law and the constitution, the constitution prevails.

Simply saying that it is "Not fair", "They stole our rights", "It's unconstitutional", etc will not work. **Advocates need to fill in the missing lines, to make it a legislator "self-interest" appeal.**

I. HOMEOWNER RIGHTS ACTIVISM

1. Campaign Tactics -- Read the *Rules of Engagement* at http://pvtgov.org/pvtgov/downloads/rule_engage.pdf.
2. Historical and background references -- *The Truth About the Emergence and Quiet Acceptance of Planned Communities and Homeowners Associations*, George K. Staropoli, Citizens for Constitutional Local Government, Inc. (unpublished 2006 http://pvtgov.org/pvtgov/downloads/hoa_truth.pdf 10/16/ 06).
3. *Why is there no Bill of Rights to protect homeowners living in HOAs?*, George K. Staropoli, Citizens for Constitutional Local Government. Inc. (unpublished 2006 <http://pvtgov.org/pvtgov/downloads/bofr.pdf>. 10/16/06).
4. *A BILL of RIGHTS for HOMEOWNERS in ASSOCIATIONS: Basic Principles of Consumer Protection and Sample Model Statute*, David A. Kahne (AARP Policy Institute 2006 http://assets.aarp.org/rgcenter/consume/2006_15_homeowner.pdf 10/16/06). (discussion material focusing on the need to protect homeowners with a bill of rights).
5. *California Common Interest Developments – Homeowner’s Guide*, Donie Vanitzian (The Expert Series, Thomson – West 2006). (This 1000 page legal treatise examines California laws from the viewpoint of the homeowner. Vanitzian’s analysis will be useful for the analysis of the laws of every state for reform legislation).

Exhibit A. House Rules Chair opposition

Subj: [hoanet] AZ legislators continue to protect HOAs and deny rights and freedoms
Date: 4/21/2006 7:27:16 AM US Mountain Standard Time
From: starmangroup@cs.com
Reply-to: hoanet@yahogroups.com

I want to thank, at the very start, all those legislators who have fought valiantly and courageously against the moneyed special interests and national lobbying organizations to restore justice for homeowners in HOAs. However, in spite of the recent successes in substantive HOA reforms by the Arizona Legislature, the old attitudes and beliefs, fostered by the special interests, still linger to prevent justice and constitutional protections for homeowners.

Under state law and the governing documents, proper due process to protect homeowner rights does not exist for many reasons. Yet, by some unfathomable logic, the Chair of the Arizona Senate Rules committee can single-handedly block a restoration of due process based on a distorted view of reality. On a CBS-TV, KPHO, interview last night he said, "**There cannot be special laws for homeowners.**" Yet, the bill being held by just this one person, HB2824, seeks to restore due process after proper notice, and a right to a hearing by an independent tribunal where the accused can confront the accusers and to bring forth and question witnesses. The special laws have existed since 1996 not for homeowners, but for the protection HOAs. There seems to be a little confusion here.

This was the second display of power by the Chair of an Arizona Rules committee, the first being only last month by the House Rule chair. Rules committees are essentially rubber stamps of bills passed out of all other committees. The political power plays flaunt the democratic processes given to the elected representatives of the people, by denying floor votes by all the legislators.

Only the influences of the special interests, CAI and its management association offshoot, AACM, can cause such ludicrous statements to be made without any doubt as to their truthfulness. But, it's shocking to hear a respected Arizona Senator make such statements with a straight face. Or, to argue that the administrative law judge procedure is not good for average homeowners seeking justice, a procedure long established in Arizona and in almost every other state. They should go to court, the Senator argues, and ignores the exorbitant legal fees, fees that do not go to helping the HOA itself, but to the "hired hand" mercenaries feeding off the unconscionable adhesion contract, the CC&Rs.

Exhibit B. Senate Rules Chair opposition

Subj: **[Constitutional Local Governments] AZ HOA Bills: What does the House leadership fear?**
Date: 2/28/2006 1:33:21 PM US Mountain Standard Time
From: info@pvtgov.org

OPEN EMAIL LETTER
Feb. 28, 2006

TO: All Arizona House Representatives

What do the House Leaders fear in allowing the HOA bills to be heard by ALL the elected Representatives? Are they afraid that, if passed, that doom and gloom will or a catastrophe upon the State of Arizona will result by granting homeowners the equal protection of the laws and due process protections? These are the same irrational fears that we've heard over and over again by the special interests groups seeking to protect their income streams. What else can it be?

Does the House leadership feel that without the coercive protection of state laws, people will shirk HOAs? That by holding the HOA boards, management firms and attorneys accountable under the law, like any other group or governmental entity, the HOAs will fail? Is the Constitution still the law of the land or can anybody draft a private government contract to avoid the US and state Constitutional protections of the peoples rights and freedoms?

Will the housing industry collapse? Will builders run for the hills? Will people seek the older authoritarian forms of private HOA governance? Or will life go on with the good people living in HOAs feeling that they are now part of the American landscape?

I say let the elected Representatives vote their conscience for which they were chosen by the people. We do not need a dictator group or chairman to tell the people what is good for them. Pass the HOA bills out of the Rules committee and place them on the Active Calendar.

Let our duly elected representatives do their job!

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Posted by Citizens for Constitutional Local Government to [Constitutional Local Governments](http://www.constitutionallocalgovernments.com) at 2/28/2006 01:33:00 PM