

October 9, 2006

Why is there no Bill of Rights to protect homeowners living in HOAs?

Over the years, several homeowners "bill of rights" have been proposed, the latest being proposed by David A. Kahne and published by the AARP Policy Institute. Homeowner rights advocates debate the provisions of these homeowner's bill of rights, and the industry supporters - the lawyers, CAI trade group, and HOA management groups -- have proposed their own version of a bill of rights. In the midst of all these proposals, one advocate wrote, "There is only one Bill of Rights, the US Bill of Rights". I ask, "What is the real bill of rights?"

The US Bill of Rights only pertains to that document called the US Constitution. These Rights are AMENDMENTS to the Constitution, period. The Constitution applies to the federal government, and to state entities only by virtue of the 14th Amendment to the US Constitution. They do not apply to private organizations, such as HOAs, unless the US Supreme Court has declared them so.

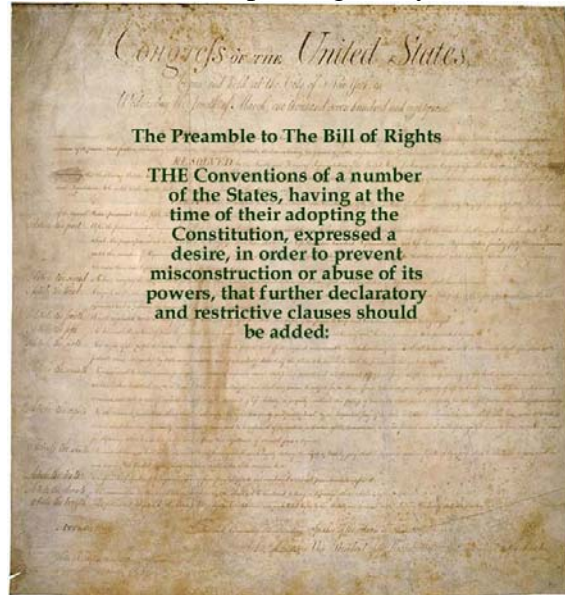
As for HOAs, we have no bill of rights, no amendments, attached to these private constitutions, called CC&Rs, as we have with the US Constitution. However, most states have laws and some version of a Uniform Common Interest Ownership Act (UCIOA), but there are no laws that specifically apply to the UCIOAs or statutes declaring planned communities, as private organizations, subject to the due process and equal application provisions of the 14th Amendment, as it applies to all public governments.

Given this understanding, there are only two courses of action to bring homeowners living in HOAs under the laws of the land: declare HOAs as government entities or state actors, and thereby subject to the US Constitution; or mandate a Homeowner's Bill of Rights that protects the people, the homeowners, and that holds HOAs accountable under the laws of the land. If advocates fight for declaring HOAs as state actors, or government entities, then they can argue for the "real" bill of rights and forget about all these other versions. In the absence of advocate support for declaring HOAs as state actors, we must settle for one of these other versions as a step toward our objective of protecting homeowner rights. The alternative is the status quo -- nothing done.

The UCIOA bill in NJ and the TUPCA (Texas Uniform Planned Community Act) bill in Texas continue to perpetuate the authoritarian, privately stated chartered HOA governments controlling subdivisions that lack a bill of rights. Industry special interests rallied to address my arguments for and the AARP for proposal a bill of rights (see AARP Policy Institute), and said at the Texas hearing, "We put in a bill of rights". Yet, a reader of the TUPCA bill (<http://tupca.org>) will only come across a subchapter on homeowner rights (TUPCA, SUBCHAPTER D. PROTECTION OF OWNERS Sec. 83.151. RIGHTS GUARANTEED) that avoids the political issue of constitutionally guaranteed rights. A proper bill of rights would state just what rights

homeowners have and a statement that no board can remove these rights, as, following the format of the US Bill of Rights:

"No amendment to the CC&Rs, bylaws, rules and regulations, or board resolutions shall be passed abridging these rights without a 2/3 vote of all homeowners after notice has been given to all homeowners. Such notice shall contain a Pro/Con section where any member may submit his opinion on the issue at hand. At the meeting called for a vote on the issue, any member shall have the right to speak freely and openly without harassment, interruption or any other attempt to prevent the member from speaking freely."



And, furthermore, Sec 83.151 of the proposed TUPCA bill should read,

"The Planned Community is, by its nature of regulating and controlling the people within the territory of the planned community subdivision in the same manner as a municipality with its assessments (taxes), rules and regulations (ordinances), enforcement that deprives a person of his due process rights (liens and foreclosure), elections of a governing council (the directors), a state actor and subject to the restrictions of the 14th Amendment to the US Constitution."

Given the complete absence of a bona fide bill of rights protection of homeowners against abuse by the HOA government, why are our legislators supporting private organizations being promoted by business trade groups for their own income streams. As stated earlier, no UCIOA or state statutes for planned communities or condominium associations since 1982, when the UCIOA model act was first proposed, has any such protections for homeowners. And over this long period of time, the special interests have fought to oppose the inclusion of such protections for homeowners. In fact, just this year the Community Associations Institute, that national lobbying organization that promotes these authoritarian forms of government filed an amicus curiae brief warning the NJ appellate court about the unwise extension of constitutional protections to homeowners associations (See *CBTR v. Twin Rivers HOA*, Docket No. C-121-00, (N.J. Super. App. Div. 2006).

Consequently, advocates must ask: What is the legitimate government interest in protecting HOAs that deny homeowners their fundamental rights? And advocates must demand that planned communities be placed under the restrictions of the 14th Amendment, as are all other government entities. The most appealing approach is to declare them to be governmental entities and therefore directly subject the US Bill of Rights and 14th Amendment. Or, that all Declarations incorporate a state imposed bill of rights that duplicates the 14th Amendment protections.

George K. Staropoli, Pres.
Citizens for Constitutional Local Government, Inc.
info@pvtgov.org
<http://pvtgov.org>
602-228-2891