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March 8, 2007

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Preamble to the US Bill of Rights

“THE Conventions of a number of States, having at the time of adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution:”

The planned community Declarations and numerous versions of the Uniform Common Interest Ownership Act (UCIOA) are a far cry from the political theories, values, beliefs and goals that are contained in the US and state constitutions. These Declarations, these private constitutions that control and regulate the behavior of the people within the community, hide behind the laws of equitable servitudes and covenants running with the land, written by profit-seeking private developers with certain benefits for the community and for state and local governments. However, they contain hardly any democratic principal of public governance. Perhaps the only substantive democratic right is the right to vote as a member, which is quickly removed upon a failure of a homeowner to make a timely payment to the HOA.

The Declaration and various state UCIOAs documents are a corporate form of state franchised private governance that obtains its powers and authority to govern based on the application of real estate equitable servitudes. These documents operate as a private constitution over the residents of the HOA community. The HOA government separates the member-owner from the management class of homeowner who have obligations under corporate law, not to the owner-members, but to the fictitious person, the HOA. The homeowners are not treated as owners, but as revenue generating resources to enable the HOA to exist and survive, since it produces no product or service.

None of these documents contain a statement of homeowner rights and protections, while granting broad and unchecked, for all intents and purposes, powers to the HOA board. To hold that “the homeowner has a right to enjoy the amenities” is a fundamental homeowner right is a

grievous distortion of the meaning of “a fundamental right”, lowering it to the level of buying a movie ticket, which gives a person the right to enter and see the movie.

What are the restrictions on the HOA government and the protections of homeowner fundamental rights that must be contained in a Homeowners Bill of Rights? The overriding goal is to limit the powers of the HOA government of planned communities, as our public government is so restricted.

PVTGOV Proposed Homeowners Bill of Rights

1. The HOA is subject to the Fourteenth Amendment to the US Constitution as are all over government entities subject.
2. The HOA, and HOA directors, officers and committee chairs are subject to the municipality and state laws wherein the HOA resides.
3. No “ex post facto” amendments to the governing documents shall be permitted without the consent of all homeowners.
4. The taking of a homeowner’s property rights by the HOA as a result of an amendment to the governing documents or rules and regulations, if any, without a judicial order and without fair compensation is prohibited.
5. The HOA right to foreclose on a homeowner as a result of failure to pay any fines, penalties, costs or other charges not a bona fide assessment is prohibited.
6. Recognizing that the HOA does not stand in the same position as a mortgagor that has a substantial monetary investment in the home, or in the case of a mechanic’s lien where the homeowner possesses greater powers over the mechanic, foreclosure shall not be permitted for amounts less than 80% of the fair market value of the home, with the balance of the sale proceeds belonging to the homeowner.
7. The directors, officers and committee chairs shall be residents and members of the HOA community.
8. ...
9. ...
10. ...

The need and justification for limiting the broad and unchecked powers of the HOA can be found in our political history as far back to the times of our Founding Fathers. These concerns are well voiced in Senator McCain’s address before The Federalist Society, February 2, 2007, provided in part:

The genius of our founding fathers wasn't that they were better people than those who came before them; it's that they realized precisely that they did not have a greater claim to virtue, and that the people who followed them weren't likely to be any more virtuous than they were. That critical insight led them to realize something important about power: if its exercise isn't limited, it will become absolute. Because power always tries to expand. It's a law of nature, of human nature.

As James Madison wrote in The Federalist No. 51, "If men were angels, no government would be necessary. If angels were to govern men, no internal or external controls on government would be necessary.

They enumerated certain baseline individual rights, but instructed that this list was not exhaustive, and they provided that the rights and powers that were not enumerated were reserved strictly to the states and the people.

By limiting government in these ways . . . one individual asserting his rights could stop the entire machinery of government from taking away his freedom.

We are a nation that limits government so that government cannot limit us.