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CAI's HOA "fundamentals" analyzed and "decoded"

CAI has published its "[Community Associations Fundamentals](#)" with the stated purpose that "CAI developed the *Community Association Fundamentals* to foster a better conceptual understanding of how associations function and the roles of residents and association leaders." I will attempt to "decode" and examine what is really being said or not being said with the understanding that the word "fundamental" has the following generally accepted meanings, "forming a necessary base or core" or "of central importance."

Just how does each of these 10 CAI assertions constitute *a necessary base* or *is of central importance* to the HOA legal concept or functioning? I distinguish between fact and wishful thinking. Is the statement factual or a non-factual, prescriptive advice of what an HOA "should be" or what the HOA "ought to be"? From the very get-go the above quote is misleading with respect to "*how HOAs function*," while CAI's understanding of the roles of association leaders is purely *ought to be* advice.

1. Associations ensure that the collective rights and interests of homeowners are respected and preserved.

The paramount, most important, aspect of HOAs is that the collective rights of all the members supersede the individual rights of a homeowner. It stands in contrast to our Constitution where individual liberties come first and may be restricted for the common good. The assertion that associations ensure the collective rights **is socialism at heart**. It does not speak of individual rights of homeowners. If protecting individual rights has been good for America for over 230 years, what's the need for government by collective rights, or socialism?

This assertion is of central importance to the viability and survival of the HOA. Like fascism, individual rights are secondary to the HOA corporate objectives as stated in the CC&Rs.

2. Associations are the most local form of representative democracy, with leaders elected by their neighbors to govern in the best interests of all residents.

This is a "double whammy." First by the CC&Rs contract, and as the CAI HOA lawyers repeatedly inform HOA members, the board must legally operate in the best interest of the **corporation**, a distinct legal entity from the individual members. Note the "all" before "residents". It also reflects *Doublethink*, from the George Orwell *1984* novel whereby

psychological manipulation results in people holding and believing 2 contrary ideas at once. Second, the statement then declares HOAs as a democracy, but then adds the clause about collective rights and not individual rights. That's socialism, not democracy. Just because you can vote doesn't make the HOA a democracy. Ask anyone about Cuba or China, or corporate government, which CAI now claims are fundamental to the HOA.

This assertion is neither factual with respect to representative democracy nor govern in the best interest of the residents. The board is obligated as contractually stated in the CC&Rs to **maintain property values** in the best interests of all members.

3. Associations provide services and amenities to residents, protect property values and meet the established expectations of homeowners.

In this assertion we see more “ought to be” and “should be” than facts. Here we can only assume that the “established expectations” are set forth in the declaration of CC&Rs. It is fundamental for HOAs to provide services and amenities, in some cases, and to protect property values. Strict enforcement of covenants, which is by far the strong point of HOA boards, is not the only factor affecting property values. Nothing is said about board failures to provide for reserves for capital improvements; nothing is said about the numerous complaints about HOA board and manager violations of the CC&Rs and statutes. Both are covered up to protect the image of the HOA.

However, it is questionable that HOAs reflect member expectations. “*Meeting the established expectations*” of the members is laughable. It is a non-fact and a “should be.” Because a person lives in an HOA doesn't mean the HOA meets its expectation, or the expectation of his neighbors. What arrogance! It implies, using the CC&Rs as the basis, that members prefer illegitimate kangaroo hearings; liens for fines; complete loss of his home for “chump change” as compared to the value of his home, when the HOA has not advanced any substantial hard cash; substandard voting and election procedures as compared to public elections; pledging their homes for the survival of the HOA, etc. I find that hard to believe that members would radically deviate from well recognized human behavior to act in their own best interests for the terms and conditions of the governing documents.

4. Associations succeed when they cultivate a true sense of community, active homeowner involvement and a culture of building consensus.

This is not a fundamental basis of an HOA, but a statement of “should be.” The only principle at work here is the recognition that a sense of community is necessary for healthy communities, but the legal structure of the CC&Rs and statutes stand in the way.

5. Association homeowners have the right to elect their community leaders and to use the democratic process to determine the policies that will protect their investments.

While homeowners have the right to vote in a questionable open and free election process, the right to vote is not as available as in the public domain. In an HOA the failure to pay assessments or a fine strips away the member's right to vote, and is not equivalent to the right to vote in public elections. Members owing money to the HOA are treated like a criminal in the public domain. Thus, anyone opposing the board can be subject to fines and prevented from voting in elections to make reforms. While fundamental to good governance, it misleads due to lacking substance in fact.

BTW, has anyone bought an HOA home fully aware that he was 'investing' in the HOA? I thought buyers were sold on buying a home in a highly desirable community, according to CAI, and not investing in a business.

6. Association homeowners choose where to live and accept a contractual and ethical responsibility to abide by established policies and meet their financial obligations to the association.

This assertion has nothing to do with the role of association leaders nor does it even state a "should be" for leader conduct. It's another bias toward the HOA against the individual member. It is an overly broad claim of contract acceptance in regard to contract law 101. Under the HOA biased equitable servitudes real property laws, the home buyer just takes his deed and is bound by the CC&Rs sight unseen. Arguments that the buyer had notice and opportunity to read before signing is, as they say in court, without merit. Not all information material to a full disclosure is provided including state laws (also biased toward the HOA) and the required state HOA/condo disclosure are a mockery of truth in buying HOA property. The private contractual nature of the HOA does not mean all public laws apply to the HOA member, also not disclosed.

Since the contractual nature of the purchase is highly questionable, it follows that any obedience to established policies and financial obligations are also questionable. The HOA comes with unclean hands, as well as those involved in the selling process.

Finally, CAI attempts to create guilt in the minds of the HOA member with respect to ethics, but fails miserably to demand and provide for the enforcement (through its dominance of state legislatures) of ethical behavior by the HOA board and manager. "Ethical" means doing what is right and surely no punishment for HOA violations is far from doing what is right. Is it just and right to maintain kangaroo courts and claim that this is what all the members love? And that members don't need any fair elections protections? Given the HOA's unclean hands, how dare CAI make such a statement?

7. Association leaders protect the community's financial health by using established management practices and sound business principles.

This is outright laughable and shamefully misleading. Another *ought to be*. Whether or not reserves are set up for capital expenditures, even if mandated in the CC&Rs, depends on the

board and the membership. There are no reserves or contingencies for losses from a decline in assessments from budgeted assessments, IF there is even a budget prepared at all. The reserve for losses is a sound accounting practice as set forth in the AICPA (American Institute of Certified Public Accounts) standards – even CAI uses it. So, these practices essential to sound operations, they are far from being adopted. Instead, CAI defends getting “blood from turnips” through a foreclosure process that is only viable under certain circumstances and does not apply equally to all members.

8. Association leaders have a legal and ethical obligation to adhere to the association’s governing documents and abide by all applicable laws.

This is a statement of fact, as specified in corporate and HOA/condo statutes, that is practiced at the pleasure of the HOA board. Since there are no penalties to deter wrongful and unethical conduct these obligations are ignored and amount to a free ride. What homeowner would want to spend their own money, some \$2,000 - \$5,000, to get the board to abide by its duties and obligations? The state doesn’t care and doesn’t get involved. And so the board doesn’t get all excited with guilt feelings at all. HOA obedience is a central core for success.

9. Association leaders seek an effective balance between the preferences of individual residents and the collective rights of homeowners.

Another false assertion as if it were a fact. Nowhere in the governing documents does it say anything like “treating the members fairly”, or “protecting their rights.” It says enforce the CC&Rs — absent the words “evenly” and “fairly” — and maintain property values. If the CC&Rs say anything about the general welfare it simply means setting rules for an orderly community – how to pay assessments, when to use the amenities, etc. Furthermore, in contrast to what is expected with public government, the HOA does not have to be charitable, just, considerate, or compassionate. See also (2) above.

10. Association leaders and residents should be reasonable, flexible and open to the possibility— and benefits—of compromise, especially when faced with divergent views.

Note the outright prescriptive advice in this statement. However, it is a not factual statement; it acknowledges the failure of such conduct by the HOA. While it is of fundamental importance to a healthy community, it is rarely found in real life. I cannot recall in my 14 years advocacy an HOA compromising with residents. They may drop the complaint, but that’s not compromising, just accepting that they won’t win.