



January 31, 2008

Things are heating up in Florida. The first hearing of the House Select Condo/HOA Committee was held this past Saturday, lasting over 5 hours with some 200 persons in attendance. Tomorrow, Cyber Citizens for Justice, the Florida based homeowner rights group, will be holding a 2 session conference with speakers from within Florida and outsiders. I was not asked to speak at this conference, but I plan to speak before the Select Committee.

Over the past 2 weeks I've distributed important historical and legal information relating to the promoters and their mass merchandising of associations, the aims and goals of CAI, analyzed a few of the more onerous Florida statutes, and made recommendations to the Committee. These materials can be found by visiting my web page and clicking on **Florida-2008**.

Obtaining substantive legislative reforms in any state is an up-hill battle. I've been involved in legislative reforms, mainly in Arizona, for 8 years and it's quite evident that ALL state legislatures are under the thumb of the special interests, and have adopted a policy of protecting the HOA. The

legislators, and many advocates, seem to exhibit fears that by pushing for these reforms -- that go to the very legal basis of homeowners associations -- will result in their disappearance.

It's like they believe that all the legislators in all the states will wake up one morning, rush to their windows and shout, **"I'm, mad as hell, and I won't take it anymore! Down with condos and HOAs!"** I wish I had that power, that influence.

In Florida, this protection of HOAs is reflected in an email by the committee staff director, who wrote,

From an economic and policy standpoint, if associations were to lose the right to foreclose upon their assessments it is believed that many associations would suffer great economic harm and perhaps would be forced to cease operations. Were that to happen, honest owners who had paid their assessment could be harmed when their common areas (roof, building supports, roads, and landscaping) would fall into disrepair.

This is standard CAI, heard in several states.

Most legislative reforms have only resulted in more and more legislative micro-management of associations in an attempt to achieve justice and fair play. And the more the legislature imposes conditions on the day-to-day operations of the associations; the more and more likely will the courts view these associations as state actors and hold them to the laws of Florida.

The desire to obtain justice and fairness can only be attained by substantive reforms to the state laws and covenants that have created oppressive regimes, operating under their own “constitutions” – bring them back under the constitution and laws of the land. For better or worse. Some 44 years of attempting to write a form of governance better than the US Constitution has been a fruitless endeavor and a miserable failure.

As an example of the need for reforms to the legal basis of HOAs is the need to foreclose on “deadbeats”, as people behind in their assessments have been repeatedly stereotyped. The staff director also wrote, “*Condominium and homeowner association liens are valid consensual liens on real property, and are subject to foreclosure if not paid.*”

First, the foreclosure is a statutory lien, one imposed by Florida law. (FS 718.116 “(5)(a) *The association has a lien on each condominium parcel to secure the payment of assessments*”). In my layman’s view, the holding that these liens are consensual comes from a statutory redefinition of what a mortgage is, and a statutory provision that the assessment can be foreclosed as a mortgage, so therefore, the HOA can foreclose on the home. (See my Tips for reforms in my materials).

Now, it’s not hard to accept that the state has an interest in keeping associations from failing, but is very hard to accept the state will do so by

denying homeowners their fundamental civil rights and liberties, and allow the HOA boards a free-hand without accountability to the state. And in order to accomplish this, a new set of laws for the governance of a community had to be established by the state just for this category of homeowners. These condo and HOA statutes created separate and unequal laws within the state.

Why do condos and Hos need the draconian right to foreclose? Aren't there existing, sound AICPA methods for the sound management of these nonprofits? How do cities and towns manage to survive difficult times? Surely, they do not foreclose themselves out of existence. Or is it simply an arbitrary and convenient method to intimidate homeowners into paying without arguing the legitimacy of the right to foreclose?

If the homeowners' conference, or the committee hearings are to be successful, advocates and homeowners must address the basic legal foundation of these associations, not be afraid to openly discuss them, and ask why the inequalities are permitted to exist.