

Dear Committee Members,

This position statement as a homeowner rights advocate was emailed as a “friend of the committee” to help you in your discovery of conditions within the condo/HOA industry in Florida. I have been active in homeowner association reforms since 2000, and I am a nationally recognized homeowner rights advocate. I founded Citizens for Constitutional Local Government to help communicate the “other side” of living in a homeowners association to state legislators, public officials, the media and the public in general. I believe the role of the Community Associations Institute (CAI) in the marketing, promotion and resistance to substantive homeowner rights reforms is not well understood.

I would like to focus your attention on the broader picture of the conditions and environment under which HOAs/Condo operate, and under which good people are bound to live at the suffrage of the board. Neither the covenants nor current state laws protect the rights and freedoms of those living in HOAs as the law does for those not living in an HOA or a condo. And, in order to arrive at a sound and just finding and recommendations, the history and role of the promoters and supporters of homeowners associations must be understood.

Please take the time out of your busy schedule to read this writing, or have your staff read it and report to you. The decisions of this committee will affect millions of people living here in Florida.

I plan to email this position statement in 4 parts, not necessarily in order. This first email is section G:

George K. Staropoli

G. Summary: Why are there problems with HOAs/Condos?

Could it be that,

1. homeowners were ignored in HOA legislation? Evan McKenzie wrote, *"Yet the delegation of governmental powers to private entities was done without adequate provisions for accountability. (p. 183). "Second, the public at large . . . is particularly exposed to failures by authorities to take into account their interests." (p.182).*
2. in spite of the statements about creating vibrant and healthy communities, HOAs *"elevate rules and regulations above the social fabric", and the "law, instead of serving the community, is elevated above it"?* (*Privatopia*, p. 146).

3. the courts see no problem with CC&Rs that are held to be binding without the buyer's explicit consent and full knowledge, and that are unconscionable adhesion contracts?
4. the HOA/condo governing documents establish an authoritarian form of private government that is inconsistent with the requirements of a municipal charter, and does not require any such approval or acceptance by the legislature as is required for municipality incorporation?
5. the governing documents do not protect homeowner rights within the governing structure, as his rights are protected under the Florida Constitution? There are no checks and balances. There is no separation of powers. There are no penalties against HOA/condo "government" officials if they violate the governing documents or state laws. There is no fair election oversight.
6. the people – the homeowners – have been rendered powerless? *"the balance of power between the individual and the private government is reversed" in HOAs. . . . [T]he property rights of the developer, and later the board of directors, swallow up the rights of the people, and public government is left as a bystander.* Consequently, *"this often leads to people becoming angry at board meetings claiming that their 'rights' have been violated – rights that they wrongly believe they have in a [HOA]."* (Privatopia, p. 148).
7. there are no notices that protect consumer homebuyers warning of the political and legal consequences of their purchase that are inconsistent with any preconceived understanding of their rights and the protection of those rights, because the HOA/condo regime is inconsistent with our American form of democratic governance?
8. the statutes do not provide penalties for HOA violations of state laws or the governing documents? This is inconsistent with fundamental American understanding that all governments must be restricted, and so we have a Bill of Rights to protect the people, and an enumeration and restriction of governmental powers. But, HOA declarations can say and do almost anything the developer pleases.
9. the Florida statutes supports these private governments and aids and abets them with coercive statutes that penalize homeowners in these regimes? Foreclosure for small amounts constitutes excessive punishment. There can be no consensual lien on the property for nonpayment of assessments, because there has been no granting of collateral in exchange for any money by the HOA/condo; the removal of homestead protections
10. the courts insist that assessments be paid even though there is a disagreement over these payments, which is contrary to fair debt protection procedures where the failure to make such payments cannot be acted on if the creditor is properly noticed?
11. for all the above reasons, homeowners feel alienated from their government, frustrated, powerless and very angry?

Someone said that, **"There cannot be change without change"**.
 My backgrounder ...