ARIZONA SUPREME COURT

CHRISTINE GELB, a single woman,

Appellant,

vs.

DEPARTMENT FIRE, BUILDING, AND LIFE SAFETY, a political subdivision of the State of Arizona; **SEDONA CASA CONTENTA HOMEOWNERS ASSOCIATION, INC.,** an Arizona nonprofit corporation,

Appellees.

Supreme Court
Case No. CV 10-371-PR

Court of Appeals
No. 1 CA-CV 09-0744

Yavapai County Superior Court
Case No. V1300CV820080197

AMICUS CURIAE BRIEF OF GEORGE K. STAROPOLI IN SUPPORT OF PETITIONER

George K. Staropoli's *amicus curiae* brief in support of the Petitioner.

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I. Interest of Staropoli

Staropoli should be granted leave to file the amicus brief for the following reasons. Staropoli lives in an HOA and will be affected by the decision of the Court. He is also a 10-year homeowner rights advocate seeking the restoration of constitutional protections to all de facto, yet unrecognized, private community governments, known as "HOAs", to which all civil government entities are held. These subdivisions are governed under a corporation form of government by a board of directors, generally known as the "HOA."

As the authority of the HOA derives from an alleged private agreement, that denies its homeowner members the equal protection of the law and due process protections. The unique and distinguishable aspect that separates a government or political "state" from other organizations is that, "Modern states are territorial; their governments exercise control over persons and things within their boundaries." See commentary under "state" in Black's Law Dictionary, 7th ed. And if the statute in question is found to be unconstitutional, as lower courts have held, how can HOAs not be held as state actors on the basis of the U.S. Supreme Court's criteria for state actors/actions, summarized in *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n,* 531 U.S. 288 (2001).

II. Reasons for acceptance of Staropoli's amicus brief .

Staropoli provides this *amicus curiae* brief to assist the Court in understanding the broader political and social environment created by the lack of constitutional protections for citizens seeking justice from private government HOAs. He has followed this issue was involved in the successful efforts to level the litigation "playing field" for HOA complaints as contained in the Ariz. Sess. L. Ch 324 (2006) (HB 2824). Staropoli is the founder of the ten year old internet advocacy group, *Citizens for Constitutional Local Government* (http://pvtgov.org), and has appeared in the media and before state legislative committees in Arizona and across the country supporting HOA reforms. [Appendix, p. 1].

The institutionalization of HOAs over 44 years has resulted in commmon myths and misconceptions about homeowners associations, and in the unquestioning acceptance of their legal structure with their unconscionable adhesion contract declarations of CC&Rs. Just filing with the county clerk's office is sufficient to bind the home purchaser to a loss of his freedoms, rights, privileges and immunities as a citizen. This misconception is the result of the misrepresentation in the sale and advertising of HOA communities and in consumer protections. There are no consumer protection warnings and notices such as "truth in lending" and "truth in advertising." The Attorney General's

office refuses to act on homeowner complaints [Appendix, p.2] as if no injustices are being perpetrated, although the AG has been granted broad consumer protection powers relating to real estate [Appendix , p.3]. The Real Estate Dept (ADRE) has failed to enforce its Commissioner's Rule [Appendix, p.4] that, "A licensee participating in a real estate transaction shall disclose in writing to all other parties any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction . . . ." A.A.C. R4-28-1101(B), Duties to Client [Appendix, p.5]. All of which raise serious issues of consent with full knowledge of life within the HOA regime.

In the absence of any public information to the contrary, what are people to believe? One definitely gets the feeling of an unspoken alliance of "no negatives about HOAs" with the active participation by the State of Arizona to further advance personal agendas against the general interests of the public. An estimated 23% of the population [Appendix, p.6] who live under the rule of these private governments will be affected by the decision of the Court.

Staropoli also attempted to file an intervenor motion [Appendix, p.7] in *Phoenix Townhouse HOA v. Ariz. OAH,* LC 2008-000740 (Maricopa County Superior Ct., Jan. 28, 2009), which included the brief filed by the Attorney General's Office in favor of constitutionality of the statute. *Troon Village HOA v. Ariz. DFBLS*, LC2007-000598 (Maricopa County Superior Ct., Oct. 2, 2008). The

AG's Office as attorney for DFBLS remained a nominal party. [Appendix, p.8].

Troon was the first case in this string of three cases: *Troon*, *Phoenix Townhouse,* and *Gelb.* Staropoli's motion was denied without reason [Appendix, p.9]. *Phoenix Townhouse* was a default decision with "nobody saying nuthin" in defense of the statute. Staropoli's request for a reason for the denial in his "new facts" letter also included new information regarding the status of the DFBLS Petitioner, Robert Meritt. Meritt, and only Meritt, was the real party in interest (there's no explanation as to why John Hernandez was added as a Plaintiff, except that he was the initial co-owner) and no longer had standing to sue since he left the HOA on Oct. 10, 2008 [Appendix, p.10-11] and the superior court appeal was filed on Oct. 23, 2008. The letter was met with a minute entry that his material be stricken and no more documents are to be accepted from Staropoli. [Appendix p. 12]. The superior court *Phoenix Townhouse* decision was the rationale for the Motion to Dismiss filed in *Gelb*, as affirmed by attorney Smith (Response, p.3), leading to the issue before this Court.

In April 2010 the legislature, most likely in response to Staropoli's repeated internet posts on the failure of the appropriate state officials to file briefs in this matter, passed a bill that declares that these officials cannot be compelled to submit briefs in questions of constitutionality. Staropoli dubbed this bill the "Take That George!" bill. Ariz. Sess. L. Ch. 105 (2010).

III. Issues Presented

A. Did the appellate court err in the misapplication of law and exhibit a bias in its focus upon and in its evaluation of legal authority in support of a "nexus"?

B. Did the appellate court introduce political elements into its analysis leading to its opinion?

1. When in its analysis it offered that even governmental officials failed to defend the statutes at issue indicating support of the court's position?

2. Was the challenge of statute constitutionality a political question brought on by the HOA attorneys in their capacity of members of a national lobbying organization?

IV. Arguments

A. Did the appellate court err in the misapplication of law and exhibit a bias in its focus upon and in its evaluation of legal authority in support of a "nexus"?

The Petition answers this question quite well in the affirmative. It appears quite apparent that the appellate court had focused on a desired out come, "no nexus", and did not form its opinion on the basis of all the "evidence", the legal authorities, that it itself quoted in its opinion. The failure to find this necessary nexus caused the court to declare that while "The HOA bears the burden of overcoming this strong presumption of constitutionality" (¶ 11), it nevertheless concluded that, "In accordance with well-established legal authority, the HOA has

overcome the presumption of constitutionality" (¶ 24).

The court compared the HOA authority with mobile home landlord tenant act authority and found distinct differences between the two in regard to regulation functions. The court argued that "Unlike mobile home parks, Arizona has never established a regulatory framework for planned communities within the DFBLS . . . ." (Opinion, ¶ 18), and "Nowhere in this express purpose is the DFBLS authorized to regulate planned communities in any respect." (Opinion, ¶16). Furthermore, as to the purpose of DFBLS, the court's quote of A.R.S. § 41-2141(A) does not speak of mobile landlord tenant authority or HOA authority. It is quite generous to equate mobile home safety and construction with rental agreements. In fact, the grant of authority to DFBLS in regard to the landlord act lies in A.R.S. § 41-2198 and is identical to that for HOAs, although one explicitly contains the word "Act" and no specific reference by Title and Chapter, and the other does not mention Act but specifies the title and chapter, as well as to the governing documents. In fact, nowhere under Chapter 16 of Title 41 governing DFBLS can any reference to the landlord tenant be found, except for § 41-2198 as stated above. In fact, the word "regulate" does not appear at all under A.R.S. § 33-1402, Purposes of the landlord tenant act. However, under subsection 1, the authority to "establish the law governing" would seem to be more of a concern for a violation of the separation of powers doctrine than the grant of HOA authority

confined to existing laws and governing documents.

The appellate court's distinction between its perceived differences in regulatory authority between the authority granted the mobile home landlord tenant act and the authority granted under the condo/planned community acts is not supported by an examination of the relevant statutes.

B. Did the appellate court introduce political elements into its analysis leading to its opinion?

1. When in its analysis it offered that even governmental officials failed to defend the statutes at issue indicating support of the court's position?

Staropoli is at a loss to understand why the appellate court found the need to introduce alleged attitudes and opinions by government officials, the DBFLS, the Attorney General, and the President of the Arizona Senate and Speaker of the House because they chose not to take part in this issue with broad application to the Arizona homeowners. The court offered these as evidence in support of its position on the need for a nexus. "The DFBLS itself has taken action consistent with this conclusion" (Opinion, ¶ 22); "Neither of these officials [legislators] sought to be heard in this proceeding" (Opinion, footnote 5); and "These actions -– by DFBLS based on its own experience -- are consistent with our conclusion that the Administrative Process creates a constitutionally improper mingling of separate departments" (Opinion, ¶ 22).

However, the citation, "*Id.* at 405, 690 P.2d at 124" is vague and confusing, referring to the *Hancock* case. Yet ¶ 22 addresses two prior cases that were found to have "violated the Arizona Constitution"s separation of powers provision" and, as a result, "The DFBLS did not appeal in either case and, in January 2009, the DFBLS 'completely discontinued processing any claims' under the Administrative Process." The only two cases that come to mind are the *Troon* and *Phoenix Townhouse* cases and not *Hancock*. Neither of these superior court cases are explicitly identified nor serve as precedent.

What was not introduced or identified are several important facts bearing on the attitudes of the officials in question, including the judicial branch. In *Troon*, the Attorney General did file a brief supporting constitutionality. "For all the foregoing reasons, the Attorney General requests the Court to uphold the constitutionality of A.R.S. §§ 41-2198 to 2198.05." THE ATTORNEY GENERAL'S BRIEF IN SUPPORT OF THE CONSTITUTIONALITY OF A.R.S. §§ 41-2198 to -2198.05, June 13, 2008, p. 11. The only mention of this brief in the *Troon* decision was a quote from the HOA's brief (also used as the basis of the court's conclusion) to justify its made-up-mind: "the Attorney General's office fails to identify a single way in which the [Department] actually exerts regulatory authority over planned communities." In fact, the *Troon* and *Gelb* analyses parallel each other quite closely – the search for the elusive nexus that would

change the court's opinion in favor of constitutionality.

After reading the AG's brief, the immediate question that comes to mind is: Why did the Attorney General opt out and not continue to support constitutionality? And, was Staropoli's attempt to introduce AG's brief in *Phoenix Townhouse,* a default decision, the real, unstated reason for his denial? Was the order to strike his letter on the standing of the real party in interest, Robert Meritt in *Phoenix Townhouse* an attempt to silence him?

In February 2007, just five months in operation and after a handful of petitions were filed, DFBLS raised the $550 filing fee for HOA petitions to $2,000 (revised to $550 for a single and $2,000 for multiple charges in April) without complying with the APA statutes on rule making, which required a public notice and a hearing. A.R.S. §§ 41-1001 *et seq*. [Appendix, p. 13]. This action indeed reflected a hostility to HOA adjudication by DFBLS, and an attempt to set a high bar to dissuade Petitions from being filed. (The filing fee for the landlord tenant complaints is only $50. Http://www.dfbls.az.gov/userfiles/files/housing/ltapetitionpacket.pdf).

Nor is there any introduction of events relating to the actions of the Speaker of the House and Senate President in regard to their holding HB 2824 in the respective Rules Committees for weeks in a personal attempt to prevent a floor vote by our elected representatives. Almost all bills pass through Rules in a matter

of a few days. In the House, the bill passed out of JUD on 2/16 and out of Rules on 3/7 (19 days), passing with a 53 – 1 floor vote; in the Senate it passed out of GOV on 3/30 and out of Rules on 4/27 (33 days), passing with a 28 – 1 floor vote. Conference committees were appointed on 5/6 and the final House vote was 44 -1 on 6/6, (31 days later) and the final Senate vote was 18 -3 on 6/8.

Why did the appellate court introduce biased personal views as justification for its decision, without ascertaining the complete facts of the matter?

3. Was the challenge of statute constitutionality a political question brought on by the HOA attorneys in their capacity of members of a national lobbying organization?

Scott Carpenter, principal in CHDW, the law firm representing the HOAs in *Troon, Phoenix Townhouse* and *Gelb*, is a long standing honored member of the national trade organization, Community Associations Institute (CAI). In 2005 CAI no longer accepted homeowners associations as a membership category. (See *HOAS no longer accepted for CAI membership*, George K. Staropoli, Constitutional Local Government, June 25, 2005. at http:// pvtgov.blogspot.com/2005/06/hoas-no-longer-accepted-for-cai.html). CAI's lawyer members include all of the partners of the Appellee's law firm, CHDW. (See CHDW web page, attorney bios at http://www. carpenterhazlewood.com/ people).

This Petition flows directly from the long opposition of CAI and CHDW to the equal protection of the laws for homeowners, that includes CHDW's involvement in two prior trial court cases seeking the demise of DFBLS acceptance of HOA complaints. The relevant question here, if indeed there is no personal agenda by the CAI attorneys, Jason E. Smith (also a member of CAI) and CHWD principals, is why would the OAH decision in favor of the HOA be challenged with respect to constitutionality? The ALJ had decided in favor of the HOA and a challenge would have a good chance, in light of the *Phoenix Townhouse* decision, to upset the ALJ ruling.

As argued in the Petition, the HOA did not raise a timely challenge to the statute. The chain of events is as follows: the *Troon* court denied an extension of its injunction against DFBLS to all HOAs and not just *Troon*. *Phoenix Townhouse*, a default decision, provided this broad expansion to all HOAs, but the superior court decision was not precedent setting as *Gelb* turned out to be. The *Phoenix* reaffirmation of the injunction, which came on Feb. 24, 2009, was too late for a proper challenge in *Gelb*, and just 10 days before the motion to dismiss on constitutionality grounds was filed. This belated challenge of March 6, 2009 occurred three days after Staropoli's “new facts” letter in *Phoenix Townhouse* was ordered stricken.

Carpenter has served for several years as the local CAI Central Chapter

Legislative Action Committee (LAC) chair. Earlier due process reform legislation in 2004 (HB 2377) and in 2005 (HB 2144) sought meaningful revisions to Justice of the Peace Court adjudication of HOA disputes. In 2006, Carpenter, opposed HB2824, the bill creating the statutes in question. [Appendix, p. 14]. Note that item 10 reflects an awareness of potential constitutional problems: "Disputes about . . . ALJ's authority." The attitude of the CHDW lawyers reflects the same attitude evidenced by CAI national in its Twin Rivers rejection of the US Constitution, and a desire for private HOA governments to be independent from federal and state controls, and functioning as true principalities, but on a local level.

However, no constitutional challenge appeared until after about one year and some 28 cases were heard, and a publication of the resulting OAH statistics (and not the first instance of the appearance by CHDW attorneys at DFBLS). Staropoli first published these success statistics on August 3, 2007 on his blog, *Arizona HOA Case Reviews* (http://azhoaoah.wordpress.com/2007/08/03/oah-stats-update/). [Appendix, p.15]. These statistics revealed a 44% victory ratio for the homeowners, which on subsequent analysis reduced to 42%. Why did CHDW undertake the first of these three challenges on Sept. 24, 2007 in *Troon,* one year later and just six weeks after the publication of the stats?

It is evident that CHDW's mission was to halt a fair and just hearing in their own self interests as loyal CAI members, even in regard to limited matters of

specific, black letter violations of the law and contractual documents. Questions relating to tort and common law violations under the Restatement Third, Property: Servitudes (2000) by HOA boards and managers were off-limits. History has shown that compliance with rules and regulations inconsistent with human nature and one's social and political system of freedom and liberties, especially in regard to private property rights, can only be attained through intimidation and coercion as found with other authoritarian regimes. CAI attorneys had to win, and win big.

The denial of a just and practical means of attaining justice has been denied to homeowners within HOAs, and is in keeping with the CAI attitude toward compliance with the U. S. Constitution as expressed in its *amicus curiae* brief in Twin Rivers. "In the context of community associations, the unwise extension of constitutional rights to the use of private property by members (as opposed to the public) raises the likelihood that judicial intervention will become the norm . . . ." Amicus Curiae brief to the NJ appellate court, *Committee for a Better Twin Rivers v. Twin Rivers HOA*, 890 A.2d 947 (N.J. Super. Ct. App. Div. (2006), p. 19, (Twin Rivers homeowners had challenged the restrictions on their first amendment free speech rights by the HOA).

V. Conclusions

It is quite evident that an Arizona homeowner living within an HOA

governed subdivision cannot look to the Attorney General, the Legislature, DFBLS, or ADRE for due process protections and the equal application of the laws. Even the lower courts are suspect. With all due respect, it remains to this Court to stand behind the promises and covenants between our system of government and the people as set forth in the U.S. and state Constitutions.

The issues before this Court are serious questions of the adjudication of HOA disputes by an independent tribunal in a "leveled" hearing process that permits the confrontation and questioning of witnesses and the presentation of evidence. The DFBLS procedure requires, as with a civil action, a statement of violation of law that is not currently required under the HOA "notice of a hearing and the opportunity to be heard" mockery of justice procedure, a procedure that encourages an "unconstitutional" taking of private property by private corporate entities.

For the foregoing reasons, the Court has no alternative but to reverse the appellate court opinion and quash the *Phoenix* injunction against hearing HOA disputes by DBFLS. If indeed the other branches of government are of the opinion that the statutes in question are unconstitutional, then they, and especially the only branch with the power to do so, the Legislature, can easily undertake a repeal of the alleged undesirable statutes. But, they choose to remain silent under the "unspoken alliance". This Court must act in the name of the people.

Respectfully submitted,

_____

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CERTIFICATE OF COMPLIANCE

I certify that the attached *amicus curiae* brief uses proportionately spaced type of 14 points or more, is double-spaced using a roman font (Times New Roman) and contains 3,465 words.

DATED this 7th day of January 2011

_____

George K. Staropoli

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing *amicus curiae* brief was filed and served on this _____ day of January 2011 as follows:

FILED: Original and seven copies delivered to:

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_____
George K. Staropoli

APPENDIX

George K. Staropoli

Mr. Staropoli is an Arizona resident who has been active as a homeowners rights advocate since April 2000. He has appeared before a Nevada Legislative committee, the Arizona HOA Study Committee, and testified many times before several Arizona Legislative committees; has been active in submitting homeowner rights issues to the legislators, the media and the public. His opinions and views have appeared in the national media: *Kiplinger's Personal Finance* magazine, *CNN/MoneyOnline* and in the *New York Times*, *L.A. Times, Palm Beach Post*, as well as on local TV news and in the *Arizona Capitol Times*. Mr. Staropoli has been quoted in *Private Neighborhoods and the Transformation of Local Government (2005)*, AARP Policy Institute *Homeowners Bill of Rights* proposal (2006), and acknowledged in the Thomson – West legal treatise, *California Common Interest Developments – Homeowner's Guide (2006).*

In 2000 he founded and is president of the nonprofit **Citizens for Constitutional Local Government, Inc,** Scottsdale, AZ, a nonprofit organization seeking to inform the legislators and public about common interest property issues and to expose the prevalent myths and propaganda about carefree living in an HOA. *Citizens* believes in supporting principles of American democracy.

George is author of ***"Understanding the New America of HOA-Lands"*** (eBook, 2010), ***"Establishing the New America of independent HOA principalities" (2008)***, and he is author of *The Case Against State Protection of Homeowner Associations* (2003) . The author, a veteran homeowner rights activist, makes his case against state government protection of homeowner associations. He documents, using his appearances before the Arizona Legislature, state legislative hostility toward upholding the civil liberties of homeowners with their broad, misguided interpretation of "private contract" prohibitions, and the use of statutes that favor the HOA.

His StarMan Publishing, LLC produced a 42 minute DVD, *Somewhere Over the Rainbow* (2004), of the Arizona Legislative session documenting the loss of homestead protections and the right of the HOA to foreclose, and a 2 volume, 4 disk DVD series, *Homeowner Rights Advocacy 2006* (2006), documenting homeowner rights advocates at legislative sessions in Arizona and Texas.

Mr. Staropoli was a member of the CEO Club, NY, NY; served as Treasurer and board member of a Penn. HOA; and was a board member of the Valley Citizens League, Phoenix, AZ. He holds a MS in Management from Polytechnic University, Brooklyn, NY.

Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Consumer Information & Complaints
602-542-5763
(In-State Toll Free Outside of the
Phoenix and Tucson Metro areas)
800-352-8431

April 13, 2010

ROBERT SWINEHART
10329 SPANISH MOSS LN.
SUN CITY, AZ 85373

RE: CIC 10-05336 SPANISHBROOK CONDO ASSOCIATION

Dear Robert:

The Consumer Protection and Advocacy Section of our office recently received your complaint against the above-named company. Unfortunately, the problem you complained about is not within our jurisdiction.

Our office enforces the Consumer Fraud Act, however, the Act does not allow our office to pursue private disputes. Our office represents the state of Arizona and cannot act as a private attorney for individual citizens. This means that we cannot provide legal advice, opinions, or interpret Arizona law for individuals.

We are not in a position to determine whether your complaint has legal merit. If you need assistance in locating an attorney, you can refer to the yellow pages of your telephone directory or call your County Bar Association, Lawyer Referral Service in Maricopa County at (602) 257-4434 and in Pima County at (520) 623-4625.

We regret that we are unable to assist you. We do wish to thank you for bringing possible violations of the Consumer Fraud Act to our attention.

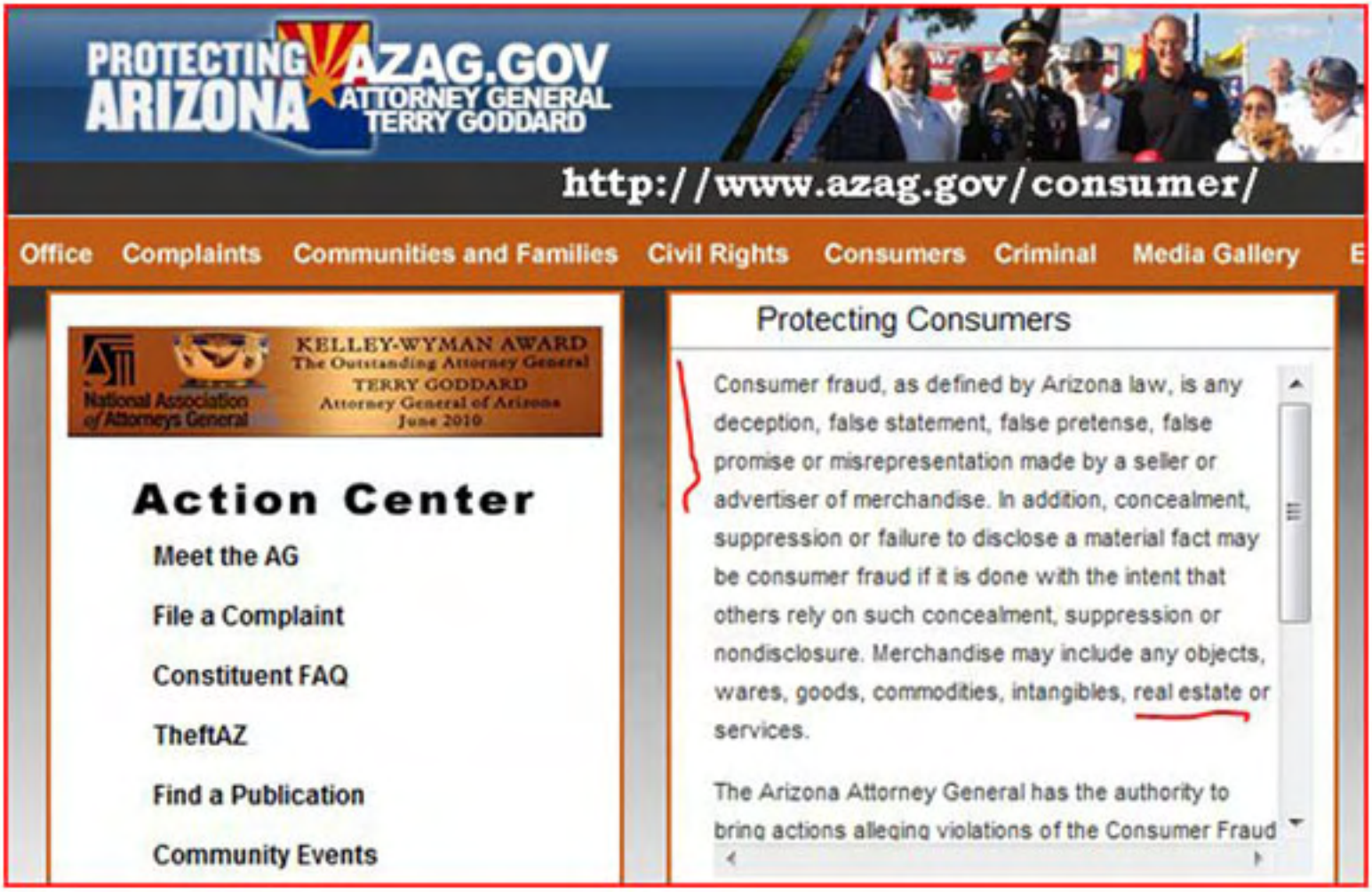
Sincerely,

Pamela L. Crabtree

PAMELA L. CRABTREE
LEGAL ASSISTANT

CPA:J

This is a copy of letter recd from A.G. office


PROTECTING ARIZONA
AZAG.GOV
ATTORNEY GENERAL
TERRY GODDARD
http://www.azag.gov/consumer/
Office
Complaints
Communities and Families
Civil Rights
Consumers
Criminal
Media Gallery
KELLEY-WYMAN AWARD
The Outstanding Attorney General
TERRY GODDARD
Attorney General of Arizona
June 2010
National Association of Attorneys General
Action Center
Meet the AG
File a Complaint
Constituent FAQ
TheftAZ
Find a Publication
Community Events
Protecting Consumers
Consumer fraud, as defined by Arizona law, is any deception, false statement, false pretense, false promise or misrepresentation made by a seller or advertiser of merchandise. In addition, concealment, suppression or failure to disclose a material fact may be consumer fraud if it is done with the intent that others rely on such concealment, suppression or nondisclosure. Merchandise may include any objects, wares, goods, commodities, intangibles, real estate or services.
The Arizona Attorney General has the authority to bring actions alleging violations of the Consumer Fraud

not unreasonable to argue that the real estate agent is duty bound to provide such material information to the prospective buyer, and that the real estate department, in keeping with R4-28-1101, would have promulgated guidelines and procedures in order to make this material disclosure a meaningful and effective rule. The rule has been ignored by ADRE with respect material information about HOAs.

Last month, in regard to another failure to protect a homeowner from HOA abuse (see Who prosecutes for homeowner justice against HOAs?), I wrote to the Arizona R. E. Commissioner, asking:

> Who will protect homeowner justice against HOAs? I ask ADRE why is it not adhering to its mission, as stated in its pamphlet, *'The Arizona Department of Real Estate (ADRE) protects the Public Interest through Licensure and Regulation of the Real Estate Industry in Arizona'* . . . . Who, then, will protect the public interest if not the licensed real estate agent under ADRE regulation? I call your attention to Commissioner's Rules, R4-28-1101, Duties to Client.

A reply by the Assistant Commissioner side-stepped this questions posed above with a "not my job" reply:

> We have been given no authority to adjudicate disputes between HOAs and its member-homeowners. The separation of powers doctrine places this adjudication role in the hands of the courts, not in the hands of the executive government.

I elearly did not ask that ADRE adjudicate disputes, but to enforce R4-28-1101 and to stand behind its mission to protect consumers, all consistent with the existing delegation of powers to ADRE and to the Commissioner.

Qui Pro Domina Justitia Sequitur

("who prosecutes on behalf of Lady Justice?", DOJ seal)

Editorial comment. I suspect, like this year's new law, HB 2774, "Take That George!" bill (my description), that explicitly states that government officials cannot be compelled to defend statutes, another bill, "Take That George, redux," will be proposed that would explicitly say that ADRE cannot be compelled to provide consumer protection to buyers of HOA controlled property.

In the words of Jim Wallis, preacher and author of *Rediscovering Values*, "What has been deliberately and carefully made 'socially acceptable' was, not too long ago, thought to be irresponsible – both financially and morally."

Possibly related posts: (automatically generated)

- **Calif. courts hold HOAs as political second governments with public issues**
- **AZ Attorney General's about face on HOA adjudication by OAH agency**
- **Ethical obligations of attorneys to HOA members**
- Washington Report: New Consumer Financial Protection Agency

This entry was posted on Sunday, May 9th, 2010 at 3:17 pm and is filed under Uncategorized. You can follow any responses to this entry through the RSS 2.0 feed. You can leave a response, or trackback from your own site. Edit this entry.

Like Be the first to like this post.

One Response to *Montelena and Sun City: the failure of government agencies to protect consumers of HOA controlled homes*

1. *HOAGOV* says:
   May 10, 2010 at 6:56 am (Edit)

   The "do not compell" bills would prevent a writ of mandamus, which is an order for a government official to meet his obligations and responsibilites of his office. It appears that any contest on defending the contitutionality now becomes a personal question. This is one more step down the road to a state not under the rule of law, but under the rule of man.

   Reply


Jerry Holt

News From The Commissioner

Department survives first leg of Sunset Legislation

Every 10 years, the Legislature must decide whether to disband the Arizona Department of Real Estate or keep it in business for another 10 years.

I'm pleased to tell you that House Bill 2007, which extends the life of the Department until July 1, 2012, has passed the House and has been sent to the Senate where it undoubtedly will be approved.

The bill states that "Pursuant to section 41-2955, subsection B, Arizona Revised Statutes, the legislature continues the state real estate department to protect the public health, safety and welfare by regulating the sale of real estate and through the administration of the real estate recovery fund."

Disclosure Instructor Development Workshop

Disclosure of all sorts of information about real property offered for sale is becoming an increasingly complex matter. This is evidenced by the Arizona Association of Realtors decision to significantly overhaul its Seller's Property Disclosure Statement and by court decisions such as that described in the article titled "Seller Beware" which begins on page 12 of this issue.

Recognizing the need for adequate continuing education in the area of disclosure, the Department, in cooperation with the Arizona Real Estate Educators Association, will present two Instructor Development Workshops (IDW) on the subject of "disclosure" on March 1 and April 5 at the Arizona School of Real Estate and Business, 7142 E. 1st Street, in Scottsdale.

Every approved real estate instructor who teaches a course that includes significant disclosure content must attend a workshop. Virtually every agency, contract law, real estate legal issues and Commissioner's Standards course includes such content.

Registration begins at 8 a.m. The workshops will begin at 9 a.m. and end at 4 p.m. The $40 registration fee includes a catered lunch.

We are deeply indebted to attorneys K. Michelle Lind, J. Robert Eckley and Richard V. Mack who will present the IDWs. In my opinion, these are really brilliant people and none better could have been selected. Our thanks goes also to the members of the committee who developed the course outline for the workshops, especially Arizona Real Estate Educators Association president Ed Ricketts. According to Mr. Ricketts, the IDW will provide a comprehensive review of salient disclosure issues, case law and examples. Each IDW is limited to 150 participants registered on a first-come, first-served basis.

For more information and to register you may contact Mr. Ricketts at ejretal@fastq.com or you may reach him by telephone at 602-277-4332.

The idea of presenting these IDWs was given to me by Mike Moloney following a Real Estate Educators Association meeting I attended nearly a year ago. (The best ideas always seem to come during the hallway talk. Thanks, Mike.) Since then, the prestigious committee was formed and probably 10 two- to three-hour meetings were held to develop the curriculum, etc. Mere words cannot adequately express my gratitude to the members of this committee whose dedication and unselfish service to their industry is so very admirable. In addition to those mentioned above, certainly Bill Gray deserves the highest praise along with ADRE staffers Judy Kisselburg, Roy Tanney and Cindy Wilkinson, and educators Tom Fannin, Martha VanDer Werf, David Compton, Cole Greenberg, Howard Weiner, Mark Hayden, Michael Woolf, Craig Yelverton, Terry Zajac and Stu Bernstein. Thanks folks; you're all aces!

Homeowners association regulation disclosure

As you undoubtedly know, homeowners associations (HOAs) are not regulated by anyone. Repeated attempts to pass legislation giving one state agency or another the responsibility for regulating HOAs have failed.

Many homeowners purchasing homes in a subdivision regulated by a homeowners association do not realize this, and may believe they can turn to some state agency or other regulatory entity when they encounter a serious problem with the association to which they belong. In fact, other than attending meetings of the Board of Directors and using all their powers of persuasion to get their way, about their only recourse is to hire an attorney to deal with the association.

Is this a material fact that should be disclosed to a prospective buyer? You bet it is. Are licensees making this disclosure? Probably very few are. Don't run the risk of being sued; disclose this fact to all potential buyers when the property falls within the jurisdiction of a homeowners association.

Hope to see you at the Prescott Arizona Association of Realtors meeting in March. I'll be on a panel and no holds will be barred.

HOA demographics: About 25% Arizonans live under private HOA regimes
May 20, 2010

Continuing my investigation into HOA demographics, I researched the percent of the Arizona population living under a homeowners association government. Surprisingly, that game to 23.4%.

As a very good indicator, although subject to a more refined analysis, data from the Arizona Corporation Commission records showed 7,297 nonprofit corporations with one of the following words in their names: HOA, homeowners association, condominium, condo, property owners association, and community association. Based on industry data from CAI, the following averages were obtained over nine entries, spanning 1970 through 2009:

average residents per HOA:	211
average Units per HOA:	82
average residents per Unit:	2.6

The analysis reveals an estimated 600,069 HOA units and 1,543,067 people living in HOAs, based on a 2009 Arizona population estimate of 6,595,778. That's 23.4% of the people subject to a second form of local government, the HOA, with their constructive notice constitutions not subject to or approved by the state of Arizona, that deny the constitutional protections of due process and the equal application of the Arizona laws.

HOA demographics: About 25% Arizonans live under HOA regimes, George K. Staropoli, HOA Constitutional Government (http://pvtgov.wordpress.com/ 2010/05/21/hoa-dmographics-about-25-arizonans-live-under-hoa-regimes/).

George K. Staropoli
5419 E. Piping Rock Rd
Scottsdale, AZ 85254
602-228-2891

Pro Se

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PHOENIX TOWNHOUSE HOMEOWNERS ASSOCIATION,an Arizona nonprofit corporation,

Plaintiff,

vs.

ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS; ARIZONA DEPARTMETN OF FIRE, BUILDING AND LIFE SAFETY; and HON. BRIAN TULLY, ADMINISTRATIVE LAW JUDGE

Defendants,

and

RON MERITT AND JOHN DEFENDANTS

Real Parties in Interest

NO. LC 2008-000740

MOTION TO INTERVENE BY GEORGE K. STAROPOLI

(assigned to the Honorable Paul J. McMurdie)

Pursuant to the Ariz. R. Civil P. R24(a)(2), (b)(2), and (c) George K. Staropoli ("Intervenor"), a member of a homeowners association in Maricopa County who seeks to protect his interest concerning a matter of law and fact in common, submits this Motion to Intervene. Intervenor is

Terry Goddard
Attorney General
Firm Bar No. 14000

Paula S. Bickett
Chief Counsel, Civil Appeals
Office of the Solicitor General
1275 West Washington – EXO/SGO
Phoenix, Arizona 85007-2926
State Bar No. 6821
Tel: (602) 542-8304
Fax: (602) 542-8308

E-mail Address for Superior Court Clerk Use Only:
AppealsOpinionsElectionsEthics@azag.gov

ARIZONA SUPERIOR COURT

COUNTY OF MARICOPA

Troon Village Master Association, an Arizona non-profit corporation, Plaintiff, v. Arizona Department of Fire, Building & Life Safety; and Nancy J. Waugaman, an unmarried woman. Defendants.	Case No. LC-2007-000598-001DT **THE ATTORNEY GENERAL'S BRIEF IN SUPPORT OF THE CONSTITUTIONALITY OF A.R.S. §§ 41-2198 to -2198.05** (Assigned to the Honorable Margaret H. Downie)

Pursuant to A.R.S. § 12-1841(A), the Attorney General files this brief in support of the constitutionality of A.R.S. §§ 41-2198 to -2198.05. These statutes authorize the Office of Administrative Hearings (OAH) and the Department of Fire, Building, and Life Safety (the Department) to resolve disputes between planned community associations and homeowners that arise out of the planned community documents and the statutes governing planned communities, A.R.S. §§ 33-1801 to 1816. The Attorney General urges

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February 23, 2009

Hon. Paul J. McMurdie
Maricopa Superior Court
101 W. Jefferson # 413
Phoenix, AZ 85003-2243

Re: LC2008-000740
special action from OAH 08F-H089004-BFS
new facts

Dear Judge McMurdie:

If I had been permitted to intervene, these facts, discovered subsequent to filing the Motion to Intervene, would have been presented appropriately. Rule 60(c)(6) *"does not limit the power of a court to entertain an independent action to relieve a party from judgment, order . . . or to set aside a judgment for fraud upon the court*."

In short:

1. Petitioner and real party in interest, Ron Merrit, had quitclaimed his deed to his co-owned property in the Phoenix Townhouse subdivision on October 10, 2008, prior to the superior court special appeal of October 23. (Exhibit 1). I believe this issue became moot at that point.
2. The new co-owner is the legal person of Big Henge Enterprises, LLC whose two members are Merrit and Hernandez. Big Henge is not a successor in interest to the Merrit Petition.
3. John Hernandez, the other real party in interest, and co-owner of the Phoenix Townhouse with along with Merrit, did not file a Petition, but was falsely named as a defendant in the special action. Hernandez is listed on the Petition as a homeowner, but did not sign it! (Exhibit 2). It appears that there are no valid real parties in interest in the special action.
4. There is no legal entity named "Phoenix Townhouse Association", the stated Plaintiff. The name appears on the court/OAH filings and in correspondence attached as exhibits to the supplemental Petition filed by Merrit on September 22. There are no records or names of any directors of the board or president on any of these documents. The "Association" named in the Phoenix Townhouse declaration is "Phoenix Townhouse Corp." (Exhibit 3) whose president is Richard Flood with Maggie O'Dell as a director (as shown on the ACC annual reports). There is no trade name filed as such.
5. The 2004 notice filing required under ARS 33-1807(J) also falsely names "Phoenix Townhouse Association" as the legal name of the subdivision (Exhibit 4). It was filed by the "managing agent", an alleged "Mutual Management

EXHIBIT 1.

20080882684

Quitclaim Deed

THIS QUITCLAIM DEED, executed this **10th day of October, 2008**

by first party, Grantor, **Ron Meritt**

whose post office address is **3154 East Brookwood Court, Phoenix, AZ 85048**

to second party, Grantee, **Big Henge Enterprises, LLC**

whose post office address is **11022 South 51st Street, Suite 201, Phoenix, AZ 85048**

WITNESSETH, That the said first party, for good consideration and for the sum of

Zero Dollars ($0.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of **Maricopa**
State of **Arizona** to wit:

1592 W. Campbell Avenue
Phoenix, AZ 85016

Unit 130, Phoenix Townhouse, according to Declaration of Horizontal Property Regime recorded in Docket 5051, Page 421, and plat recorded in Book 105 of Maps, Page 45 and Page 46, records of Maricopa County, Arizona

Parcel ID Number: 512 21 010

A.R.S. 11-1134 **B9**

10 10

On or about _____ (specify date), the Respondent committed the specific following act, or specifically failed to act in the following manner, or caused the following condition to occur:

_____

_____

_____, in violation of the following provisions of the condominium or planned community documents and/or A.R.S. § Title 33, Chapter 9 (condominium) or A.R.S. Title 33, Chapter 16 (planned community). Please specify the subsection: _____

*** Additional Counts Should Use Same or Similar Format to Above ***

RELIEF REQUESTED

5. Petitioner requests that the following relief be awarded regarding the acts, omissions, or conditions described in the table above (check all relief requested):

X Order a party to abide by the statute(s) specified in the table above.

X Order a party to abide by the section(s) of the condominium document(s) or community document(s) specified in the table above.

X Impose a civil penalty on the basis of each violation specified in the table.

X If the petitioner prevails, order the respondent to pay to the petitioner the filing fee required by A.R.S. § 41-2198.01.

6. Petitioner expects to call the following number of witness at hearing: 1.

7. By signing below, Petitioner requests that a hearing be held before the Office of Administrative Hearings. If Petitioner is an Association, the signer is authorized to sign on behalf of the Association.

Petitioner's Signature Ron Merritt Date 8/4/08

Print Name RON MERITT

Title, if Petitioner is an Association _____

REMINDER: If you do not fully complete the Petition as indicated, enclose the filing fee, and, if applicable, attach the Condominium or Planned Community documents, the Petition will be returned to you as incomplete.

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
03/04/2009 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2008-000740-001 DT 03/02/2009

HONORABLE PAUL J. MCMURDIE

CLERK OF THE COURT
S. LaMarsh
Deputy

PHOENIX TOWNHOUSE HOMEOWNERS ASSOCIATION

HUNTER F PERLMETER

v.

ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS (001)
ARIZONA DEPARTMENT OF FIRE BUILDING AND LIFE SAFETY (001)
HONORABLE BRIAN TULLY (001)
RON MERITT (001)
JOHN HERNANDEZ (001)
GEORGE K STAROPOLI

CAMILA ALARCON
GEORGE K STAROPOLI
5419 E PIPING ROCK RD
SCOTTSDALE AZ 85254

REMAND DESK-LCA-CCC

MINUTE ENTRY

The Court has received Intervener's, George Staropoli, miscellaneous filings.

IT IS ORDERED striking these filings.

IT IS FURTHER ORDERED that the Clerk of Court shall not accept any filings from George Staropoli in this case.

HOA Constitutional Government

VERITAS PRO JUSTICIA

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Arizona Curtails HOA Complaints with 400% Fee Increase

Quite unexpectedly, as of this morning, the Arizona Dept. of Building, Fire and Safety increased the non-refundable filing fee from $550 to $2,000, effective until April when it will once again be reviewed. This is outrageous, and an attempt to stifle homeowner justice as revealed by my case summaries. It reminds me of the 1950s Poll Tax in the South to prevent blacks from registering to vote.

Word is from BFS that, out of some 7,000 – 8,000 a year heard by OAH (Office of Administrative Hearings), the 22 cases to date in the first 5 months during which OAH could hear HOA disputes are overburdening the judges, who need to spend extraordinary amounts of time finding out how to make a decision on HOA disputes. So, these 22 cases require a 400% increase in order to provide justice to homeowners against HOAs, while all other civil complaints can be funded out the state coffers. This is outrageous! This is an attempt to coverup problems created by pro-HOA legislation and unconscionable adhesion contracts known as CC&Rs.

In 2004, when a bill was proposed to have JP courts decide the disputes, fears of outlandish costs that would overpower the JPs caused the bill to be defeated. Well, it turns out to be just some 50 cases for the year. I guess HOAs are just to much for our system of justice to handle, whether JP or OAH, and we should just let HOAs continue to be independent principalities operating outside the Constitution and state laws.

OAH adjudication has been working to bring justice to homeowners against abusive HOAs. OAH has had the additional benefit to expose the types of injustice, and attitudes of HOA boards and attorneys that are quite contrary to their pronouncements before the legislature and the media of a democratic community working to create vibrant, harmonious communities.

This filing fee increase should and must be paid for from state coffers to remove this scandalous bar to justice.

(Originally posted February 16, 2007).

This entry was posted on Friday, March 2nd, 2007 at 8:17 am and is filed under Uncategorized. You can follow any responses to this entry through the RSS 2.0 feed. You can leave a response, or trackback from your own site. Edit this entry.

Leave a Reply

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—— Original Message ——
From: Michael Lerch
To: CAI
Sent: Monday, June 05, 2006 11:34 AM
Subject: Arizona Legislative Action Committee - CALL TO ACTION!

CALL TO ACTION

Community Associations Institute

Arizona Legislative Action Committee

We need your help!

We need your help in contacting President Bennett to request that he hold HB 2824. We also need your help in contacting the senators to request their assistance in asking President Bennett to hold the bill or to vote no if it does come to a vote. Below are the reasons why this is a bad bill:

This bill will cause:

1. **1. More disputes in which associations and board members get dragged into a judicial proceeding;**
2. **2. An extra layer of litigation since many decisions of the administrative law judge (ALJ) will be appealed to Superior Court;**
3. **3. More expense in the form of attorneys' fees;**
4. **4. More time spent by managers preparing for and appearing at hearings;**
5. **5. More time spent by board members preparing for and appearing at hearings;**
6. **6. Increased and open-ended liability for associations because the ALJ will have the ability to fine with no limits;**
7. **7. Increase and open-ended liability for board members;**
8. **8. Increased and open-ended liability to managers;**
9. **9. More insurance claims which will result in higher premiums;**
10. **10. Disputes about the timing of the ALJ process and the ALJ's authority.**

Please remind the senators that several other pieces of legislation have already been signed into law this session and in previous sessions improving the governance of homeowners associations.

14

Arizona HOA Case Reviews

August 3, 2007

OAH stats update

Filed under: Uncategorized — pvtgov @ 9:38 am Edit This

Since my last accounting back on June 18th, 3 decisions were made on 4 cases, OAH-012/013 were consolidated (count as 2 cases).

OAH-12/13 was dismissed because homeowner failed to make his case — insufficient evidence.

OAH-020 was won hy HOA for lack of sufficient evidence.

OAH-022 was dismissed since petitioner's claimed of HOA violation would result in violation of corporate law.

Stats: (44% for HOs (8/18)

HOs 8

HOAs 10

split 3

vacated 3

In my reviews I keep on stressing the difference from complaining about the board or something you don't like about the board, and the **judicial requirement to prove your case with FACTS — evidence.** If you can't prove it, save your money and don't file.

If you don't like something about the board, well, recognize the fact that HOA living is now being admitted as being communal living (see Twin Rivers opinion) — your neighbors are like your spouse and you can't do anything without his/her agreement. Like in marriage, compromise or get out! These type of "I don't like" complaints should be handled through the voting mechanisms, poor and biased as they may be, but that's the nature of the CC&Rs adhesion contract.

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