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## **Regulatory agency enforcement of HOA violations**

### Background on law enforcement

We all know that **criminal law** is enforced by state governments through prosecution by state attorneys and attorney generals. Criminal laws are statutes to prevent harm and damage to the general population; and to *insure domestic tranquility* and to *promote the general welfare*.

**Civil law**, governing relationships between private parties, is generally enforced by private law suits, as we all know with respect to HOAs. The law suits are based upon violations of the governing documents and the state's civil statutes. **Tort law**, on the other hand, is civil law holding a person responsible for his conduct that caused harm or injury to another person. (The personal conduct of HOA directors, officers, or managers can be subject to tort law; such as libel, inflicting emotional stress, destroying homeowner property, etc.).

However, there has always been a secondary mechanism for enforcing civil law violations that homeowners have been told very little about. In fact, the national 'educational' business trade organization has fought against this method from time immemorial.

**The enforcement of civil law can be found in such state (and federal) regulatory agencies** as real estate, banking, medical, registers of contractors, bars, hair salons, etc. Except for HOAs. Why not? Why is CAI so vehemently opposed to a regulatory agency that it has fought 3 constitutionality law suits to prevent an Arizona agency, DFBL, from using administrative law judges to adjudicate HOA disputes? (DFBL is alive and well today in spite of CAI's efforts).

The enactment of regulatory agencies is a widely accepted method for the legislature to meet its oversight obligations under the Constitution.

*"It is a well established theory that a legislature may not delegate its authority to private persons over whom the legislature has no supervision or control." (McLoughlin v. Pima, 58 P.3d 39 (2002)).*

While state legislatures have intentionally avoided explicit delegation of authority to HOAs, their abdication of their constitutional responsibilities by a do nothing, hands-off attitude is an implicit delegation of authority. This failure to protect HOA members has caused much harm and injury to individual homeowners, and has caused much divisiveness and disharmony within HOA communities. The various state HOA acts are devoid of any effective supervision, control, or oversight and should be declared unconstitutional. **A regulatory HOA agency solves both the constitutional and civil enforcement defects.**

### Why, then, is a regulatory agency for HOAs so bad?

Setting aside the constitutional arguments, HOA regulatory agencies are so bad because CAI says so! CAI's motive, as I see it, is that CAI would lose its dominance of HOA-Land and its reason for being. CAI has argued before the courts, in contradiction to its PR propaganda aimed at the public and the policy makers, for the separation of HOA-Land from our constitutional system of government. By this separation, CAI comes forth as the 'savior' and will educate the public as how to run this new, wonderful thing known as an HOA. CAI, by its omissions, believes that there is no need to teach or learn Government 101, good local government, successful city managers, or becoming effective town councilmen. There is no need because HOAs are not governments — so says CAI. Some examples,

*Constitutional protections are not necessary to protect association members' rights . . . . These rights of members do not arise from the State Constitution but rather from statutes, contract, the association's and governing board's fiduciary duties, public policy and fundamental fairness. [We all know about top-down adhesion contracts (CC&Rs) and pro-HOA statutes drafted, for the most part, by the HOA special interests. State constitutions remain untouchable by the special interests.]*

*In the context of community associations, the unwise extension of constitutional rights to the use of private property by members [...] raises the likelihood that judicial intervention will become the norm, and serve as the preferred mechanism for decision-making, rather than members effectuating change through the democratic process ". [The HOA is above the people and a rejection of constitutional government].*

*I don't think government should dictate in detail how associations should be run from some far off state capital or even Washington, DC. That would be taking away an associations democratic rights and responsibilities. [But the "take it or leave it" developer CC&Rs are an excellent example of the voice of the people? CEO Skiba.]*

*Community associations are not governments . . . . Yet they are clearly democratic in their operations, electing their leadership from among the*

*homeowners on a periodic basis. In fact, associations operate much more democratically than almost any other form of corporate entity [CEO Skiba].*

### Shaping the public's attitude against HOA regulation

In reading the above quotes, be wary of the buzz words, the sound bites, and the impassioned pleas that are designed to misdirect advocates away from the real, material issues that need to be addressed. Be wary of the Orwell's (1984 novel) *Newspeak* that redefines words and concepts to the special interests' liking and distorts the past; and of *Doublethink* manipulation that black is really white, and you really like white. "Voting makes the HOA a democracy" is pure *Newspeak*. Business owners can vote but no one would call the business a democracy. Nor would anyone describe Cuba or China as democracies.

And how about the acceptance that 'Community associations are not governments' and that unrestrained HOA boards are the best form of democracy? Really? (This is an example of *Doublethink* manipulation whereby the public accepts the view that a non-government entity is really a democracy). How about, 'the Bill of Rights is not needed as the members have rejected constitutional government by remaining HOA members and having agreed to be so bound'?

And let's not buy into the false fear mongering that people will not want to serve on HOA boards if they are held accountable for their actions. That's pure BS! HOA officials have about the same protections, immunity and indemnifications as do public employees. However, like with public employees, it is when their wanton, intentional and flagrant acts cause harm to others will they be held to account for their acts. Serving as an HOA official under the protection of a regulatory agency will result in a better, more healthy community.

(Specific rebuttals of the HOA stakeholder views can be found in my posts: [HOA Common Sense: rejecting private government](#) and [HOAGOV EDUCATION SERIES: understanding the real lives of HOA members](#)).

### The need for an HOA regulatory agency

Just as the business board of directors stands in opposition to worker interests, so does the HOA board of directors stands in opposition to member interests, and to justice and fair play. We need a strong agency to protect member interests and that can only come about by an HOA member dominated regulatory agency. An agency that is immune to CAI's propaganda and misrepresentation, yet one that can be fair and just in protecting material aspects of the HOA's survival.

It is completely unacceptable for the usurpers of homeowner rights — the special interests by means of lobbying for pro-HOA statutes — to sit as equal partners in any regulatory agency. Such an arrangement would not pass constitutional review and acceptance.

My proposed [model AZ regulatory agency bill](#), in addition to providing a constitutional basis for HOA-Land, is aimed at removing special interest dominance and to provide a strong voice for *the rank and file* HOA members. Read it! Support it in your state!

For more information on HOA agency regulation, see 1. [AZ Model regulatory HOA agency fact sheet](#) and [Arizona HOA regulatory bill needs your support](#).