

HOA SURVIVAL GUIDELINES UNDER ACCOUNTABILITY LAWS

As more and more state legislatures realize that they cannot continue to protect homeowner associations that deny citizens their fundamental rights and freedoms, and that the grievances repeatedly brought before them are legitimate and well grounded in law, the existing un-American form of HOA government and the way of life promulgated under these authoritarian regimes will cease to exist. The HOA, as with the Anti-Bellum South, will be gone, Gone with the Wind.

State legislatures will impose more and more stringent and necessary laws and regulations on these regimes as has been warranted by the failure of and repeated resistance to self-reform. The HOA will be held accountable under the laws of the state and country, as is required of every other level of government in these United States of America.

The theories of the academics that support planned community developments with its mandatory authoritarian regimes, and who influence the policy makers, will be put to the test. True local government control being the "new wave", the new social order, as Robert Nelson cites from the '1976 Neighborhood Bill of Responsibilities and Rights', *"The ideal of neighborhood government rests upon the belief that people can govern themselves democratically and justly."*¹ We know this ideal has never been attained in HOAs as they exist today.

Democratic and just governance can occur when the disproportional control of and influence on the HOA model, and on the legislatures, by CAI², a national lobbying organization that sets the tone and attitudes across the states through its state chapters, is ended. I believe their 33-year record speaks for itself. CAI never supported democratic local government, as they exist under American system of government with its emphasis on individual freedoms and liberties, but instead supported "the emergence and acceptance of a quiet innovation in housing."³

For example, it has, in its educational materials, extolled and promoted the business judgment rule instead of the "rational man" rule when deciding the validity of the board's activities. The business rule regards the fiduciary duties of directors in terms of the best interests of the HOA, not the best interest of the members. That's like saying that our elected representatives, city, state and federal, are required to act in the best interests of that level of government, and not in the best interests of the people. This is not the American system of government. Yet the HOA regulates and controls the people living within the territory of the subdivision, and is a de facto political government.

With mandatory accountability in place, the HOA board will function independently and subject only to the same laws as any other municipality under the US Constitution. HOAs and planned communities are not an experiment in the idealistic utopian reordering of society by a small group that believes itself to be elitist.⁴ They are average people living in the privacy of their homes.

No longer will HOAs be the ward of the state with special laws, special "dispensations", to make the HOA model work. In order for the HOA to survive as a viable form of governance, homeowners must:

1. Fire and remove all attorneys and management firms that are members of that 20 year national educational organization, or that follow the teachings of this organization, since it has failed to resolve the problems relating to association governance. Realizing that its educational efforts failed, this organization, 13 years ago, became a business trade group lobbying to protect its "turf", its income stream.

2. Fire and remove all directors, officers and committee members who exhibit a militaristic mentality toward enforcement, and who are hard-line supporters of the "old ways."

3. Provide to homebuyers, to obtain their informed consent, full disclosure of the extent to which the HOA can intrude upon the homeowner's privacy. The objective of the disclosure is to advise and warn of the loss and surrender of individual freedoms, and the false expectation of the applicability of the public government laws relating to expected protections of recognized rights, and the permissible conduct and actions of the HOA government.

4. Begin an active program in self-education for any homeowner seeking a position in the HOA, before educational and licensing requirements are also imposed by the legislatures.

5. Read such books as:

How to Manage Nonprofit Organizations

Accounting for Beginners

Neighbor Law (Nolo.com)

***Villa Appalling!*, D. Vanitzian & S. Glassman**

***Homeowner Associations: A Nightmare or a Dream Come True*, Joni Greenwalt**

Roberts Rules of Order

Meeting Procedure (Nat'l Assn of Parliamentarians)

Civics 101

Fiduciary duties of directors to the members in HOAs

How to Win Friends and Influence People

How to Setup Capital Improvement and Bad Debt Reserves

State laws relating to HOAs

Notes.

1. Robert H. Nelson, *Private Neighborhoods and the Transformation of Local Government* 232 (Urban Institute Press 2005) (presented at the 1976 convention of the National Association of Neighborhoods); see conclusion at 47, "The legal framework for collective ownership of housing [the planned community] emerged within the real estate industry in response to its own perceived needs."

2. The national membership of CAI, as advertised in 2006, is roughly 16,000 members, about three-quarters the size of the Realtor organization in Arizona, the Arizona Association of

Realtors. Of CAI's membership, it is estimated that roughly 50% belong to the category of HOA volunteers with 2 votes on the board of trustees. The other categories are management firms, 4 votes, and vendors that include attorneys, 2 votes.

3. Subtitle of the book, *Community Associations: The Emergence and Acceptance of a Quiet Innovation in Housing*, Donald R. Stabile (Greenwood Press 2000) (partly funded by ULI and CAI through contributions to the Land Economics Foundation of Lambda Alpha International, at ix).

4. See *The United HOAs of America*, George K. Staropoli, Pvtgov.Blogspot.com, <http://pvtgov.blogspot.com/2005/09/united-hoas-of-america.html> (Sept 2005).