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How long will it take legislatures to defend the people against HOA private governance, created by business interests to enhance their profits?

This eEditorial presents a historical criticism of planned communities, dating from 1992 through 2000, by two political scientists, Evan McKenzie, Associate Professor of Political Science, University of Illinois at Chicago, and Robert Jay Dilger, formerly Professor of Political Science, University of West Virginia. The last material comes from Donald Stabile's book, which was funded by both CAI and ULI, the two prominent organizations that promoted and mass marketed the legal scheme for HOAs. It presents a homeowner advocates view of history that is not publicly known to state legislators or public officials.

In 1992

Neighborhood Politics: Residential Community Associations in American Governance, Robert Jay Dilger, New York Univ. Press, 1992.

Moreover, even when the CC&Rs are disclosed, they are often written in complex legal language and are very long. As a result, even when disclosed, many homebuyers do not read or fully understand the neighborhood's CC&Rs prior to purchasing their homes. They become aware of the extent the CC&Rs and the powers of the RCA's board of directors only when that board cites them as being in violation of the CC&Rs. Surprised homeowners often react negatively to the board's orders to comply with the CC&Rs. (p. 35).

RCAs' critics question the assertion that homeowners are freely and knowingly consenting to restrictions on their property rights in exchange for enhanced property values. . . . To promote consumer protection and enhance the legitimacy of RCA governance, RCAs' critics want all states to require sellers of homes subject to RCA governance to provide potential buyers with comprehensive public offering statements prior to closing They also want states to require sales personnel to be more forthcoming about the precise nature of the RCA's governance procedures and CC&Rs . . . (p. 38).

[T[heir [the RCAs] role as facilitators of civic virtue is muted because RCAs' internal decisionmaking processes and the attitudes and behavior of RCA members often differ significantly from the theoretical model [direct democracy]. For example, most of those who advocate . . . RCAs assume that RCAs . . . incorporate all the rights and privileges embodied in the U.S. Constitution, including all the rights of free speech . . . and the

rights to due process and equal protection of under the law found in the Fourteenth Amendment. (p. 136).

However, RCAs often employ decisionmaking processes that are far more closed and automatic than those used by local government and mandated for all governments in the United States by the U.S. Constitution. (p. 136).

Recognizing that the 1990 survey's random sample was drawn from CAI's membership list . . . a majority of the 1990 survey respondents were board members of condominium associations (61%), followed by board members of homeowners associations (35%), and by board members of cooperatives and others (4%). (p. 124).

In 1994

Privatopia: Homeowners Associations and the Rise of Private Residential Government, Evan McKenzie, Yale Univ. Press, 1994

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).

[HOAs] "elevate rules and regulations above the social fabric", and the "law, instead of serving the community, is elevated above it"? (p. 146).

[T]he 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]. (p. 148).

In 2000

Community Associations: The Emergence and Acceptance of a Quiet Innovation in Housing, Donald R. Stabile, Greenwood Press, 2000 (funded by CAI and ULI).

I found it refreshing to be among persons who went about their work with a sense of purpose, here the noble purpose of improving the lifestyles available to members of community associations. If I did [live in an HOA], I would want it run by persons belonging to the CAI. They are not for everyone. (Acknowledgements, p. x).

Instead of peaceful communities, they have sometimes become scenes of conflict and litigation. (Introduction, p. 5).

They [HOAs] kindle such longstanding community issues as individualism versus the common good, public or private services, regulation versus freedom of action, and business standards of profit and management versus democracy.

[*The Holmes Association Handbook*] would serve as a ‘guide to the development and conservation of residential neighborhoods . . . and maintained with property-owners associations founded on legal agreements running with the land’. In other words, it would be a community association manifesto. (p. 92).

Developers need to set up legal enforcement remedies, including establishment of the assessments as a lien on the property. In addition, because mortgage lenders have a priority over assessment liens [over the property], the fees should be made to be collectible as a personal judgment against the defaulter. To ensure the legality of this right, the developer must form the corporation [the HOA] at the same time as the CC&Rs. (p. 98).

[HOAs are] a consumer product sold by profit-seeking firm, a legal device, a corporation reliant on both coercive powers and voluntary cooperation, a democracy, and a lifestyle. With this plan, TB50 [*The Holmes Association Handbook*] set out the plan that would be taken in forming the CAI. (p. 103).

Critics of this collaborative effort [FHA and private interests] find this an unhealthy alliance between government and business to promote CAs [HOAs] to unwary customers. As evidence, they can cite mounting complaints against CAs that accompanied their rapid growth. (p. 108).

[T]he objective of this change [the 1992 major revision in its bylaws and membership] was to create a culture in the CAI more conducive to lobbying as a national membership coalition As part of this new culture, the CAI began encouraging the formation of state Legislative Action Committees and gave guidance to their functioning. [Note, as of this writing there are, from the CAI website, 58 state chapters, but the actual number of LACs is open to members only. Some states with multiple chapters have only 1 LAC.] To him [Byron Hanke, author of TB50 and CAI founder] the changes meant that ‘the CAI appears headed now to becoming eventually a partisan trade association, and probably a very effective one’. It would serve the provider groups of the CA industry very well, but the consumer groups of homeowners and associations [as of 2005, no longer a membership category] would find a reduced level of service. (p. 144).

Critics of the CAI change charge that it has become a trade association and cite its lobbying activity as one example as one example of why a trade association approach is not beneficial for CA members. (p. 146).

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