

We the People

of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article 1 of a private HOA

We the People ~~of the United States, in Order to form a more perfect Union, establish Justice,~~
to protect property values

~~insure domestic Tranquillity,~~

~~provide for the common~~

~~defence, promote the general~~

~~Welfare, and secure the~~

~~Blessings of Liberty to~~

~~ourselves and our Posterity, do~~

~~ordain and establish this~~

~~Constitution for the United~~

~~States of America.~~
Decaleration for the United HOAs

THE FOUNDATIONS of HOMEOWNERS ASSOCIATIONS

and

THE NEW AMERICA

Parts I - III

George K. Staropoli

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ASSOCIATIONS**

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Part III

American Political Governments

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American Political Governments

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**American political governments:¹
private under servitudes law and public under
constitutional law**

***Is the restatement of law for servitudes
establishing a parallel form of local private
government, not subject to constitutional
restraints and the protections of individual
rights and freedoms?***

This lengthy paper, by internet posting standards, explores the dual forms of political government that currently exist here in the United States². These two forms of

¹ Private governments, namely the homeowners association (HOA), are the governing body of a subdivision that is subject to CC&Rs under servitudes law. And, as nonprofit corporations, are further subject to corporation laws and any special real property laws referred to as state HOA acts or laws. They are not subject to state and US constitutions and municipality laws, as are public government entities. It is estimated that there are just under 19% of Americans living in HOAs today, which is more than either the Black or Hispanic minority percentages.

² See *Establishing the New America of independent HOA principalities*, George K. Staropoli, StarMan Publishing (2007). See author's interview video at the HOAGOV Channel,

<http://www.youtube.com/watch?v=o3I9v64JZ6o>.

governance, which can be found in our history since medieval times, are clearly distinct and incompatible, having come to present times from two paths, one concerned with the control of real property interests by groups or associations of persons, and the other concerned with the democratic governance of a people. The former path has evolved into what is known today as the law of servitudes that govern homeowners associations, and the latter is known as constitutional law that governs all other American government entities.

Today, and for the past 44 years, these differing views of governance here in America have come together in conflict.³ The government of our Founding Fathers, an experiment in democratic representative government, having endured some 220 years is under attack from the real property legal-academic aristocrats who, having commented in their establishment of rules for HOAs, advocate in the servitudes restatement of law: "*The question whether a servitude unreasonably burdens a fundamental constitutional right is determined as a matter of property law, and not constitutional law.*"⁴

This comment, serving to clarify the common law servitude "rules" for court usage, support the views of the Reporter/chief editor in the Foreword (emphasis added),

Professor Susan French [Reporter (chief editor/contributor) for this Restatement] begins with the assumption . . . that **we are**

³ See [The Foundations of Homeowners Associations and the New America](http://pvtgov.org/pvtgov/downloads/hoa_history.pdf), George K. Staropoli, HOA Constitutional Government (http://pvtgov.org/pvtgov/downloads/hoa_history.pdf webpage) June 2009. (This report follows the history of the current HOA legal scheme from 1964).

⁴ *Restatement Third, Property (Servitudes)*, Susan F. French, Reporter (American Law Institute 2000), § 3.1, cmt h.

willing to pay for private government because we believe it is more efficient than [public] government Therefore **this Restatement⁵ is enabling toward private government, so long as there is full disclosure⁶**

What was the basis for the assumption? Did it include concerns that individual property rights would be surrendered to an authoritarian corporate form of government? And who was the "we"? And, the reader can see for himself, in the Reporter's own words and view point,

⁵ What are Restatements? (University of Texas School of Law, <http://tarlton.law.utexas.edu/vlibrary/outlines/restatements.html>).

Restatements are secondary sources that seek to "restate" the legal rules that constitute the common law in a particular area into a series of principles or rules. They are prepared by the [American Legal Institute](#) (ALI), an organization formed in 1923 consisting of prominent judges, lawyers and teachers. **The ALI's purpose is to distill the "black letter law" from cases, to indicate a trend in common law and, occasionally, to recommend what a rule of law should be.**

The legal rule is printed in boldface type. Following the Restatement rule is a section labeled "Comments." Comments are written by the drafters of the Restatement to explain the provision and identify its limitations. The "Illustrations" sections of the Restatement provide examples of how a particular Restatement provision would apply in specific factual situations. Most Restatement provisions conclude with "Reporter's Notes," which give the history of the provision and cite to the authority from which the rule was derived. Restatements are not primary law. They are, however, considered persuasive authority by many courts, especially as support for legal arguments that have not been addressed by the courts in a particular jurisdiction. Restatements are heavily annotated with case citations and thus can also be an excellent case-finding tool. Summaries of cases which have adopted or interpreted the Restatement rules can be found in the Appendix volumes which accompany a set of topical volumes or, in later Restatements, in the Reporter's Notes (e.g., Restatement (Third) of Agency). In addition, West topic and key numbers and A.L.R. Annotations will be cross-referenced in the Appendix for the more recent Restatements.

⁶ Id, Foreword, third paragraph.

that the Restatement is pro-HOA, and silent on protecting individual rights and freedoms. The courts, making use of this Restatement, will be making pro-HOA rulings that exclude concerns for the American values and principles of democratic government, which will be explored further in this paper.

In the Introduction (emphasis added), *"This Restatement presents a comprehensive **modern treatment** of the law of servitudes"* and then claims that *"it preserves the judiciary's traditional role **of protecting the public interest in maintaining the social utility of land resources.**"*⁷

What does "modern treatment" mean? Does it mean the acceptance, promotion and support of HOAs, as we shall discover in Chapter 6 of the Restatement? What does "social utility of land resources" mean? Social utility?? Under servitudes (the Restatement has redefined this term as "covenants running with the land") posterity is locked into what amounts to a developer's idea of a governing "constitution" that is geared to protect his financial, as well as the mortgagor's financial interests, and supposedly maintain property values under what can be viewed as an adhesion contract, with very little homeowner protections, as we shall also discover in Chapter 6. And where does the public enter into this private arrangement? Does it include preserving the individual property rights and constitutional restraints on government? No, adherence to the Bill of Rights is not mentioned at all in either the Foreword or Introduction, just creating a "private government."

Does the judge who makes use of this persuasive authority understand these terms? Can he answer the questions posed above? Are these legal-academic aristocrats making new laws outside the judicial system? Or,

⁷ Id, Introduction, first sentence.

outside the legislative process, which the courts themselves are very hesitant to violate? The description of what the Restatements are all about, footnote 4, clearly reveals that the Restatements are not simply a summary of case law. The introductory remarks clearly show personal, unsupported views of a preferred direction for real property law that trespasses upon, but ignores, constitutional law and state constitutions as well. (Sec. 3.1 of the Restatement, Validity of Covenants, and the "rules" regarding constitutionality will be addressed later).

The most recent state supreme court challenge to the constitutionality of the HOA regime took place in NJ⁸, and reflects the influence of the new world order of private governments as promoted by the Restatement.

The Association argues that . . . it was error to impose constitutional obligations on its private property. The Association urges this Court to follow the vast majority of other jurisdictions that have refused to impose constitutional obligations on the internal membership rules of private homeowners' associations.⁹

The homeowner plaintiffs argued *"that political speech is entitled to heightened protection and that they should have the right to post political signs beyond the Association's restricted sign policy."*¹⁰ The court saw the issue as (emphasis added),

⁸ Committee for a Better Twin Rivers v. Twin Rivers, 2007 N.J. LEXIS 911, 929 A.2d 1060 (NJ 2007).

⁹ Supra n. 8, p.20.

¹⁰ Id.

Here, we must determine whether this case presents **one of those limited circumstances where, in the setting of a private community**, the Association's rules and regulations are limited by the constitutional rights of plaintiffs.

And the court, hinting at where its holding will go, comments on case law where,

Those courts recognize either explicitly or implicitly the principle that “the fundamental nature of a constitution is to govern the relationship between the people and their government, not to control the rights of the people vis-a-vis each other.”¹¹

Both the US Constitution and the NJ constitution, under which this case was brought, were found to be incapable of interfering with privately contracted governments, because of the disjointed clause in Art. 1, sec. 10 of the US Constitution, and repeated in similar form in state Declarations of Rights¹² articles within their constitutions. It seems that when it comes to private contracts, the constitutions are viewed as permitting private parties to contract to do what ever they so desire, ignoring, or placing in a lower level of importance, all of the other objectives, purposes, prohibitions, restrictions and citizen protections stated throughout these constitutions. The state police

¹¹ Supra, n. 8, p.37.

¹² For example, the Arizona Constitution, Art. 2, Declaration of Rights, Section 25. No bill of attainder, ex-post-facto law, or law impairing the obligation of a contract, shall ever be enacted.

powers, under the Preamble¹³ objective of "promoting the general welfare", which is used to regulate activities for the benefit of the general public, the public good, do not seem to be applicable to HOAs, leading to the conclusion the contracting parties are, by virtue of the contract, unquestionably acting in a manner for the benefit of the public, for the good of greater society. In many, many other areas, such is not the case!

The Twin Rivers case illustrates additional, serious aspects of how government by private "contracts" that are subject to servitudes law, the CC&Rs or declaration, has been accepted by the courts as a legitimate form of political government in these United States, even being held superior to the supreme law of the land, the Constitution. Both the Twin Rivers opinion and the Restatement of servitudes law endorse the "business judgment rule" which is a corporate business doctrine designed to protect boards of directors from legal liability.

The heart of the BRJ, as stated in the Restatement, lies in its design to "*encourage entrepreneurial [business] risk taking by protecting directors from personal liability for losses due to **erroneous business judgments***"¹⁴ (emphasis added), and "*is intended to reduce the ease with which disgruntled members can obtain judicial review [court decisions] of association decisions and to discourage judges from substituting their judgment for that of the*

¹³ "We the people, in order to . . . establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and to secure the blessings of liberty" Note that here is no mention of promoting or establishing homeowners associations, or to beautify the American landscape by authoritarian enforcement, or "*maintaining the social utility of land resources*" (see Supra, n. 7).

¹⁴ Supra n. 4, §6.13, p. 237. (This section is titled, Duties of a Common-Interest Communities to its members).

association."¹⁵ Admitting that the courts prefer the BJR, servitudes law in the Restatement advises that directors should be liable "*only where **no reasonable person** would have taken the same course*"¹⁶ (emphasis added), which is equivalent to the strict requirement for a murder case of "*beyond a reasonable doubt*" (interpreted as there is no other reasonable alternative).

It is interesting to note that the rules in sections, §§6.13 and 6.14, were formulated with the intent of balancing the relationships between directors and the HOA, and the members and the community. "*They provide advantages of the business judgment rule*", which protects directors, and "*protect individual community members from careless and risky management practices,*" which seems contract the first quote.¹⁷ While rule § 6.13(1)(c) requires the board to act reasonably, rule §6.13(2) places the burden on the homeowner. Rule §6.14 recites the "good faith", "deal fairly" and prudent man obligations, without a requirement for reasonableness, and "comment b" recites the purpose of the HOA: "*to protect property values and quality of life by managing the common property.*"¹⁸ It appears that "*quality of life*" follows from managing the common property alone, and not from a much broader "promoting the general welfare" concern.

In rejecting the homeowners' argument of a violation of their constitutional free speech rights, the NJ justices declared,

¹⁵ Supra n. 4, §6.13, p.236.

¹⁶ Supra n. 4, §6.14, p. 270. (This section is titled, Duties of Directors and Officers to the Association).

¹⁷ Supra n. 15.

¹⁸ Supra n. 4, §6.14, p.269.

Moreover, common interest residents have other protections. First, the business judgment rule protects common interest community residents from arbitrary decision-making. . . . Pursuant to the business judgment rule, a homeowners' association's rules and regulations will be invalidated (1) if they are not authorized by statute or by the bylaws or master deed, or (2) if the association's actions are fraudulent, self-dealing or unconscionable.¹⁹

What has happened to the Constitution, which clearly states,

This Constitution, and the laws of the United States . . . shall be the supreme law of the land; and that Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. Art. VI, paragraph 2.

In its amicus curiae brief to the NJ appellate court, CAI urged,

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, and serve as the preferred mechanism for decision-making, rather than members

¹⁹ Supra n. 8, p. 45-46.

effectuating change through the democratic process.²⁰

What is being said here about constitutional protections? Perhaps, Prof. McKenzie can clarify this, when he wrote in 1994,

Residents in CIDs commonly fail to understand the difference between a regime based formally on rights, such as American civil governments, and the CID regime, which is based on restrictions. This often leads to people becoming angry at board meetings and claiming that their “rights” have been violated – rights that they wrongly believe they have in the CID. This absence of rights has important consequences because the balance of power between individual and private government is reversed.²¹

When the discussion turns to homeowner rights, advocates are speaking of a restoration of those rights claimed to have been surrendered to the HOA by virtue of the servitudes law of constructive notice, or simply by a "posting" of the CC&Rs to the county clerk's office as being necessary and sufficient for legally binding all lot owners. This doctrine is contrary to the strict requirements for a bona fide surrender of one's rights, namely, a fully knowledgeable

20 Community Associations Institute amicus curiae brief to the NJ Superior Court, Appellate Division, *Committee for a Better Twin Rivers v. Twin Rivers*, A-4047-03T2, Feb. 7, 2006. The common theme, as reflected by this statement, is that CAI and other pro-HOA supporters consider the so-called servitudes contract "holier than thou", sacrosanct, and that regulation by unaccountable HOA regimes is to be preferred over constitutional restrictions on government that also provide for homeowner protections.

²¹ *Infra*, n. 34, p. 148.

party, not under any pressure or stress to agree to the surrender, and by means of an explicit written instrument. What CAI is saying in its brief above is not to open HOAs to the same restrictions and prohibitions that de jure (legal) government entities are subject, and to the same protections that all Americans are entitled under the laws of the land. In other words, CAI argued for independent "principality" status where the CC&Rs are the "laws" of the land.

Why are we seeing all this deference to private contractual arrangements that are allowed to deny constitutional protections to homeowners? Why are business interests allowed to subject homeowners and their posterity to these authoritarian regimes, not permitted to terminated until some 20 - 30 years have past? Why did the national special interest trade group, CAI, vehemently oppose the application of constitutional protections to homeowners in HOAs?

A critique of the NJ supreme court's opinion can be found in the Rutgers Law Review article,²² co-authored by an author of the AARP amicus brief²³ supporting the homeowners, that provides a rationale behind the support for HOAs,

The *laissez-fare* approach to CIC regulation is reflected in the statutory law, which affords exceedingly few rights and protections to

²² *The Twin Rivers Case: Of Homeowners Associations, Free Speech Rights, and Privatized Mini-Governments*, Paula A. Franzese and Steven Siegel, Rutgers Journal of Law and Public Policy, vol. 5:4, p. 729, Spring 2008.

²³ BRIEF OF AMICUS CURIAE AARP, Steven Siegel, Franco A. Munoz, and Ann Silverstein, Supreme Court of NJ, Docket # 59,230, Committee for a Better Twin Rivers v. Twin Rivers.

homeowners association residents, and in the common-law principles applied by New Jersey courts when resolving disputes arising over CIC governance.²⁴

CAI knows better than to argue that HOAs are democratic. The Restatement §6.14, Representative Government (emphasis added), provides a blatant reversal of a government of the people, by the people, for the people: "*Except as otherwise provided by . . . an association . . . is governed by a board **The board is entitled to exercise all powers of the community except those reserved to the members.***" Under Art. 9 and 10 of the Constitution, all rights that are not grants of authority or restrictions of authority, belong to the people, the homeowners.

* * * *

And why are the legal-academic aristocrats arguing for the supremacy of servitude law over constitutional law?²⁵ And why are the courts hearing no evil, seeing no evil, and speaking no evil about these private governments unanswerable under the Constitution? HOAs are not just another nonprofit corporation concerning itself with social relationships, charitable concerns, or providing services to members who can freely enter and exit without the harsh penalties of financial liens or threats of having their homes taken away. HOAs regulate and control the people within a subdivision with the objective of maintaining property values as the "state's" objective, without concern for the Bill of Rights, namely the First and Fourteenth Amendment protections. Yet, we repeatedly see our government continually side with the collective ownership of property in

²⁴ Supra n. 22, at 731.

²⁵ Supra n. 4.

a communal setting that is free to ignore the Constitution, allowing it to be subservient to these private communities. They are de facto governments functioning independently of the constitutional protections and restrictions to which our government is held.

The Constitution is not entirely ignored in servitude law, just those protections and restraints are ignored. What servitude law says, in §3.1, Validity of Covenants, of the Restatement is that they must not be illegal (which is an explicit recognition of the applicability of police powers to regulate!), unconstitutional, or not violate public policy. Under "public policy", the reader is advised that it includes, a servitude that

1. is arbitrary or capricious,
2. "*unreasonably burdens a fundamental constitutional right*", which grants, as valid, any reasonable burden, or restriction or restraint on a constitutional right. The Twin Rivers opinion reflects the extent to which the courts are quick to subordinate the constitution to private property concerns and to servitude law.
3. is unconscionable, as further set forth in §3.7, Unconscionability [sic]. (The discussion in §3.7 touches on contract law and the UCC, but avoids any explicit mention of unconscionable adhesion contracts, to which a neutral party would have devoted serious analysis).

Here is where one would expect to find allegiance to this country and to its democratic system of government, but §3.1 is silent. Its silence causes one to believe that was it an intentional omission, because the creation of independent private governments was an objective in subjecting HOAs to servitude law, and constitutional law made subservient.

This silence, this broader unspoken alliance, can be traced back to the modern incarnation of utopian communities as promulgated by the Urban Land Institute's *The Homes Association Handbook*²⁶ of 1964. This guide to the creation and promotion of planned communities, with stated requirements for HOAs to be tied to servitudes and covenants running with the land, promised something for everyone as an inducement to climb aboard the bandwagon. It, too, was silent on allegiance to the Constitution. It had to, in order to be able to coerce homeowners into compliance.

We have taken the position that no organization is a homes association unless provided for, in some manner, in the covenants, deeds, or other recorded legal documents which affect title to the land within the development. (p. 15) . . . The right to membership in such an association is automatic [mandatory in today's jargon] for every home owner because it cannot be withheld from an owner whose land is charged with the obligation to pay its assessments. (p. 16) . . . Fundamental to the legal arrangement for a homes association is the covenant for assessments which must be made to run with the land so that the association can be assured of a continuing, legally enforceable source of maintenance funds. (p. 314).²⁷

The internet paper by this writer, *The Foundations of Homeowners Associations and the New America* (see

²⁶ *THE HOMES ASSOCIATION HANDBOOK*, Urban Land Institute Technical Bulletin #50, 1964.

²⁷ *Id.*

footnote 3), examines this 433 page "bible" for establishing homeowners associations across the land.

In considering the above, several extremely important questions can be raised:

1. Can a legislature delegate its functions, not government services but functions, to private entities without oversight or compliance with the Constitution, as required of all government entities?

2. Can private parties enter into contractual arrangements using adhesion contracts and a constructive notice consent, which serve to regulate and control the people within a territory (an HOA), within the state, to circumvent the application of the Constitution?

3. In 2009, should HOAs, as a sui generis private government, be held as state actors under the US Supreme Court criteria as a result of state protective statutes reflecting a cooperation, support or coercion; a symbiotic relationship; a close nexus; or an entwinement between state and HOA?²⁸

²⁸ The Twin Rivers case discussed state actors and the 1946 "public functions" company town test in *Marsh v. Alabama*, often cited by the national lobbying group for HOAs, Community Associations Institute (CAI), who had filed an amicus brief in support of the association. A summary of the indicated US Supreme Court criteria can be found in *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288 296 (2001). These criteria did not enter into this case.

Clouding the concepts of a business, a private government and public government

There are numerous legal arguments regarding HOAs as quasi- or mini-business, or is equivalent to a business, none of which are addressed by the real property legal-academic aristocrats in the Restatement. The NJ trial court in Twin Rivers quickly dismisses the issue of HOAs as a quasi-government with a strict legal view, saying.

Private organizations, even when they perform municipal functions, do not become quasi-municipal agents. . . . A quasi-municipal agency is "a corporation, created by the Legislature, that is a public agency endowed with the attributes of a municipality that may be necessary in the performance of a limited objective," or "a public agency created by authority of the legislature to aid the state in some public or state work for the general welfare." . . . Twin Rivers was not created by East Windsor Township and none of its authority to regulate within the community is delegated to it by the municipality.²⁹

Another strict legal view of a government subdivision can be found by examining your state statutes on the requirements for forming legitimate incorporated and unincorporated towns/villages. (The requirements are varied and much less stringent than those imposed by the "public functions" test from the 1946 *Marsh v. Alabama*³⁰ opinion regarding free speech in a company town. The NJ justices

²⁹ *CBTR v. Twin Rivers Homeowners' Association*, p. 6-7, Docket C-121-00, Superior Court, Mercer County, Feb. 17, 2004.

³⁰ *Marsh V. Alabama*, 326 US 501 (1946).

cited this antiquated test, and never raised the more current US Supreme Court criteria for state actors/action.) Simply stated, HOAs are chartered under corporation laws, and not under municipality laws or by legislative decree through a designation of powers.

The reader should understand that references to "mini-government", "quasi-government", or "equivalent to a government" can only have meaning outside the strict legal creation or formation statutes, and only in terms of the broader concept of a government as a person or body that controls and regulates the people within a territory, which may be a simple subdivision. This is the view that has been debated by many legal scholars and HOA authorities, that should have been addressed long ago, in the name of justice, and as required under the Constitution.

Former CAI president Wayne Hyatt, and co-author Susan French, (also the Reporter for this Restatement) devote chapter 4 of their book on homeowner associations law to the topic of mini-governments, and saw into the future with,

The third theory, 'symbiotic relationship' or the 'sufficiently close nexus', [both are part of the Supreme Court criteria] are less relevant to the common interest community setting of today [1998] but may have more relevance in the future. State action is found .
...³¹

³¹ *Community Associations Law*, Wayne S. Hyatt and Susan F. French, Ch. 4, p. (Carolina Academic Press 1998). Ch 4 consists of some 89 pages of discussion of numerous cases pertaining to constitutional issues. Hyatt seems to be having second thoughts on the benefits, values and problems after 44 years of public existence. See

In a more recent presentation of an earlier article by Hyatt, the reader is presented with the constitutional implications of HOA private governments and their impact on the public at large, the greater community.

These issues [the sui generis nature of HOAs, and predominantly judge-made laws that become common law precedent] are significant far beyond the real estate industry and the legal community that supports the real estate industry. As community associations reach beyond their geographic boundaries to become more involved in the broader community, as they perform more community services for their own members, and as they build public and private alliances to provide many different services that were formerly public services, the legal, political, social, and economic consequences and effects increase and implicate corporate, municipal, constitutional, and other areas of law as well as social and public policy concerns.³²

A search of the literature reveals attacks on the HOA form of governance by political scientists, not real estate lawyers:

1. **In 1992**, Dilger wrote,

Other scholars view RCAs [HOAs in today's terminology] more critically.

³² *COMMON INTEREST COMMUNITIES: EVOLUTION AND REINVENTION*, p. 307-308, Wayne S. Hyatt, 31 J. Marshall L. Rev. 303, Winter 1998. Re-published by The John Marshall Law Review on 9/9/2008 as part of Symposium proceedings.

[HOAs] . . . have governance procedures that violate the constitutional standards applied to government. They want government to regulate [HOAs] to insure that they are run in a democratic fashion and are in full accord with constitutional guarantees embodied in the First and Fourteenth Amendments.... Moreover, [HOAs'] critics question the assertion that homeowners are freely and knowingly consenting to restrictions on their property rights in exchange for enhanced property values³³

2. **In 1994**, McKenzie wrote on the violations of rights and freedoms and the fact that HOAs could get away with actions that would be prohibited under public government.

HOAs currently engage in many activities that would be prohibited if they were viewed by the courts as the equivalent of local governments. . . . The balance of power between the individual and the private government is reversed in HOAs. ... The 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.³⁴

³³ *Neighborhood Politics: Residential Community Associations in American Governance*, p. 37-38, Robert Jay Dilger, New York Univ. Press, 1992.

³⁴ *Privatopia: Homeowners Associations and the Rise of residential Private Government*, Evan McKenzie (Yale Univ. Press 1994);

3. **In 2000**, the author of a partisan history of HOAs, which was funded by CAI, wrote,

[HOAs are] a consumer product sold by a profit-seeking firm, a legal device, a corporation reliant on both coercive powers and voluntary cooperation, a democracy, and a lifestyle. . . . The innovators of CAs were entrepreneurs . . . The dilemma [as far back as the 1930s] was how to ensure their widespread acceptance among government agencies, builders and developers, and prospective home buyers.³⁵

4. In 2007, Franzese and Siegel analyzed HOA issues, holding that,

For too long, conventional wisdom has been that CICs are nothing more or less than the product of market forces, and that the elaborate CIC servitude regime is nothing more or less than a market response to consumer demand. This received wisdom ignores the realities of several distinctly non-market phenomena, including the pervasive privatization policies of local governments and the self-interested motives of CIC developers, that

³⁵ *Community Associations: The Emergence and Acceptance of a Quiet Innovation in Housing*, p. 68, Donald R. Stabile (Greenwood Press 2000). (A book partially funded by ULI and CAI).

are at variance with the best interests of
CIC homeowners.³⁶

5. In 2008, Franzese and Siegel team up again and criticized the Twin Rivers opinion,

The Twin Rivers decision is unsatisfactory in many respects, because it lacks clarity and a firm underpinning in settled constitutional doctrine. The Court's failure to anchor its decision in established constitutional doctrine is particularly unfortunate, because there is substantial precedent available and adaptable to the homeowners association paradigm [legal concept or model].³⁷

At this time, it should be quite apparent that CAI and other promoters of HOAs have had a personal agenda: control over planned communities for profiteering purposes. And that the popular political vision of America with its "no government is good for America" faulty ideology has only served to concentrate legal power into the hands of HOAs. And these private government regimes have strong legal precedents in support as a result of the vicious cycle of many years of HOA favorable case law, which have been compiled into an almost complete rewrite of servitudes law under the direction of pro-HOA persons -- the common law Restatement of Servitude -- which only serves to further increase pro-HOA decisions. And when the courts resort to extensive reliance on precedent and the Restatement, without

³⁶ *Trust and Community: The Common Interest Community as Metaphor and Paradox*, Paula A. Franzese and Steven Siegel, Vol 72, Missouri L. Rev., 1111, 2007.

³⁷ *Supra* n. 22, p 250.

stepping back to look at the ugly forest through the trees, justice is not served, and a new America is being established.

* * * *

Returning to the questions posed earlier, under constitutional law, the answer to question #1 is a well settled, resounding no! First, the Art. 1 of the Constitution is quite emphatic that *"All legislative powers herein granted shall be vested in a Congress of the United States," "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers necessary"* (Art.1, sec.8), and under the Tenth Amendment, *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people."* And state constitutions contain wording similar to, *"The legislative authority of the state shall be vested in the legislature."* Research into case law produced only one case on point, where a planning board issued a regulation that, upon petition of two-thirds of affected property owners [private persons], the board would modify property boundaries, and the other affected one-third would be so bound by law. The court opinion found the ordinance to be unconstitutional as *"an unreasonable exercise of police power."*³⁸

Case law does abound with issues pertaining to delegation of legislative powers to the Executive or his agencies. Delegation of legislative powers to government agencies is permitted, but subject to restraints, such as, the delegated authority is subject to and limited by the declared legislative policy relating to such delegation. Even with respect to the delegation to the President of the US such is a limiting factor on his authority, and one cannot reasonably

³⁸ *Eubank v. City of Richmond*, 226 U.S. 137 (1912).

expect that delegation to lesser persons or to private persons would be less restrictive.

When the President is invested with legislative authority as the delegate of Congress in carrying out a declared policy, he necessarily acts under the constitutional restriction applicable to such a delegation.³⁹

With respect to homeowners associations, there is no delegation from the state legislature, just a series of statutes. Furthermore, the Restatement ignores constitutional law in general, but comments that servitudes law should control in the event of a conflict between constitutional law and servitudes law.⁴⁰

The pro-HOA supporters would strongly argue that the HOA is not exercising legislative powers, or for that matter, any public executive or judicial powers since it is not a government. These supporters describe HOAs as privately contracted associations of homeowners who have willingly consented to be governed, and who have openly and willingly surrendered their rights and freedoms that all other non-HOA members enjoy. "Consent to be governed"⁴¹ is a public government doctrine, and cannot be found within the CC&Rs "contract."

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³⁹ *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935).

⁴⁰ *Supra*, n. 4.

⁴¹ See generally my discussion of CC&Rs as the new social contract, [*CC&Rs: The Non-legitimate Social Contract*](#), in which Rousseau is quoted: , "After the state is instituted, residence implies consent: to inhabit the territory is to submit to the sovereign".

The major alternative description of the HOA legal structure is that it is a business, and therefore, not a government. In fact, the CEO of CAI, the national pro-HOA lobbying trade organizations has argued that "*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.*"⁴² (Emphasis added).

From the point of view of the developer and the pro-HOA service vendors, namely the HOA lawyers and HOA management firms, the answer to question #1 would be "Yes". It is doubtful that any unbiased homeowner -- one not pro-HOA or having suffered injustice under an HOA regime -- would admit that making a business investment was a material consideration when buying his HOA controlled home. Yes, they would probably agree to the benefits of the HOA -- property maintenance, amenities, and enforcement against violators, to name a few -- but not to a conscious belief that they were entering into a business relationship. They thought that they were buying a home.

Now, while the Restatement of servitude law completely ignores constitutional law, it is replete with rules, analysis and points of view reflecting the position that the HOA is essentially a nonprofit business having the objective of maintaining property values, and "*having substantial power to affect both the quality of life and financial health of their member.*"⁴³

⁴² *Democracy In Our Communities?*, Tom Skiba, We The mutual benefit and reciprocal nature of those rules and regulations, and their enforcement, is essential to the fundamental nature of the communal living arrangement that Twin Rivers [*43] residents enjoy. Welcome to Ungated, April 2, 2008 (http://cai.blogware.com/blog/_archives/2008/4/2/3616608.html).

⁴³ *Supra* n. 4, Vol. 2, p. 68.

But then, what is government?

This paper has shown that an HOA, in strict legal terms, is neither delegated authority by the legislature, nor is chartered under the state's municipality laws. The HOA, itself, the private nonprofit corporation and governing body of a subdivision, is subject to CC&Rs, which has been identified as the HOA's "constitutional" contract between the HOA and its members. They are therefore subject to servitudes law. The Restatement subjects HOAs to a collective, a communal,⁴⁴ agreement between the subdivision (territorial) developer of a residential community, which can be identified as equivalent to a small village or to a large town on the one hand, and each lot or unit owner member, separately, on the other hand. And when those covenants run with the land, then servitude law has trespassed and infringed upon the American system of political government, and upon the supreme law of the land.

Servitudes had their origins long ago in the feudalism of medieval times⁴⁵. It all began with the victory of William the Conqueror who seized all lands in his name, and awarded parts to his knights, "tenants in chief", for services. In time, they subdivided their lands to subtenants for services to the knight himself, which led to the start of tenants in perpetuity. These grants were originally for the life of the parties only,

⁴⁴ Supra, n. 8 p. 42. The concluding opinion held: "*The mutual benefit and reciprocal nature of those rules and regulations, and their enforcement, is essential to the fundamental nature of the communal living arrangement that Twin Rivers residents enjoy.*"

⁴⁵ See generally, *The Law of Property*, Third Edition, §§ 1.6 - 1.8, Feudal Tenure to Ownership, William B. Stoebuck and Dale A. Whitman, (Hornbook Series, West Group 2000). See also

but then were permitted to pass to the heirs of the owners. These English laws passed on to the new discoveries here in America, and American real property evolved in time to fee simple ownership. Land ownership was then transferred with conditions under the complex laws now referred to as servitudes.⁴⁶

The ownership of land was originally tied to the governance of the people by the King and his vassals governing the land owned by the king. It has evolved over the centuries as governance took on a republican, democratic nature to where real property ownership was no longer tied to the king, but to simply property owners. But, with the third edition (2000) of the Restatement of servitudes, we have come full cycle to where the servitudes have trespassed and infringed upon political government, rejecting our democratic form of governance.

The HOA proponents strenuously argue that many organizations levy fines, require the payment of dues or assessments, make "laws", and regulate the conduct of their members, etc. and they are not considered a government. (Remember, the argument being made is not of a de jure government, which is well accepted, but that HOAs are the equivalent to a public government were it not for the legality of their creation). They continually evoke the 1946 "company town" test of public functions, and ignore state statutes on the creation of local governments that do not, themselves, meet the public functions test, but are otherwise legitimate de jure towns. And these promoters, these special interest groups, also conveniently ignore those highly applicable US Supreme Court test criteria of state actors/actions, which would indeed make HOAs the equivalent of a government entity.

⁴⁶ Id, Ch. 8, Servitudes.

Perhaps a refresher course in the fundamental philosophy and principles of government, and of democratic representative government, will help us today to better understand what a government is all about. I shall be referring to Blackstone's Commentaries⁴⁷ and Locke's Second Treatise.⁴⁸

By the constitution of the United States, the solemn and original compact here referred to, being the act of the people, and by them declared to be the supreme law of the land, the legislative powers thereby granted, are vested in a congress, to consist of a senate and house of representatives. As these powers, on the one hand, are extended to certain objects [areas], as to lay and collect taxes, duties, &c. so on the other they are clearly limited and restrained These, and several others, are objects [areas] to which the power of the legislature does not extend; and should congress be so unwise as to pass an act contrary to these restrictions, the other powers of the state are not bound to obey the legislative power in the execution of their

⁴⁷ *Blackstone's Commentaries on the Laws of England* (lectures at Oxford University, 1753) contain Appendices with Notes that were written by St George Tucker, Professor of Law, William & Mary University, in 1803. The value of *Blackstone*, and *Tucker's Blackstone* lies in their contemporaneous commentary on English laws that influenced the Founding Fathers. See The Constitution Society website at <http://www.constitution.org/tb/tb-0000.htm>.

⁴⁸ *Second Treatise of Civil Government*, John Locke, 1690, can be found at the Constitution Society website, <http://www.constitution.org/jl/2ndtreat.htm>.

several functions . . . but the very reverse is their duty, being sworn to support the constitution, which unless they do in *opposition* to such encroachments, the constitution would indeed be at an end.⁴⁹

The GOVERNMENT or administrative authority of the state, is that portion, only of the sovereignty, which is by the constitution entrusted to the public functionaries: these are the agents and servants of the people. . . . Legitimate government can therefore be derived only from the voluntary grant of the people, and exercised for their benefit.⁵⁰

But, as it is necessary to the preservation of a free government, established upon the principles of a representative democracy, that every man should know his own rights, it is also indispensably necessary that he should be able, on all occasions, to refer to them. In those countries where the people have been deprived of the sovereignty, and have no share, even in the government, it may perhaps be happy for them, so long as they remain in a state of subjection, to be ignorant of their just rights. But where the sovereignty is, confessedly, vested in the people, government becomes a subordinate power, and is the mere creature of the people's will: it ought therefore to be so constructed, that its operations may be the subject of constant observation, and

⁴⁹ *Supra*, n. 47, Editor's Appendix, Book First, Part First, Note A.

⁵⁰ *Id.*, Note B.

scrutiny. There should be no hidden machinery, nor secret spring about it.⁵¹

And much earlier, John Locke wrote about people uniting in a common purpose for their mutual benefit, as we are mistakenly told is the broad purpose of the HOA.

Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, are in civil society one with another [§ 87] Where-ever therefore any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a political, or civil society [§ 89] [The HOA subdivision that is subject to CC&Rs is a form of civil society] For he that thinks absolute power purifies men's blood, and corrects the baseness of human nature, need read but the history of this, or any other age, to be convinced of the contrary. [§ 92] [The failure of the state to hold HOAs accountable to them, and their failure to enforce the laws against violations by HOAs, is a grant of absolute power].⁵²

While Locke seems to agree with the objectives of the HOA, "*The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under*

⁵¹ Id, Note D, ¶ 2.

⁵² Supra, n. 48.

government, is the preservation of their property"⁵³, he cautions,

There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them . . . yet men being biassed [sic] by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.⁵⁴

Locke is clearly saying that the preservation of property itself, alone, is not the entire end of government, as we see with the HOA "constitutions." He adds,

The legislative, or supreme authority, cannot assume to its self a power to rule by extemporary arbitrary decrees, but is bound to dispense justice, and decide the rights of the subject by promulgated standing laws, and known authorized judges;⁵⁵

. . . .

The legislative cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the common-wealth, which is by constituting the

⁵³ Supra, n. 48, Ch. IX, Of the Ends of Political Society and Government, § 124.

⁵⁴ Id.

⁵⁵ Id, § 137.

legislative, and appointing in whose hands that shall be. And when the people have said, We will submit to rules, and be governed by laws made by such men, and in such forms, no body else can say other men shall make laws for them; nor can the people be bound by any laws, but such as are enacted by those whom they have chosen, and authorized to make laws for them.⁵⁶

And, as we have made clear, this private government has not been delegated authority by the legislature to so govern subdivisions. Surely, allowing the unfettered voice of a few people to stand in place of our elected representatives cannot be tolerated.

Government is defined by a "social contract", and CC&Rs define the new social contract

The current view of the controversy that HOAs are governments make use of these similarities of purpose and functions between other legal entities and HOAs to argue that the homeowners association is not a government. However, since the "evidence" presented clearly demonstrates that governments and HOAs share these attributes, this comparison also serves the argument that a government is a business. This comparison argument, promoted by the pro-HOA special interests, places credence on the much quoted, yet archaic and misplaced 1946 Supreme Court holding (*Marsh v. Alabama*)⁵⁷, "public functions" test that compared functions, services, and public access territories (the issue in this case was not about whether or not HOAs are governments, but on the

⁵⁶ Id, § 141.

⁵⁷ Supra, n. 30.

application of free speech to company towns). It fails in face of the stark reality that state laws do not impose any such requirements on the incorporation of a town or village.

Given the prevalence of this misguided public functions test, I've repeatedly made use of a basic definition of government: a government is: "*the person or group that controls and regulates the people within a territory.*" While the functions and provided services of a government are shared with many other entities, both businesses per se and nonprofit organizations, this definition "separates the chaff from the wheat." What has been absent from any debate on this controversial topic has been the subject of purpose: what is the purpose of the organization? Businesses per se, have a profit motive. Nonprofit entities have a multitude of purposes ranging from a purely educational focus to providing a united support group for a particular trade or industry or to providing some form of charitable assistance to the public.

The question to be addressed, and that has not been addressed, is: What is the purpose of government that distinguishes it from all these other organizational forms? If none can be found, then what is the point of a government? Can we really say that American government is a business like any other business? But, before we proceed any further, an examination of the loosely used term "government" or more precisely, "public government" is in order. After all, all organizations, if viable, have a form of government or governing body. Keeping it simple, a number of related definitions from *Black's Law Dictionary* will clarify my definition of a government.

Under "government", Black's simple definition says: "*The structure of principles and rules determining how a state or organization is regulated.*" And, to clarify by what is meant by a "state", Black's speaks in the same terms of the American political governments

differences in function that distinguishes an association from that of the state, and of the need to determine the "essential and characteristic" activities and purposes of a state. A state is a community of people established for "securing certain objectives . . . a system of order to carry out its objectives." Nothing new here, but Black's then goes on to say: "*Modern states are territorial; their governments exercise control over persons and things within their frontiers.*" And cautions not to confuse the "state" with other communities of people in other forms of organizations designed to accomplish other objectives.

With this understanding, we can now move forward to examine the distinguishing essentials and characteristics of public, or state government. And the answer to the question raised above can be uncovered in the political and democratic philosophies and fundamental principles written centuries ago, in the writings of Rousseau, Voltaire, Locke, Montesquieu, Thomas Jefferson, James Madison and the other Founding Fathers. In short, and stated simply, they are the surrender of the rights and freedoms possessed by man living in "the state of nature" (which is a long forgotten condition and environment, yet, unrecognized, is still a condition actively desired in today's society), under a "social contract" that establishes the quid pro quo for this surrender.⁵⁸

In his *Social Contract*, Jean Jacques Rousseau wrote,

But the social order is a sacred right which serves as a basis for all other rights. And as it is not a natural right, it must be founded on

⁵⁸ See generally, CC&Rs: The Non-legitimate Social Contract, George K. Staropoli, internet paper, 2006 (http://pvtgov.org/pvtgov/downloads/new_social.pdf).

covenants. The problem is to determine what those covenants are.⁵⁹

And throughout Locke's Second treatise the reader discovers those concepts of "in the state of nature" (not subject to any political entity) and those "natural laws" (those that every person possesses), and those "unalienable rights" of the Declaration of Independence that are not and cannot be surrendered to a political government by a social contract or "compact" (emphasis added):

Political power is that power which every man having in the state of Nature has given into the hands of the society . . . with this express or tacit trust, that it shall be employed for their good And this power has its original only from [is based on] compact and agreement and the mutual consent of those who make up the community."⁶⁰

The nation is nothing other than an artificial person the life of which consists in the union of its members Hence we have to distinguish clearly the respective rights of the citizen and of the sovereign [the HOA], and distinguish those duties which the citizens owe as subjects from the natural rights which they ought to enjoy as men.⁶¹

And when factions or cliques form within the community,

⁵⁹ Jean-Jacques Rousseau, *The Social Contract*, Book 1, Ch. 1 (1762).

⁶⁰ John Locke, *The Second Treatise of Government*, § 171 (1690).

⁶¹ *Id.*, Book 2, Ch. 4.

We might say, that there are no longer as many votes as there are men but only as many votes as there are groups. . . . When one of these groups becomes so large [or so powerful as the board in HOAs] that it can outweigh the rest . . . then there ceases to be a general will, and the opinion which prevails is no more than a private opinion.”⁶²

Even the national lobbying organization, Community Associations Institute (CAI), joins in this social contract philosophy when it promotes planned communities with their HOA governance as the means to better communities and community governance. Its promotional brochure, *Rights and Responsibilities for Better Communities*³ clearly reflects the position that the CC&Rs are seen as a social community, not a business, regulating and controlling the homeowners:

More than a destination at the end of the day, a community is a place you want to call home and where you feel at home. There is a difference between living in a community and being part of that community. Being part of a community means sharing with your neighbors a common desire to promote harmony and contentment.⁶³

It should be understood, then, that government is essentially a quid pro quo surrender of certain freedoms and liberties in order to regulate and control the interactions between the members of the society, for the benefit of the society. And, all other rights and freedoms that belong to

⁶² Id, Ch. 3.

⁶³ *Rights and Responsibilities*, Community Associations Institute, <http://caionline.org/rightsandresponsibilities/index.cfm> (July 2, 2006).

Man -- the members of the society -- that are not derived from government, shall be protected from infringement by either government itself or from infringement by some more powerful faction within the society.

It should be also be understood that government pervades almost every area of society, the community of people, living within a designated territory, and cannot be equated with the very limited scope of the surrender of one's rights in a business organization, or while a member of a social, sports or charitable club or organization, which benefits the limited purposes of the organization and not society as whole. Our US Constitution is the American social contract between the government and the people. HOA CC&RS are also a social contract, but between the HOA government and its people, the members of the subdivision.

Public governments and homeowners associations share this one distinguishable feature that establishes the HOA as a bona fide political government, although the aims of the contract, the purpose of the society, are so dissimilar. A government may be democratic or autocratic, but, regardless of structure, is still a political government. Or, a government can be established to support "state" monetary or business objectives, as, for example, a fascist government or an HOA government. And if we, if our government officials, legislators and judges, are to be true to our democratic origins, then HOAs must be accountable to the US Constitution as are all other forms of government. The continued failure to correct this "separatist" movement serves to continue the establishment of the United HOAs of America, the *New America*.

Conclusions

The essential point is that HOAs are more equivalent to local government than to a business or any other nonprofit organization. Don't be fooled by the necessary use of non-governmental terminology to distinguish de jure public government status from private HOA government status. HOAs are governments true and true and must be brought back under the umbrella of the US Constitution. Otherwise, what is the purpose of the Constitution? What is the purpose of having a written contract between the government and the people, if the people can unilaterally deny and violate the contract? Have our enlightened generation of political and judicial leadership found the promised land where the will of the people shall prevail? Or have they become another example of: ***"Those who cannot remember the past are condemned to repeat it."***⁶⁴

The conclusion that we live today in a New America consisting of private government HOAs subject to servitudes law, and of democratic public government subject to the US Constitution, cannot be denied. HOAs have been allowed to secede from state government, with the "sovereign's" blessings. If the Southern States only had recourse to servitudes law in 1861, our Civil War could have been avoided.

* * * *

A few words are in order that serve to summarize the conditions and problems confronting democracy in HOA-land caused and abetted by the abdication of state legislatures and courts to uphold the Constitution.

⁶⁴ George Santayana, *Life of Reason, Reason in Common Sense*, Scribner's, 1905, page 284.

- First, with respect to the abdication of the state's duties and obligations to protect its citizens: *If men were angels, then no government would be necessary. If angels were to govern men, then neither external nor internal controls on government would be necessary.* (James Madison, Federalist #51).
- Second, with respect to the protecting the public from those who seek to flaunt the laws, *If there is no penalty [for] disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation.*" (Alexander Hamilton, Federalist #15).
- Third, in spite of the historical reality of the above two quotes, state governments have buried themselves in ideological dogma that the people are free to do as they please, and have adopted this erroneous application of a parallel legality to the Kings of yesteryear: *"The sovereign of the subdivision, the HOA, can do no wrong."*

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 "*Establishing the New America of independent HOA principalities*" (2008), and has published several books and videos on reforming planned communities and their HOA form of government. He is editor of *Buyer's Guide to Living in a Community Association* (2001), and he is author of *The Case Against State Protection of Homeowner Associations* (2003), reaching a growing audience of concerned people. 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.