The Case Against State Protection of Homeowner Associations

Is it good public policy to support undemocratic, private governments that deny homeowners their fundamental liberties?

Citizens Against Private Government HOAs, Inc

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ACKNOWLEDGEMENT & PURPOSE

The author, a veteran homeowner rights activist, makes his case against state government protection of homeowner associations. He documents 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, using his appearances before the Arizona Legislature; the numerous supporting materials from US Supreme Court, federal appellate and state court decisions; the research and publications of political scientists going back to 1992; and the publications of the national trade organization that lobbies state legislatures against returning homeowner associations to the American system of government.

The opinions and evidence presented makes a case for a uniform view that homeowner associations are state actors – governmental agencies as defined by the US Supreme Court -- and that there is no overwhelming public interest to warrant the denial of the US Bill of Rights and laws to homeowners living in associations.

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Report

On the

Arizona Legislature

and

HOA Reforms

2000 - 2002

"The tyranny of the legislature is really the danger most to be feared, and will continue to be so for many years to come".

…. Thomas Jefferson

George K. Staropoli, Editor

I. Initial Statement

Statement
Prepared for presentation to the
Homeowners Association Study Committee
Of the
Arizona State Legislature
August 14, 2000

My name is George Staropoli. I'm a homeowner speaking for myself, although I maintain an internet email service called "HOA Network". I am not here to gripe.

There is no vehicle, no avenue, no means of effective redress of grievances when it comes to a homeowner making legitimate claims that an HOA board has failed to conduct themselves as required by state law:

- To act in good faith,
- As a prudent person would in a similar situation.
- The board has a fiduciary duty to its members.

The homeowner needs an effective mechanism for the redress of grievances. It is for this reason that this committee exists. If there were no homeowner complaints we wouldn't be here today. The association managers didn't complain; the association directors didn't complain; the lawyers didn't complain.

As I look over the non-legislator members I see the non-complainers, the groups representing the status quo are present. They are representatives of their industry. I have no personal comments to make against any member of the committee.

Yet, I see an attorney who has been president of an association trade group chapter, Community Associations Institute, Inc, and is currently the Chair of their Legislative Action Committee for the Central Arizona Chapter.

CAI started as an educational non-profit firm in 1973, Today, it claims 16,500 members and states that there are some 205,000 homeowner associations in the country. That means, after some 27 years, CAI has only about 8%, at most, of the associations as members. It further states that some 17.8% of member dues are used for lobbying purposes in representing this 8% of homeowner associations. Its own brochures state that they speak for the industry. Maybe so, but they do not speak for the homeowners.

I also see a representative of a homeowners association on the committee. There is no minimum requisite knowledge required for association board members to govern the citizens of the State of Arizona. There are no licensing requirements for either board members or management personnel / firms to protect the citizens of Arizona.

And then there is the developer. The structure of the homeowners association is designed to protect the property values **for the developer** while the project proceeds to completion. When the developer leaves, and turns the association over to homeowner members to serve on the board, the structure remains the same. **It does not convert to an American form of government** with its inherent civil liberties and other protections provided under the laws of the land.

I posed the following question to the association directors and management firm subscribers on my internet network:

> **Do you feel that giving back civil liberties to the citizens of Arizona who live in your association would harm the association's property values?**

There was no response from the 8 or so subscribers identified as management or association director subscribers. Why? Because there is no valid YES answer. America grew in just 225 years from a rag-tag collection of colonies to the greatest and richest nation in history with the Bill of Rights in place. There is no YES answer.

So the makeup of this committee reflects the reality of the homeowners associations. The moneyed, powerful organizations, including their attorneys, are here to be judges of themselves. The two homeowner representatives, representing the reasons for this committee's existence, must once again do battle with the same elements as found in dealing with homeowners associations. And with the same expectations of results.

Let me make a few points about the role attorneys for homeowner associations. They are very influential, because they do not have to worry about the State Bar's enforcement of Ethics Rule 1.13, dealing with "Organization as Client", which is not addressed by your committee's mission.

Lawyers, we are told, represent the association and not any one party. Yet, if a member complains to the attorney about violations of the governing documents by the board, you will most likely meet with, "I don't represent you since you are in conflict with the association". Under the rule, however, the attorney is required to advise the board accordingly that its acts are illegal and if the acts don't cease the attorney is to resign. The attorney has no fear of complying with or being sanctioned by the rule and in realty, then, the attorney represents the board.

There is no appeal of the State Bar's lack of enforcement of this rule to the Chief Justice. I am told by the Chief Justice's office that the Chief Justice does not get involved and that I can sue the State Bar if I wish. Once again a citizen's only real alternative is begin an expensive legal suit at his expense, while the wrongfully acting board can use homeowner dues to oppose the homeowner.

It is unconscionable that the board is allowed to use homeowner's funds while opposing the homeowner, and that the homeowner must dig into his own pocket for expensive legal fees in order to seek justice. **Something is seriously wrong here!**

I believe that this committee will come to the appropriate decisions necessary to alleviate the plight of homeowners living in homeowner associations.

Thank you for listening.

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II. Homeowners Decl. of Independence

Statement
Prepared for presentation to the
Homeowners Association Study Committee
Of the
Arizona State Legislature
September 7, 2000

FOR RELEASE ON September 7, 2000

HOMEOWNER'S DECLARATION OF INDEPENDENCE

FROM HOMEOWNER ASSOCIATION GOVERNMENTS

Good morning Mr. Chairman. Good morning ladies and gentlemen of the Committee. Once more I reluctantly find myself before the committee to speak against my neighbors and other citizens of Arizona. I don't relish being here; however, circumstances and events have brought me here.

As in the times of 1776, a small, principled and dedicated group of citizens are seeking a redress of their grievances. They first looked to the existing government, the HOA Board, and having failed to obtain satisfaction therein, must seek other means of redress – a radical change in the concept and legal structure of the homeowner association and its controlling document, the CC&Rs. What is needed is an inclusion of a homeowners Bill of Rights and the removal of such onerous provisions that make the homeowner nothing more than an indentured servant, living at the suffrage of the board – pleased if the board is benevolent; living in fear if the board is oppressive. To quote from the Declaration of Independence,

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."
>
> "That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government . . ."

Mr. Chairman, ladies and gentlemen of the Committee, at this time I had hoped that the citizens of Arizona would be able to present and enumerate their long list of abuses, and solutions to these abuses, similar to those found enumerated in the Declaration of Independence, without the interference and obstruction by elements of these "oppressive governments". I see that this will not be the case. Continuing my quote,

> "In every stage of these oppressions we have petitioned for redress in the most

> humble of terms; our repeated petitions have been answered only by repeated injury".

The people of Arizona only wish to be able to present their case before this Committee in a fair and just manner. However, sadly I feel that, because of the composition of the committee they are being asked to justify their grievances before their oppressors; they are being put directly into a trial situation with their "oppressors" sitting in judgment. The homeowners, Arizona citizens in good standing, who find these truths to be self-evident, are being called to justify their complaints without the committee calling for the perpetrators to answer for these repeated acts against them.

Further injury has occurred by the acts and actions of certain members of this committee. These insidious acts do not help to arrive at a solution to our grievances or to propose revisions to the CC&Rs, but only serve to further alienate the homeowners. Here are a few statements from the "nation's voice for" the industry:

- "the majority of boards quietly go about their business, and that the major problems are rare"
- "I am here to try and make the industry better … I heard mostly complaints without any real suggestions on what can be done"
- "Perception vs Reality – Promoting a Positive Image at the state legislature", from a CAI luncheon announcement on 8/17 sponsored by Mr. Ekmark's committee"

I haven't read any call for CAI members to "bring your solutions to the hearing". This silence is perplexing when you consider the following quote from a paper by Prof. Evan McKenzie in CAI's 1999 publication, Community First!:

> "A homeowner bill of rights including basic constitutional liberties and due process of law, all consistent with functioning local democracy
>
> "plain-language CC&Rs that make the basics easy to understand so that it is fair to expect compliance
>
> "Too often neither the association members nor the candidates for the board understand ... what the director may and may not do . . . "It may be that government can help here -- through licensing, certification, public complaint, and continuing professional educational requirements."

In over 5 months since this committee was announced, I have not heard said:

> "We agree that homeowners have been denied their civil rights and we will work with you for their restoration", or
>
> "We will join with you in helping to stamp out those boards that violate state law and the governing documents, including those management firms and attorneys that conveniently look the other way"

Today we seek the replacement of the homeowners association form of totalitarian government as set forth in the CC&Rs. We seek, among other changes to the CC&Rs, the inclusion of a

homeowners' bill of rights, restoring those rights that every American is entitled to and should enjoy in today's society.

This committee has an historical opportunity to eliminate this dictatorship form of government that denies civil liberties for the betterment of and in the interest of the state, the homeowners association, with its façade of democratic principles and allure of a better world, and restore those principles of American democratic government to the citizens of Arizona. You, ladies and gentlemen, can put a stop to dictatorship in the midst of America by proposing a homeowners' bill of rights along with additional restrictions and legal sanctions against the abuse of these rights by boards of directors, management firms and attorneys who supposedly represent the association. We need to re-write the CC&Rs.

Thank you for this opportunity to speak before you.

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III. The Role of HOA Attorneys

Statement
Prepared for presentation to the
Homeowners Association Study Committee
Of the
Arizona State Legislature
September 28, 2000

Good morning Mr. Chairman. Good morning ladies and gentlemen of the Committee. My name is George Staropoli. I'm a homeowner speaking for myself, although I maintain an internet email service called "HOA Network". I am not a lawyer nor do I give legal advice.

As to the myth that the HOA attorney represents the association and all the parties within the association. How can that be? That's another legalese that's an oxymoron due to its built-in conflict of interest.

So whom does he attorney represent? That's a rhetorical question since, in reality, we all know who the attorney represents – the board of directors. They are supposed to act in the best interests of the association, their client. Somehow, somewhere along the line some attorneys lost the distinction between their client and the representatives of the client, the board of directors. Some even step over the line and defend the directors and officers against charges by the members of violations of state law and of the governing documents. They act in collusion with the board against the best interests of their client, the association.

Why? Because they know that there is no enforcement of the rules and no penalties against them if they violate their code of professional conduct, in other words, act unethically. They know the homeowner can't afford to sue using his owns money while the unscrupulous board uses the association's money.

It's important that we examine what is going on here, because almost all those horror stories and complaints could have been prevented, or severely curtailed, if the attorneys acted in an ethical manner instead of against the best interests of their client.

The Rules of Professional Conduct of the Arizona Supreme Court, ER 1.13 states,

- "(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents".
- "(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter … that is a violation of a legal obligation to the organization, or a violation of law … the lawyer shall proceed as is reasonably necessary in the best interest of the organization."

Clearly, the ethical actions of the HOA attorney are proscribed in ER 1.13. It is important to follow a real example of how this rule is ignored by some attorneys and how attorneys actually coach the HOA board as to how to proceed if a complaint is made against them. In other words, not to act in accordance with state law and the governing documents, but to protect the board's "turf".

There is a case relating to ER 1.13 in which the State Bar saw no problem with an attorney, Beth XXXXXX, who represents the Las Colonias HOA, refusing to comply with paragraph ER 1.13(b) when she was given certain statements written by the HOA President, Dick XXXXXX, alleging an opinion from the attorney. The case involves the President's desire to charge some homeowners interest on monthly payment of assessments and not charge other members. The simple CC&Rs article reads, "Both special and annual assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis". Period!

The President didn't like this wording and was charged to get an opinion from the attorney. Some 6 months after the annual meeting the President states, "It is the opinion of the HOA attorney that charging interest on assessments still treats all members fairly and uniformly". This is a verbal statement and neither Dick XXXXXX nor Beth XXXXXX feel it necessary to put her opinion in writing. It side steps the issue of interest charged to some members in violation of the CC&Rs. What is going on here? Not justice. Just protecting the President's rear parts against the best interest of her client, Las Colonias HOA.

Now this is not a question of alleged wrongdoing, since the wrongdoing had been provided by the President's own letter. So, we don't have an issue with her not knowing of wrongdoing. Yet, Ms XXXXXX, the Executive Director and President of the State Bar saw no problem with the dismissal of the complaint. (My reply to the State Bar is included as part of this statement). This dismissal is outrageous in view of the fact that the board uses HOA funds, money paid by the homeowners, to defend their unlawful acts against the homeowner.

Let me slip in statements regarding the attitude of Ms XXXXXX. Ms XXXXXX in her response to the complaint falsely refers to a lack of payment of assessments by me, implying a current condition when in fact it took place some 8 years ago and was resolved to the satisfaction of all parties. She further stated that since I am in conflict with the association, she doesn't have to represent me. Here we have the attorney saying, "I can't represent you because your interests conflict with those of the board". Who asked her to? Here we have the attorney saying, "that advising the board as to their unlawful acts is not in the best interests of the association". In a response last week to my attorney regarding this illegal charging of interest, she now changes her defense to "the association is allowed to charge interest on late payments". She ends the letter to my attorney with an "in your face" arrogance, "if you feel you have valid claims, sue the association" and don't talk to me anymore about it. Sure, she has association money to pay her.

This week in my replying to a letter sent to the President regarding the disappearance of some $10,000 from the books of the association without any explanation – an example of total incompetence, or falsified statements – I get the same "in your face" reply and no response to a legitimate question of where's the money?

Unscrupulous attorneys know they can get away with flaunting the law because of the lack of enforcement. Pretending to be prim and proper, they actually act unethically. Beth XXXXXX's actions and words as stated above conflict with her public persona as stated in a Nov 12, 1999

article in the Republic:

> "Phoenix attorney Beth XXXXXX, who represents about 120 associations, acknowledges that some groups may go too far, being overly aggressive or maybe using the board's power to strike back against those they don't like."

In effect, the State Bar in refusing to uphold this ethics rule in the case of HOAs has said that the attorney does represent the board of directors. Either the attorney represents the association and not the board, or the attorney represents the board. If indeed the attorney does represent the board as the State Bar's decision makes all too clear, then any statements made to the contrary by attorneys, management firms and boards of directors are false and misleading and should cease immediately. Furthermore, given the above, any member of an association probably has a strong case for a class action suit against his attorney, his management firm or board of directors if such statements were made by any of them, and against the State Bar, too.

You asked for solutions. This rule, ER 1.13, must be enforced either by fines and suspensions of the attorneys by the Attorney General, since the State Bar is not impartial.Or, an alternative solution if this turns out to be a serious political problem, through a "public defender" lawyer paid for by the association; or by the board members being required to use their own personal funds to defend themselves against charges of violations of state law or of the governing documents. This is called "a level playing field".

This ounce of prevention will generate a pound of cure. It is a very effective "checks and balance" on the board of directors. The solution is very practical since it does not deal with high principles, but with self-interest pocket-book concerns. Boards will think twice before they attempt to intimidate homeowners and violate the governing documents. The HOA attorney will think twice about his responsibilities and who will pay him. This will be especially so if fines and penalties are also made part of the law.

Thank you for this opportunity to speak before you.

Contact: George K. Staropoli

IV. Letter to Arizona Senators

G E O R G E K . S T A R O P O L I
Scottsdale, AZ

January 2, 2001

State Senate
1700 West Washington
Phoenix, AZ 85007

Dear Senator:

Let me first wish you a very successful year for the upcoming legislative session.

I am a 16-year resident of Arizona living in a small homeowners association in Scottsdale. You are undoubtedly aware of the recent media attention to problems in these associations as well as the results of the HOA Study Committee just ending this past December. I have been an active participant for homeowner rights and HOA reforms, producing several articles for the web site, presenting papers to and speaking before the HOA Study Committee, and being quoted in several nationwide publications. I maintain internet email sites, http://starman.com/HOA and http://pvtgov.org, and an email list service, HOA Network, with an nationwide membership. I've started a membership, non-profit organization, Citizens Against Private Government HOAs, working to bring important and full information about living in an association to the attention of the public, the media and Arizona legislators.

Let me say that the Study committee did not do the job it intended to do – it failed to protect homeowner's rights and did not examine at all the practices of the special interest groups, the management firms, that had representatives sitting on the committee. It is my strong conviction, as well as that of others who have been seeking homeowner rights nationwide, that these special interest groups with the inclusion of the associations and attorneys working in this area that have deliberately mislead the legislature, the media, the public and the buyer of an HOA-controlled property. The question comes to: Can the homeowners association maintain property values, as it is charged by virtue of the CC&Rs attached to the development, and not deny its homeowner members the basic civil liberties and rights that are guaranteed to all citizens of this state and this country?

Senator Smith, at the committee hearings and in the press said, "I don't want to hear any more horror stories" from citizens speaking before the HOA Study Committee. The committee has received thousands of letters and emails as Senator Freestone stated at the first hearing. No, we are not a few "malcontented and disgruntled homeowners" as stated publicly by the leading trade group, CAI, in the media, in the Arizona School of Real Estate's monthly publication and in their own monthly publication.

I have asked at the committee hearings, on the national CAI email list, and in my articles,

> "Do you feel that giving back civil liberties to the citizens of Arizona who live in your association would harm the association's property values?"

I have stated before the committee that I have not heard CAI say,

> "We agree that homeowners have been denied their civil rights and we will work with you for their restoration … We will join you in helping stamp out those boards that violate state laws and the governing documents …"

Yet, you, the legislators and the public, are still being told by the special interest groups that there is always a discontent minority and we should not upset things for the 95% of the associations doing things right. Well, it's this arbitrary and unverified 5% that need the protection of the laws of the land to stop abuses, oppression, intimidation, loss of home and possible financial ruin as a result of HOA boards of directors failing to follow state law and their obligations under the associations governing documents. Why? Because the enforcement of the CC&Rs falls into the hands of a non-profit corporation called, essentially, the homeowners association. The HOA is a private corporation and not a civil government and thereby allows the boards of directors to disregard the rights of its homeowners and prevents the state from taking actions against the unlawful acts of these boards.

Yet, you, the legislators and the public, are still being told by the special interest groups that the homeowner signed an agreement which is a private contract and outside the protection of the civil liberties we all have come to expect and are guaranteed by the Bill of Rights. No mention is made, by the special interest groups, of the fact that the average homeowner does not understand that he surrendered his civil liberties when he bought his home. No mention is made that the average homeowner cannot fully comprehend the 8 page home purchase contract, nor the 100+ pages of the governing documents he is supposed to receive, nor that he was not given a 5 or 10-day "escape" provision to cancel his contract if he was not satisfied with the documents he read.

There are those who argue that this is wrong, that this is un-American and violates the American system of government and principals and values of justice for all and fair play. Studies regarding these problems with HOAs have been conducted by several university researchers: Evan McKenzie, Stephen E. Barton and Carol J. Silverman, to name a few. There was even a study conducted in 1992 in Arizona regarding the problems with homeowners associations. There are those who argue that it is now time for the legislators to seek out the truth, the full story, regarding the private government aspect of homeowners associations and take steps to remedy this unjust and unequal application of the laws against homeowners living in associations.

I am seeking effective legislative reform to bring justice to homeowners and hold the HOA boards of directors accountable as we currently hold our civil government accountable. Yet, you, the legislators and the public, are still being told by the special interest groups that

- if you hold HOAs accountable,
- if you seek to have only knowledgeable and informed persons, through training requirements, be able to hold a position of authority in an HOA,
- if you require the licensing HOA management firms as property managers are required to be licensed

all of this will cause homeowners not to volunteer to serve on the HOA boards and will thereby result in the failure of the association. The implication here is that property values will erode because an association is the only method to ensure property values. This is the same false conclusion that the courts have ruled on: to allow an association not to enforce the payment of assessments through foreclosures on homes would cause serious harm to the association.

Do not fall for these arguments seeking to generate false fears. What we have here is the special treatment of a person, the HOA, by the government so it can't fail. What we have here is the special treatment of a person, the HOA, permitting it to govern citizens while denying them the rights guaranteed to all citizens under the Bill of Rights – due process and the equal protection under the law.

What do we have here?

The Arizona legislature passing laws in violation of the Arizona Constitution that forbids enacting laws favoring any one individual or person. The creation of an un-American system of government, the private HOA-controlled property government, where the foremost purpose of the government is not the protection of the freedom and liberties of its citizens, but the subversion of these basic American principles to the "state" goal of maintaining property values.

I have therefore, not being at all satisfied with the performance of the HOA Study Committee, prepared my own proposals for HOA reform and the restoration of homeowner rights. I am not seeking anything that is not the right of any citizen. I am not seeking to destroy homeowners associations, but to seek justice for homeowners. I have taken pains to make as little changes as possible to existing statutes, relying on existing laws and their modification for application to the problems with homeowners associations. Included with this letter is my draft proposal for a legislative bill to be introduced at this legislative session.

I urge all legislators to sponsor and support these proposed legislative reforms.

Sincerely,

George K. Staropoli
starmangroup@cs.com

V. HOAs Are Big Business

Submitted as a Commentary to the Arizona Capitol Times, Apr 24, 2001

It has been just about a year since ex-Senator Tom Freestone was able to get the legislature to create the HOA Interim Study Committee that met from August to December of 2000. The mission of the committee included "To (1) review the effectiveness of current homeowner association laws in ensuring the rights of homeowners are protected; (3) examine the role of management companies hired by homeowner associations."

I feel the committee had failed to effectively to meet items (1) and (3) relating to protecting the rights of homeowners and investigating the practices of management companies, respectively. As for item (3), the committee never called any of the management companies to answer for the charges made against them by the homeowners and therefore, could not come to any unbiased conclusion.

Pat Haruff, HOA committee member and homeowner representative, writes, "The most frustrating part of the legislative process is that 'Joe Citizen' is really NOT a 'part' of the process … In the final analysis the ONLY persons who have ready access and plenty of contact with YOUR representative are the Lobbyists for the many Special Interests."

To place these issues in proper context let me say that the intrinsic legal structure of the HOA is defective and that the problems with HOAs are not the grumbling of a "disgruntled minority". It's a nationwide problem and Arizona had an opportunity to do the right thing and failed. Shu Bartholomew, host and producer of On The Commons, uses the slogan "You are now leaving the American Zone" to call attention to the private government nature of these nonprofit corporations, with their denials of the civil liberties that Americans are entitled to. There have been Supreme Court cases in other states that decided that certain acts by HOAs are "an unconstitutional delegation of government powers". Yet, homeowners are still being held to a so-called private contract arrangement between HOA and the homeowner that is arguably voidable for 2 reasons: it denies homeowners their civil liberties and there has not been a true "meeting of the minds" with a full disclosure of what living in an HOA really means.

What the legislators and the public are not being told by the special interest management firms, lead by the leading trade group, CAI, that, as Ms Bartholomew states, "Property values and the quality of their lives are subject to the whims of their neighbors and the honesty or lack thereof of management". As Rick Happ from North Carolina Property Rights says, "Even a well directed HOA is "one election away" from tyranny … The HOA problem is a national problem that needs to be addressed on a Federal level."

"Why", I ask, "have the Arizona legislators failed to see these basic violations of the American way of government and fair-play?" Because HOAs are big business! CAI, the special interest lobbying trade group, vigorously attacked homeowners seeking to call attention to these problems in the HOA committee, in the legislature and in the media. And the legislators sat silent and wouldn't even remove this impediment to the redress of grievances from the HOA committee. Cities and towns get infrastructure paid for by developers rather than having to raise taxes to pay for expansion, creating these private governments that denial civil liberties. This is the extent that special interests have spread their myths about HOAs, permitting government officials at all levels to look the other way. HOAs are big business!

VI. 2 Year Legislative Inaction Summary

Does the legislature want to solve the HOA problem?

Letter to the Editor of the Arizona Capitol Times
May 27, 2002

Another year has gone by and still the Arizona Legislature has failed to deal with the horror stories involving rogue homeowner associations. The two main bills, sponsored by Sen. Gerard and Rep. Voss, both failed to address the heart of the problem: unregulated HOA boards that abuse homeowners and operate outside the laws of the land. The press has referred to these reform bills as "middle ground", "a first step", "baby steps", "baby reforms" and after the demise of the combined reforms into HB2604, a "consumer bill".

These bills were not middle ground, but just that -- baby steps. Citizens expect adult solutions to adult problems from their elected representatives and not childish solutions. The bills followed from last year's SB 1368 which arose out of the failings of the HOA Study committee of 2000, with some changes, but avoided any substantial redress of grievances. The legislators have ignored many materials provided to them in support of the homeowner advocates' positions from political scientists; from research reports in CAI publications disputing CAI's own statements to the legislators; and US and state Supreme Court and Appeals cases reflecting on questions of constitutionality of certain HOA functions and powers.

Requests sent to the legislative leaders asking that they fund an independent and unbiased research study, by a bona fide and respected "think tank", went unanswered.

There has been a recent case in the US 9th Circuit Court stating that "state actors" cannot deny citizens their civil rights. And the US Supreme Court had ruled that private corporations exercising public functions, or to whom the state gives support with its coercive powers or encouragement, are "state actors". Everyone will agree that HOAs fit well into this classification and cannot, therefore, deny homeowners their civil liberties.

At the March 25th meeting of the House Commerce & Economic Development Committee, during a discussion of HB2604, Rep. Somers asked Rep. Voss about the constitutionality of HOA monetary penalties (fines). She deferred and Mr. Carpenter, president of CAI, replied to this question that he "really wasn't aware of what the argument is … but the argument in the abstract, to me, is not sufficient to removes the power to fine…." Advocates Haruff and Staropoli set the record straight with citations of the court decisions and gave a summary of the opinions – "is an unconstitutional delegation of government powers".

You will, as of this writing almost 2 months later, not find this important discussion raising valid issues of constitutionality concerning the functions and rights of HOAs in the official minutes of this meeting. Requests to correct these minutes, and to reflect legitimate, legal concerns by homeowner advocates as to the true nature of the issues being raised by a Representative, have gone unanswered by the Speaker and the committee chairman. This is highly unethical. To blame it on some clerical error is outrageous and an attempt to cover up the failure of the

committee members, who must approve any minutes, to insure that the minutes do not mislead the public.

An investigation is warranted to determine if there was undue pressure put on the House staff or committee members by private parties to omit these important statements from the minutes. These statements were made by the public at an official legislative committee meeting. It is these minutes that are readily available to the public, and not the audio tapes.

What is happening to Arizona? Why are the legislators so opposed to an open discussion of all the factors involved in solving the HOA problem? This is the only real way to end the horror stories.

George K. Staropoli
Citizens Against Private Government HOAs

PART 2.

COMMUNITY ASSOCIATIONS:

A VIEW BY A HOMEOWNER RIGHTS ADVOCATE

A homeowner rights advocate reviews this book, funded by CAI and ULI, and strips away the high praise given to the proponents of planned communities and the founders of CAI. He reveals the business profit motivations and actions to make this "innovation in housing" a success, and the lack of interest or concern for the democratic governance of these planned communities.

George K. Staropoli
April 2002

I. Community Associations:

The Emergence and Acceptance of a Quiet Innovation in Housing (Contributions in Economics and Economic History), Donald R. Stabile, Greenwood Press, 2000
A CAI and ULI funded publication.
Reviewed by: George K. Staropoli

1. CAI Admits HOAs are Private Governments

Review of Chapter 1.

(Remember that the author is an economist and not a political scientist or sociologist).

The chapter begins with statements in regard to marketplace forces on the price of housing:

> "Economists would interpret the growth in CAs over the past two decades as an indication that this new form of housing has succeeded. Critics should not ignore this market test as an indicator of consumer satisfaction"

Knowing that this is not the complete picture, the author continues, *"For markets to work properly there must be competition"* and that would determine the price of housing. Yet, he feels the need to address the question of " fair market practices",

> "With a CA, they [home buyers] may not be willing or able to read a complicated copy of CC&Rs. As a result, developers must try to ensure that consumers know that they are purchasing a home and an organization. Real estate agents need to give accurate information about CAs. Home buyers need to shop around for alternative homes and learn what life in a CA will entail for them".

I would add that state legislatures must get involved to protect home buyers from the abuses that have been occurring, and continue to occur, by organizations quite familiar with current marketing practices. The legislators must act now and stop their "hands off, not my problem" attitude of the past and take responsibility for allowing these abuses to continue. He then argues that planned communities allow builders to a make a profit while keeping the price of housing low.

> "CAs are a way for a home buyer to have more influence over the ancillary components of housing [public services, neighbors, schools, roads, etc]."

See what we are really up against and who is espousing this view? Pure economics and no discussion of the means and methods to attain and force home buyers into living in CAs, or concerns about democratic processes. And this book was written in 2000, not some 10 years ago! Stabile goes on to say that the government is not the best means of supplying affordable housing and that businesses are better, because, ***"The advantages businesses have in carrying out plans is that they have a 'bottom line' of profits to inform them when a plan succeeds and when it fails".*** No mention of all those governmental acts that place restrictions on business abuse, going back to the "Trusts" at the turn of the century and the Sherman Antitrust Act, the excesses of the tobacco companies, the drug company regulations and even the Fair Housing Act.

But the author catches himself once again and adds, ***"To be sure, the CC&Rs place limits on the political process, much as the US Constitution limits what the federal government can do"***. I have been arguing that CAI really knows that HOAs are independent city-states, and this statement

putting HOAs on the same level as the federal government clearly indicates this arrogance. They forgot Teddy Roosevelt's statements, referring to the Trusts, that we created these private companies and we have the right and obligation to regulate them.

Getting caught in arguments of government and efficiency that he started with the above quotes, the author attempts to defend CAs on political and not economic grounds.

> "They [CAs] provide their residents with services usually considered public goods, such as roads, police, garbage collection and general maintenance. The advantages of private associations are their efficient decision making and the responsiveness of the 'government' to local concerns".

The reviewer, having been involved in homeowner rights advocacy for several years, wonders where and in what country Mr. Stabile found his assertions to be anywhere near valid. Apparently, he had not seen any evidence to the contrary from the political scientists' research and court cases. Finally, the author attempts to deal with political and governance issues within the CA when he raises the question of setting fair rules and regulations. Who does he use to shed light on the issues? Jefferson? Madison? John Locke? Rousseau? No, he chooses R. H. Coase, a Noble winning economist who favored Bentham's utility analysis of economic behavior. The author uses, "the greatest good for the greatest number". We are aware of this argument that gets translated into "the rule of the majority".

He continues to wrestle with this problem of rule setting that is faced by any organized society, but can only state,

> "CAs are a private form of government that regulates through CC&Rs and association bylaws. By joining a CA, members have implicitly agreed to a private contract to eliminate the social costs of neighborhood effects [setting fair rules and regulations] in a prescribed way".

Notice the phrase, "implicitly agreed to a private contract". Webster defiines implicitly as, "without questioning". The truth of the matter is, "without appropriate knowledge and information as to the consquences of purchasing an HOA-controlled property". Yes, there is much that the public, the media and the legislatures are unaware of and are not being being told, even with this CAI funded publication. The book is informative, yet biased toward the purchase and acceptance of HOAs.

2. CAI speaks on its noble purpose for a better America

> "To give them guidance [CAs], in 1973 the FHA, the ULI [a nonprofit educational group, Urban Land Institute], the NAHB [business trade group, Nat'l Assn of Home Builders] ... formed CAI."

This is not another book that homeowner rights advocates can openly point to and say, "See, he supports us, too". At least not on the basis of the Forward by David O. Whitten ("Series Advisor for Contributions in Economics and Economic History, Number 218") and the author's Acknowledgments and Introduction. As you probably already noted, it's not a book on government or democracy or politics, but on $$$$$$.

In this reviewer's opinion, being a homeowner rights activist for over 2 years and finding himself opposing CAI on several issues, this book is a self-serving propaganda vehicle for CAI. It makes no serious attempt to inform the reader of all the issues relating to community associations,

especially those dealing with the denial of association member's civil liberties because of a private contract interpretation of CC&Rs, the undemocratic aspects of HOAs and the questionable practices still being used to sell this defective product to unsuspecting homeowners.

Rather, the author and David O. Whitten, writing a Foreword, try in the Forward and Acknowledgments sections to "sell" the idea of highly democratic governance of community associations and lavishes high praise for CAI and its "noble purpose". The reader should bear in mind that they are economists by trade who are commenting on the governance and democratic aspects of the associations. They are, in the reviewer's mind, attempting to persuade the reader of the virtues of CAs while not speaking of their undemocratic, private government status within America.

Here's how this book starts out with the Forward by Whitten:

> "Community Associations ... illuminates the important yet unheralded application of democracy to the provision of one of mankind's essentials, shelter.... Entrepreneurship in the application of democracy to units smaller than local governments has brought homeownership within the grasp of millions -- 42 million ***people were represented by 205,000 community associations".***

The justification for employing this private government model is money, we are told.

> ***"Democratic governments at every level of the American federal system play an essential role in the creation and operation of CAs by specifying property rights and creating a legal framework within which developers can establish CAs and homeowners can direct them"***

The reader should be careful as to what is cleverly being said, and what is not said. In the reviewer's mind, what is being said is that democratic institutions, your government, at all levels have worked to create and to maintain CAs for the developer's benefit, and that these are supposedly democratic organizations. Very little discussion is made of the works of political scientists, such as McKenzie, Dilger, Barton & Silverman of criticism, complaints and problems with the so-called democratic processes within CAs. Lip service is paid to these criticisms in the 6-page Introduction with only one and one-half paragraphs touching on these problems. Stabile offers a one line rebuttal that is not from another political scientist, but, again, from an economist.

In fact, only Prof McKenzie's name appears in the index, only because he's mentioned as a speaker at CAI functions and that his works appears as a chapter in a CAI publication. However, three of the four texts criticizing CAs are only found buried in the Notes on p. 6, presumably put there so the author can say I referenced the criticism. It would seem that the author is telling us that affordable housing takes precedence over our fundamental rights as citizens. That good bricks and mortar make good communities and a better America. Why this seeming bias? Well, in the Acknowledgments we find:

> "Research and authorship for this book were funded by a grant from the Land Economics Foundation ... and made possible by contributions to the foundation by the Community Associations Institute, the Urban Land Institute Foundation...."

The author further displays his bias when he pays tribute to his "sponsors" with:

"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. I do not live in a community association and probably never will. They are not for everyone".
By this, I have to wonder whether the author is saying, I don't believe what I wrote. While providing some historical content and views of the proponents of "affordable housing" and efficient land use policy, it fails to provide a balanced view. And since it was funded by CAI and ULI, it is definitely a propaganda piece to deflect serious and growing criticism of the CA model of community government, and of CAI's approach to defending the status quo. The very sub-title, "*The Emergence and Acceptance of a Quiet Innovation in Housing*", reveals, indeed, that there has been a quiet acceptance as a result of this propaganda and the failure to hear the other side's viewpoints.

Mr. Stabile provides a “why” for this acceptance, when he makes the following statements:

"It [this book] will record what ... the founders of the CAI had to say about how CA s and the CAI should function and whether that functioning was consistent with the potential for CAs to offer attractive housing and political participation to their residents.... For this potential to be realized, home buyers must choose to purchase homes in CAs [bold is my emphasis]. They are a product and sold by businesses for profit, a legal entity imposing rights and obligations on their purchasers, a corporation, a community, and a lifestyle".

Mr. Stabile says a lot here. Justification for HUD / FHA to look the other way on homeowner rights -- mortgage lending protection. Justification for the developers to look the other way on homeowner rights -- profits. Homeowner rights advocates have found that these products, the CAs, **are indeed defective product**s with respect to the denial of a citizen's guaranteed civil liberties. Laws have been created in favor of the developers and HOAs without any Bill of Rights protection for the homeowners, and some of these laws, where they can be used to protect homeowners, lack any means of enforcement such that they are really ineffective and useless.

Furthermore, CAs are being sold under highly questionable methods that would not be permitted for new securities or used car sales. Adhesion contracts where the buyer doesn't sign off on or negotiate any provisions; a failure of a "meeting of the minds" as a result of partial and non disclosure of material facts relating to severe restrictions on a homeowner's rights, as compared to homeowners choosing not to live in a CA; and a private contract ruling that legalizes undemocratic, private governments whereby the state government has no or very limited oversight authority.

The author, in his chapter on "A Period of Change", fails to mention that CAI elected to become a business trade group and is no longer an educational tax-exempt organization. Yet, to this day in its Mission Statement and in other publications, CAI continues to imply that it's still an educational organization. More propaganda.

3. The Emperor Has No Clothes

Comments:
This book reveals that many of the problems existing today were known as far back as the 1970s. It mentions many attempts and reports by CAI to remedy these problems, but they remain today. It discloses the intents and motivations of the CAI founders and creators of the planned community development; that it's purely a "for profit" motivation with very little concern for democratic government or the application of the US Constitution and its Bill of Rights.

The book contains many prescriptive terms, “should be”, “recommended” “encouraged to”,

“advised to”, etc. quoted from studies, reports, manuals and from key individuals. Subsequent events clearly show that many of these prescriptions have not only gone unheeded, but have been actually resisted by the various industries, including CAI.

It's time to turn to the advocates for solutions to their problems because it's obvious that CAI cannot or will not make reforms necessary to bring the equal protection of the laws to homeowners.

a) Pre-HOA communities

The initial concepts of planned communities in the early 1900s, which evolved into our current planned communities, were utopian visions of an ideal community in reaction to industrial-urban blight. The concept focused on a community run by the experts and governed by experts in their respective fields. This utopian concept was not dissimilar to socialistic views or the communist view of, "From each according to his abilities; to each according to his needs".

b) The beginnings of planned communities.

Early planned communities had CC&Rs, but no homeowners associations. The CC&Rs were voted on by all the current homeowners, and not designed by the developers and provided as an adhesion contract to homeowners. They were profitable to developers.

> "The innovators of CAs were entrepreneurs ... who set up CAs to make money by creating better communities."

c) The mass marketing of community associations

Problems arose relating to the business decision to increase sales and profits by the mass marketing of HOAs. Even with these early HOAs the developers encountered homeowner apathy. This led to the need for HOAs, as the enforcement agency that strictly enforced the CC&Rs, as well as the need for mandated membership.

d) The Feds get involved (1960s)

In addition to the desirable public interest benefits of affordable housing as a result of space usage, the federal government entered the picture with federal mortgage insurance -- Fannie Mae, Ginnie Mae, Freddie Mae. And these agencies also saw the business benefits, as well as public benefits, to require the HOA enforcement agency.

An FHA booklet read, ***"Establishment of property owners associations is also advisable to provide an effective means of obtaining adherence to protective covenants".*** The FHA and its ULI arm wrote manuals [TB50] on how to set up community associations and how to run them, strictly from the point of view of a viable business enterprise. It contained such “gems” as:

- For legal reasons, CC&Rs must be in place from the outset and the power to modify them must be limited.
- those who hold themselves as directors or committee chairmen do not always have the necessary talent to operate a community organization
- They [CAs] exhibit a combination of traits in keeping with their being a consumer product sold by a profit-seeking firm, a legal device, a corporation reliant on both coercive and voluntary cooperation.

Caution was included that the home buyer must be told that he was buying into a business when he bought his HOA-controlled home. Disclosure requirements were also included in order to inform the buyer as to just what he was getting into. Happy purchasers were the reasons for these requirements, because happy people make good testimonials for the HOA model.

e) The need for professional management (1973)

As the mass marketing brought more and more people into the planned communities that required mandatory membership in an HOA, problems arose. The author writes, "Critics of this collaborative effort [between FHA and ULI/NAHB] find this an unhealthy alliance between government and business to promote CAs to unwary consumers". People wanted homes, not to be government officials. The profitability of these HOAs were becoming a problem, so ULI and NAHB formed CAI to provide professional business management to these HOAs that were still seen as a business, not a community or government. The need for "experts" as originally seen in the utopian concepts were now realized.

f) The beginnings of CAI

Remnants of the early utopian concept of a society run be experts was carried into CAI with its membership categories from 5 involved areas -- public officials, HOAs, association managers, professionals, other related industries. It was founded as an educational nonprofit to keep those HOAs solvent and viable.

"The Leadership Group [CAI study committee] felt that CAI needs to be the voice of the industry by relating positive aspects to the public ... Founders of the CAI recognized that its structure of equal interest groups would be difficult to preserve, but deemed it important for attaining legitimacy for the CAI as a voice for the entire CA industry".

CAI prepared educational courses and "how to" manuals on how to run an HOA business as well as educating "certified professionals". One CAI brochure said,

> ***"The major responsibility of the association is to protect the investment and enhance the value of the property owned by members … an important thing to remember about a community association is that it is a business".***

g) HOAs as a civil government

In the late 1970s there was criticism of the HOA board's inflexibility with respect to the enforcement of the CC&Rs. ***"Articles in the press have attacked these often for being unduly restrictive and taking away basic human rights".*** A CAI handbook was produced with the key element of ***"regarding whether or not to define them [CAs] as governments. Legal opinion was offered, in a debate on the issue, that "the Supreme Court had required constitutional procedures in a 'company town' and with "political parties***".

This handbook discusses the government vs. business issue without attaining any clear definition.

h) The utopian concept runs into trouble (1992)

Problems continued to plague the HOA model of government. After almost 20 years in existence, CAI had less than 4% of the total HOA market, as compared to AARP that had some 50% of people over 55 as members. Conflicts began to show between the membership categories – some arguing that CAI was a consumer group, others argued that it was a professional group.

Federal legislation was being considered that would regulate HOAs. Research studies were pointing to problems with democratic processes, HOA boards, rules enforcement, etc. CAI reorganized its membership and began acting like a trade group and started lobbying committees nationally and in the chapters.

In 1980, CAI had produced a report highlighting problems with HOAs, part of which said, ***"Problems in sales and resales took place because developers did not inform consumers about the social, financial and legal factors related to CA membership".*** According to the author, CAI President Keenan, at this time, "understood that CAs were a social experiment". Various CAI members said,

> ***"Although homeowners had not joined in large numbers and professionals came to dominate the CAI; the CAI board had a hard time getting homeowner members; the objective of this change was to create a culture in the CAI more conducive to lobbying as a national membership coalition"***
>
> ***"Longtime members of the CAI, including several of its founders, disapproved of this change [in 1992]. They feared it would turn the CAI into a trade association for CA managers".***

It was strongly noted by the reviewer that no mention was made that CAI did become a business trade group, a 501(c)6 tax-exempt nonprofit organization. A paragraph is given to McKenzie's piece in CAI's **`Community First!`** publication (1999), with such wording, "a new paradigm for CA management... McKenzie raises issues relating to his new paradigm, such as how it connects with a communitarian movement emerging in intellectual circles", omitting his statements about the problems with HOAs. Professor McKenzie is an outspoken critic of the private government HOAs since his publication of **`Privatopia`** in 1994.

> ***"Its [CAI educational materials] overall message is clear: CAs should be managed as a business."***

4. An Advocate Responds

Many homeowner rights advocates would agree that planned community developments, common interest properties, provide public interest benefits with respect to affordable housing and the efficient use of land. Their objections are to:

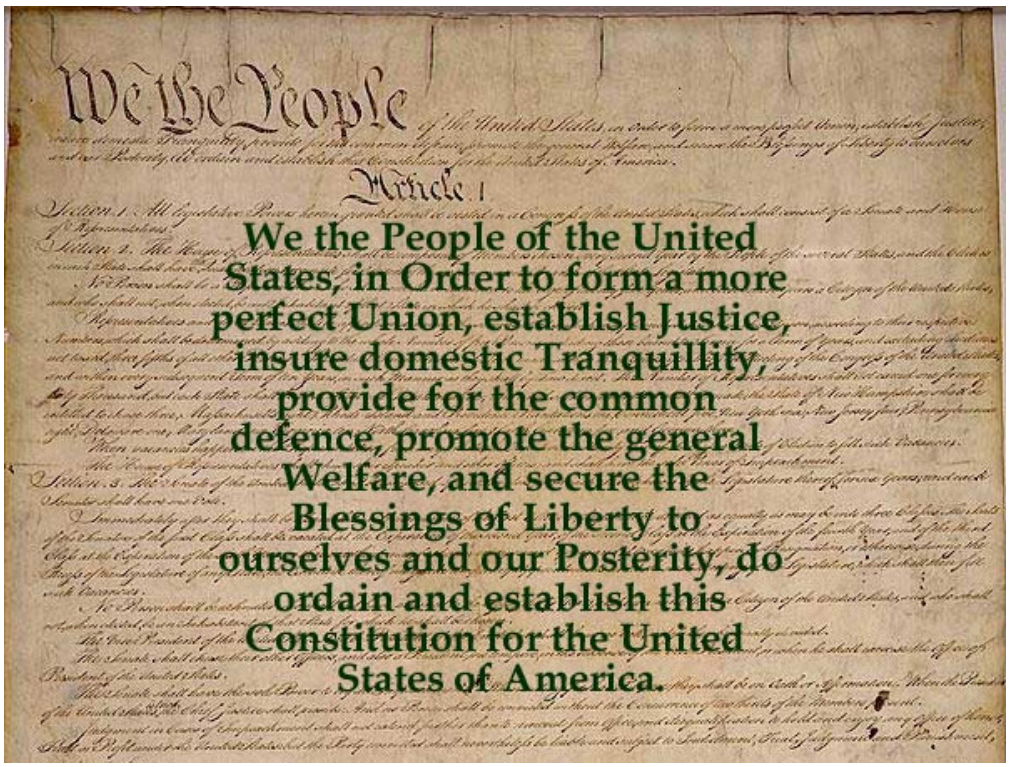
a) the undemocratic form of governance, the nonprofit corporation charter, without due process, no separation of powers, no checks and balances, and no “bill of rights” protection for the homeowners who are the owners of the HOA;
b) the use of the mandatory membership HOA that functions as a strict enforcement agency of the community laws as contained in the governing documents;
c) the absence of state governmental oversight of this privatization of community governance and the reluctance of state legislatures to protect homeowners from abuses by rogue boards that easily occur as a result of these conditions;
d) the enforcement of a contract between the homeowner and the HOA in which questionable sales and marketing methods are employed;
e) the use of laws that are favorable to HOAs, that promote the denial of civil liberties to homeowners in order to support an otherwise defective product, and that would fail without these oppressive laws;
f) the government’s continued support of the HOA model, whose primary purpose was for the financial benefit of private enterprises -- the developer / builder, the real state agent, and the special interest firms that supply services to these HOAs.

Many homeowner rights advocates believe 1) that the benefits of planned communities could be achieved without the HOA model of governance and within the American system of government, with its protection of the rights of its citizens, and 2) that the use of unconstitutional and repressive statutes in order to make the HOA viable, and that interfere with free and open market forces, is unconscionable.

This book, funded by CAI and ULI, describes events that support these views by homeowner rights advocates.

I. The Loss of Democracy in America:
The Myth of Homeowner Associations

The Governing Documents:



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

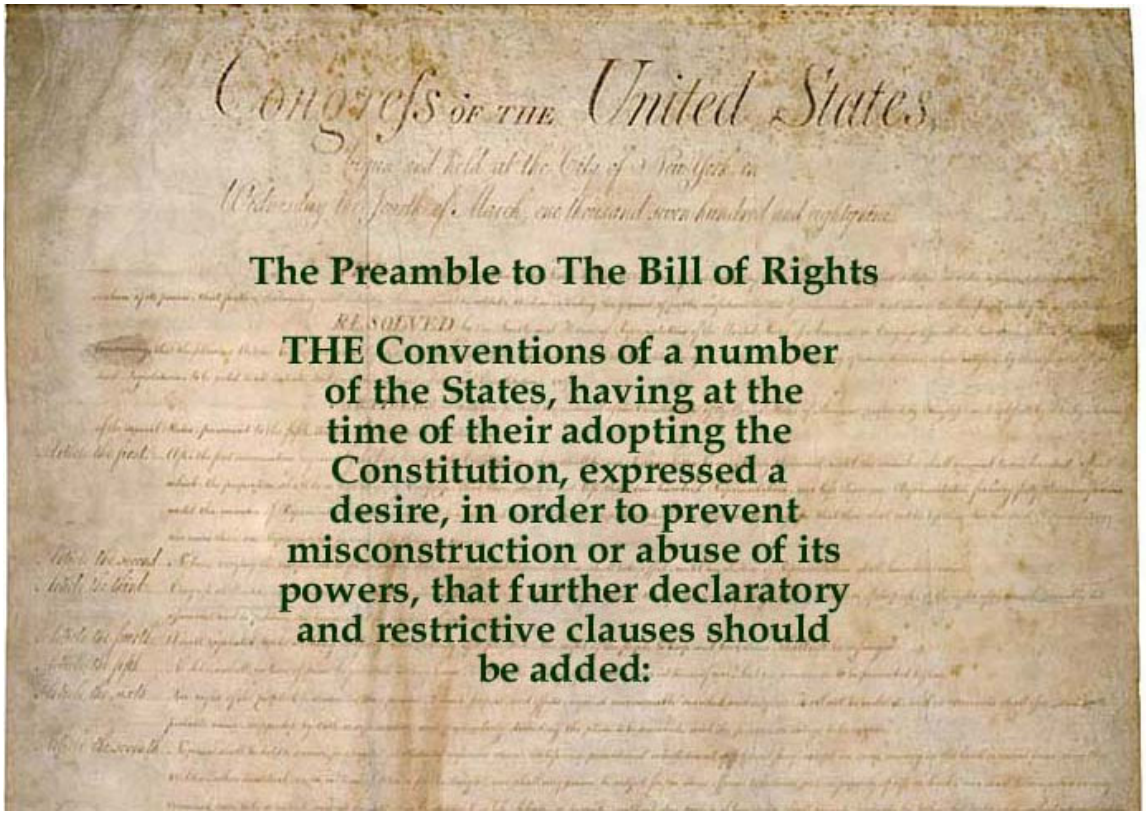
THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 30th day of August, 1995, by , a Arizona limited liability company (the "Declarant").

Declarant is the owner of the real property described in Exhibit "A," attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article I) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of that plan, this Declaration provides for the formation of Community Association, Inc., an Arizona nonprofit corporation, to own, operate and/or maintain certain common areas and community improvements and to administer and enforce the provisions of this Declaration, the By-Laws, the Design Guidelines, and the Use Restrictions and Rules promulgated pursuant to this Declaration.

Article III
MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area and other portions of the Area of Common Responsibility to the extent such responsibility is assigned to or assumed by the Association. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership may adopt pursuant to Article X. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Arizona.

Bills of Rights:



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

Homeowner Bill of Rights

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Article 1, Section 10.1 of the U.S. Constitution states, in part, **"No state shall … pass any …law impairing the obligation of contracts"**. The courts have misguidedly declared that the CC&Rs

is an adhesion contract binding the homeowner and the HOA. The legislature and courts have used these 11 words to permit homeowner associations to operate outside the laws of the state, depriving homeowners of their constitutionally guaranteed rights. I do not believe that the Founding Fathers ever contemplated that the US Constitution be used to undermine and permit private, undemocratic governments to flourish with the proactive support of state governments. President Lincoln fought a war to prevent states from leaving the Union, while current politicians are allowing the destruction of our American system of government.

The following are conclusions on democracy in HOAs, taken from a 1991 study here in Tempe / Mesa, AZ, by Gregory Alexander, Law Professor at Cornell Law School (published in "*Common Interest Communities*", Barton & Silverman, Eds.).

- "Individuals do not react to disappointment by becoming active participants in the governing process unless a democratic culture already exists … " People do not become activists and will remain mute and passive if there is no group attitude toward participating in the government of the HOA.

- "Passivity and apathy are expressions in which living within a group lacks meaning for individuals". If a sense of powerless results, as when a group has commandeered the functions of a board for their own interests, then apathy will prevail and not participation in the governing process.

Democracy, as we practice it here in America, is a myth in homeowners associations. Just because there is some sort of defective voting process, doesn't make a corporate form of government a democracy. After more than 2 years of attempting to obtain a redress of homeowner grievances by the Arizona Legislature, allow me to summarize the guiding principle of HOA government by paraphrasing Benito Mussolini's description of fascism: "Everything for the HOA, nothing outside the HOA, nothing above the HOA." And that means enforcing the CC&Rs, period!

Is this proper? Is this good public policy? Or is it aiding and abetting business interests at the expense of our constitutionally guaranteed rights? We must all work to restore democratic government to an estimated 42 million Americans living in some 215,000 homeowners associations,

Forces promoting the HOA form of governance

The Community Associations Institute, Inc is a business trade organization fostering the homeowner association industry through actively lobbying the Congress and state legislatures for over 30 years. CAI does not encourage, promote or provide information to the media, the public or to the legislatures regarding the adoption of democratic forms of government for planned communities. Nor has it worked to develop a comparable homeowners bill of rights.

Rather, CAI has responded to such criticisms in the media by homeowner rights activists with. (**Please note that CAI still refers to itself as "a nonprofit association created in 1973 to provide education and resources" in the last paragraph, and not as a trade organization since 1992**).

Subj: [CAIerelease] New Book Helps Community Associations Set Reasonable Rules, 09/06/2002
Date: 9/5/02 1:46:13 PM US Mountain Standard Time
From: aadler@caionline.org
To: CAIerelease@yahoogroups.com

FOR IMMEDIATE RELEASE

New Book Helps Community Associations Set Reasonable Rules Alexandria, Va., September 6

The best thing--and the worst thing--about community-association living is The Rules. Rules do more to enhance property value and promote community harmony than any other factor, but they can also create division in a community. Community Association Press™ has just released "Reinventing the Rules: A Step-By-Step Guide for Being Reasonable" by Virginia attorney, Lucia Anna Trigiani, which shows communities how to increase the harmony and decrease the division. Trigiani, who specializes in community association law, offers practical advice on how elected boards of the nation's homeowner and condominium associations can fulfill their duty to the community while still being reasonable about drafting and applying rules.

"Reinventing the Rules" covers all aspects of dealing effectively with rules--from taking preventative actions to facilitating compliance. It explains how to make truly reasonable rules and when to make exceptions. It reveals what people really think about rules in their communities, and it provides interesting insights into the hidden costs of battling with residents instead of being flexible.

"Words like 'enforce,' 'penalty,' and 'punishment,' are associated with getting people to live by rules, but they actually cause problems for community associations," according to Kris Cook, CAE, Sr. Vice President of Community Associations Institute, the parent group of the book's publisher. "Unlike other books on this topic, this book tells readers how to get results, not how to get tough."

Not only does "Reinventing the Rules" review the basics of how to start off with good rules, it also contains useful pointers on assessing the reasonableness of existing rules and changing what's unacceptable to rules that everyone can live by. Professional Community Association Manager,® Judy Burd Rosen of St. Louis stated, "It's a challenge to put your community first and get residents to comply with the rules that make the community a desirable place, but this book goes a long way in meeting that challenge."

Author Trigiani has been an active leader in the community association industry at the local and national levels for many years. She's well qualified to offer excellent advice after dealing with rules issues in dozens of associations.

"Reinventing the Rules" retails for $30 (CAI members receive 40% off) and is available by phoning 703-548-8600 (M-F, 9-5 EDT), or order online at www.caionline.org/bookstore.cfm. The table of contents and preface are also available at this location online. Industry discounts are available to retail book sellers and authorized dealers.

Community Associations Press™ is the publishing division of Community Associations Institute (CAI), **a nonprofit association created in 1973 to provide education and resources** to America's 231,000 community associations--condominium associations, homeowner associations and cooperatives. CAI members include homeowners, associations, and the professionals who provide products and services to them.

4/13/02 1

II. Common Interest Planned Communities:
Undemocratic Private Governments in America

A brief history

CIPCs have evolved from a utopian socialistic ideal at the turn of the century of a planned city with commerce and industrial segments at the core and a greenbelt around its perimeter. (Prof. McKenzie describes this beginning in his book, *Privatopia: Homeowner Associations and the Rise of Residential Private Government).* Its government could be described as a democratically controlled technocracy where the "technical experts" were in charge. The constitution/charter would be like a business corporation. The central council would govern the community. The ideal was the rational management of practical matters by experts. Needless to say, this model was not in keeping with American principles of government. In contrast, the Founding Fathers, with all their idealism, recognized the problems with despotic governments and the basic nature of human beings and setup our system of government accordingly.

As this basic concept evolved into today's CIPCs, problems arose in the model and CAI was formed to deal with them in 1973. Its idealistic formation dealt with the inclusion of all interested parties – the associations, developers, property managers, public officials and professionals – and that it had to represent the consensus of these parties. The founder was concerned that the associations had sufficient influence for educational purposes. In short, teach the boards how to run an association. In 1992 CAI was having problems being viable and it was reorganized by the property managers and attorneys as a business trade group with a strong lobby presence in Congress and in the state legislatures. Many feel that this turn of events pitted CAI against homeowner rights activists seeking reform of the CIPC model toward more democratic principles of government.

Undemocratic, private community governments

Today, CIPCs are undemocratic, private government existing outside the American system of government, without "separation of powers" or "checks and balances" doctrines, and without a Bill of Rights or a proper election certification mechanism. In place of these fundamental American principles, CIPCs are a nonprofit corporation whose primary purpose is the maintenance of property values without any protections for the rights of its member-owners who live in the community. There is ample support from political science researchers and court cases in several states for the assertion that CIPCs function in many ways as a government entity. I will deal with these in
more detail later.

Yet, homeowners are viewed as having entered into a private contract with the CIPC as a corporation and not a government. Homeowners are held to having voluntarily and with full knowledge entered into a contract with the CIPC when the buyer signed his purchase agreement that informed him 1) that he was bound by the CC&Rs and 2) that he automatically became a member of the CIPC. Not one homeowner would tell you that he understood that he was entering into a contract with a private corporation thereby surrendering his Bill of Rights.

Not one homeowner can recall signing a separate document clearly stating that this is a contract with the CIPC. In contrast, when a person accused of a crime agrees to plead guilty, he is asked to sign a statement that he was surrendering his rights under the Constitution. But not the home

buyer. The end result is that the homeowner cannot make use of his state's attorney general or county attorneys to file complaints against abusive and wayward boards of directors. It's not enough that the homeowner is not protected by his government, but any violations of the few state laws proscribing what directors may or may not do, do not contain any enforcement provisions.

Therefore, the CIPC board is free to do as its conscience dictates. It may function as a benevolent dictator looking after the interests of the homeowners and to establish a pleasant community, or as a despotic dictator inflicting all sorts of pain and suffering it so chooses to inflict. In either case, the homeowner lives at the suffrage of the CIPC's board of directors, because the CIPC lacks fundamental democratic principles of government as set forth by our Founding Fathers.

People have asked, Why is there no public outcry? No one is getting hurt, except for a small minority. They say we must look to the greater benefit to society and the community that CIPC's provide. I, and other advocates say, that this is the tyranny of the majority at work, suppressing the Bill of Rights for the supposed greater benefit of the community. But we are not at war. There is no terrorist attack on the community. Why must the Bill of Rights be suspended for the greater benefit of the community? Why are our state legislatures allowing this to continue by not upholding and defending the Bill of Rights and Constitution? No, this is the tyranny of the majority at work to suppress our guaranteed civil liberties.

What do the courts say? In three states, the courts have found that the right of a CIPC to fine its members as a punishment constituted "an unconstitutional delegation of government powers". A federal appeals court recently found, ***"The fact that property is private is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties."*** Just needs to be applied to CIPCs.

A New Jersey case is underway that argues that CIPCs are indeed private governments. An Arizona case will be appealed questioning the unconstitutionality of statutes that interfere with the private contract nature of CIPCs. This case is important in that it will assert that if there are no contractual provisions in the CC&Rs, then the state must enforce its laws against CIPCs or be subject to violating the 14th amendment guaranteeing the equal protection of the law.

Why is this happening? Because as many researchers and homeowner rights advocates have argued, the CIPC model of community governance is defective, just like the communist form of government. It is defective because of the above denial of civil liberties is needed to force obedience to the overall objective of protecting property values over the protection of ownermember's civil rights. Why does the government allow the developer to write such onerous CC&Rs, when he will leave the community in a relatively short time? Why do mortgage lenders need to interfere in homeowners property and activities in order to provide financing at affordable rates? Why do cities and towns not give taxes credits to homeowners in CIPCs so that they are not double-taxed? Why does the government allow CIPC boards to operate outside the American system of government? Why? It must stop today!

Feb 16, 2002

III. Denial of Homeowner Civil Rights Used to Obtain HOA Compliance

The denial of homeowner civil rights is the prevalent and effective method used to sustain and nourish the patently un-American common ownership properties – homeowners associations, common interest developments -- that have grown so rapidly across this country. It is estimated that are some 50 million Americans living in 205,000 HOAs/CIDs. This form of property or home ownership is supported by mortgage lenders and city and town governments at the expense of the rights and civil liberties of homeowners under a legal interpretation that the CC&Rs constitute a private, adhesion contract between the buyer and the HOA/CID. This prohibits, as homeowners have been told, state interference into the private affairs of an HOA/CID and allows for the denial of the homeowner's civil liberties.

This outrageous state of affairs, here within the United States of America, bastion of democracy and people's rights, has come about, in part, by providing partial information and the omission of important facts about HOA/CID to homebuyers, that negatively reflects life in an HOA/CID. Such as, the fact that there are very limited state laws to protect homeowners, the nonenforcement of state laws and the non-existence of penalties against HOAs/CIDS when its directors violate state law or the HOA/CID governing documents.

Further restricting the rights of homeowners are the HOA governing documents that grant very broad powers to the HOA board of directors, while not providing for any protection of the fundamental rights of homeowners, the owners of the HOA. As a leading political scientist on HOAs, Evan McKenzie, wrote, ***"CIDS [HOAs] currently engage in many activities that would be prohibited if they were viewed by the courts as the equivalent of local governments."***

The facts and evidence are out there, available for all to see, and have been for as early as 1982. There are numerous academic research studies, publications and papers concerning the private government aspect of HOAs/CIDs, questions of US constitutionality of certain powers allowed by these entities, court cases in several states, and these facts are even found in the Community Association Institute's (CAI) own Research Foundation studies and reports. Some of these studies show many community relations problems resulting from boards of directors overstepping their responsibilities and the fact that homeowners were not aware of what they agreed to allow HOA/CID boards to do.

Adding to further insult, the courts have held buyers to a binding adhesion contract – one that one party, the buyer, simple accepts and cannot negotiate – that, unknowing to the buyer, gives away his civil rights. Yet, supporters of HOAs/CIDs point to the democratic nature of these entities, simply because there is a voting mechanism to elect directors. Well, Cuba and China have elected representatives, but I can't imagine anyone calling them democratic. How can there be a democracy, as practiced here in this country for over 225 years, when the citizenhomeowner is bound to a contract he didn't have a hand in drafting, was not told the full details that he was, in fact, entering into a contractual arrangement whereby he agreed to surrender his guaranteed civil liberties?

Supporters of these undemocratic nonprofit corporations have argued that,

1. It's the buyer's fault for not reading some 100+ pages of legal documents,

2. 2. Homeowners can always move if they don't like the restrictions, arrogantly saying,"HOA/CID living is not for everyone",
3. The homeowner can vote to remove the board or change the governing documents, and,
4. HOAs/CID maintain property values.

In answer,

1. Are these supporters adopting a "buyer beware" attitude when speaking about the advantages and niceties of living in an HOA/CID? B) Or is this deliberate misrepresentation, because these required documents do not warn buyers about the severely limited recourse available to them in event of problems with the HOA/CID?

2. More and more communities are mandating only common ownership properties for new homes. B) Why should a homeowner move when he did no wrong?

3.

A) How can anyone base an activity or obligation on another fully knowing that it's not a commonly accepted behavior of society; that it requires a behavior, a communal response, far exceeding what can be expected of a community when contrasted to the response of the general population in our general elections? Further, normal political voting is based on the percent of those voting, not a percent of all eligible voters as is commonly contained in the governing documents? There is no independent vote counting or "agency" to insure the integrity of the voting process – the "board machine" controls everything.

B) Here again they go mixing governmental functioning with private contractual obligations. Why must third parties be included to renegotiate a contract, the CC&Rs, between the HOA/CID and the individual homeowner? You know, this is the same private contractual "fact" used to keep the government from intervening in HOAs, now being applied in favor of the HOAs. This "individual" contract now becomes a "social contract" amongst all HOA members, as if the HOA were now functioning as government and not functioning on the basis of a private contract.

4.

A) The true factors affecting real estate property values have to do with market factors, and the economy, of which location is most important.
B) Need there be an HOA/CID to enforce CC&R restrictions regarding property values, because, by law, each homeowner can sue to enforce these restrictions?
C) There are many well kept communities without an HOA/CID and the unnecessary intrusion of "outsiders" into one's home. In a democracy there is no written, legally bound contract between the government and the citizen that makes third parties, other members of the HOA/CID, a part of this adhesion contract. This is a pervasion of democratic principles and is very important when you realize that the supporters are making use of democratic principles when it suits their objectives while denying democratic principles when it does not suit their interests. For example, a Tucson judge has supported a statute that interferes with the governing documents to the detriment of the homeowner plaintiff; the legislature tells homeowner advocates that penalties cannot be

used because the HOA directors because they are not government employees.

Special interests refer to "private contract" to allow HOAs/CIDs to deny civil liberties and prevent government regulation and oversight, and refer to democratic government when speaking of a homeowner's voice in the operation of the HOA/CID. The entire concept and legal structure of common ownership properties is a mess of corporate law and political governance concepts, all slanted in favor of the HOA/CID and against the rights of citizens. In a democracy there is the Bill of Rights, there is a separation of powers between executive, legislative and judicial branches and checks and balances. None of which exists in a HOA/CID to protect homeowners. HOAs are governed by corporation laws with some poorly conceived modifications, and we all know that corporations are not democratic.

How is this all maintained? Much to the pleasure of the special interest parties, the mortgage lenders, the HOA management firms, the HOA attorneys, the cities and counties, and the legislators, only a small number speak up, justifying the argument that there is only a small disgruntled group of malcontents seeking to make things bad for the rest of the HOAs/CIDs.

Why are there not more people coming forward to complain? There are several reasons.

- Some people accept the rules and regulations as a "given" and are more concerned about stability, order and property values. But then,
- Some people, at some later time after buying into an HOA-controlled property, take offense or object to some of the procedures, decisions or activities of the board of directors. When they complain or object they find out that there is very little that can be done legally, without the expenditure of a large amount of money in legal fees just to get the board to follow the governing documents. They accept the reality of these conditions.
- Some of the people in (2) above become outspoken and try to point out these problems to other HOA/CID members and find out that they become scorned by neighbors and are the object of arbitrary fines and penalties with hefty attorney's fees attached. A technique that is designed to intimidate the outspoken and justifiable homeowner, into compliance.

In the case of (2) and (3) above, there is always the real threat of foreclosure on their house for failure to pay these fines and penalties, with interest attached, resulting simply because they objected to the HOA's actions. Some people will argue that this power of the HOA/CID to foreclose because of fines, and sell a homeowner's property that will benefit a third party, is an unreasonable seizure of property and a violation of the 4th Amendment. Others feel it is an unconstitutional delegation of government powers to a private organization, as courts in two states have ruled.

Considering the above, the power of the HOA/CID to foreclose, even by means of a non-judicial process in some states, **then it is an inescapable conclusion that these factors represent a "legalized extortion" of homeowners not to speak up, to obey the HOA/CID board of directors and to pay their assessments without complaint.** In short, pay up or else! Not to do so brings the real threat of fines and foreclosure. While supporters may argue that this does not happen in the majority of common ownership properties, the threat is always there, just waiting for an incident or a new board to make use of it against some outspoken member, or for personal reasons. The threat is always there and amounts to legalized extortion. And while they can get away with it, it is unjust, unfair and makes homeowners second-class citizens! Minorities,

women, the handicapped and gays have more rights than these 50 million Americans!

If one considers all the factors presented above, the inescapable conclusion is that the HOA/CID concept or product is defective and that marketplace forces have been tampered with in order to force the acceptance of HOAs/CIDs. If homebuyers knew the full truth, would they so readily accept this form of home ownership? If the facts were readily publicly available to buyers, would there still be governmental support for these undemocratic organizations? The inescapable conclusion is that this concept is so flawed that special, unreasonable and unjust laws interpretations of these laws have been enacted in order to force compliance with these horrendous provisions of the HOA governing documents.

That's why there is no public discussion of these aspects of HOA government. The special interests don't want the truth to be known. But, in order for a democracy to function properly, there must be public, open discussion of all the issues.

February 16, 2002

IV. Will the dissolution of CC&Rs imperil the Union or Arizona?

Let's examine this issue of the dissolution of CC&Rs and HOAs from an historical parallel. While I have referred to a "the conspiracy of silence" with respect to the undemocratic, private HOA governance, Joseph J. Ellis, Ford Foundation Professor of History, Mount Holyoke College, writes about another forbidden topic in our nation's beginnings in ***Founding Brothers*** (Alfred A. Knopf, 2001).

Chapter 3, is called "Silence", and deals with the slavery issue from day one to a petition by 2 Quakers to address the issue before Congress in 1790. I found this chapter to present a disturbing historical parallel to the question of the dissolution of CC&Rs that call for the establishment of homeowner associations. The issue before Congress in 1790 was what to do with the slave problem, which was considered a moral and an economic issue, and included

1) being an unmentionable topic in public, the word "slave" doesn't even appear in the Constitution [Art 1, Sect 2.3, refers to "the number of free persons ... excluding Indians not taxed, three-fifths of all other persons"] ;
2) a "gentlemen's agreement" in 1787 not to bring up the issue of the slave trade until 1808;
3) arguments that the relocation of freed slaves would cause economic chaos in the Southern States and would be cost prohibitive, because the use of slaves had gotten to be too big a problem to handle [a biracial society was not even contemplated at that time], and
4) the use of slaves was still growing in 1790. Does this sound all too familiar? Those who have been following my arguments and events in

Arizona can't help missing the parallels. Just replace "slave" with "HOA private government". Very disturbing indeed.

We all know how long it took to free the slaves and how it finally came about. The reason offered by Professor Ellis as to why nothing was done in 1790 was the fear of destroying the Union, because as early as 1790, the first time the issue was addressed in public (the Constitutional Convention of 1787 was a "closed door" affair), Georgia and South Carolina were already making these threats. He writes, **"Whether even a heroic level of leadership stood any chance was uncertain because -- and here was the cruelist irony -- the effort to make the Revolution truly complete seemed diametrically opposed to remaining a united nation"**.

The issues raised by the Quakers was tabled until 1808 to coincide with the issue on the ending of the slave trade. Ellis writes, **"Madison knew what the American Revolution had promised, that slavery violated that promise, and Franklin ... [reminded] all concerned that silence was a betrayal of the revolutionary legacy"**.

In our modern, faster paced society we cannot wait any longer for a redress of grievances. In our modern, enlightened society, action must be taken today by the various state legislatures. The Union is not in peril today! The states are not in peril today! If Arizona can survive the $100 million dollar plus alternate fuels fiasco, it will survive the dissolution of these undemocratic, private governments, and so can the other states.

V. Arizona State Bar and a Question of Attorney Ethics

The following issue is presented in an excahnge of letters between Citizens Against Private Government HOAs (CAPGH) and The Arizona State Bar regarding the ethics question of: Who does the HOA attorney represent and why?. The Rules of Professional Conduct are developed under the oversight of the state Supreme Court. Ethics rule ER1.13 deals with the ethics relating to "Organization as a Client".

The case by CAPGH:

Citizens Against Private Government HOAs, Inc
5419 E. Piping Rock Road, Scottsdale, AZ 85254-2952
602-228-2891 / 602-996-3007
pvtgov@cs.com http://pvtgov.org

August 16, 2002

Honorable Charles E. Jones
Chief Justice of the Arizona Supreme Court
1501 W. Washington
Phoenix, AZ 85007

Mr. Ernest Calderón, President
State Bar of Arizona
111 W. Monroe Street – ste 1800
Phoenix, AZ 85003-1742

RE: Rule 42, ER 1.13 as applied to HOAs

Dear Mr. Chief Justice:
Dear Mr. Calderón:

I wish to bring to your attention the urgent need to provide clear ethical guidelines for attorneys who represent homeowners or condo associations. In far too many instances, the problems encountered by homeowners involve an attorney who represents the HOA board and not the association. How can an attorney defend a board when presented with information, that is obvious to all, that board members are violating either state laws or the HOA's governing documents and still claim, under the Rules of Professional Conduct, ER 1.13, "Organization as Client", that they are functioning in the best interests of their client, the HOA?

Please bear in mind that we are not talking about the usual non-profit corporation, but a

- mandated membership, nonprofit corporation with compulsory dues,
- where the involved parties had not and still refuse to provide the complete facts to the HOA home buyer about the impact on commonly accepted expectations of homeownership,

- and the lack of any state assistance or support in the event a dispute arises with the HOA. .

It's highly unethical that these compulsory dues are used by HOA boards to pay the HOA's attorney against the interests of the owners of the HOA, the homeowner-members, even when it's quite clear that it's the board that's violating state law or the HOA's governing documents. Yet, the attorney will unquestionably defend the HOA director against such complaints by members, constituting a clear violation of the intent and spirit of ER 1.13. And these attorneys will act like debt collectors and harass members for payments of fines and the huge attorney's fees that become part of the foreclosure lien. These fees often exceed the HOA debt by a factor of 2 – 3 times this debt.

We are talking about corporations that clearly fit into the US Supreme Court's definition of a state actor, and therefore obligated to uphold the civil rights of its members. We are talking about quasi-governments and communities and not corporations.

Please bear in mind that there is no due process within these private organizations whereby a homeowner can contest any rulings or accusations made by board members. There is no provision for a judiciary consisting of independent members to decide in accordance with our commonly accepted rules of evidence, proof, etc. Please bear in mind that the AG can act on complaints regarding alleged wrongdoing by government officials, but cannot so act with regard to private HOAs. And even ER 1.13 allows the HOA attorney to avoid acting in such a capacity.

ER 1.13 is a complete failure with respect to HOAs. I and others have filed such a complaint only to have the State Bar dismiss them outright, without regard to the strong evidence presented in regard to wrong-doing by HOA directors, under the excuse, as I was told, "The respondent has replied that she does not represent you and that my complaint is not in the best interests of the HOA". No one even looked at the evidence or even held a hearing, just outright dismissal. This is a mockery of the Rules of Professional Conduct whereby the accused can simply reply and say that the complainant is just not a good guy. It is unjust, immoral and unethical given when we are talking about mandated membership and compulsory dues.

I strongly urge a review of this rule in light of the conditions relating to homeowner and condo associations. The attorney must deal fairly with the members of the association and not accept fees from the HOA in these cases of governing document violations, but individually from the directors involved. Or withdraw from involvement in the issue. It would be too much to expect that the attorney would function in a proper client-attorney relationship and advise the HOA of the errors of its ways. The norm appears to be that they are indeed acting as co-conspirators advising the HOA board on how to avoid its fiduciary duties to the members, or to assist the HOA on how to ignore state laws.

I strongly ask for your speedy consideration and action on this problem.

Yours truly,

George K. Staropoli

And the Arizona State Bar responded:

STATE BAR of ARIZONA
www.azbar.org

Direct Line: (602)340-7241

September 19, 2002

George Staropoli
Citizens Against Private Government HOA' Inc.
5419 East Piping Rock Road
Scottsdale, AZ 85254- 2952

Dear Mr. Staropoli:

Please be advised that we are in receipt of your correspondence dated August 16, 2002. Your correspondence expresses your general concerns regarding the relationship between lawyers and the homeowner associations they represent. The provisions of Rule 42, Ariz.R.S.Ct., specifically ER 1.13, define lawyers' obligations and responsibilities as they relate to the representation of an organization. The attorney represents the association, and addresses legal concerns of organizations as a whole. The attorney does not represent the individual homeowners.

In short, it is particularly difficult to address generalized concerns such as yours as each case involves separate facts and circumstances, which are considered when making a determination as to whether a lawyer has violated the provisions of ER 1.13.

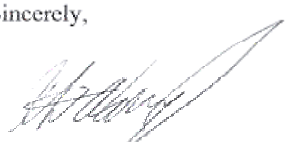
Your correspondence indicated that you previously filed a complaint with the State Bar alleging misconduct on the part of your Homeowner's Association attorney. I have reviewed that matter and concur with the prior disposition. The focus of the State Bar's attention in reviewing complaints of attorney misconduct is entered on the ability to prove ethical misconduct by clear and convincing evidence for the purpose of potential prosecution or referral to other appropriate State Bar programs. Your particular complaint did not establish a basis for concluding that the lawyer engaged in misconduct or violated an ethical rule.

I would like to assure you that the State Bar of Arizona is committed to upholding the integrity of the disciplinary system, which serves to better the profession and protect the public.

111 West Monroe • Suite 1800 • Phoenix, AZ 85003-1742 • Phone 602.252.4804 • Facsimile 602.271.4930

I thank you for the opportunity to address this matter with you and if there is any further information or assistance I may provide, please do not hesitate to contact me.

Sincerely,



Robert B. Van Wyck
Chief Bar Counsel

RVW:slh

CAPGH responds to the media:

Sept 22, 2002

FOR IMMEDIATE RELEASE

Arizona State Bar upholds unethical ethics rule against HOA homeowners

The Arizona State Bar declined to take action in regard to an August 15th letter, by George Staropoli, founder of **Citizens Against Private Government HOAs,** sent to AZ Chief Justice Jones and president of the State Bar, Ernest Calderone, regarding the application of ethics rule ER 1.13 as applied to HOA attorneys, and ignores the unethical use of this rule to defend highly questionable acts that can be interpreted as collusion with lawbreakers. Mr. Staropoli argued in his letter that, " In far too many instances, the problems encountered by homeowners involve an attorney who represents the HOA board and not the association", as required by ER 1.13, by defending the directors against complaints of violations of state laws and the governing documents."

Robert B. Van Wyck, State Bar Chief Counsel, responded by simply repeating the existing unethical ethics rule supposedly guiding HOA attorneys and ignores its unjust application. He recites, "The attorney represents the association and addresses legal concerns of organizations as a whole", whatever the last phrase means. He continues, "The attorney does not represent the individual homeowners". This interpretation avoids the arguments of Mr. Staropoli that the attorney must act in the best interests of the client, the HOA, as required by ER 1.13, and not to defend such acts by the board, which makes ER 1.13 meaningless.

Apparently, the Chief Counsel doesn't consider 1) violations of state law or the governing documents by boards of directors as "legal concerns" for the HOA, or 2) that attorneys who permit or defend such acts by directors are not acting in the best interests of their client the HOA, or, 3) that such an attitude is a question of ethics for the State Bar to be concerned. What are they then?

Chief Justice Jones nor his office has replied to the letter.

The essentials of Mr. Staropoli's argument, as taken from his letter to Chief Justice Jones and Mr. Calderone, are:

"I wish to bring to your attention the urgent need to provide clear ethical guidelines for attorneys who represent homeowners or condo associations. In far too many instances, the problems encountered by homeowners involve an attorney who represents the HOA board and not the association. How can an attorney defend a board when presented with information, that is obvious to all, that board members are violating either state laws or the HOA's governing documents and still claim, under the Rules of Professional Conduct, ER 1.13, "Organization as Client", that they are functioning in the best interests of their client, the HOA?

"Please bear in mind that we are not talking about the usual non-profit corporation, but a · mandated membership, nonprofit corporation with compulsory dues, · where the involved parties had not and still refuse to provide the complete facts to the HOA home buyer about the impact on commonly accepted expectations of homeownership, · and the lack of any state assistance or support in the event a dispute arises with the HOA. As it can be seen, several important issues have not been addressed by Mr. Van Wyck's response.

Homeowner advocates can now add the AZ Supreme Court, that has oversight responsibilities here, to the list with the legislature, the Attorney General, The Real Estate Commissioner, AAR and CAI. Homeowners living in HOAs have less protection than illegal aliens and about the same as suspected terrorists. Who will stand up for good, taxpaying homeowners who have the misfortune for living in a private government HOA, entered into under questionable marketing practices?

####

VI. VI. HOA Constitutionality Issues Raised

Summary of Complaint

[Comments: The following is a summary of the complaint filed by homeowners in the Twin Rivers, NJ suit. Please read it, because it shows how our common complaints against HOA BODs were turned into issues of civil rights and constitutionality. **If it can be done in New Jersey, we can do it in Arizona, in Florida, in California, in Texas and in every other state.**

I'd like to thank Frank Askin of Rutgers for providing this document for distribution.]

FRANK ASKIN, ESQ.
Rutgers Constitutional Litigation Clinic
Attorney for Plaintiffs
on behalf of the ACLU of NJ

LENORA LAPIDUS, ESQ.
American Civil Liberties Union
Of New Jersey Foundation

SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-MERCER COUNTY

COMMITTEE FOR A BETTER TWIN RIVERS (CBTR);	
Plaintiffs,	DOCKET NO. C-121-2000
vs.	
TWIN RIVERS HOMEOWNERS' ASSOCIATION (TRHA); TWIN RIVERS COMMUNITY TRUST;	CIVIL ACTION
	COMPLAINT FOR INJUNCTION AND DECLARATION OF RIGHTS
Defendants	

INTRODUCTORY STATEMENT

2. This is an equitable action against the defendants for temporary and

permanent injunctive relief and declaratory judgment.

3. Defendants have engaged and are engaging in actions and practices that deny to plaintiffs the right of democratic participation in the governing affairs of the Twin Rivers Homeowners' Association (TRHA) as guaranteed to them by common law, statute and the New Jersey Constitution.

4. Plaintiffs have no adequate remedy at law to protect their rights and seek equitable relief to prevent further injury that cannot be compensated with monetary damages.

COUNT ONE

[POLITICAL SIGNS]

53. On information and belief, the restrictions against posting signs on one's own lawn more than three feet from a house are selectively enforced against supporters of CBTR.

Wherefore plaintiffs pray for the following relief:

- Injunctive relief requiring the Board to allow the posting of political signs on their own property and on common elements under reasonable regulation.

- Reasonable attorneys fees and legal expenses

- Any other relief that the Court determines equitable or just.

COUNT TWO

[ACCESS TO THE COMMUNITY ROOM]

Wherefore plaintiffs pray for the following relief:

- A declaration that TRHA Resolution 98-15 denies them equal protection of the laws and unreasonably and unconstitutionally violates Plaintiffs' right to access to the community room on a fair and equitable basis.

- Temporary and permanent injunctions mandating TRHA to allow Plaintiffs to utilize the community room in the same manner as other similarly situated entities.

- Reasonable attorney fees and legal expenses.

- Any other relief that the Court determines equitable or just.

COUNT THREE

[ACCESS TO THE TWIN RIVERS TODAY NEWSLETTER]

77. A recent Community Associations Institute (CAI) poll indicates that 93% of homeowners in planned unit communities read their community newsletters. See http://www.cairf.org/research/gallup-9.html.

Wherefore plaintiffs pray for the following relief:

- A declaratory judgment that the TRT newspaper is a common element.
- A declaratory judgment that all TR residents should have equal access for expression of their views concerning the management of the community.
- A permanent injunction enjoining the president of the Board from using TRT as his own personal political trumpet and requiring the Board to create rules for equal access to TRT by all TRHA members.
- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT FOUR

[TAPE-RECORDING OF OPEN MEETINGS OF THE TRHA]

79. The Board of Trustees' Secretary tape records all Board meetings. The Board does not permit members of Twin Rivers' access to these tapes. On information and belief, after the Secretary prepares the minutes, she then destroys the tapes.

80. TRHA members frequently contest the accuracy of the minutes of the TRHA meeting.

81. Under the state law all board meetings must be open to the TRHA members.

Wherefore plaintiffs pray for the following relief:

- An injunction requiring the TRHA Board to allow the tape recording of the Board meetings.

- A declaratory judgment stating that members of the TRHA have the right to tape record all open TRHA meetings.

- Reasonable attorney fees and legal expenses.

- Any other relief that the Court determines equitable or just.

COUNT FIVE

[ACCESS TO FINANCIAL DOCUMENTS]

89. The Board abused its discretion when it denied Plaintiff Bar-Akiva's requests for financial documents.

90. TRHA is a non-profit corporation which is bound by New Jersey non-profit corporation statutes. N.J.S.A. 15A:5-28, which is based on N.J.S.A. 14A:5-24 of the New Jersey Business Corporation Act, provides for access by members to corporation books and records. TRHA is bound by this statute and must provide access to the books and records of the corporation to members of the TRHA.

Wherefore plaintiffs pray for the following relief:

- Temporary and permanent injunction disallowing the TRHA Board from denying access to financial documents without specification of the reasons for concealment.

- Reasonable attorney fees and legal expenses.

- Any other relief that the Court determines equitable or just.

COUNT SIX

[RESOLUTION 2000-1]

93. In February 2000 the TRHA passed Resolution 2000-1 purporting to provide the Board with the authority to discipline members suspected of disclosing allegedly confidential information.

94. On March 1, 2000, Defendant Scott notified Plaintiff Dianne of her suspected violations of Resolution 2000-1. All but one of these alleged violations had occurred prior to the enactment of Resolution 2000-1. The allegations were not supported by any details or documentation of the specific acts which constituted her violations.

99. Resolution 2000-1 is overly broad, vague, and encroaches on the individual rights of Board members and residents.

100. Resolution 2000-1 unduly burdens Board members and denies TRHA members access to vital information concerning their community.

101. According to the DCA, Sections "v" through "vii" of Resolution 2000-1 are in violation of the Planned Real Estate Full Disclosure Act, N.J.S.A. 45:22A-46a. (See Exh. F)

102. Resolution 2000-1 was promulgated in bad faith and is arbitrary and capricious.

103. Resolution 2000-1 has the appearance of being intended for the sole purpose of removing a certain Board member, which is violative of the election and removal process for Twin Rivers Board members. According to the TRHA by-laws, Board members are to be removed only by a vote of the members of the community. Resolution 2000-1 is an effort to circumvent the established procedure for Board member removal.

104. Resolution 2000-1 serves no legitimate purpose.

Wherefore plaintiffs pray for the following relief:

- A declaratory judgment that Resolution 2000-1 is in violation of N.J.S.A. 45:22A-46a and common law.
- A declaratory judgment that Plaintiff McCarthy never violated any resolution and her censure be expunged from the records of the TRHA as though it had never occurred.
- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT SEVEN

[ACCESS TO VOTING LISTS]

116. A member of the Board, Plaintiff Dianne McCarthy, has been denied access to the list of eligible voters. On information and belief, other members of the Board do have access to the list of eligible voters.

117. Currently it is unknown what percentage of voters are ineligible to vote and for what reasons.

118. In order to effectively campaign for the elected positions of the TRHA,

plaintiffs need access to the lists of eligible voters. The list is necessary to identify and contact eligible voters.

119. The TRCT has recently allowed for conditional access by Plaintiffs to the voter lists. The TRCT has only allowed for the inspection of lists of all Twin Rivers residents without any distinction between those who are eligible and ineligible to vote. In addition, the TRCT has required that an overly broad and unreasonable indemnification agreement be signed before the release of the list. (See Exh. G)

Wherefore plaintiffs pray for the following relief:

- Temporary and permanent injunctive relief requiring the Board to allow the plaintiffs access to lists of eligible voters without unreasonable conditions.

- Reasonable attorney fees and legal expenses.

- Any other relief that the Court determines equitable or just.

COUNT EIGHT

[ALTERNATIVE DISPUTE RESOLUTION]

121. N.J.S.A. 45:22A-4(c)and its legislative history, Senate Act 217, clearly requires defendants to "provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association . . . which shall be readily available as an alternative to litigation."

122. The current alternative dispute resolution mechanism at Twin Rivers is governed by Resolution 99-4, which was promulgated on March 25, 1999. Resolution 99-4 provides for an inadequate and ineffective system of dispute resolution.

123. Resolution 99-4 limits the definition of a dispute. Paragraph 5 of Resolution 99-4 states that, "[a] dispute shall not include issues relating to (i) the payment or nonpayment of regular and/or special common expense assessments levied against a Unit in accordance with the governing documents, (ii) election issue, nor (iii) alleged noncompliance by the Association or the Association Board with the governing documents or applicable law. Paragraph 5, in essence, exempts the Board from any and all alternative dispute resolution mechanisms in violation of New Jersey law. In particular, it denies ADR for disputes involving assessments for disenfranchisement.

126. On information and belief, the absence of a convenient and inexpensive mechanism for resolving disputes between the TRHA and its members has resulted in the disfranchisement of many other TRHA members. Those members have been assessed various amounts for alleged infractions of TRHA rules and failure to pay disputed assessments. If such members are unwilling to pay those fines under protest

and undertaking the substantial expense of a lawsuit against the TRHA for reimbursal, their voting rights are suspended.

127. Thus, by refusing to honor state law and create an alternate dispute resolution system, the TRHA violates both the members' statutory right to an effective dispute resolution system as well as the right to vote.

Wherefore plaintiffs request pray for the following relief:

- Permanent injunction requiring the Board to establish a dispute resolution process as described herein.

- Temporary and permanent injunctions re-establishing the voting rights of Plaintiff Bruce Fritzges and other TRHA members similarly situated.

- Reasonable attorney fees and legal expenses.

- Any other relief that the Court determines equitable or just.

COUNT NINE

[DENIAL OF VOTING EQUALITY]

130. Since the Twin Rivers Board exercises powers of management similar to those exercised by municipal corporations, this weighted voting scheme violates principles of equal protection embodied in Article I, Paragraph I of the New Jersey Constitution.

131. The TRHA governing board, although elected by TRHA members, is the product of an electoral system that is a substantial variance from the one-person, one-vote principle guaranteed by the New Jersey Constitution.

Wherefore plaintiffs pray for the following relief:

- Declaratory judgment that the weighting voting provision of the TRHA by-laws and charter violates the New Jersey Constitution and must be reformed.
- Reasonable attorneys fees and expenses.

- Any other relief that the Court determines equitable or just.

WHEREFORE, plaintiffs pray for the relief requested in Counts 1 through 9.

_____

Date: February 12, 2001

VII. Are CC&Rs adhesion contracts good public policy?

COMMENTS: CAPGH believes that one of the most serious problems with the homeowner association model/theory of governing planned community's lies in the interpretation by the courts that the CC&Rs/Declaration is a binding contract between the homeowner and the HOA. It's this opinion that the CC&Rs are a private contract that allows for abuse by rogue boards and the denial of civil liberties by all HOAs. This opinion permits them to be viewed as renegade communities in the sense that they are allowed to operate and are protected by the state, while the state chooses not to enforce any of its laws for the homeowners.

CAPGH further believes that this opinion of CC&Rs as a contract needs to be revisited and this contract declared null and void. There are 2 principle factors for this view:

1. The sale of HOAs are the result of questionable marketing techniques whereby the complete truth concerning the effect on a homeowner's fundamental rights are deliberately hidden from the purchaser, thereby violating the "meeting of the minds" condition for a bona fide contract, and
2. The opinion by the courts that not only are CC&Rs a contract, it is an adhesion contract whereby the buyer has no say in the terms and conditions of the operation of the HOA. (Since it is a mandatory contract between an individual homeowner and the HOA, any requirements for the approval by other HOA members in order to modify this contract creates an illusory contract). Some have argued that this interpretation of an adhesion contract is unconscionable and against good public policy.

This report deals with item (2) and consists of a condensation of a California State Appeals decision that identifies these terms as well as the application of these terms. The appellate opinions have broad and widespread application to many areas of the commonly used CC&Rs provisions. While the contract does not involve the CID as a party, the claims by the homeowners can be used against repressive CC&Rs and abusive boards of directors. The Agreement being discussed in the case is the purchase contract for the homes.

This report is provided by CAPGH to help other homeowners and homeowner rights advocates better understand what can be accomplished in the courts, because CAI, the CID/HOA and the state government will not tell you these important aspects of how to stand up for your rights.

George K. Staropoli
Founder, CAPGH

CAPGH AND GEORGE K. STAROPOLI ARE NOT GIVING LEGAL ADVICE NOR ARE THEY ATTORNEYS.

[EXCERPTS FROM]

COURT OF APPEAL –
FOURTH APPELLATE DISTRICT - DIVISION ONE

STATE OF CALIFORNIA

PARDEE CONSTRUCTION COMPANY,
Petitioner,

v.

IVAN ERNESTO RODRIGUEZ et al.,
Real Parties in Interest. **THE SUPERIOR COURT OF SAN DIEGO COUNTY**,
Respondent;

D039273
(San Diego County
Super. Ct. No. GIC769966)

In June 2001 plaintiffs filed a class action suit against Pardee for construction defects in the homes and underlying lots. In November 2001 Pardee appeared specially to seek a stay of the proceedings and appointment of a judicial referee under the terms of the parties' agreements. In opposing Pardee's motion, plaintiffs claimed the parties' agreements, including their judicial reference provisions, were contracts of adhesion, unconscionable and against public policy. After hearing, the superior court denied Pardee's motion.

In denying Pardee's motion, the superior court concluded the parties' agreements were contracts of adhesion; the agreements' provisions requiring submission to judicial reference were unconscionable; the agreements' provisions effecting waiver of the right to recover punitive damages were contrary to public policy (Civ. Code, § 1668); and the agreements in their entirety were contrary to the public policy against compelling homeowners to submit construction defect claims to alternative dispute resolution (cf. Code Civ. Proc., § 1298.7).

Our analysis is narrowly tailored to this record, in particular to the parties' agreements. We do not decide any issue as a matter of law. Instead, on this record we simply conclude the parties' agreements were adhesive contracts fatally infected with procedural and substantive unconscionability.

The Purchase Agreements Were Adhesion Contracts

The superior court concluded the parties' agreements were contracts of adhesion because plaintiffs were presented with "standardized" contracts "drafted" by Pardee "and imposed on plaintiffs who could only accept or reject" them.

"'The term [contract of adhesion] signifies a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.'" (Armendariz v. Foundation Health Psychcare Services, Inc. (2000) 24 Cal.4th 83, 113 (Armendariz); Villa Milano Homeowners Assn. v. Il Davorge (2000) 84 Cal.App.4th 819, 826; Izzi v. Mesquite Country Club (1986) 186 Cal.App.3d 1309, 1318.)

"If the contract is adhesive, the court must then determine whether 'other factors are present which, under established legal rules — legislative or judicial — operate to render it [unenforceable].' [Citation.] 'Generally speaking, there are two judicially imposed limitations on the enforcement of adhesion contracts or provisions thereof. The first is that such a contract or

provision which does not fall within the reasonable expectations of the weaker or "adhering" party will not be enforced against him. [Citations.]

The second — a principle of equity applicable to all contracts generally — is that a contract or provision, even if consistent with the reasonable expectations of the parties, will be denied enforcement if, considered in its context, it is unduly oppressive or "unconscionable.'" Subsequent cases have referred to both the 'reasonable expectations' and the 'oppressive' limitations as being aspects of unconscionability." (Armendariz, supra, at p. 113.)

As stated by the superior court at the hearing on Pardee's motion, the situation presented each buyer with "a take-it-or-leave-it proposition"; and since each buyer was "buying a house," not "a piece of sporting equipment" or some other "regular type of product," factors such as "location," "view," and "set-back" made it "a pretty unique purchase," one that "for most people" is "the biggest purchase they will ever make in their life." The court also stated that "as a practical matter," Pardee's argument that plaintiffs "can go elsewhere if they don't like it" flies "in the face" of "the uniqueness of a home."

"Unconscionability is ultimately a question of law for the court." (American Software, Inc. v. Ali (1996) 46 Cal.App.4th 1386, 1391.) Unconscionability '"has both a "procedural" and a "substantive" element,' the former focusing on '"oppression"' or '"surprise"' due to unequal bargaining power, the latter on '"overly harsh"' or '"one-sided"' results. [Citation.] 'The prevailing view is that [procedural and substantive unconscionability] must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability.'

Issue of Procedural Unconscionability

"'Procedural unconscionability' concerns the manner in which the contract was negotiated and the circumstances of the parties at that time." (Kinney, supra, 70 Cal.App.4th at p. 1329; American Software, Inc. v. Ali, supra, 46 Cal.App.4th at p. 1390.) Procedural unconscionability "focuses on factors of oppression and surprise. [Citation.] The oppression component arises from an inequality of bargaining power of the parties to the contract and an absence of real negotiation or a meaningful choice on the part of the weaker party." (Kinney, at p. 1329.) "The second component of procedural unconscionability encompasses an aspect of surprise, with the terms to which the party supposedly agreed being hidden in a prolix printed form drafted by the party seeking to enforce them."

Issue of Substantive Unconscionability

"Substantive unconscionability focuses on the actual terms of the agreement . . . ." (American Software, Inc. v. Ali, supra, 46 Cal.App.4th at p. 1390.) "While courts have defined the substantive element in various ways, it traditionally involves contract terms that are so one-sided as to 'shock the conscience,' or that impose harsh or oppressive terms." (24 Hour Fitness, Inc. v. Superior Court, supra, 66 Cal.App.4th at p. 1213; accord Villa Milano Homeowners Assn. v. Il Davorge, supra, 84 Cal.App.4th at p. 829.) Oppression is present when an agreement includes terms serving to limit the obligations or liability of the stronger party. (Madden v. Kaiser Foundation Hospitals (1976) 17 Cal.3d 699, 713.) Thus, in essence, '"[s]ubstantive unconscionability' focuses on the terms of the agreement and whether those terms are 'so onesided as to "shock the conscience."'" (Kinney, supra, 70 Cal.App.4th at p. 1330; American Software, Inc., at p.1391.)

Further, although plaintiffs may "certainly" waive their constitutional right to a jury trial, '"the

right to pursue claims in a judicial forum is a substantial right and one not lightly to be deemed waived.'" (Villa Milano Homeowners Assn. v. Il Davorge, supra, 84 Cal.App.4th at p. 829; Marsch v. Williams (1994) 23 Cal.App.4th 250, 254.) Hence, before upholding the provisions of the parties' agreements purporting to effect a waiver of plaintiffs' constitutional right to trial by jury, we must closely scrutinize the impact of the waiver on the parties. Moreover, nothing in the record suggests that buyers otherwise gained anything from waiving their substantial constitutional right to a jury trial. (Villa Milano Homeowners Assn. v. Il Davorge, supra, 84 Cal.App.4th at p. 829; Marsch v. Williams, supra, 23 Cal.App.4th at p. 254.) Thus, as giving buyers nothing in return for such waiver, the judicial reference provisions of the parties' agreements were so one-sided as to be substantively unconscionable.

In its minute order denying Pardee's motion for judicial reference, the superior court concluded the parties' agreements "as a whole" were "contrary to the public policy against compelling homeowners to submit their construction defect claims to alternative dispute resolution. (See . . . § 1298.7.)"

APPENDIX A George K. Staropoli

Mr. Staropoli has been active as a homeowners rights proponent for the past year; is a member of 4 HOA internet email lists; and has appeared twice on a live talk radio HOA advocacy show, *On The Commons*, heard internationally over the internet. He appeared before the Arizona HOA Study Committee in August 2000 and at a Special Hearing on HOAs held by Nevada state senators O'Connell and Schneider; and has been active in communicating HOA advocacy issues to the Arizona Legislators, including the submission on Sept 7, 2000 of his *"Homeowner's Declaration of Independence from Homeowner Association Governments*" to the committee.

The Arizona Capitol Times has printed Mr. Staropoli's Commentaries: *"Reforms Would Not Destroy Homeowners Associations"* and *"Homeowners Associations Are Big Business: So Government Officials Look Other way"*. Many of Mr. Staropoli's papers and articles can be found on his web sites, http://starman.com/HOA and http://pvtgov.org.

Mr. Staropoli has served on the board of an 800 member HOA and as its Treasurer and has been a board member of the Valley Citizens League, a Phoenix based civics organization. He is president of the non-profit Citizens Against Private Government HOAs and a member of CAI for over a year.

HOA Boards

- **Conashaugh Lakes Community Assn, Pennsylvania** -- Board member and Treasurer of an 800 lot HOA for 2 years.
- **Wild Oaks HOA, NY** -- Board member of 22 unit HOA, 5 years.

Non-Profit Boards

- President, **Citizens Against Private Government HOAs, Inc**
- **Valley Citizens League, Phoenix** -- Board & Government Liaison Cmte member, 2 years
- **Data Processing Management Association, NY** -- Board member and Newsletter Editor, 3 years

Business Management

- **Software Consulting** -- Founder and president for 8 year old consulting firm to Fortune 500 and small busineses.
- **International Securities** -- Vice president of data communications planning for $250M Wall Street firm for a 3 year period.

Education & Professional Achievements

M.S.in Management, Polytechnic University, NY, 1979

Licensed Arizona Real Estate Salesperson (agent) -- over 10 years.
Realtor, Phoenix Association of Realtors -- over 3 years

Published Papers

Homeowner's Declaration of Independence (statement submitted to Arizona Legislature's HOA Interim Study Committee), HOA Network, Sept. 7, 2000
Open Letter to the People of Arizona, Arizona Republic, Dec, 14, 2000; HOA Network, Letter
Comparison of Governments, CAPGH, Dec 2000,
Private Contract Myth, HOA Network, April 2000,
Buyer's Guide to Buying an HOA Controlled Property, Editor, CAPGH, Nov.
Open Letter to Arizona Legislators, Arizona Capitol Times, 1/12/01
HOAs Are Big Business So Gov't Officials Look Other The Way, Arizona Capitol Times, 5/4/01

APPENDIX. B - Citizens Against Private Government HOAs,

Mission

To inform the public (a) of the private government nature of HOAs and their governing bodies, the homeowners association; (b) of the restrictions on homeowners' civil liberties and; (c) of the lack of effective enforcement of state laws and the governing documents under the "private contract" interpretation of HOAs.

To seek changes to existing state and federal statutes to (a) restore democratic principles of government to existing homeowners associations and (b) replace the "private contract" view of CC&Rs with a declaration that HOAs are civil governments subject to the laws of the land.

To define, create and promote the acceptance and adoption of an alternative form of common interest government that would (a) allow for the protection of property values and (b) provide for financial and tax savings for municipalities, and

To foster and promote grassroots lobbying efforts for the above goals.

APPENDIX C. RESOURCES

Email lists and web sites

American Homeowners Resource Center
http://ahrcnews.com/

Citizens Against Private Government HOAs, Inc
http://pvtgov.org
pvtgov@cs.com

Cyber Citizens For Justice, Inc
http://www.ccfj.net

Consumers for Housing Choice
http://www.consumersforhousingchoice.org

HOA Network
http://starman.com/HOA
hoanet-subscribe@yahoogroups.com

Homeowner Associations – advocacy
hoas@yahoogroups.com

Homeowners Associations: A Dream or A Nightmare Come True by Joni Greenwalt
http://www.homeownerassoc.com

On The Commons - live radio talk on the Internet (email for current HOA schedule)
onthecommons@cox.net
http://www.onthecommons.org

Privatopia.info – get the latest developments and news relating to HOAs from a highly knowledgeable source.
http://privatopia.info

Property Rights Foundation
http://www.propertyrightstexas.com

Book References

Common Interest Communities: Private Governments and the Public Interest, Barton & Silverman, eds, Institute of Governmental Studies Press, Univ of California, Berkeley, 1994

Community Associations: The Emergence and Acceptance of a Quiet Innovation in Housing, Donald R. Stabile, Greenwood Press, 2000

"The Constitution and Private Government: Toward the Recognition o*f *Constitutional Rights in Private Residential Communities Fifty Years After Marsh v. Alabama, " 6 William & Mary Bill of Rights Journal 461 (1998) Volume 6, Issue 2, Spring 1998, pages 461-563.

Fortress America: Gated Communities in the United States, Blakely & Synder, Brookings Institute, 1999

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

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

Court Cases

Villa Milano Homeowners Assn. v. Il Davorge (2000) 84 Cal.App.4th 819, 826
The California Court of Appeal ruled CID CC&RS are contracts.

Lee v. Katz, Case #: 00-35755 Citation: 2002 DJDAR 373 US 9th Court of Appeals,1/10/02
State action may be found when private individuals or groups are endowed with governmental powers or functions because they in turn become state agencies or instrumentality's

BRENTWOOD ACADEMY v. TENNESSEE SECONDARY SCHOOL ATHLETIC ASSOCIATION et al, case no 99-901, US SC
we have found a private organization's acts to constitute state action only when the organization performed a public function; was created, coerced, or encouraged by the government.

PARDEE CONSTRUCTION COMPANY v. IVAN ERNESTO RODRIGUEZ et al, Cal. App. 4th [No. D039273. Fourth Dist., Div. One. Aug. 2, 2002.]
Issues on unconscionable contracts, adhesion contracts and good public policy (not directly involving HOA)

James Foley v. Osborne Court Condominium et al. 97-522-Appeal. 724 A.2d 436; 1999 R.I.
RI Supreme Court remanded this case to the Superior Court for findings on whether the plaintiffs constitutional rights in this case were violated by the provisions of the 1982 Condominium Act that authorize a condominium association to foreclose on property without the necessity of a judicial proceeding.

Unit Owners Assoc v, Gillman 223 VA 752 (1982)
whereby the Virginia Supreme Court held that the power to fine is a governmental power

Villa De Las Palmas Homeowners Association v. Paula Terifaj 2002 DJDAR 11230
We affirm the judgment in its entirety, finding that the restrictions contained in the amended declaration constitute enforceable equitable servitudes that are presumptively reasonable under Civil Code section 1354

Marsh v Alabama 326 US 501, 508 (1946
company town is a state actor

Shelly v Kraemer 334 US 1, 13 (1948)
judicial enforcement of restrictive covenant was a state action

State v Kolez 276 A2d 595 (Middlesex County Ct 1971)
HOA is analogous to company town

Arizona Cases --

Duffy v. Sunburst Farms East Mutual Water &Agricultural Co., Inc 124 Ariz 413, 604 P 2d 1124 (1979)
Words in the CC&Rs to be taken as to their common everyday meanings

Caron v. Maxwell, 48 F. Supp. 2d 932 (D. Ariz. 1999)
A homeowner sued under the FDCPA, alleging that the HOA's lawyer was a debt collector

Ahwatukee Custome Estates Management Assn, Inc v. Bach, 196Ariz 631, 633-634, 2 P 3d, 1276, 1278-79 (Ariz App Div 1 2000) citing **Arizona Biltmore Estates Assn v. Tezak, 177 Ariz 447, 448, 868 P 2d 1030, 1031 (1993)**
CC&Rs and bylaws as binding contract between the association and the individual homeowner

PATRICIA GFELLER and RICHARD GFELLER v. THE SCOTTSDALE VISTA NORTH TOWNHOMES ASSOCIATION 1 CA-CV 98-0010, COURT OF APPEALS STATE OF ARIZONA DIVISION ONE
We find that the CC&Rs impose an affirmative duty upon the Association to enforce the drainage requirements of the CC&Rs.

Bryceland v. Northey, 160 Ariz. 213, 215, 772 P.2d 36, 38 (App. 1989).
We interpret written CC&Rs de novo where, as here, there is no extrinsic evidence of the drafter's intent.

Hamberlin v.Townsend, 76 Ariz. 191, 196, 261 P.2d 1003, 1006 (1953)
We will, if possible, interpret a contract in such a way as to reconcile and give meaning to all of its terms, if reconciliation can be accomplished by any reasonable interpretation.