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June 12, 2006

Gene Mullin, Chair

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

California State Legislature

EMAIL LETTER

CC: Sen. Lowenthal

B. Hebert, Asst Exec. Secy, CLRC

RE: June 14, 2006 hearing on SB551

Why must homeowners be defended against homeowner associations?

The June 11, 2006 issue of The Arizona Republic surfaced this important aspect of association living in its subtitle, "*HOA warriors make some progress in defending owners from associations*", which leads to the question in the title to this paper. Aren't HOAs/CIDs supposed to be healthy, vibrant and responsive communities of people? Aren't HOA boards supposed to represent the interests of the homeowners, its member-owners in an excellent example of grassroots democracy in action, as the special interests have been promoting for over 40 years? Or are there other dynamic and structural factors at play here that account for all these years or strife, hostility, and an "us against them" attitude reflected in opposing views on association reform legislation?

I still cannot understand that a homeowner, and a board member who is also a homeowner, would want to forego homestead exemption protections for the benefit of the nonprofit association to the tune of hundreds of thousands of his own dollars. Or openly, knowingly and willing surrender his due process protections and his right to have the association be held accountable before the state as any other municipal government is held? Or to pay for an attorney who will represent his adversary, the association, and will not even return his calls in many instances. Or wholeheartedly support foreclosure and loss of all his equity in his home in a legally accepted, but unconstitutional act of excessive and unusual punishment, for amounts often less than 1/10th the amount owed the association. The association has no hard cash at stake, as a bank or mortgage company may have.

Yet, the California Legislature and government agencies and commissions are besieged with arguments by not only the business trade group, CAI, but by many individual board members

and associations of board members. The national trade group lobbyist position is understandable, as Tom Skiba, its CEO, recently said, "Community Associations are businesses." Several of its attorney members repeatedly contact legislators and agencies with position papers without identifying their membership in the CAI College of Community Association Lawyers: Sproul, Grimm, Rosenberry, to name a few. But the positions of the association associations and board members raises many questions as to why this opposition, and the answers are not simple to understand. However, I will try to clarify this seemingly illogical difference between board members and homeowners, differences that the Arizona Legislature apparently recognized when it passed ground-breaking legislation to restore due process protections for homeowners, and holds associations accountable under the laws of the land.

First, Mr. Skiba's revelation is a surprise since nowhere can a person find this bold statement in any of CAI's numerous promotional materials to those interested in understanding community associations. But, legally and upheld many times by the courts, associations are indeed businesses run by undemocratic boards, as compared to public municipal governments, with constitutions lacking any of the American protections of a person's fundamental rights and freedoms – no bill of rights. Interestingly, still, after 40 or so years in operation, CAI and these association associations, continually oppose reforms as we see in SB551 and other bills.

The law states that, as such, the fiduciary duty of the board is to this fictitious person, the HOA, and not to the homeowners. And if the purpose of the association is to maintain property values, then whatever the board believes to be consistent with this goal is valid. No matter if an individual is made to suffer emotional stress, financial hardship or loss of a home, these are not part of the objectives of the association so the board has no interest in these matters. In fact, the basis of the board's authority, the CC&Rs, are well grounded in validity as a covenant running with the land if it benefits not the individual, but the community as a whole. That's all the board needs as a basis for its actions. So, not allowing deadbeats to get away with not paying their assessments and the use of legitimized extortion laws, the homeowner will lose his home no matter what.

And CAI and ECHO (which is a misrepresentation of the organization's mission since it supports the association and not the homeowners, and should be renamed ECHOA) clearly understand this difference; yet continue to exploit the confusions and misunderstandings promoted by its redefinition of the everyday meanings of words and concepts. But the homeowners do not understand this difference. They are led to believe, by currently available promotional and "explanatory" materials, and by the absence of cautionary and warning notices that all is not as it appears when living in an association. They still believe that they are buying their private home, with some rules attached. They do not understand, and lack the appreciation for, the consequences and impact on their lives by living in an association until it is too late.

The result is this class division between management and owner-members who are treated as employees of the association with its hostility, anger and abuse as we have seen with the labor union movement of our past history. And the homeowners, like those early days of management-labor disputes, lacks the powers and means to adequately protect his individual property rights and fundamental American freedoms.

Second, do the homeowners have any rights at all? Is there a board fiduciary duty to those mandatory members, with compulsory assessments, that supply the revenues for the association to function and to even exist? Do these same requirements of a fiduciary apply to the members

themselves? Of fair dealing? Of reasonable actions? Of loyalty? And how about duties to uphold the US and California Constitutions? Don't the homeowner-investors have this right, this reasonable expectation that the laws of the land apply to homeowner associations as well as to anybody else? If not, then what is community association living all about?

It should be clear to all that when these associations of associations, and the national lobbying trade group, CAI, contact the government that they are not speaking for the homeowners, but a distinct class of HOA membership and as a vendor, a hired-hand? Is it clear that no membership meeting was conducted electing representative and platforms to take before the various governmental commissions and agencies? As we would expect in a truly democratic process that takes place with our public elections? Is it clear that association board members are not the representatives of the homeowners, especially when those CC&Rs do not grant the boards any such powers? To presume that these powers are "implied powers" stretches the imagination; after all, the homeowner still thinks he bought a private home, period.

CAI, ECHO (ECHOA) and other board members clearly believe in the strict corporate, business, structure of the HOA, which is why they vehemently oppose any application of accountability of the HOA to the state or any protections of homeowner rights. And why there will continue to be problems in spite of the interference in the day-today affairs of associations while substantive reforms, as we have witnessed in Arizona this session, go unaddressed.

Are CIDs corporate governments, like the British East India Company, operating with broad powers solely to bring revenues to the kingdom and with no other restrictions? What is happening to America?

SB551 is a step in holding the associations, their boards and agents, accountable as any other form of government within the State of California.

Respectfully,

George K. Staropoli