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FOR IMMEDIATE RELEASE

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**A proposal for the "Muni-zation" of HOAs;
Stop developers from granting private government charters**

Dear Legislator:

Why are private corporations permitted to "grant" private government charters to organizations that give the power to control and regulate the people within the territorial boundaries of the subdivision? The developers are creating political governments, sometimes as a requirement of a local government, as defined in Black's Law Dictionary (when such powers are given to the HOA with respect to a territory, making it a political government for all intents and purposes).

What is the purpose of permitting and protecting such agreements through legislation that "sanctifies" these provisions in CC&RS? These CC&R "constitutional charters" that lack protection for the rights, freedoms and liberties of homeowners living in these planned communities governed by HOAs. This is an issue of constitutionality, of the delegation of private governments unanswerable under the 14th Amendment. Let me offer this quote by Gillman in his *The Constitution Besieged* to help clarify this point:

"Specifically, it came to be determined, first, that laws that singled out specific groups or classes for special treatment would withstand constitutional scrutiny only if they could be justified as really related to the welfare of the community as a whole ... and were not seen as a corrupt attempt to use the powers of government to advance purely private

interests; and second, that acts that interfered with an individual's property or market liberty would be considered legitimate so long as they were not designed to advance interests of just certain groups or classes““.

I have argued for some time now that the inequities and oppression of the current legal structure of planned communities can be successfully dealt with. This approach will better meet the legitimate government ends and interests and better provide social and general welfare benefits to citizens within the state, while treating all citizens equally under the law. The proposal is to simply make HOAs public entities after the developer meets the CC&R criteria of turning the HOA over to the homeowners and loses control of the community. At this point in time, the developer no longer has a stake in the community and its covenants, that are profit motivated, should not continue to be a burden to the homeowners.

Let me explain my proposal. By setting up special taxing districts for HOAs you will subject them to the same muni laws and protections of our government while still retaining the individual rules and regulations so dear to many as may be their belief in protecting property values. In short,

1. all amenities can be turned over to private operators, and I do mean "operators" as exist today to run such private facilities.
2. the current rules and regulations of HOAs would be incorporated into the district's ordinances subject to the same application of the laws as any other muni government (think of incorporated or unincorporated towns). Certain rules and procedures would not make the "cut", as expected in order for justice to prevail.
3. use of the subdivision's facilities can be restricted to homeowners by the special district's tax basis -- only members.

Let me clarify at this time, that there is an important distinction between the HOA and the subdivision real estate "package" known as a "planned community". HOA supporters continually cloud this distinction, because a planned community can exist without the private, undemocratic governing body known as the homeowners association. "Doing away with HOAs", as sometimes seen in the media, falsely implies doing away with the planned community real estate package. No, it doesn't. But the HOA special interests want you to think so. There is no need to impose undemocratic private governments over these communities of Americans that operate outside the 14th Amendment and the Constitution.

Let's examine this proposal to some extent. All objections relating to creating more levels of government and increasing government costs are not true, because each HOA will operate on its own as they do today. Yes, there will be some oversight involvement costs, but they can easily be handled as a "per door" charge to HOAs as currently used in Florida, Nevada and other states. But the state legislatures must realize that they helped create and allowed this problem to get out of hand, and must now rectify past errors.

These governments, this "additional layer of proposed government" as some have argued, already exists in large numbers and has been ignored by the states. It's now time to take effective action to stop the abuse of rights. These private governments are allowed to operate outside the laws of the land by remaining private entities that benefit not the state -- witness the cries of lost rights and the lack of justice -- but benefit the special interests who live off the discord and adversity that they themselves foster.

I will not pursue the argument here relating to informed consent supposedly attributed to home buyers in order to declare that the CC&Rs are a binding contract. But, the alternative to this proposal is to keep the status quo with its false recognition that home buyers agreed, with full knowledge and express consent, to surrender their constitutional rights and freedoms to the HOA government.

The planned community concept has had its problems for over 40 years now, since its inception and wide scale promotion by ULI, NAHB and FHA in the 50s and 60s. It was sold as a social benefit, "affordable housing" to the government agencies and as a profitable business to the real estate special interests -- the developers, real estate associations, contractors, etc. Adherence to the laws of the land and the rights of homeowners was a secondary, if that, consideration. Even the formation of CAI in 1973 couldn't stop these problems, but created even more desperate measures in 1992 when CAI realized that it had to strongly lobby its interests in the face of mounting opposition. And the problems are still here and will remain here, because the concept is inherently defective and an anathema to American values.

Turning HOAs over to the government places no problems on the operation of the facilities. All that is necessary is to form a special taxing district that has limited and restricted authority as so specified. Your HOA's rules and regulations can be incorporated as special ordinances, but will now be subject to muni laws and oversight, and public hearings and meetings and public disclosures, etc. Also, by taking this route, the HOA procedures or rules will be subject to review as just and legally appropriate and binding.

This is a first proposal, one that I've studied for some time now as a result of my four plus years of involvement in homeowner rights advocacy. Let's work together on this to solve the problems. Let's not be afraid of finally taking decisive action and stand up to those special interests who will not really be hurt by this proposal. Think about it.

Agents will still sell homes because developers will still build homes. HOA management firms will now manage the facilities, cut grass, keep the books, etc, but now independent of the CC&Rs. As for attorneys, well, there are always be a need for attorneys. And, homeowner advocates can finally stay at home, away from the legislature.

I will be happy to discuss this proposal with you or your staff to answer any of your questions. Any comments, suggestions or thoughts are welcomed. I am particularly interested in two categories of discussion: 1) on the mechanics, the methods and

approaches contained in the proposal, and 2) on the question of adopting this proposal as good public policy.

Respectfully,

George K. Staropoli