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An Evaluation Book Review by George K. Staropoli

New Neighborhoods: The Consumer's Guide to Condominium, Co-op, and HOA Living

Gary A. Poliakoff & Ryan Poliakoff

Emerald Book Co., 2009

paperback, 256 pages

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\$16.95

Explaining the New Neighborhoods with their second system of American political government

In the Forward, Ellen Hirsch de Haan, former CAI president, acknowledges that the biggest problem for the successful operations of these associations *"is the lack of education among the consumers who are buying homes and units"*, and that this book, written in plain English for the layperson, is *"a comprehensive presentation of all the aspects"* of HOA living.

At the very beginning, in the Dedication Page, the authors inform their readers that, *"These neighborhoods could not operate without . . . the owners, who give up certain traditional homeowner rights for the good of the community."* This statement, by a homeowners association (collectively referred to as "HOA") activist and member of the Community Associations Institute's (CAI) College of Community Association Lawyers, is consistent with the position of this reviewer, a long-time homeowner rights activist, that homeowners in associations have exchanged their individual rights and freedoms for simple statements, not guaranties or promises, of maintaining property values.

The Poliakoff's return to this theme in their Introduction, informing their readers that "out of anarchy came utopia", and quote an appellate court dicta that *"each owner must give up a certain degree of freedom of choice which he might otherwise enjoy living in a separate, privately owned property."* The authors define the purpose of this book as, explaining *"the workings of these communities -- these New Neighborhoods -- . . . and to let purchasers know just what they are getting into."* In keeping with their objective, the Introduction concludes with, *"A man's home is his castle. For many of us, this couldn't be further from the truth."* This reviewer has designated these new neighborhoods as the foundations of a *New America* of independent HOA principalities.

However, it soon becomes apparent that the authors are not really concerned about the truth, or presenting all the facts, or explaining the downside of HOA living. They start at the get-go with a biased view and explanation of "shared ownership communities" (SOC, as they are denoted), using anthropological history to justify modern acceptance of HOAs. Even defining community associations "*as a private democracy designed to govern . . . group ownership*," without presenting any debate or controversy regarding the status of HOAs as a bona fide democracy, or as a quasi-government that is not subject to constitutional restraints, prohibitions and protections of individual rights. And when the laws offer some protection, they are meaningless because there is no deterrence, no penalties, attached to violations of these laws by HOA boards.

No, I am sorry to have to say that this book, while explaining life in HOA-land for those who have already accepted communal living, reflects the group think mentality of those who believe in the HOA legal scheme. It continues the myth that homeowners associations are good for America, good for the municipality, and good for their members, but fails dismally to mention or to discuss the inherent defects of the legal scheme or the broad powers that were "granted" to the HOA board, often exceeding the purchaser's reasonable expectations of board authority. Or the extent to which the surrender of freedoms include a loss of bona fide due process. (Glossed over in chapter 10 with "allow them to present their case", which has little basis in the contract. Generally, the CC&Rs simply state, "after notice and an opportunity to be heard" without further necessary protections regarding evidence and the right to confront witnesses before an independent tribunal, etc). Or, the lack of understanding that one's home has been given as collateral for the HOA's survival; that "shared" really means "being married to your neighbors", because, without their consent, your hands are very often tied while your neighbors do not always need your consent to affect your personal or real property rights.

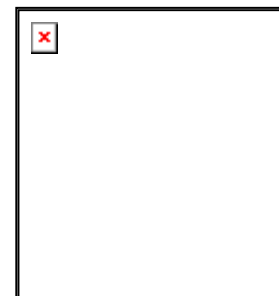
As examples of the failure, a quick presentation of substantial HOA issues of constitutionality reveals the following. In chapter 3 the AARP Bill of Rights for Homeowners is presented, giving the impression that "so let it be written so let it be done" is a fact. It isn't, and substantive legislation to make it happen has been repeatedly opposed by the special interests. In chapter 4 the authors give the illusion that the HOA is like a public government since the CC&RS are referred to as "contractual constitutions" with "private laws", very important issues with serious consequences that are not fully discussed. Happily, the "constructive notice" acceptance of these "contracts" is mentioned, but not its unjust application to the loss of one's rights. Or, the failure to mention that the common law of equitable servitudes (covenants) controls many areas of HOA law, and that the astute legal-academic aristocrat writers have maintained, in *The Restatement of Servitudes*, that servitude law should trump constitutional law. For example, there is notice or warning that the courts have upheld "ex post facto" amendments that can affect your unit and your original "contract", without your consent. However, the authors do state that this cannot happen (also again in chapter 10).

A quick summary includes: there is no information provided to purchasers regarding the level of judicial scrutiny (essentially courts tests) required for the valid surrender of one's rights, or the basic legal requirements for a binding contract, which the CC&Rs are held to be by the courts, or what constitutes a valid "consent to be governed" by the HOA. The reader is not cautioned that the HOA is not recognized as a bona fide public government where the doctrine of living in a political jurisdiction can be taken as agreement to be governed by the laws of the jurisdiction. The HOA is subject to the CC&Rs contractual provisions the covenants, as set forth in the legally binding CC&R contract itself, have radically different requirements in order to be legally binding.

While the authors attempt to clarify the workings of an HOA and to reassure existing members that their decision was a good one, it seriously fails to accomplish its stated goal: to educate purchasers as to the total picture of HOA living. It fails to present the serious consequences and harm that can befall good people "*who [unknowingly] give up certain traditional homeowner rights for the good of the community.*" Readers should constantly compare the operation of HOAs with the operation of public governments to determine what has been lost. Do not assume that the good people on the board will do justice as you are familiar with in public government, without a legal, contractual, binding requirement to do so.

George K. Staropoli

Mr. Staropoli is an Arizona resident who has been active as a homeowners rights advocate since April 2000. He has appeared before a Nevada Legislative committee, the Arizona HOA Study Committee, and testified many times before several Arizona Legislative committees; has been active in submitting homeowner rights issues to the legislators, the media and the public. His opinions and views have appeared in the national media: *Kiplinger's Personal Finance* magazine, *CNN/MoneyOnline* and in the *New York Times*, *L.A. Times*, *Palm Beach Post*, as well as on local TV news and in the *Arizona Capitol Times*. Mr. Staropoli has been quoted in *Private Neighborhoods and the Transformation of Local Government (2005)*, AARP Policy Institute *Homeowners Bill of Rights* proposal (2006), and acknowledged in the Thomson – West legal treatise, *California Common Interest Developments – Homeowner's Guide (2006)*.



In 2000 he founded and is president of the nonprofit **Citizens for Constitutional Local Government, Inc.**, Scottsdale, AZ, a nonprofit organization seeking to inform the legislators and public about common interest property issues and to expose the prevalent myths and propaganda about carefree living in an HOA. *Citizens* believes in supporting principles of American democracy.

George is author of *"Establishing the New America of independent HOA principalities" (2008)*, and has published several books and videos on reforming planned communities and their HOA form of government. He is editor of *Buyer's Guide to Living in a Community Association (2001)*, and he is author of *The Case Against State Protection of Homeowner Associations (2003)*, reaching a growing audience of concerned people. The author, a veteran homeowner rights activist, makes his case against state government protection of homeowner associations. He documents, using his appearances before the Arizona Legislature, state legislative hostility toward upholding the civil liberties of homeowners with their broad, misguided interpretation of "private contract" prohibitions, and the use of statutes that favor the HOA.

His StarMan Publishing, LLC produced a 42 minute DVD, *Somewhere Over the Rainbow (2004)*, of the Arizona Legislative session documenting the loss of homestead protections and the right of the HOA to foreclose, and a 2 volume, 4 disk DVD series, *Homeowner Rights Advocacy 2006 (2006)*, documenting homeowner rights advocates at legislative sessions in Arizona and Texas.

Mr. Staropoli was a member of the CEO Club, NY, NY; served as Treasurer and board member of a Penn. HOA; and was a board member of the Valley Citizens League, Phoenix, AZ. He holds a MS in Management from Polytechnic University, Brooklyn, NY.

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