

The HOA Citizen

HOA citizens are US citizens first!

October 2003

eNewsletter

Florida, California move forward

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Jan Bergemann, president of CCFJ, has been quite outspoken in his fight for homeowner rights. Keep up the fight and good luck.

Members of the Miami/Dade Legislative Delegation, under the leadership of State Representative Julio Robaina (R-District 117) and State Representative Juan Carlos Zapata (R-District 119), have organized a town hall meeting on **Wednesday, September 24th, 2003**. The agenda was "Condos and HOAS".

Here's CCFJ's list of reforms:

Enforcement Without any reasonable method of enforcement,

sonable method of enforcement, most all enacted legislative changes will not help the homeowners and condo-owners. Most of the violations of existing laws are allowed to continue because of the inability of the owners to enforce their rights in court.

Without easy enforcement of the regulations, any changes in existing laws are doomed to

fail. The major reason for the many known violations is the lack of enforceability by the owners. Using the DBPR as enforcer has failed.

[Most Common Violations By Associations](#)

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Equal Justice Under Law

Able to leave HOA for non-HOA home

Nobody told me when I bought into an HOA community that I gave up my constitutional rights to due process. In fact I doubt many people know they are giving up their constitutional rights when purchasing a home in an HOA community. As you correctly stated, the Board can take

private property away from the homeowner and the state or police will not intervene. How many home buyers know this fact? I know because this happened to me even if the bylaws do not permit it. In fact the Board can do anything it wants to the homeowners (short of break-

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The social responsibilities of associations

In Arizona, and I'm not sure in what other states, planned community common areas are valued at a fixed \$500, regardless of whether its country club, golf club, etc. I am aware of a country club with a fair market value of \$9.4 million being valued at this token \$500 amount.

The point I am trying to make is that non-tax status and "largess" in terms of highly favorable tax status should bring with it certain obligations and responsibilities to the state or federal government -- the greater community.

If common areas were taxed at fair market value, could supporters of HOAs still argue that they are the solution to affordable housing?

With HOAs, as carefully planted in everyone's mind, the total focus is on Rights & Responsibilities to the HOA itself. There is no legal requirement by the state or within the

CC&Rs for the HOA to act with civic and social responsibilities or obligations.

Supposedly, this beneficial tax status is given for some greater public service, namely the state/local government doesn't have to provide for the services provided by the HOA -- amenities, governance, police powers, etc. Yet, the amenities are not open to the public and the streets are being shutoff in gated communities.

Why should all citizens pay full freight in terms of real estate taxes to cover the loss of revenues so freely given to these

HOAs? As you know, most states have continual budget problems and social services, medical services and education suffer.

In Arizona with its huge half billion dollar shortfall and these above services and more are being curtailed and affecting all citizens, nobody touched the favored son status of these amenities. This is another example of state protection of HOAs to the detriment of the citizens of Arizona, a redistribution of benefits to a select few.

Why isn't the state providing the equivalent of a public defender, using an increase in common area valuation for this purpose? Or fund licensing requirements for management firms and education for board members?

The authors of *Fortress America: Gated Communities in the United States* write:

"From there it is a small step to seceding from a city or county in order to avoid paying for those who don't live in one's HOA. Civic secession is happening in many places across the country.

"If we are to be the democracy we set out to be, we have to do more to reach one another, not through walls or gates but across the streets we live on".

... Florida, California

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- Refusal to publish or to allow copying of official documents
- * Total lack of financial accounting
- No public board meetings
- Election Fraud – Using false proxies, unjust suspension of voting rights, etc.
- Selective Enforcement
Threats of liens and foreclosures
Unlawful changes of bylaws and deed-restrictions by board decisions
- Creating arbitrary and capricious rules
- Unjust financial gain of board members and relatives
- Use of reserve funds for different purposes

Mr Bergemann continues with:

“The above listed problems will be explained in detail to follow! The list goes on and on, but these are the most common violations known. All these violations are possible because of total lack of required enforcement.

“Complaints by owners to board members are most often answered with:

“Sue us, if you don’t like it!” The board members, their attorneys and community association managers know full well that most of the individual owners don’t have the financial resources to fight the association’s deep pockets -- meaning the money contributed by owners!

“Most owners want to buy a home for their families, not a share in association politics. If financial records of these associations show that up to 70% of the budget is used for management and legal fees, it is very obvious that the existing system is totally flawed.



“Experience from all the past years and daily horror stories are proof **My home is my castle!** that only a total overhaul of the system, led by some way to easily enforce the regulations, will help the homeowners and condo-owners in desperate need! There have been different suggestions to create a system with sufficient power to fight the growing problem.”

Mr. Bergemann writes about the results of this town hall meeting:

Dear members and friends,
just in short, I don't have the full reports from Miami yet, but it was obviously a

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Fiduciary responsibilities of boards

In other posts, I and others have argued that HOA boards have a fiduciary duty to the homeowners. Let me continue with this argument to make it clear that the mandate of the HOA defines the overriding fiduciary duty of the board and prohibits, in many important ways, the exercise of our rights and freedoms.

Professor Nancy L. Rosenblum of Brown University writes about fiduciary responsibilities of boards in her book, *Membership & Morals*,

"Common ownership and the right of enforcement invite vigilantism, 'condo commandos' on the prowl on patrol for minor violations of the rules".

"RCA [residential community associations] directors are corporate officers, not political representatives of the owners who elect them. Democratic critics of RCAs see covenant, conditions and restrictions as the

weight of a dead hand on a potentially lively, self-governing community." She quotes McKenzie saying, "the chief obstacle to democracy is the managerial mindset" and a Barton & Silverman study saying, "They want to transform these associations from scenes of corporate management into arenas of democratic engagement".

She adds, "Members are left to the director's discretion; there is ample opportunity for partiality and capriciousness. They are also vulnerable to

intrusive communitarianism. Common ownership and the right of enforcement invite vigilantism, 'condo commandos' on the prowl on patrol for minor violations of the rules. ... **My point is that the heart of the board's fiduciary duty is maintaining the value of the owners' property in accordance with association purposes**". And this is what we repeatedly hear from association supporters who carry this message to the media and to the legislators, and who also add, "Therefore the strict adherence to enforcing the CC&Rs."

The issue winds down and centers on this mandate to the HOA board, and to the implicit agreement and support by the homeowners who bought an HOA-controlled home with this acknowledged purpose. Even the arguments that this mandate supersedes any democratic rights and freedoms customarily expected by citizens of this country begins to weaken when these homeowners say, "Yes, that's what I signed up for".

Other homeowners argue that they did not surrender their rights to due process and the equal protection of the laws, and expect these constitutional rights to be upheld within and under the overall purpose of the HOA. In short, ex-post facto and bills of attainder laws would apply, and state laws would be enforced by the appropriate agencies.

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CAI responds to advocate criticism

Advocates have repeatedly criticized CAI claims to represent homeowners and homeowner associations. It is argued that CAI is a business trade group and HOAs are consumers — a clear conflict of interest situation for both CAI's tax status and HOA board members.

Here's the latest from CAI's web page:

“America's leading advocate for responsible communities

“Community Associations Institute (CAI) is the only national organization dedicated to fostering vibrant, responsive, competent community associations. Our mission is to assist community associations in promoting harmony, community, and responsible leadership.

“CAI was founded in 1973 as a multi-disciplinary non-profit alliance serving all stakeholders in community associations. We provide education and resources to America's 250,000 residential condominium, cooperative, and homeowner associations, and to the professionals and suppliers who serve them.”


Yet, on its “Join CAI” page it informs prospective members that:

Influence Legislation and Policy — Protect your interests through CAI's lobbying activities. You can help our efforts to overturn harmful legislation, fight unfair

municipal and business practices, and make sure community association homeowner interests are protected. CAI's government and public affairs department lobby's state and federal governments on behalf of community associations throughout the country.

And in an April 2002 letter to ABC's 20/20:

“The Community Associations Institute is 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.”



CAI became a business trade group, 501(c)6 tax exempt in 1992 in order to strongly lobby Congress and state legislatures

In California CAI opposed legislation to inform homeowners about the salaries paid to management firm and HOA employees. In Arizona, CAI opposed the restoration of homestead exemptions to homeowners in HOAs or the due process requirement that any liens must first be justified and obtain court approval.



... Florida, California

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great success for the consumers. Great attendance, but some real sad stories in Miami! But it sure got lots of attention. More to come. The meeting took five hours, one hour longer than intended, so everybody had the chance to tell his/her horror story!

It sure was an eye-opener! Some of the presentations will be posted on the Web-Pages.

"Most owners want to buy a home for their families, not a share in association politics".

Great day in Tallahassee today. Despite the fact that Karen and I were totally outnumbered we sure got their attention. Thank you, Karen, for being there!

I presented our list of demands, underlining the enforcement necessity. My statement: without enforcement by government agency they can save the time trying to amend useless bills. See: <http://www.ccfj.net/ccfjbullet-sheet2.html> This presentation was as well given to the legislators of the Miami/Dade Legislative Delegation and the members of the House Select Committee on Condominium Association Governance.

I was very proud of our buddy Bob J. from Ocala - WISHFER! He made it clear to Secretary Carr and the members of the Task Force that CCFJ is a growing

state-wide organization with many allies. "And we're here to stay and we will not give up until our goals are achieved!" Bob, I think they got our message!! His presentation sure raised some eyebrows! More presentations and actual reports of meetings will be posted a.s.a.p.

This was a great start! Let's continue our efforts to let them know that Bob was absolutely correct! Thanks to everybody who helped to make this such a success!

Take care Jan"

[Jan Bergemann, president of CCFJ], Inc was appointed to the newly formed Florida DBPR Homeowner Association Task Force. Congratulations!]

And in California, from AHRC News Services, "**AB 104 Becomes Law in California** ... Requires homeowner associations to make accounting books, records and minutes available for inspection and copying by members This bill would require an association to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as specified."



... left HOA

(Continued from page 1)

ing into their home) and the police will not intervene. It's up to the homeowner to spend his money and sue the HOA to enforce the rules. Who really is going to sue in the big court over a \$10 piece of property the Board took in order to enforce the rules? There are limits to what it makes sense to sue over and a good lawyer will advise against suing over small matters just "for the principle".

My ultimate solution this year to solve my HOA nightmares was to move to a non HOA single family home. As long as the rogue Board is still in power the abuse will continue. Fortunately most of the detached homes where I live were built in the 1940's and 1950's before HOA's so I had a choice. I'm sure many people do not have a choice in certain areas.

Gary in MD



Advocacy as a social movement

I think we should all keep in mind that advocacy networks serve the purpose of educating and informing others, mainly homeowners and other advocates. This is good, but we must reach out to the greater community, to those who shape our lives -- the legislators, public officials, the media, the Realtors and the civics groups. We must reach out to change their perception, their

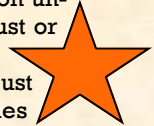
... fiduciary duties

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No, there are no provisions in the Declaration for a bill of rights to protect homeowners from abusive boards, because the Declarations are written by and heavily in favor of the business interests of developers and lenders. The Declaration of Covenants, Conditions and Restrictions must not be confused with the Declaration of Independence.

Under this Declaration and its requirement for a corporate form of governance, the board has no obligation under its mandate to be fair and just or to apply or permit a homeowner's rights and freedoms, just to maintain property values through the enforcement of the CC&Rs.

And with the broad powers given to these boards, "maintaining property values" can mean almost anything, including a requirement to pay fees to a for-profit, non-HOA owned country club that is also open to the public.



attitudes, their views of what homeowner associations are about and that they are not perfect, that they have serious flaws and defects. HOAs have punished the people enough!

This requires an attitude on our part to bring about social change



Democracy in America — Revisited Again

[The following applies to our current state of affairs and the biased treatment of homeowners in planned communities.]

Robert A. Dahl, a Yale University political science professor, asks "How well does the constitutional system perform in comparison with other countries with well established democracies?" **One criteria he uses is, Protecting Fundamental Rights.**

After comparing 22 stable democratic countries, he concludes that "in the end a democratic country cannot depend on its constitutional systems for the preservation of its liberties. It can depend only on the beliefs and cultures shared by its political, legal, and cultural elites and by the citizens to whom these elites are responsive".

Another criteria he raises is "the question of fairness and justice ... the fairness with which it treats different citizens".

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At about the time our original 13 states adopted their new constitution in 1787, a Scottish history professor by the name of Professor Alexander Tyler had this to say about "The Fall of the Athenian Republic" over 2,000 years previous to that date.

"A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves largesse (generous gifts) from the public treasury. From that moment on, the majority always votes for the candidates promising the most benefits from the public treasury, with the result that a democracy always collapses over loose fiscal policy, (which is) always followed by a dictatorship."

"The average age of the world's greatest civilizations has been two hundred years. These nations have progressed through this sequence. From bondage to spiritual faith; from spiritual faith to great courage; from courage to liberty; from liberty to abundance, from abundance to complacency; from complacency to apathy, from apathy to dependence, from dependence back into bondage."

Professor Joseph Olson of Hamline University School of Law, St.Paul, Minnesota, thinks the US is now between the apathy and complacency phase of democracy although he believes that 40 percent of the nation's population has already reached the dependency phase.

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