

# The HOA Citizen

*HOA citizens are US citizens first!*

November 2003

eNewsletter

## HOA forecloses on dying woman

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An Arizona woman, dying of terminal breast cancer, received notice of foreclosure from her HOA for back dues, reported the Arizona Republic in an October 9th article. Evelyn Lyles, 44, and mother of 3, was trying to make up the back payments, but apparently the HOA couldn't wait any longer. And, as usual there was the underlying hand of the HOA attorneys tacking on their charges that brought the amount due up from some \$260 to over \$2,000.

The HOA is Western Skies Estates 4 of Gilbert, AZ and the attorney is Guy Wolf, neither of whom would reply to the reporter. So,

too, with Mike Gerson of Gerson Realty & Management Co, the management firm. Cowards!

The East Valley Tribune wrote two editorials headed, "HOA's grasp for house of dying woman is about as low as it gets" and "Rein in the HOAs". In angry tones, the Editors wrote, "These are the people who are trying to take the home of a dying woman because of a measly, stinking thousand bucks."

While defending the HOAs legal right to act, the editors strongly feel that something is wrong here, definitely wrong. "But if Berman prevails in this particular case that won't address the underlying moral rot that allows HOAs

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## Desert Crest homeowners need help

In the September 2003 issue, we wrote about Desert Crest homeowners who may be forced to pay fees to a public county club. Trevor Sheehy made the following appeal for the AHRC News Services.

"However, when people buy homes

affected by CC&R's and a homeowners association, are they truly cognizant of the possible impact of the association on their use and enjoyment of the property?

"The laissez faire attitude of the courts has become one of aggres-

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## State compensation for HOA defects

I am presenting a short summary of arguments by others regarding the private government aspect of HOAs and the special treatment of HOAs in order to make the concept work.

CAI's own *Community First!* publication, 1999, contains a paper by Professor McKenzie who makes arguments for the defective nature of HOAs, that they deprive homeowners of their civil rights



"In any other context, the franchise would be permitted to go out of business rather than be supported by court decisions!"

and the need for adequate disclosure for new home buyers. In short, these arguments and positions are not new, have been around and published at least some 6 years ago and CAI is

aware of them.

HOAs are a private government above the law because the courts, currently, treat them as a private contractual matter. The rights of citizens are suppressed and the law of the land is not applied as would be expected with a typical civil government. HOAs are totalitarian whose homeowners live at the suffrage of the BOD. A benevolent board brings harmony; a despotic board brings oppression. Which one do you have now? What will you have tomorrow? And there is very little that can be done by the homeowner – he's told that he signed his rights away (anybody hear about Miranda Rights?).

The deck is rigged! The state's interest, the HOA's protection of property values, supercedes the rights of the homeowners as expected and granted in a democracy. That is the definition of "totalitarianism".

Let me explain what I mean by "defective". If you view the HOA as a corporate franchise being sold to homeowners, then we clearly see that it is a defective product or service that has required special treatment in order to make it a viable product. For example, take the argument for foreclosure as made in, "*Foreclosure Offers Homeowner Associations Critical Enforcement Power*" by Marjorie Jean Meyer, CMCA, PCAM argues,

"The right to foreclose is a harsh remedy, but one that is absolutely necessary if homeowner associations are to provide the services for which they were created."

In any other context, the franchise would be permitted to go out of business rather than be supported by court decisions! Similarly, the argument that holding BODs to the same oversight as civil government employees would result in volunteers not willing to serve on the BOD is an admission of another defect – the HOA will fail if we don't suppress the civil rights all citizens have come to expect.

Nov. 13, 2000

## ... dying homeowner

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and their lawyers to swipe a dying woman's home under the guise of collecting such a petty debt. Look. This is not a call to strip HOAs of their legitimate legal authority to collect debts. But that debt — if it still exists — can be collected through the lien process when the home is sold. Foreclosure in such an instance is cheap, shoddy, heartless and unconscionable."

Arizona House majority Leader, Eddie Farnsworth, proposed a bill to retain some rights to protect homes from foreclosure last year. It would have allowed the HOA to wait 7 years, or sooner if the house sold, to collect from the homeowner.

Other homeowners not living in HOAs still enjoy their homestead protection exemption of \$100,000. But this was stripped from HOA homeowners in a 1996 statute in an act of extreme prejudice against one class of homeowners for the benefit of a private organization. Both he and Gilbert Mayor Berman were outraged.

The Manager of this publication wrote in response to this immoral act,

"We must demand reforms, among

which should include education in government for board members, licensing of HOA managers and management firms and the removal of statutes that are biased against the fundamental rights of homeowners.

"We must make the HOAs responsive to US and state laws."

Arizona homeowner rights advocates vow to be back next year and fight again for an anti-foreclosure bill and a restriction on the hOA from filing liens without due process — going to the courts first. This, too, was part of Representative


Farnsworth's bill last that was defeated but supposedly HOA boards acting to protect HOAs. But what about their fiduciary duties to the homeowner members, as required by Arizona statute?

It appears that the majority of those "good" HOA board members, speaking before the Senate Government Committee that killed the bill, came from just two CAI member associations.



Equal Justice Under Law





## The role of the FHA in planned communities

Thanks to Arizona's CAI lobbyists who tried to find a device to prohibit the removal of HOA foreclosures, I am investigating the role of the Feds and the FHA/HUD requirements for mortgage insurance. The requirements to notify the lender (regarding CC&R modifications) and the 20 - 30 year minimum life of the HOA (can't dissolve for a minimum period) always rubbed me wrong.

So, here's my first look into this topic, taken from Evan McKenzie's historical record on homeowners associations, *Privatopia: Homeowners Associations and the Rise of Residential Private Government* and Robert J. Dilger's *Neighborhood Politics: Residential Community Associations in American Governance*.

In the 1960s, the overwhelming public interest served by promoting and encouraging HOAs was to reduce the land development costs, since land was becoming scarce, so they said. This resulted in smaller lots on the same acreage, as compared to the traditional suburban detached home, so a higher home density could be achieved.

Higher density was needed since so much land had to be set aside in this given development acreage for common areas; and to keep the equivalent same number of units in the develop-

ment. In other words, lower development costs with the same or increased sales prices on the same number of units, providing the developers with improved profits.

In 1966 a much more thorough publication of some 422 pages, *The Homes Association Handbook*, known as TB50. Yet, we still had the critics "of this collaborative effort [finding] this an unhealthy alliance between government and business to promote CAs to unwary consumers. As evidence they cite mounting complaints about CAs that accompanied their rapid growth" (From *Community Associations* by Stable).

The FHA steps in with guidelines for obtaining mortgage insurance; that is, protect FHA from the development turning into a blighted area with the loss of value to the lender.

### The FHA manual required:

\*\* an automatic-membership non-profit homes association with the power to enforce protective covenants running with the land

\*\* an association charge on each lot to assure sufficient funds and to provide adequate safeguards against undesirable high charges

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## Municipality services

Here's a Letter to the Editor of a local Phoenix newspaper in regard to the Evelyn Lyles story contained on page 1 of this issue.

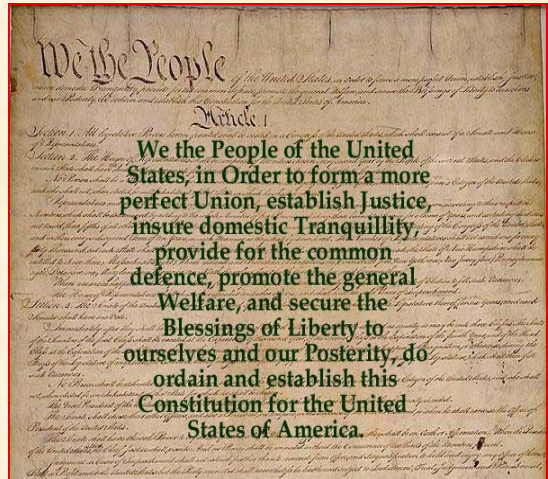
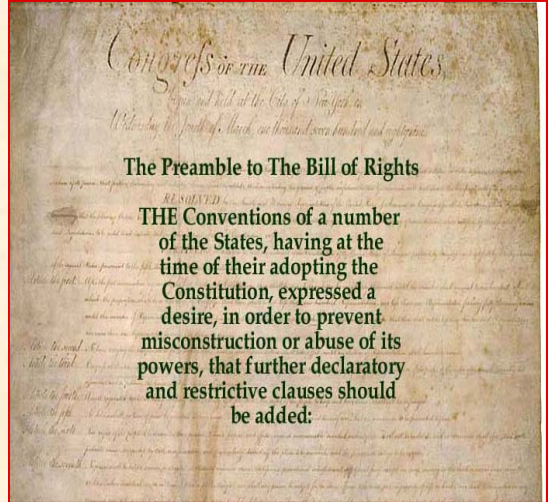
Dear Editor,

I'm surprised that Gilbert Mayor Steve Berman would admit that municipalities cannot pay for HOA common area maintenance (Art Thompson article on "Woman Faces Two Battles"). Is this the reason for mandatory homeowner associations? To allow, sorry, to force, to coerce and to conscript homeowners to pay for private facilities?

Suppose the State of Arizona lifted the flat \$500 evaluation for these common areas. Would municipalities be in better shape to maintain them? And whatever happened to government supervision and oversight that is a requirement for the delegation of functions to private organizations? And let's not forget the failure to inform buyers of their loss in rights that others, not living in HOAs, continue to enjoy. Like a homestead exemption.

It's time to restore justice and the equal protection of the laws to all citizens, both in and not in HOAs. It's time to hold these private organizations accountable to the greater community within they exist, that grants them such largess and exception from the laws of the land.

George K. Staropoli  
Citizens Against Private Government HOAs



## ... the FHA's role

*(Continued from page 4)*

\*\* give the homeowner voting rights

In 1963, Byron Hanke, later to help form CAI in 1973, influenced FHA to insure a PUD in California that was incapable of getting insurance. The above manual was instrumental in getting

"Difficulties occurred with 'boards that did not represent the whole community' or that degenerated into extremes of 'dictatorial leadership' or 'overly permissive leadership' [and this was 1966].

mortgage insurance for the developer. Hanke then used this manual to sell PUDs to America. He found his mission in life that didn't include consideration of democratic systems of governance.

However, academics were not too pleased with developments and criticism that homes associations looked like

private governments emerged. Stanley Scott argued, p 93,

"The FHA-ULI [Urban Land Institute, a private organization created as The Real Estate Foundation] policy would bring about excessive control of thousands of inhabitants by private associations manipulated by developers [...] All in the interest of manipulating property values.

"He points out that the twin devices of restrictive covenants and homeowner associations 'favor the interests of the

developer and lender in almost every way' and anticipates that 'uniform and national application of such policies [...] could be most unfortunate'."

Forty years later and the problems are here with us. And in 1973 CAI was formed to deal with problems with HOAs.

Dilger echos this role of the Feds with,

"The RCA's CC&Rs [...] are written to conform to guidelines issued by lenders such as FHA, VHA, FHLMC and Fannie Mae [...] Lenders are particularly interested in assuring that the RCA has sufficient funds to maintain the common properties ... As a result they generally require very specific assurances in the CC&Rs that the RCA has the authority to collect reasonable assessments [...] that RCAs have in place procedures to deal with delinquent assessments".

What we have here is a question of good public policy. Is it good public policy to promote the private interests of the real estate industry and to impose restrictions that cause the loss of our constitutional rights, the denial of the equal protection of the laws, and the loss of our freedoms and liberties as citizens living in America have the right to expect?

I think not, since there are alternative means to achieve these goals without homeowners being treated as second

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## ... Desert Crest

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sive social engineering. A recent appellate court tentative decision ... allows the homeowners association to impose a new requirement that all homeowners pay a monthly fee to an adjoining private club not owned by the association or the residents whether or not the homeowner is able to or wishes to use the facilities.

“The decision of the three judge panel of the appellate court must not be allowed to go unchallenged.

“To help them defend their homes and possibly your own, please send your donations to:

“Fair Play Advocates, 69534 Morningside Drive, Desert Hot Springs, California 92241

**“ATTENTION APPELLATE SPECIALISTS** — Any appellate specialists interested in this case please **email Trevor Sheehy** or call (949)366-2125”



## ... the FHA

(Continued from page 6)

class citizens. Where does it say in the Constitution that it's the government's obligation to provide this form of housing?



## ... HOA petition

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property and causing us financial loss. Across this country, this practice is and has caused an epidemic that must be stopped. It is impossible for us to stop this practice through our local legislators because special interests groups have more power and more money than we do. We cannot win at the local level; we need your help! This capability must be removed from existing CC&Rs and prevent its inclusion in future CC&Rs. To that end, we, the undersigned, do petition you, the Congress of the United States of America, to draft and pass legislation that prohibits the foreclosure of any of its citizens' property by a Homeowner Association, a Property Owners Association, or any comparable homeowners Association that may go by any other title, by banning the practice of developers creating these restrictions prior to our making a decision at closing as to whether or not we want this on our property. Help us get back our property rights!



### Author Information

*Name:* The Texas Homeowner's Advocate Group

*Email:* [TheDoubles@aol.com](mailto:TheDoubles@aol.com)

*Address:* Mrs. Harvella Jones

[Http://www.stoptheforeclosures.com](http://www.stoptheforeclosures.com)



## Texas advocate group's national petition

### **Petition to Permanently Stop Homeowner and Property Owner Association Foreclosures in America (Homeback) — The People of the United States of America -**

To: The United States of America Congress

I am writing to ask you to ensure that when I get to the closing table to purchase my properties, there are no pre-existing liens on my property before I get there. I want the opportunity to decide if I want to subject my home to a homeowner or property owner foreclosure if I do not pay my maintenance fees or violate a deed restriction.

I am asking for protection of my property from foreclosures by my neighborhood Homeowner Association (HOA) or Property Owner Association (POA). You may not be aware of this but throughout the United States, **developers** have been and are placing nonnegotiable restrictions and conditions of ownership on our future property as they develop the land. These restrictions and conditions are listed in the Covenants, Conditions, and Restrictions (CC&Rs) attached to the title of the property. These CC&Rs contain a potential lien capability whereby the Homeowners Association can foreclose in the event you do not pay main-

tenance fees or commit some other CC&R violation such as painting your mailbox a color they don't like, or a roof type that is not approved, or if you are not cutting your lawn enough, etc. These are certainly not violations you should be foreclosed for.

If a homeowner is having trouble paying their maintenance bill or fail to pay included penalties generated by their board members, they should not be subject to a foreclosure of their property.

We want this foreclosure cancer to stop eroding our property values and our property rights. We bought our homes and we want to maintain our right to decide what should happen to it as our forefathers planned decades ago.

We need your help in ensuring that this is what happens. It is time to stop these cottage industries from robbing us of our property rights. We ask that you stop this practice of including a foreclosure capability in the CC&Rs by creating a law that will stop it once and for all. We cannot rely on our state to do this for us. This practice is unjustly robbing us of our

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**StarMan Publishing, LLC**

Scottsdale, AZ

Phone: 602-228-2891  
Fax: 602-996-3007  
Email: pvtgov@cs.com

George K. Staropoli, Manager  
Liz Pinson, Editor



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