The HOA Citizen

HOA Citizens are US citizens first!

November 2004



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In an HOA, your vote isn't necessary

A September 2004 Michigan Appeals Court decision addressed the validity of amending the CC&Rs with less that a unanimous vote.

held to The Court position that are homeowners bound to amendment changes that are passed in accordance with the CC&Rs amendment provisions -- a less than 100% vote binds all others. Talk about lack of informed consent to such potenwide-ranging impact on your home.

Citing another case, the Court considered the following as a possible consequence of allowing a less than unanimous vote:

"Taking these words to mean that particular lots could be excepted [say from payina assessments] permits the obviously unintended result that 51 per cent of the owners could exempt their own property and leave the other 49 per cent encumbered or could even impose more strict restrictions upon certain lots."

Therefore, It went on to say, "We conclude that the logic of the many courts cited [] is sound and should be followed here: Non-uniform covenant amendments require the unani-

mous consent of the affected property owners.

Permitting nonuniform amendments and exemptions by majority or supermajority vote would destroy this crucial aspect of covenants and thus undermine the entire system of private regulation of real property in Michigan.

The fundamental premise that makes people willing to bind themselves to the burdens of restrictive covenants is that the resulting benefits are assured; each property owner relies on the fact that all are bound equally"

To contact us:

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Excerpt:

Muni to take over HOA obligations?

The necessary and proper functions of government are spelled out in the Preamble to the Constitution.

Woods, Bluffs and community develop- ture." ment.

SOUTH

Fred Pilot informs us:

CIDs HOAs. They would nism initially be under de- zation". dissolved and infra- later. structure maintenance

ELGIN — The village "I think this Illinois board voted Monday story shows that local night to require special government officials service areas, or SSAs, are recognizing that Parkside while they may require Cambridge new development to be Prairie of the common interest subdivisions. variety, the lack of The SSAs are merely homebuyer support for backups "if the home- HOAs calls into ques- The necessary and don't do what they are over the long term and Super, director of associated infrastruc- stitution:

Comments:

planned communities vate governments, ings of liberty." given the lack of then, they too, will homebuyer interest in turn to this mecha- It's under the general of

ment and financed via ment interference" tion; namely, special tax district seem to settle for homeowners private government the HOA board.

interference that lacks any obligation to protect our rights - the HOA. Who else will protect our rights if not the government? Isn't that what we expect from our government?

owners associations tion their sustainability proper functions of government are supposed to with infra- consequently their spelled out in the structure," said Steve ability to maintain Preamble to the Con-

"to establish justice, insure domestic tranauility (keep It's all possible and peace), promote the "It is interesting indeed when the local gov- general welfare (now -- and this could end ernments and state extended to mean up becoming standard legislators run out of "health, safety and procedure in detached defenses to continue the general welfare"), aka to protect these pri- and secure the bless-

"muni- welfare function that We just the conduct of perveloper control via need to help these sons in the states is developer controlled people see the light regulated and con-HOA, then the HOA sooner rather than trolled for their overall benefit. And that includes protecting one responsibilities trans- Those who say, "we faction from the injusferred to local govern- don't want govern- tice of another fac-

"then the HOA dissolved and infrastructure maintenance responsibilities transferred to local government"

To contact us:

Call for city codes to regulate HOAs

The Arizona Republic printed a letter from a Chandler , AZ resident proposing steps by the city to regulate HOAs.

The writer makes the argument for municipalities to develop a code that creates HOA boards in a different way. Many cities mandate HOAs, yet they do nothing to help them do the right things. Civic-minded citizens must be given both the incentive and the tools they require in order to serve their community in an efficient and fair fashion.

Furthermore, he calls for a city code would require board members be educated in the proper operation of HOAs, provide a mandatory monitoring function and an ombudsman to mediate disagreements. Prospective board members with personal issues or vendet-tas would be weeded out quickly.

Covenants, Conditions and Restrictions (CC&Rs) should be reasonable and common among HOAs: CC&Rs should not vary so strongly from HOA to HOA.

The code, he adds, should also provide a basic set of CC&Rs to be used throughout the municipality. A citizens commission with diverse membership would develop this basic set of CC&Rs. Individual developers, with city approval, could add a CC&R addendum to the basic set to govern "special requirements" as they exist within their development.

These "special requirements" have been proposed under my own "Muni-zation" plans as special taxing district ordinances, thereby allowing for restricted use of amenities and "tailored rules and regulations" for each community, yet not inconsistent with the laws of the land.

With keen insight, the write states that, "If Chandler would take responsibility for the HOAs it creates and make these three changes, we could keep the good aspects of HOAs and cure the bulk of the problems. Further state legislation will only muddy the waters by creating a hodgepodge of 'fixes' that don't really address the real problems."

[For more details on the Muni-zation proposal, see my site at http://pvtgov.blogspot.com

And scroll down.]

To contact us:

Florida's OPPAHA to review HOAs

From Jan Bergemann, President of Cyber Citizens for Justice, a Florida based service at http://ccfj.net]

After a lengthy telephone conversation with the very helpful staff of OPPAGA yesterday, I received an e-mail outlining the next steps of the review. In order to solve the problem of soliciting testimony, that would often require lengthy travels -- inconvenient especially for our elderly friends -- the decision has been made to create an interactive website where you all can easily file your grievances from your home.

It will help to finish the review in a shorter time span. It seems that many of the complaints against the DBPR are going in similar directions. This new website will help all of us to air our grievances, but will allow OPPAGA to get an easier handle on the problems.

Please read the below letter carefully, so you know what is intended with this review. We don't want a witch hunt, we want improvements that will help us in the future. Besides filing your grievances please make proposals for improvements as well. Your help will be very important for the success of this review!

OPPAGA has begun its review of

the Department of Business and Professional Regulation's Division of Land Sales, Condominiums, and Mobile Homes. Our review-will evaluate the division's performance of its primary functions and will include an assessment of its processes for handling consumer complaints related to condominiums, as well as timeshares, mobile homes, and yacht- and shipbrokers.

Although OPPAGA will not be taking public testimony, citizen input is very important to us. In addition to listening to the tapes of public testimony before the House Select Committee on Condominium Association Governance, we will be soliciting feedback from citizens to assist us in identifying specific areas of concern. For this purpose, we are developing a website to allow us to obtain formal input from citizens regarding the division's performance. We expect to have this website completed in November and will contact you with the details about how the public can provide us with the information needed for our review.

We have also created a special mailbox to facilitate receipt of e-mail specific to this review. Accordingly, any future correspondence should be sent directly to the project team at LSCMH@oppaga.fl.gov

"we are developing a website to allow us to obtain formal input from citizens ."



To contact us:

Litigious associations benefit the lawyers

Deb Rich wrote in the SF Chronicle last month]

What makes life in CIDs particularly litigious is the fact that people who buy a home in a CID essentially pledge their private property as a guarantee of their good behavior (as defined by the CC&Rs and as interpreted by the association board). Homeowners associations have a contractual right to place liens on the properties and homes of residents to enforce compliance with the CC&Rs.

"Homeowners associations, being private organizations, cannot violate the Constitution, no matter what they do. They can tell you to take down your Christmas decorations, your American flag, whatever," says Evan McKenzie, political science professor at the University of Illinois, Chicago, and lawyer.

CIDs and CC&Rs are here to stay. Why? Because every day more of us want homes and because cash- strapped towns and cities can't afford to resist a developer who pitches a proposal in which the developer agrees to put in the infrastructure that the city itself used to have to install—the sewage lines, the roads, the parks.

It's a win-win deal; the city gets

to collect property tax from the new homeowners without having had to front the money for development, and the developer gets to pass on the cost for the infrastructure and its upkeep to the home buyers in the form of dues and special assessments.

Homeowners associations are run by a board of directors composed of elected volunteers from among the property owners. However, few homeowners, despite their volunteer spirit, have experience running a multifaceted operation, managing finances, negotiating contracts and smoothing the ruffled feathers of feuding neighbors. Even fewer have time for a second job or have the commitment necessary to spend evenings checking whether the height of the Jones' new fence meets association code.

And the home buyers? Well, the home buyers get a shiny new neighborhood. And the home buyers get the job of keeping it polished.

Comment: Unlike a municipal government, and even though a homeowner can vote, the HOA/CID is undemocratic without checks and balances or a separation of powers that makes is highly susceptible to cliques.

It's a win-win deal; the city gets to collect property tax from the new homeowners without having had to front the money for development

To contact us:

Growing HOA dissatisfaction



From the Christian Scientist Monitor by Mark Sappenfield]

associations have power "assessments" more governed by associa-

tions, there are signs of a mounting revolt.

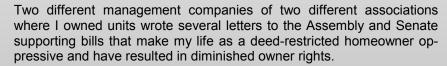
"In my view, there is For decades, such an imbalance of between occupied a murky homeowners' assoniche as more than a ciations and home- many complaints to private business but owners," says Cali- the Legislature and less than a local gov- fornia state Rep. Dar- the government durernment - collecting rell Steinberg (D), ing the past couple of t a x - I i k e who sponsored a bill years," says William but that subject to little public banned foreclosures chair of a Florida task oversight. Yet as unless the resident force convened by Americans owed more than Gov. Jeb Bush (R) to move into homes \$2,500 in assess- deal with the issue.

ments. "There is an unfairness in giving homeowners' associations that much authority."

"There have been would have Sklar, who was co-

Do the HOA lobbyists represents you?

Excerpt from letter to Glassman/Vanitizian column in the L.A. Times]





The letters were written on association letterhead and signed by the management company owners or managers. The letters did not state that the board instructed them to write, nor did they reflect that they were written on behalf of the association.

I showed owners and board members copies and they were mad. Those letters give the impression that the management company speaks for our association. It doesn't. It also gave the impression that the board and owners asked them to write. We didn't.

REPLY:

The company and all its employees mustact only for the association's benefit, meaning with board consent.

To contact us:

'That 51 per cent of the owners could exempt their own property and leave the other 49 per cent encumbered"

... your vote not necessary

sound and should be supermajority uniform property owners.

Permitting nonuniform amend-

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Governator vetoes bill

Although it had wide bipartisan support, Gov. Arnold Schwarzenegger vetoed a bill would that have stopped California's 37.000 homeowner associations from foreclosing on homes for small debts.

The legislation, by Assemblyman Darrell Steinberg, D-Sacramento, and Sen. Denise Ducheny, D-San Diego, would have made associations use small claims court to collect unpaid debts under \$2,500, ending a practice of threatening to foreclose while adding \$1,500 to \$2,000 in attorneys fees and other collection costs to the

Debts over \$2,500 could still have been collected through nonjudicial foreclosure. But the new law would have significantly restricted foreclosure practices in associations. It proposed to make association boards personally approve foreclosure proceedings instead of delegating to others, make new buyers pay at least 65 percent of a foreclosed home's value and gave homeowners 90 days to buy back their property.

Efforts by homeowner groups to pass similar legislation in other states - such as Texas, Florida and Arizona, which contain more than half the nation's 260,000 homeowners

associations - have also repeatedly failed.

"I think he recognized the unintended financial havoc that this legislation could have created," said Tom Skiba, chief executive officer of the Community Associations Institute, a Virginia-based industry group that mounted a major lobbying effort this month with Schwarzenegger. "This had potential to damage the entire economy of California.".

The fear tactics prevail — officials accept the falsehood that only HOAs will be built, sold and bought by home buyers.

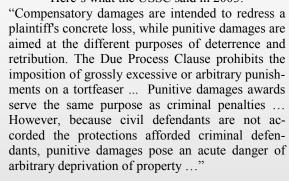


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Emotional distress by HOA

A US Supreme Court case on the topic of punitive damages has bearing on the Radcliff case mentioned above, and on other HOA foreclosure cases

Here's what the USSC said in 2003:



This was an insurance case, won by the inurance company, with a ratio of 145:1 in punitive damages. The foreclosure against the Radcliff's was for \$120 debt and the loss of home equity was some \$285,000, representing over a 2,000:1 pun-



Do HOA foreclosures violate due process?

A US Supreme Court case on the topic of punitive damages has bearing on the Radcliff case mentioned above, and on other HOA foreclosure cases.

Here's what the USSC said in 2003:

"Compensatory damages are intended to redress a plaintiff's concrete loss, while punitive damages are aimed at the different purposes of deterrence and retribution. The Due Process Clause prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeaser ... Punitive damages awards serve the same purpose as criminal penalties ... However, because civil defendants are not accorded the protections afforded criminal defendants, punitive damages pose an acute danger of arbitrary

deprivation of property ..."

This was an insurance case, won by the inurance company, with a ratio of 145:1 in punitive damages. The foreclosure against the Radcliff's was for \$120 debt and the loss of home equity was some \$285,000, representing over a 2,000:1 punishment.

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